SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Deveau*, 2023 NSSC 429

Date: 20231006
Docket: 508832, 522774
Registry: Yarmouth

Between:

His Majesty the King

Plaintiff

v.

Dominic Deveau

Defendant

Restriction on Publication: Restriction on Publication: s.486.4CC

Judge: The Honourable Justice Muise

Heard: Oral decision rendered October 6, 2023

Counsel: Chelsea Cottreau, for the Plaintiff
Philip Star, KC, for the Defendant

486.4(1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

(i) an offence under section 151, 152, 153, 153.1, 155, 160, 162, 163.1, 170, 171, 171.1, 172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or

(ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph (a)

By the Court:

DECISION ON SENTENCE

[1] I remind everyone that there is a publication ban on any information that might disclose the identity of the victims.

Offences

[2] Dominic Deveau is being sentenced in relation to two offences contrary to section 271(1) of the *Criminal Code*.

[3] The Crown proceeded by indictment on both charges.

[4] Each offence carries a maximum penalty of 10 years.

[5] There is no minimum penalty.

Circumstances of Offences

[6] The first s. 271 offence occurred on or about March 3, 2019.

[7] The accused was 44 years of age at the time.

[8] The victim, MM, was a participant in a workshop that Mr. Deveau was running through Southwest Employment Services. That was as a part of a program to help people, including people like MM, who had experienced trauma and mental health difficulties, to get back into the workforce. He was also hired by them to provide counselling to those participating in that program if they wanted it. So, she also had a potential counselling relationship with him.

[9] As a result, MM and Mr. Deveau both knew that it was improper for them to engage in sexually suggestive discussions and develop a personal intimate relationship outside of the program. Nevertheless, they did meet for coffee, including on the day of the event in question.

[10] On that day, they met for coffee at a café in Yarmouth. However, Mr. Deveau made it clear that he was anxious to get out of that public location quickly. He drove her to a rural location about 15 to 20 minutes away and parked on an offroad facing the ocean.

[11] He asked if she wanted to kiss. She said she did not. He insisted that they do so just a little and started kissing her aggressively and passionately without her consent.

[12] Then he started pulling her over to him. He reclined his seat and was trying to pull her on top of him. She tried to resist by being a dead weight.

[13] He then unzipped his pants, pulled out his penis and pushed her head in his lap. He kept trying to pull and push her.

[14] During all of this she kept saying “no” over and over, even as he was reclining his seat. He was saying “Oh just a little bit”.

[15] He was trying to get her to perform oral sex on him. She told him she did not want to. He responded by saying “just give it a little kiss”.

[16] At some point he grabbed her hand and directed it towards touching his penis. At that point she placed her hand on him below his penis and pushed off to prevent his penis from going in her mouth.

[17] He was pushing her head repeatedly towards his penis. She kept turning her head to the side and saying “no”.

[18] She did not consent and said “no” repeatedly.

[19] He abruptly stopped when she disconnected from her body due to flashbacks from a traumatic event which occurred in her teenage years. She thinks she went limp at that point.

[20] They returned to Yarmouth where he dropped her off at her car.

[21] The second s. 271 offence occurred on or about December 4, 2020, while Mr. Deveau was on an undertaking given to a peace officer in relation to the first matter.

[22] The accused was 46 years of age at the time, having turned 46 that October.

[23] The victim, LJ, went to Mr. Deveau for therapy sessions. She informed him that she was experiencing financial difficulty and that it was hard for her to pay for

the sessions. He decided to continue sessions for free, though, ultimately, she discovered she had medical coverage to pay for them.

[24] From September to December, 2020, she attended seven one-on-one therapy sessions with him at his office, each lasting about one hour. After the last session on December 3, 2020, he asked her to go for coffee and she told him she wanted to stop sessions with him. That was because he was becoming flirtatious with her.

[25] On that same day, he sent her a text telling her he wanted to lay in her arms, that he was in love with her eyes, and her lips were distracting in therapy sessions.

[26] The next day, on December 4, he called her and arranged for her to come to his residence, which is also where his office is located. There, they smoked a cannabis joint before driving to Cape Forchu. They then returned to his residence where they smoked a second joint.

[27] Then, they sat on the couch and watched a movie. LJ was feeling high from the cannabis.

[28] During the movie, Mr. Deveau stood up, pulled down his pants, and exposed his penis to LJ, then sat down again on the couch. He made a motion indicating he wanted her to perform oral sex on him.

[29] She was wondering whether the situation was really happening. As a result, she did not communicate that she did not want the sexual activity to occur. She also proceeded to perform oral sex on Mr. Deveau and put his penis in her mouth. As she was doing that, he was pulling her towards himself with his arms on her shoulders.

[30] It is agreed that, in the circumstances, including the therapist-client relationship they had, LJ did not provide informed consent to the sexual activity.

[31] The next day, December 5, Mr. Deveau told LJ she could keep the $500 from the insurance to buy presents for her children.

