PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. J.E.*, 2018 NSPC 4

Date: 2018-02-16
Docket: 8049859, 8049860
Registry: Bridgewater

Between:

R.

v.

J.E.

Restriction on Publication: s. 486.4 CC ban on publication

Judge:	The Honourable Judge Catherine M. Benton, J.P.C.
Heard:	February 16, 2018, in Bridgewater, Nova Scotia
Decision	February 16, 2018
Charge:	271 CC, 151 CC
Counsel:	Perry Borden, for the Crown Alan Ferrier, Q.C., for the Defence

PUBLICATION BAN

S. 486.4 CC A ban on publication of any information that could disclose the identity of the victim and/or complainant

By the Court:

Background

[1] This is the sentencing of J.E. who has been charged and pled guilty as follows: that on or between the 1st day of November, 2016, and the 25th day of November, 2016 at or near Lunenburg County, Nova Scotia, did for a sexual purpose touch the complainant, a person under the age of sixteen years directly with a part of his body, to wit his finger, contrary to Section 151 of the **Criminal Code.**

[2] The Crown proceeded summarily. Accordingly, the penalty for sexual interference under section 151(b) is a minimum punishment of imprisonment for a term of 90 days. The Crown is seeking the minimum punishment of ninety days incarceration and is not opposed to the sentence being served intermittently.

[3] The defence has made application to have the mandatory minimum penalty outlined in section 151(b) of the **Criminal Code** judged unconstitutional as it is in violation of Section 12 of the **Charter of Rights and Freedoms** and unjustifiable under section 1 of the **Charter.** The defence is seeking a sentence less than the minimum punishment of ninety days incarceration.

[4] Section 12 of the **Charter of Rights and Freedoms** states as follows:

"Everyone has the right not to be subjected to any cruel and unusual treatment or punishment."

[5] Section 151(b) of the **Criminal Code of Canada** reads as follows:

> "151 Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of 16 years….. (b) is guilty of an offence punishable on summary conviction and is liable to imprisonment for a term of not more than two years less a day and to a minimum punishment of imprisonment for a term of 90 days."

FACTS

[6] The victim was approximately 15 years and 3 months of age and the defendant was 23 years of age at the time of the offence. The victim met J.E. through the church they attended and had known him for over five years. J.E. became part of her support system when she was struggling with personal issues. They were best friends until approximately five months prior to the offence wherein she had developed feelings for J.E. and wanted a physical relationship with him. The victim acknowledged that she would tease J.E. by kissing him and playfully biting him. At first, J.E. was reluctant to participate in the sexual touching requested by the victim, suggesting that they should wait until she was 16 years of age. However, during the month of November, 2016, he digitally

penetrated the victim at her request. This occurred on six to seven occasions during the month of November, 2016.

[7] In preparation for this sentencing I have had the benefit of the following:

1. Pre-Sentence Report prepared September 22, 2017
2. Victim Impact Statement prepared October 3, 2017
3. Counsel's briefs dated November 14, 2017 (Defence) and December 20, 2017 (Crown) along with their respective submissions on January 10, 2017.

[8] In **R. v. Lloyd 2016 SCC 13** the Court provided the following at paragraphs 16 to 18:

> "[16] – Just as no one may be convicted of an offence under an invalid statute, so to may no one be sentenced under and invalid statute. Provincial court judges must have the power to determine the constitutional validity of mandatory minimum provisions when the issue arises in a case they are hearing. This power flows directly from their statutory power to decide the cases before them. The rule of law demands no less.
>
> [17] In my view, the provincial court judge in this case did no more than this. Mr. Lloyd challenged the mandatory minimum that formed part of the sentencing regime that applied to him. As the Court of Appeal found, he was entitled to do so. The provincial court judge was entitled to consider the constitutionality of the mandatory minimum provision. He ultimately concluded that the mandatory minimum sentence was not grossly disproportionate as to Mr. Lloyd.