Sentence Recommendations

[32] The Crown recommends one year of imprisonment for the sexual assault on MM and two years' imprisonment for the sexual assault on LJ to be served consecutively, for a total of three years, as well as the following ancillary orders:

- A SOIRA order for 20 years under s.490.013(2)
- A Primary DNA order under s. 487.051
- A s. 109 Firearms Prohibition Order, which is mandatory, for 10 years and for life for restricted and prohibited firearms
- A s. 743.21 noncommunication order with MM and LJ while serving the custodial sentence

[33] The Defence recommends a period of imprisonment to be served in the community under a conditional sentence order, at or close to the maximum allowable time, followed by 2 years' probation.

[34] It does not contest the ancillary orders.

Availability of Conditional Sentence

[35] This case does not involve any of the specifically excluded offences in s. 742.1 (c) and (d), so the prerequisites in those parts are not applicable.

[36] *R. v. Proulx*, 2000 SCC 5, outlined the proper approach to determining whether a conditional sentence order ("CSO") is an appropriate sentence.

[37] First the Court must be satisfied that the three remaining prerequisites exist:

1. There is no minimum sentence. (That is clearly established as the victims were over 16.)
2. Both probation and a penitentiary term of imprisonment are inappropriate. (Clearly probation is inappropriate.)
3. The safety of the community would not be endangered.

Appropriate Range

[38] Determining the appropriate range of sentence requires court to consider the objectives and principles of sentencing.

[39] As noted in *Proulx*, including at paras 59 and 60, in making the preliminary determination regarding whether a penitentiary term is inappropriate, "the judge need only consider the fundamental purpose and principles of sentencing set out in

ss. 718 to 718.2 to the extent necessary to narrow the range of sentence". Then, only if a preliminary determination is made that a penitentiary sentence is inappropriate, and the other prerequisites are met, should the Judge "proceed to the second stage of the analysis: determining whether a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2. Unlike the first stage, the principles of sentencing are now considered comprehensively. Further, it is at the second stage that the duration and venue of the sentence should be determined, and, if a conditional sentence, the conditions to be imposed."

[40] Therefore, I will examine the relevant objectives and principles with a view to determining whether this case meets the prerequisite to a CSO that a penitentiary sentence be inappropriate.

[41] In going over these objectives and principles I will note points that also relate to whether a CSO would be contrary to or, conversely, satisfy the objectives and principles of sentencing.

Objectives of Sentencing

[42] The key objectives of the sentence in this case include:

- denouncing unlawful conduct; and,
- deterring the offender and other persons from committing offences.

[43] The loss of the ability to continue working in his profession as a psychological counsellor Mr. Deveau has and will continue to suffer, as a result of these offences, could have been expected to provide some specific deterrence. However, when he committed the assaults, he had to know he was risking losing his profession. In addition, now that is no longer a potential consequence for him, and no longer provides the same deterrence. Nevertheless, it would still provide some general deterrence.

[44] These are serious offences which carry significant stigma. He lives in a small town where his involvement in such offences is more likely to be known. That ought to have some deterrent effect. However, this case was not highly publicized. Perhaps, a more important question is what sentence provides sufficient general deterrence and denunciatory effect. These are very serious offences. They

are not in any way minor offences. Denunciation and general deterrence are very important objectives.

[45] Perhaps, a more important question is what sentence provides sufficient general deterrence and denunciatory effect. These are very serious offences. They are not in any way minor offences. Denunciation and general deterrence are very important objectives.

[46] I must determine a sentence that sufficiently fulfills those objectives when considered along with all other relevant sentencing objectives and principles.

[47] As noted at paragraph 102 of *Proulx*, despite a conditional sentence generally being more lenient than incarceration, it can provide a significant amount of denunciation, particularly when "onerous conditions are imposed and the duration of the conditional sentence is extended beyond the duration of the jail sentence that would ordinarily have been imposed in the circumstances". However, as noted at paragraph 106, "there may be certain circumstances in which the need for denunciation is so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct".

[48] Similarly, as noted at paragraph 107, " a conditional sentence can provide significant deterrence if sufficiently punitive conditions are imposed and the public is made aware of the severity of these sentences", and, if the offender is amenable to conditions such as being obliged to "speak to members of the community about the evils of the particular criminal conduct in which he or she engaged", that can also have a deterrent effect.

[49] Another objective is separating the offender from society where necessary.

[50] These are offences of a type which often make that necessary. However, if the prerequisites for a CSO are met, as noted at paragraph 108 of *R. v. Proulx*, if complete separation by incarceration is required "it is as a result of the objectives of denunciation and deterrence, not the need for separation as such".

[51] Other objectives include:

- to assist in rehabilitating the offender;
- to provide for reparations for harm done to victims and the community ; and,

- promoting a sense of responsibility in the offender, and acknowledging the harm done to the community.

[52] A CSO is well suited to addressing these restorative objectives.

[53] The Offender's lack of related record is a factor which supports rehabilitation being a viable and important objective, as, ultimately, the long-term protection of society is best served by successful rehabilitation.

[54] However, there are a number of points which raise serious questions about the viability of rehabilitation. They include the following:

- His expressions of remorse were guarded, almost half-hearted. As the writer of the PSR stated, "he appears to have limited remorse for his behaviours". It was limited to him expressing regret for the MM incident and sorry he had hurt the victim as she had been hurt before by men, while stating he had a "make out" session with her which crossed boundaries and led him to panic and say they could not see each other again.
- Even his statement to the Court today showed guarded remorse and limited insight into the seriousness of his offending behaviour. He described his actions as highly inappropriate and crossing boundaries, when they were highly predatory acts deliberately committed on victims he knew to be vulnerable after, through inappropriate means, he arranged to alone in intimate settings with them, despite LJ being his therapy client and MM being his student who could attend counselling with him.
- His clinical therapist "expressed he has failed to accept responsibility for his actions" and had not "expressed any remorse" (at least in relation to MM).
- She also indicated that he: "showed no real commitment to change throughout his therapy sessions", "did not follow through on any homework and did not wish to address same at later appointments", only attended 6 sessions, failed to show for 4, and rescheduled 12.
- He has not consented to a Sex Offender Risk Assessment, so that his risk of recidivism could be assessed.

- The Provincial Forensic Sexual Behaviour Program administered in the Community would be expected to take 2 to 3 years from referral. That is longer than could be imposed in a CSO.

[55] The harm that this type of offence does to the victims is reflected in the Victim Impact Statements (VIS's) filed by both victims.

[56] MM provided a detailed and comprehensive victim impact statement noting very serious impacts upon her, including, among others, the following:

- She is chronically stressed.
- She does not trust men anymore.
- That makes it such that she has to ensure she has a self-defence tool and an exit strategy, and always informs a friend or family member of her plans.
- There are a number of triggers which affect her whole nervous system, causing her heart to speed up, her gut to clench and an abatement of her breath. She has to use coping techniques to remain grounded and relaxed after such triggers. The triggers include those which follow:
    - seeing a blue Honda civic (i.e. presumably the type of car Mr. Deveau drove her in);
    - seeing a Minion because Mr. Deveau looks like one of the minion characters (she had to discard many toys and items of her children depicting minion characters);
    - seeing or hearing the name Dominic;
    - engaging in intimacy with her new partner because his shaved head reminds her of Mr. Deveau and what happened in the car with him;
    - taking her children to their dentist because his office is right behind Mr. Deveau's home; and,
    - seeing an unsolicited photo of a penis.
- While she was still living in Yarmouth, seeing him was very upsetting for her and, especially seeing him in her neighbourhood, which made her worry about the safety of herself and her children. As a result, she had to

install a home security camera and started keeping track of every time she saw him.

- She had felt safe with Mr. Deveau because he was a therapist and was her teacher in a course designed to help vulnerable people become work ready. Having attended counselling for numerous reasons, she knows that it is a vulnerable place to be and that you have to trust your therapist to receive the benefits. Mr. Deveau abused his power and that special role in the community. Though she, herself, still trusts therapists and counsellors, she recognizes that some may be so fragile that that type of event would prevent them from reaching out to a therapist that they desperately need.
- At the time the event occurred she had been offered a job placement at a women's centre. However, seeing sexual assault awareness month materials caused her to report. The stress the ensuing process created for her made her unable to continue with that employment.
- The fact that she had no family in Nova Scotia, and only one friend, left her feeling isolated.
- Even though she had previously quit smoking all she could do at that point was drink coffee and smoke cigarettes and shake like a leaf. She ended up at the local women's shelter for four or five days. There, she was in fight or flight mode.
- It rendered her unable to do many other things that she used to do, including cooking for her family and being a fun mom. She felt angry and cried all the time.
- Around the same time, she slipped and broke her tailbone. The stress she was going through at the time made her unable to care for herself as she should have. She did not make it to the doctor. As a result, her back healed improperly. She now has chronic back pain and is unable to stand for more than a few minutes, nor walk for long, nor bend and pick up anything off the floor without great caution and effort. She now walks with a cane and feels she needs a mobility scooter.

[57] LJ noted that, because of the offence, she has:

- moved towns, changed jobs, and lost much sleep;
- cried profusely;

- hated herself;
- begged and prayed to God for help;
- felt scared and trembled more than she ever has before;
- felt embarrassment, shame and dirtiness;
- missed countless shifts at work;
- experienced anxiety to a greater extreme than she ever had before;
- felt wary trusting new healthcare professionals and other professionals;
- rubbed her skin raw;
- been unable to eat, causing weight loss;
- felt suicidal;
- sought out therapy from a female psychologist, consumed all self-help materials she could find, turned to nature and exercise, to become a better person for her family, partner and friends; and,
- experienced such difficulty dealing with the offence that she can understand why many victims do not come forward.

[58] These specific effects on an individual flow over to the community at large in the way of diminished productivity and higher health care costs. More generally, it leads to distrust and fear, which limits our sense of security and freedom.