> The fact that he used the word "declare" does not convert his conclusion to a formal declaration that the law is of no force or effect under section 52(1) of the **Constitution Act, 1982.**
>
> [18] To be sure, it does not follow that a provincial court judge is obligated to consider the constitutionality of a mandatory minimum provision where it can have no impact on the sentence in the case at issue. Judicial economy dictates that judges should not squander time and resources on matters they need not decide. But a formalistic approach should be avoided. Thus, once the judge in this case determined that the mandatory minimum did not materially exceed the bottom of the sentencing range applicable to Mr. Lloyd, he could have declined to consider its constitutionality. To put it in legal terms, the doctrine of mootness should be flexibly applied. If an issue arises as to the validity of the law, the provincial court judge has the power to determine it as part of the decision-making process in this case. To compel provincial court judges to conduct an analysis of whether the law could have any impact on an offender's sentence, as a condition precedent to considering the laws constitutional validity, would place artificial constraints on the trial and decision-making process." [Emphasis added]

[9] The accused bears the onus of establishing a Section 12 **Charter** violation on the balance of probabilities. The test for whether a particular sentence constitutes cruel and unusual punishment is whether the sentence is grossly disproportionate. To be considered grossly disproportionate, the sentence must be more than merely excessive. "The sentence must be so excessive as to outrage the standards of decency and disproportionate to the extent that Canadians would find the punishment abhorrent or intolerable." **R. v. Ferguson** 2008 SCC 6 para 14, **R. v. Al-Isawi** 2017 BCCA 163 para 16.

[10] There are two stages to the section 12 **Charter** analysis. The first involves an individual or a particularized inquiry which focusses on the individual circumstances of the accused. Where a sentence is grossly disproportionate for an individual accused, then a *prima facie* violation of section 12 is established and the court should go on to consider whether the infringement can be justified under section 1 of the **Charter**. The second stage arises where a sentence is determined to be not grossly disproportionate for that particular accused. In those circumstances the court can, nevertheless, go on to consider whether a breach of section 12 arises from "reasonably foreseeable circumstances" suggested by the accused. **R v. Nur**, 2015 SCC 15 par. 65.

[11] The first stage of the section 12 analysis involves two steps. First the court must determine what is an appropriate sentence for the offence having regard to the purpose and principles of sentencing in the **Criminal Code**. Secondly, the court then must ask whether the mandatory minimum requires the judge to impose a sentence that is grossly disproportionate to the offence and its circumstances. If the answer is yes, then the mandatory minimum provision violates section 12 of the **Charter** and the court will then have to decide whether it is justified under section 1 of the **Charter**. **R v. Lloyd** supra at paragraph 23.

[12] In deciding whether a mandatory minimum sentence is grossly disproportionate, the court is required to examine all relevant contextual factors including,

(a) the gravity of the offence

(b) the personal circumstances of the offender

(c) the particular circumstances of the offence

(d) the effect of punishment on the offender

(e) the penological goals and sentencing principles on which the sentence is fashioned.

(f) a comparison to punishments imposed for other similar offences.

Not all of these factors will be relevant in every case. The presence or absence of any one factor is not determinative on the question of gross disproportionality. **R. v. Morrisey** 2000 SCC 39 SCC at paragraphs 27 and 28.

GRAVITY OF THE OFFENCE

[13] The court is to consider the gravity of the offence generally and not the gravity of the particular circumstances of the offence before the court. **R. v. Nur** 2013 ONCA 677 Ont CA, at paragraph 81.

[14] Sexual interference is a crime of specific intent requiring proof beyond a reasonable doubt that the touching of the victim was for a sexual purpose and that victim was under the age of consent.

[15] In assessing the gravity of the offence, it is significant to note that parliament has increased the severity of sentences at the low end of the sentencing range. As Gobermam, J.A. stated for the court in **Lloyd,** supra at paragraph 54, "where parliament enacts a minimum sentence provision that dramatically increases the severity of sentences at the low end of the sentencing range, I do not doubt that is in an indication that the offence is to be considered to be more serious than it was previously"

[16] Section 151, sexual interference, whether proceeded by indictment or summary conviction carries mandatory minimum penalties. If proceeding by indictment, a maximum punishment of fourteen years with a minimum punishment of one year, or if proceeding summarily a maximum punishment of two years less a day or a minimum term of incarceration of ninety days.

[17] Regardless of the Crown electing to proceed summarily or by indictment, there are minimum penalties attached to each and thus a conditional sentence is not available.

[18] 718.01 of the **Criminal Code** mandates that the court must give primary consideration to denunciation and deterrence when the crime involves the abuse of a person under the age of eighteen years.