[59] Most concerning is that, given Mr. Deveau's position as a therapist or counsellor, these offences particularly lead to general distrust of mental health professionals, thereby discouraging some victims of sexual offences and others from seeking the very services that would help them heal.

[60] There is little that could be imposed upon Mr. Deveau that would provide any meaningful reparation for the harm done or promote in him a sense of responsibility or an acknowledgement of the harm caused.

[61] One potential tool would have been to require him to engage in public or group-session speaking regarding his sexual offences and how others might be able to avoid engaging in such activities. However, on the evidence before me, it does not appear that he is amenable to such an initiative. It is clear that he, himself,

despite having a Master's degree in counselling and psychology, lacks insight into his own offending behaviour, minimizes it, expresses only half-hearted remorse, and is not motivated to fully engage in therapeutic intervention to change his outlook and, ultimately, his actions.

[62] In his statement to the Court, he did say he wished to educate men in the area of self-love. That is an important objective. However, it would not have the same impact that talking about how he came to his own offending behaviour and how others might avoid it. It demonstrates that he is more focused on himself than on the harm caused to the victims.

Other Sentencing Principles

[63] The following sentencing principles also apply.

[64] A sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender: S.718.2.

Aggravating and Mitigating Circumstances in the Case at Hand

[65] The aggravating circumstances include the following:

- The offender abused two persons.
- In committing the offences, he abused a position of trust or authority, particularly in relation to LJ. Through his client-therapist relationship with her he became aware of her vulnerabilities, including her mental health and financial difficulties.
- In relation to MM, he at least capitalized on vulnerabilities he became aware of through his position as trainer and he was also available as a counsellor for MM, which, though not as flagrant a breach of trust, still involves a breach of trust.
- He consumed cannabis with LJ to the point where she became high, rendering her even more vulnerable.
- He committed the offence on LJ while on an undertaking given to a peace officer in relation to the offence he had committed on MM.
- The offences had devastating impacts on the victims.

- The impacts were exacerbated by their personal circumstances, including their mental health and financial vulnerabilities.

[66] The mitigating circumstances include the following:

- In relation to LJ he entered a guilty plea, saving her the additional trauma of having to testify at the trial.
- He has no prior criminal record.
- He has supportive parents and siblings.
- He is somewhat remorseful, though it is unclear to what extent, as he appears to minimize the events.
- He has been under release conditions, which he appears to have followed, though with the only restrictions initially being to stay in NS, report changes of employment or occupation to the police, and not communicate with MM.
- A more restrictive release order was made after the charge related to LJ surfaced.
- Though he has struggled with substance misuse, there is no evidence substance played a part in the offence against MM, nor that it reduced his level of moral culpability in relation to LJ. Also, though he has attended AA and with an addictions therapist, he does not appear very motivated to make progress in that area.
- He notes he hopes to become a productive member of society. However, he was a productive member of society as a therapist and trainer. That did not stop him from abusing that position for his own self-gratification.

Parity Principle (s. 718.2 (b))

[67] A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[68] The Defence advanced a number of pre-Friesen cases in which CSO's were granted for sexual offences, including:

- *R. v. A*, 2019 NSPC 87
- *R. v. Jensen*, 2019 ABQB 873
- *R. v. CP*, 2019 NSSC 157
- *R. v. JP*, 2017 NSPC 54.

[69] They were submitted more for various principles stated in them than as comparison cases. However, to the extent that they may serve as comparison cases I will briefly address the question of distinguishing features.

[70] *R. v. Friesen*, 2020 SCC 9, directed that sentences for sexual offences against children should increase. It was not tasked with deciding whether sentences for sexual assaults against adults should increase. However, as noted in *R. v. Pettitt*, 2021 ABQB 773, at paras 44 and 46, "the fundamental wrongfulness, harm, and blameworthiness of sexual offences persists regardless of the victim's age" and *Friesen* specifically stated, at paragraph 118, that nothing in its reasons should be taken as "a bar against increasing sentences for sexual offences against adult victims".

[71] For these reasons, I agree with the Crown that the date of those decisions is a distinguishing feature. There are also other distinguishing features including those which follow.

[72] *R. v. A.* involved an Indigenous offender with significant Gladue factors, a single act, and a guilty plea. There are no Gladue factors at play in the case at hand. There were two victims. Mr. Deveau only pled guilty in relation to one of the incidents.

[73] In *R. v. Jensen*, the 78-year-old offender confessed and expressed remorse immediately to the police. He expressed remorse to the writer of the PSR. The matter was proceeded with by summary conviction. He was not in a position of trust in relation to the victim. With the exception of guarded expression of remorse, none of those factors exist in the case at hand.

[74] *R. v. C.P.* involved a historic sexual assault by an 18-year-old Indigenous person who engaged in inappropriate touching with his half-sister when she was six or seven years of age. A number of Gladue factors were identified. That is a completely different situation than the case at hand.

[75] In *R. v. J.P.*, the Crown proceeded summarily and the accused entered guilty pleas to both offences. In the case at hand, the Crown proceeded indictably and Mr. Deveau was convicted following trial in relation to one of the offences. In addition, the circumstances of the case at hand are much more intrusive.

[76] The Defence also advanced the following post-Friesen cases where CSO's were imposed for sexual offences:

- *R. v. Carson*, 2021 NSPC 1; and,
- *R. v. Holland*, 2022 ONSC 1540

[77] *R. v. Carson* involved a summary conviction proceeding and the sexual assault involved grabbing of the buttocks of two different female employees over their clothing. The level of abuse of power and the intrusiveness of the acts were far lower than in the case at hand.

[78] *R. v. Holland* involved only one victim and the event had occurred 14 years prior. Though there was some digital vaginal penetration, the whole incident, starting from when she was first grabbed, lasted only 10 to 15 seconds and the accused stopped immediately when she asked him to. The victim was a patron at a nightclub he was promoting. She was not an employee. He was not in a position of trust in relation to her. The judge found the appropriate range of sentence to be between eight and 12 months. He gave one month of remand credit. Ultimately, he imposed an eight-month CSO. In the circumstances, though lenient, that sentence might be justifiable. However, the circumstances in the case at hand are substantially different for reasons already canvassed.

[79] The Crown provided the following comparison cases:

- *R. v. Pettitt*, 2021 ABQB 773;
- *R. v. Murray*, 2023 NSSC 62; and,
- *R. v. Anthony*, 2014 BCSC 2132.

[80] In *R. v. Pettitt* a tattoo artist sexually assaulted three of his clients while applying tattoos in their upper thigh or hip area. With victim 1, there was nonconsensual touching of her vaginal area without penetration. When she realized what was happening, she got up and left. A sentence of 12 months' imprisonment was imposed for that event. In relation to victim 2, he digitally penetrated her and

put his finger on her clitoris quite a few times. She asked him to stop three or four times and he did not. The court imposed a sentence of 30 months' imprisonment in relation to that victim to be served consecutively. In relation to victim 3, he touched her vaginal area and digitally penetrated her for at least a minute. The court imposed a sentence of 36 months' imprisonment to be served consecutively. It was held that the offences involved a breach of trust. However, the breach of trust would not be greater than that in the case at hand. The digital penetration aspect of the offence is arguably as intrusive as Mr. Deveau having his penis in LJ's mouth, though some might say that the fact that a penis was involved rather than a finger makes it more intrusive. Certainly, in relation to vaginal penetration, if a penis is used, it is generally considered to be more intrusive than a finger because of the added risks. In the case at hand, in relation to MM, though she managed to keep Mr. Deveau's penis out of her mouth, he certainly made extensive efforts to force and/or coerce her to perform oral sex on him. She had to struggle to resist him.

[81] In *R. v. Murray*, the summary conviction appeal Court substituted a sentence of 18 months' imprisonment followed by 24 months' probation, for a 90-day intermittent sentence that it found to be demonstrably unfit. The accused had grabbed the victim by the back of the hair, forced her head down to his penis and put his penis in her mouth without her consent, against her will and in the face of her protestations. His youthful age of 29 was a mitigating factor and he had a positive presentence report. He had undergone counselling and cooperated and learned from therapy. It is noteworthy that, since the Crown proceeded summarily, the maximum penalty was 18 months' imprisonment. Although it is comparable in relation to one of the victims in this case, it is not in relation to the other and those mitigating features do not obtain.

[82] *R. v. Anthony* is also a pre-Friesen case and the sentence imposed was lenient given the circumstances. The court concluded that a sentence of three years' imprisonment would have been appropriate were it not for the accused's personal circumstances, but, instead, imposed one of two years less a day, partly due to the accused having health issues and possibly requiring significant bypass surgery. The accused was a psychologist who sexually assaulted his patient. He started by sexualizing the therapy sessions. He first told her that for homework she had to go home and masturbate. In the second session he stared at her chest and asked about whether she had masturbated. He told her she needed radical sex therapy. In another session he told her to remove her clothes and cupped her

breasts and vagina over her bra and underwear. In the next session he had her remove her undergarments and rubbed her clitoris and digitally penetrated her vagina. In later sessions, he touched her breasts, vagina, digitally penetrated her and performed cunnilingus. In one later session she briefly fellated him. There was no legitimate therapeutic purpose to these sessions. They went on for about three months.

[83] There was obviously a gross breach of trust, preying on vulnerabilities and a violation of the victim's well-being in that case. The acts were highly invasive of her sexual autonomy and integrity. The offence aggravated her pre-existing mental health problems.

[84] The offending behaviour was calculated and planned. It occurred over a long period of time.

[85] However, Dr. Anthony had what was described as an "impressive array of letters attesting to [his] work ethic, good character, and commitment to his community". He was determined by the court to be at a low risk of reoffending. He was no longer in a position of power, trust or authority regarding vulnerable members of the public.

[86] The Crown was seeking a sentence in the 12-to-18-month range, so the court exceeded the Crown recommendation.