[19] Further, 718.2 (a)(ii.1) requires an increase in sentence as committing an offence that involves an abuse of a person under the age of eighteen is an aggravating factor.

[20] In R v. George 2017 SCC 38 at paragraph two, the court indicated

> "Sexual crimes are disproportionately committed against vulnerable populations, including youth. The "reasonable steps" requirement is in section 150.1(4) of the **Criminal Code** RSC 1985, ch 46, which requires an accused person who is five or more years older than a complainant who is fourteen years of age or more but under the age of sixteen, to take "all reasonable steps to ascertain the age of the complainant" before sexual contact—seeks to protect young people from such crimes. It does so by placing the responsibility for preventing adult/youth sexual activity where it belongs: with adults. Parliaments allocation of responsibility to adults is crucial for protecting young people from sexual crimes."

[21] As noted in the preamble to the Act to Amend the Criminal Code (Protection of children and other vulnerable persons) and the Canada Evidence Act SCC 2005, ch. 32, Parliament has acknowledged the vulnerability of children to all forms of sexual abuse.

[22] Parliament has recognized in reality that adolescent children, those under sixteen and eighteen, where the offender occupies a position of trust and authority are still children. As such, they are incapable of consenting to sexual activity with those not within the close in age exception, and need to be protected from what even they may think is acceptable for them. These sanctions are designed to protect children from the power imbalance held by adults and from the child's own sexual immaturity.

PERSONAL CIRCUMSTANCES OF THE OFFENDER

[23] J.E. has entered a guilty plea not requiring the victim to testify in this matter. He does not have a criminal record, is youthful, and has expressed remorse for his actions. These can be considered mitigating factors.

THE PARTICULAR CIRCUMSTANCES OF THE OFFENCE

[24] The aggravating factors are that J.E. digitally penetrated the victim on six or seven occasions during the month of November of 2016. There was a large difference between the age of both J.E. and the victim and in committing the offence, J.E. abused a person under the age of eighteen.

THE EFFECT OF PUNISHMENT ON THE OFFENDER

[25] The sentence of ninety days incarceration as requested by the Crown in this matter is also one, if the circumstance warrant, can be served on an intermittent basis (732(1) **Criminal Code**)

[26] In consideration of the requested sentence by the Crown it will be relevant to consider the nature and conditions of the sentence such as the duration of the sentence and the availability of escorted absences and the possibility of day parole and full parole. **Morrisey** supra at paragraph 41.

[27] McLachlin, C.J. in **Nur** at paragraph 98 indicated that it's not possible to know at the time of sentencing whether parole eligibility will reduce the result of the mandatory minimum penalty as parole is a statutory privilege, rather than a right.

[28] However, the Crown in our matter has indicated that remission is almost automatic in Nova Scotia. And further, that federal and provincial correctional regimes are required to accommodate prisoners with mental health needs including the potential for early parole at any time in appropriate circumstances, and conditional release for up to sixty days which can be renewed. Citing section 121(1) of the **Corrections and Conditional Release Act**, SC 1992, ch 20 "**Prisons and Reformatories Act** RSC 185 ch P-20 section 6, also **Prisons and Reformatories Act Regulations Nova Scotia** Reg 249/88; Early Release from Jail, The Line of Responsibility, The Honourable Judge Peter Ross, September 2003, **R v. Carvery** 2014 SCC 27 at paragraph 14 and **Correctional Services Act** 2005, ch 37 (47 thru to 86) Regs 99/20624/2016.

THE PENOLOGICAL GOALS AND SENTENCING PRINCIPLES ON WHICH THE SENTENCE IS FASHIONED

[29] The court must analyze the penological goals and sentencing principles upon which the sentence is fashioned in order to determine whether Parliament was responding to a pressing problem in enacting the mandatory minimums. **Morrisey** supra at paragraph 33.

[30] **R. v. Lonegren** 2009 BCSC 1678 (Breach Ruling), at paragraph 10, Barrow, J. held that "the object of the law, namely the protection of children from sexual interference is properly conceived to be both a pressing and substantial societal concern"

[31] An Act to amend the Criminal Code (protection of children and other vulnerable persons) and the Canada Evidence Act SC 2005 ch. 32 containing the original mandatory minimum sentences in section 151, 153 and 172.1 and 718.01 of the Criminal Code makes denunciation and deterrence the primary considerations in sentencing an offender who has abused a young person.

[32] The increase in the mandatory minimum sentences in section 151, 153 and 172.1 and the enactment of a mandatory minimum sentence for the offence of sexual assault via the **Safe Streets and Communities Act**, SC 2012 ch 1, section 11, resulted from the same pressing and substantial concerns.

[33] In **Morrisey**, Goenthier, J stated the following principles at paragraph 44 to 48

(a) "The presence or absence of any one sentencing principle should never be determinative at this stage of the analysis; the principle of proportionality is the essence of the section 12 analysis.

(b) General deterrence cannot, on its own, prevent a punishment from being cruel and unusual, but it is still relevant when the court is

considering the range of sentences that are acceptable under section 12. General deterrence can support a sentence which is more severe while still within the acceptable range of punishments that are not cruel and unusual.

(c) The respective importance of prevention, deterrence, retribution, and rehabilitation will vary according to the nature of the crime and the circumstances of the offence.

(d) The minimum sentence serves a principle of denunciation.

(e) The minimum sentence serves the principle of retributive justice. Retribution sanctions the moral culpability of the offender and represents the fundamental requirement that a sentence imposed be just and appropriate under the circumstances."

[34] Denunciation and deterrence must be the primary consideration in sentencing an offender who has abused a child under the age of 18. Rehabilitation is of secondary importance.

A COMPARISON OF THE PUNISHMENTS IMPOSED IN OTHER SIMILAR OFFENCES

[35] This factor requires that the court examine whether the mandatory minimums appear grossly disproportionate when compared to the sentences imposed for other similar crimes.

[36] Upon review of the cases cited by counsel and some of my own research it is clear that a sexual interference charge requires a custodial sentence. The case law

provides for a range of 90 days incarceration to periods of federal incarceration. I did not find any case law that supported a non-custodial sentence in these circumstances.

[37] In determining the appropriate sentence I consider the following:

> THE PURPOSE AND PRINCIPLES OF SENTENCING,
>
> 718. "The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to the respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> (a) To denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
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> (b) To deter the offender and other persons from committing offences;
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> (c) To separate offenders from society, where necessary;
>
> (d) To assist in rehabilitating offenders;
>
> (e) To provide reparations for harm done to victims or to the community; and
>
> (f) To promote a sense of responsibility in offenders, and acknowledgement of harm done to victims or to the community."

OBJECTIVES

OFFENCES AGAINST CHILDREN

718.01. When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give

primary consideration to the objectives of denunciation and deterrence of such conduct."

FUNDAMENTAL PRINCIPLE.

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

OTHER SENTENCING PRINCIPLES

718.2. A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and without limiting the generality of the foregoing, …. .

...(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim.

CASE LAW

[38] **R v. Farrell-Cote** 2017 Carswell Ontario 5151. The accused was sentenced with respect to one count each of sexual interference (s. 151(a)), and invitation to sexual touching (s. 152) and exposure (s. 173(2)) on a single victim. The accused had moved into the victim's residence as he had been kicked out of his parents'

residence. The victim was 12 and the accused was 20 at the time of the offence. They became involved in a boyfriend/girlfriend relationship which involved the sexual acts of masturbation, digital penetration and oral sex. The victim thought she was in love with the accused. The accused had two unrelated convictions and was sentenced to a global period of incarceration of thirty months along with the requisite DNA, weapons probation and SOIRA orders.

[39] **R v.Fitzgerald** 2014 NSPC1 The accused was sentenced to two years federal custody followed by an 18-month period of probation along with the required ancillary orders with respect to a section 151 charge. A fourteen-year old acquaintance of the accused had run away and asked to stay with the accused. There was an act of sexual intercourse without any coercion or force. Judge Atwood cited the need to denounce and deter, particularly the offences that involve sexual abuse of minors.

[40] **R v. Oliver 2007** NSCA 15 The Court of Appeal upheld a sentence of two-year federal incarceration followed by one year probation There was sexual intercourse on three occasions with a twelve year old friend of the accused's family. The accused was between 19 and 20 years of age at the time. The victim was impregnated as a result.

[41] **R v. C (W.C.)** 2005 ABPC 362. A friend of the family was staying with the victim's family and was known as an uncle to the five-year old victim. On one occasion in the children's bedroom there was mutual touching and digital penetration. A fit and appropriate sentence was determined to be three years.