[87] As noted by the Defence, Mr. Deveau did not similarly engage in sexual contact under the guise of therapy. For that reason, his breach of trust does not reach the level of that engaged in by Dr. Anthony. In addition, the sexual offending was not as prolonged.

[88] However, as I alluded to, the sentence imposed in that case was excessively lenient, likely at least partly due to the even more lenient Crown recommendation. In addition, Mr. Deveau does not have the same health issues that would warrant reducing the length of imprisonment because of the impact that such a condition would have on him while serving the sentence. Further, Mr. Deveau victimized two vulnerable victims, not just one. He is still engaging in online training or teaching. He has not shown that he is at a low risk of reoffending. He has not submitted any impressive array of character letters. His presentence report is far from glowing.

Restraint (s. 718.2 (d) & (e))

[89] I have considered the principle that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances. All available sanctions other than imprisonment (or as it relates to the possibility of a CSO, to echo the wording in Proulx, "incarceration") that are reasonable in the circumstances should be considered for all offenders.

Philosophical Points Raised Regarding Jails

[90] This is perhaps an opportune point at which to deviate briefly into the philosophical discussion about jails raised by Mr. Deveau.

[91] He says jails are a barbaric instrument as they cage people. In more historic times they flogged people, but that stopped.

[92] Jails have come a long way towards ensuring respectful and humane treatment. Where it may be lacking, *habeus corpus* is available to rectify it.

[93] I see jails not so much as a barbaric instrument but as a blunt instrument.

[94] We live in a society. We are interconnected with all parts of society in some way. The parts of our society engaged in criminality affect all of society and our social structure may play a part in propagating criminality.

[95] Putting offenders in jail can be compared with crudely cutting off a cancerous part of our body.

[96] Ideally, our social structure would ensure it remains healthy so that no cancer develops or is at least controlled enough that it does not reach the point of requiring surgery. That would be the best for everyone.

[97] As Justice Scanlan stated in *R. v. Ellis,* 2023 NSCA 63, at paragraph 145, it would be better if offenders could have been "successfully treated, not excessively jailed".

[98] Unfortunately, we are not there yet.

[99] Another preferable avenue would be to provide sufficient resources to ensure as many inmates as possible can heal from their own traumas and be restored to fully healthy parts of society. That would render jails a more refined surgical process.

[100] Unfortunately, we are not there yet.

[101] Where the cancer is such that it needs to be removed, all we are left with is this crude instrument.

[102] Mr. Deveau also submits the time spent in jail can never be replaced.

[103] Whether time is wasted depends on one's attitude. I take Nelson Mandela as an example. He spent years in jail and was treated brutally. Yet he learned and practiced gratitude and forgiveness, allowing him to overcome anger and hate. His experiences made him a stronger person. One that became president and invited his oppressors, including the jail commanders who had abused him, to his inaugural event.

[104] So, whether jail time is time taken from an inmate depends on what they do with it.

[105] Now, I will return to the sentencing objectives and principles.

Proportionality (s. 718.1)

[106] It is a fundamental principle of sentencing that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[107] As highlighted by the Crown, these are clearly very grave offences, committed by a person in a position of trust or authority, who preyed on the vulnerability of his victims, and who was solely and completely responsible for the offences. There was nothing diminishing his level of responsibility. Quite to the contrary, his position as therapist and workshop leader also providing personal counselling, augmented his level of responsibility, and particularly considering that, having a master's degree in counselling and psychology, he ought to have been clearly cognizant, not only of how wrongful his actions were, but of the extreme harm that they were likely to cause.

[108] Also, particularly in relation to MM, the fact that he started assaulting her immediately after parking the car, indicates that he went there planning to engage in that activity, at best hoping she would go along with what he wanted.

Factors Affecting Sentencing in Sexual Assault Cases Specifically

[109] Justice Warner, in *R. v. H.C.D.*, 2008 NSSC 246, at paragraph 15, stated:

> A useful starting point for the factors affecting sentencing in sexual assaults case is found in the Quebec Court of Appeal case called R. v. J.L. That decision enumerated seven factors that were recently repeated by Judge Tufts in a case called R. v. S.C.C. 2004] N.S.J. No. 272 which is sometimes cited in Courts of Nova Scotia respecting relevant factors for these kinds of offences.
>
> (a) First is the nature and intrinsic gravity of the offence, which is affected, in particular, by the use of threats, violence or psychological manipulation;
>
> (b) Second is the frequency of the offence and the time period over which it was committed;
>
> (c) Third is the abuse of trust and abuse of authority involved in the relationship between the offender and the victim;
>
> (d) Fourth is any disorder underlying the commission of the offence, whether the offender had psychological difficulties, disorders or deviancies and other similar factors;
>
> (e) Fifth is whether the offender has previous convictions of a nature similar to those which are before the Court;
>
> (f) Sixth is the offender's behaviour after the commission of the offence such as confessions, assistance in the investigation, immediate involvement in a treatment program, potential for rehabilitation, and financial assistance, as well as empathy and remorse for the victim; and,
>
> (g) The time between the commission of offence and the guilty plea or verdict as a mitigating factor depending on the offender's behaviour.