[42] **R v. G(W.R.)** 1987 63 NFLD and PEI 229. The accused received a period of two years incarceration for sexually assaulting a neighbours eleven-year old son ten to fifteen times over an eleven month period. The sexual conduct consisted of mutual masturbation.

[43] **R v. Butterworth** 1999 Carswell, NFLD and PEI 199. The accused was convicted of sexually assaulting the 13-year old daughter of his neighbour. The conduct consisted of digital penetration. A nine-month sentence of incarceration was upheld on appeal.

[44] **R v. R.R.G.S.** 2014 BCPC 170. The accused was found guilty of sexual interference (s. 151) and unlawfully in a dwelling house (s. 349) and pled guilty to one breach of undertaking with respect to alcohol consumption. The 27-year old accused was in a relationship with his spouse for approximately nine years. For the first four years they lived with his spouse's parents, two sisters and two twin nieces between the ages of four and eight years. After they moved out of his

spouse's parent's residence, they continued to have contact with the nieces. When one of the twin nieces was fourteen years of age, the accused entered into the residence without permission and went in to her bedroom where she was sleeping. He was able to hug her, kiss her neck and back and move apart her legs before she woke. The accused received a 90-day sentence of incarceration.

[45] **R v. P(S.J)** NSPC 50 The 41-year old father was found guilty of sexual interference (s.151) against his toddler daughter by picking her up and bringing her belly up to his groin and rubbing himself. He was sentenced to five months incarceration.

[46] **R v. Eisan** 2015 NSJ 260 NSCA The accused pled guilty to sexual interference (s. 151) where on the first occasion he had the victim masturbate him until he ejaculated. On the second occasion he grabbed the victim's breasts and ground up against her. The sentence of 14 months incarceration was upheld on appeal.

[47] **TEH v. Her Majesty the Queen** 2011 NSCA 117, The Court of Appeal upheld the sentence of two eight-month periods of incarceration to run consecutive with respect to two separate incidents of sexual interference (s. 151). The accused

was 51 years of age at the time and the victim was a family friend and 15 years of age. The conduct consisted of touching and oral sex.

[48] **Her Majesty the Queen v. W.R.M** 2013 NSC 392. The accused pled guilty to a charge of sexual interference (s. 151). The accused was 29 and the victim was 14 years of age. The accused had been invited by the victim's parents to stay with them and also were accepting of the relationship between the two parties. The accused had a prior sexual assault on his record when he was a youth and other unrelated adult and youth matters. He was sentenced to five months incarceration, with Justice MacDougall noting that at the time of the offence, the minimum penalty was 45 days incarceration.

[49] **Her Majesty the Queen v. Deyoung** 2016 NSPC 67. The accused had pled guilty to sexual assault (s. 271) and the Crown withdrew the sexual interference charge. The Crown had proceeded by indictment so the mandatory minimum is one year. Judge Atwood determined that the range in sentence for these circumstances ranged from one to two years. Mr. Deyoung was sentenced to a one-year period of incarceration noting somewhat lengthier sentences in similar cases. However, the youthfulness, his remorse, willingness to accept treatment and bail compliance warranted the sentence as fit and appropriate. The accused, 21

years of age, and the victim 14 years of age, engaged in oral sex and intercourse on one occasion.

[50] **R v. Horswell** 2017 BCSC 35. The accused was staying at a cabin with friends of the family. Sometime during the night he took the four-year old child from her bedroom to the bathroom. There the child was digitally penetrated, both vaginally and anally. Justice Williams determined that a range of 12 to 18 months incarceration would be a fit and appropriate sentence for these particular circumstances. He subsequently sentenced the accused to twelve months incarceration.

PRE-SENTENCE REPORT

[51] The pre-sentence report discloses that J.E. is currently 24 years of age, he was 23 at the time of the offence. He grew up on a farm with his parents along with his siblings. He describes a loving and supportive home environment. He has received his grade 12 GED. Further, he's commenced a Bachelor of Commerce program at St. Mary's. Although he's not attended for the past year, he indicates that he may return after this matter before the court is concluded. He is currently employed seasonally and has been for the last four years. His employer, made comments to the writer of the pre-sentence report describing "the subject as

dependable and gets along well with others." Further, the employer advised the probation officer that "he himself has not been well lately and regularly leaves the operation in J.E.'s hands without any concern or worry that things will not go well. He is highly capable of running the business in his absence". Page 4, Pre-Sentence Report.