[110] I have already discussed the gravity of the offences.

[111] At least in relation to MM, he appeared to employ some level of psychological manipulation in trying to coerce her into kissing him and his penis against her will. He did so, knowing of her vulnerabilities.

[112] In relation to LJ, he used cannabis as a tool to lower her resistance and the shocking impact of dropping his pants and gesturing for her to perform fellatio.

[113] There was only one incident involving each complainant. It is not completely clear how long the incidents lasted. However, they were certainly well in excess of the 10 to 15 seconds involved in the *Holland* case.

[114] For reasons already discussed there is clearly an abuse of trust or authority.

[115] There is no evidence of any underlying psychological difficulties, disorders or deviancies which would lower his level of responsibility or moral blameworthiness. There is no indication that his anxiety and depression would have that effect. His substance misuse does not, in the circumstances.

[116] He has no prior convictions.

[117] There is no evidence of Mr. Deveau having provided confessions, prior to the guilty plea and agreed statement of facts in relation to LJ.

[118] There is no indication he assisted in the investigation.

[119] Though he has been involved in addictions therapy, he has not meaningfully participated. In addition, he is not involved in any treatment or counselling program that would address his risk of sexual recidivism.

[120] Given his apparent attitude towards the offences and therapy, his potential for rehabilitation appears poor.

[121] He does express some empathy for the victims, and some limited remorse.

[122] Unlike in the *Holland* case, it has not been 14 years since the commission of the offences. Effectively, the delay has primarily been from the cases working their way through the system, as opposed to any delay in reporting. Therefore, the time between the commission of the offences and the verdict or guilty plea is not a mitigating factor.

Range of Sentence Less Than 2 Years?

[123] Considering these objectives, principles, factors and points, I have noted, in the circumstances of the case at hand, the sentences suggested by the Crown of 1 year and 2 years' imprisonment, to be served consecutively, are not inappropriate. They are quite appropriate, and even higher sentences would not be inappropriate.

Totality Principle (s. 718.2 (c))

[124] Where consecutive sentences are imposed, the total sentence should not be unduly long or harsh.

[125] There were two victims and the abuses occurred 1 year and 9 months apart in completely different locations. There is no connection between them.

[126] Therefore, it would not be appropriate to impose concurrent sentences. As such the totality principle comes into play.

[127] Before considering the principle of totality, the sentences noted would result in a combined sentence of 3 years' imprisonment.

[128] *R. v. Adams***,** 2010 NSCA 42, with references omitted, outlined the proper approach to applying the totality principle as follows:

> "23 In sentencing multiple offences, this Court has, almost without exception, endorsed an approach to the totality principle consistent with the methodology set out in C.A.M., ... The judge is to fix a fit sentence for each offence and determine which should be consecutive and which, if any, concurrent. The judge then takes a final look at the aggregate sentence. Only if concluding that the total exceeds what would be a just and appropriate sentence is the overall sentence reduced. ..."

[129] I find that, in the circumstances, a total sentence of 3 years' imprisonment is in an acceptable range. It is not an unduly long and disproportionate sentence. It is at the lower end of the range. Therefore, it is not to be reduced.

[130] Consequently, the prerequisite to a CSO that a penitentiary sentence be inappropriate has not been established.

Safety of the Community

[131] The safety of the community prerequisite is discussed at paragraphs 62 to 76 of *Proulx.*

[132] The Court must take into account

> "(1) the risk of the offender re-offending; and (2) the gravity of the damage that could ensue in the event of re-offence. If the judge finds that there is a real risk of re-offence, incarceration should be imposed. Of course, there is always some risk that an offender may re-offend. If the judge thinks this risk is minimal, the gravity of the damage that could follow were the offender to re-offend should also be taken into consideration. In certain cases, the minimal risk of re-offending will be offset by the possibility of a great prejudice, thereby precluding a conditional sentence": para 69.

[133] A non-exhaustive list of factors is reproduced at para 70.

[134] These offences are of a sexual nature which occurred in private locations at which Mr. Deveau brought his vulnerable victims, fully cognizant of their vulnerabilities and of his position of trust or authority in relation to them. As noted by the Crown, the fact that he victimized two vulnerable victims in relation to which he was in a position of trust, reveals a concerning pattern. These circumstances suggest an elevated risk of recidivism.

[135] The second offence occurred while the offender was on an undertaking from the first offence.

[136] His professional relationship with both victims made it such that even meeting with them outside of that professional relationship was fraught with inappropriateness and danger of sanctions from his regulatory body. He was aware of that as he was anxious to leave the café with MM.

[137] Yet he groomed them by being flirtatious, engaging in sexually suggestive conversation, or both.

[138] Then he forged ahead with, taking both victims to private locations, having LJ engage in unwanted sexual activity with him and in trying to force MM to do so. With LJ his manipulative tactics included having her consume cannabis to the point of being high, inside his own residence, the ultimate private and intimate location.

[139] With LJ, he dropped his pants and motioned for her to perform fellatio on him.

[140] With MM, he, among other things, pulled out his penis and pushed her head in his lap, continuing to push and pull her even though she was saying “no” repeatedly. He even tried to coax her into performing fellatio by saying “just give it a little kiss”. She had to push off from him to prevent his penis from going into her mouth.

[141] That shows an intentional level of aggression beyond recklessness or wilful blindness as to consent. It shows he proceeded clearly knowing there was no consent.

[142] Despite being a mental health counsellor himself, he has shown a lack of commitment to change through therapy.

[143] His expressions of remorse are half-hearted.

[144] His refusal to participate in a Sex Offender Risk Assessment leaves the Court without any information to support a finding that he might have a lower-than-normal risk of reoffence.

[145] He lives alone, so even if protective conditions were imposed, there would be no one there to supervise whether he complied or not.

[146] He would be right where one of the offences occurred.

[147] He teaches online and could similarly lure a student to his residence.

[148] Even if he was motivated to change, there would not be enough time on a CSO for effective community-based sex offender treatment. In addition, there would be a long period of time before any progress could be made.

[149] For these reasons, the risk of recidivism is well above minimal.

[150] Even if it was minimal, the gravity of the potential damage of reoffence is very high. In that regard, I need only point to the victim impact statements I have already referenced. Plus, there is ample judicial recognition of the inevitable harm caused by such offences, particularly where the offender abuses a position of trust or authority.

[151] For these reasons, in relation to this offender and these offences, in the circumstances, the safety of the community cannot reasonably adequately be protected by a CSO, even with very stringent conditions.

CSO Prerequisites Not Met

[152] For these reasons, the CSO prerequisites have not been met and a CSO is not available.

[153] Even if the had been met, a CSO would not be consistent with the fundamental purposes and principles of sentencing in ss. 718 to 718.2 for the reasons canvassed while determining range or duration of sentence.

SENTENCE

[154] Considering the objectives, principles and factors I have already canvassed, I find that, in the circumstances of the case at hand, a total sentence of 3 years or more is appropriate. Applying the principle of restraint, I will limit it to 3 years, and sentence Mr. Deveau as follows:

- 1 year imprisonment for the sexual assault on MM; and,
- 2 years' consecutive imprisonment for the sexual assault on LJ, for a total of 3 years' imprisonment.

Ancillary Orders

[155] The offences are primary designated offences in subsection (a) of definition in s. 487.04 Therefore a DNA order is absolutely mandatory. There is no discretion to decline to make the order on the basis of grossly disproportionate impact. So, I must and do make the order.

[156] A s. 109 firearms prohibition order is mandatory for a minimum period of 10 years and, in relation to some items, for life. Therefore, I grant a s. 109 firearms prohibition for 10 years.

[157] S. 271 is a designated offence under s. 490.011(1)(a). Therefore, under s. 490.012(1) a SOIRA order is mandatory. The offences carry a maximum term of

imprisonment of 10 years. Therefore, pursuant to s. 490.013, the SOIRA order is to be for a duration of 20 years. Consequently, I grant a 20-year SOIRA order.

[158] I also grant a s. 743.21 noncommunication order with MM and LJ while serving the custodial sentence.

Victim Surcharge

[159] After the Supreme Court of Canada, in the case of *R. v. Boudreault,* 2018 SCC 58, declared s. 737 of the *Criminal Code* (i.e. the victim surcharge provision) unconstitutional, it was revised to make it Charter-compliant. The revised version has not been challenged. S. 737(2.1) gives the Court discretion to order no victim surcharge, or a reduced one, if the surcharge would cause undue hardship to the offender. There is also another enumerated ground that is not applicable to the case at hand. S. 737(2.3) provides that imprisonment alone does not constitute undue hardship. It requires, under subs. (2.2), inability to pay.

[160] In the case at hand, no fines are to be imposed, and both offences are indictable. Therefore, the surcharge would be $200 per offence, for a total of $400.

[161] Would imposition of a victim surcharge cause undue hardship?

[162] Mr. Deveau submitted that if he is sentenced to a CSO a victim surcharge would be appropriate, but not if sentenced to a lengthy period of imprisonment because he would lose his income.

[163] However, as noted by the Crown, despite being unable to work as a counsellor, while these proceedings were unfolding, he did work. The PSR indicates that he has been earning $33,120 per year as an online teacher. In his circumstances that is not an insignificant amount. Those circumstances include that he lives alone in an apartment above his parents' store. There is no indication he is responsible for supporting anyone.

[164] Further, he will be eligible for parole in a relatively short time. If released, he will once again be able to earn income.

[165] Therefore, I cannot find that a requirement to pay $400 would cause undue hardship, particularly if given sufficient time to pay.

[166] So, I order him to pay $400 in victim surcharges within 6 months of release from imprisonment, including release on parole.

Muise, J.