[52] J.E.'s mother also provided comments to the writer of the pre-sentence report. She indicated "J.E. had little experience in dealing with female advances, therefore this may have been a factor contributing to his poor decision regarding the offence." She further indicated "this incident has been very difficult for him and he has been extremely hard on himself. She feels he has learned a great deal and this sort of incident will not happen in the future." Page 4, Pre-Sentence Report.

[53] J.E. was actively involved with his church until he was charged with the matter before the court. At the time he stopped attending the church as the victim attends there as well. His pastor described J.E. "as kind, helpful, having a heart of gold, tender-hearted, very accommodating and willing to lend a hand when needed. He had been an active participant in their church youth group, including helping with the junior camp to which will now not be available for the offender given his criminal conviction." Page 6 Pre-Sentence Report

[54] J.E., in discussing the charge before the court indicated to the writer of the pre-sentence report that "he was attempting to mentor and support the victim and he should not have gone along with her sexual advances toward him as she was just a child." "He let himself make a very poor decision concerning the offence. He has deeply regretted his actions to the point he advised the probation officer he attempted to end his life in January of 2017. He carries a great deal of shame about his actions as well as how his entire family has been impacted." Page 6 Pre-Sentence Report

VICTIM

[55] The victim provided a victim impact statement. The contents of the victim impact statement clearly outline a young girl who felt she was in love with J.E.

DISPOSITION

[56] Mindful of the principles and purpose of sentencing contained in sections 718, 718.01, 718.1 and 718.2 in the **Criminal Code** along with the case law and J.E.'s personal circumstances and the circumstances of this particular offence, I find that the appropriate sentence is 90 days incarceration as requested by the Crown. J.E. acknowledged that the victim was just a child that he was attempting to mentor and support. He was the adult. He was the one that should have

abstained from this inappropriate behaviour. Although the victim as this point may not realize the impact J.E.'s actions have had on her but she will as she matures.

[57] Accordingly, I have found that the appropriate sentence for J.E.'s actions does not exceed the bottom of the sentencing range and is not grossly disproportionate in these circumstances. As such I am declining to consider its constitutionality pursuant to section 12 of the **Charter** on the basis of reasonably foreseeable circumstances.

[58] On the charge that you did for a sexual purpose touch the complainant, a person under the age of 16 with a part of your body contrary to Section 151 of the **Criminal Code**, the Court sentences you to a 90-day period of incarceration. After completion of your sentence of imprisonment you will be subject to probation for a period of two years with the usual statutory conditions outlined in 732.1, and the following optional conditions:

1. You will report to a probation officer within three working days of your release from your period of incarceration and thereafter as required to do so or directed to do so by your probation officer;

2. You'll have no contact, directly or indirectly, or attempt any communication, directly or indirectly with the complainant.

3. You will attend for such assessment and counselling as directed by your probation officer with the exception of a sex offender assessment.

[59] As this is a primary designated offence pursuant to 487.04, there will be an order for a sample of your D.N.A.

[60] You will also be subject to the Sex Offender Information Registration Act Order pursuant to 490.012 for a period of ten years.

[61] You will also be subject to an order under section 161 of the Criminal Code for a period of two years prohibiting you from

(a) attending a public park or public swimming area where persons under the age of 16 are present or can reasonably be expected to be present or a daycare centre, school ground, playground or community centre

(a.1) being within two kilometres of any dwelling house where the victim identified in the order ordinarily resides

(b) seeking, obtaining or continuing any employment, whether or not the employment is remunerated or becoming or being a volunteer in a capacity that involves being a in a position of trust or authority towards persons under

> the age of 16 years with the exception of incidental contact as required by your employment with your current employer and members of your immediate family.
>
> (c) having contact, including communicating by any means with a person who is under the age of 16 with the exception of incidental contact in your employment with your current employer and members of your immediate family.

[62] Given this matter proceeded summarily there must be consideration as to whether an order for a discretionary firearms prohibition (s. 110) should be issued. I have considered the circumstances and note there was no overt violence and the conduct was not overly invasive. The Crown has not requested a weapons prohibition and given the circumstances of this particular case I find no need to impose same.

[63] I did not order J.E. undergo or attend for a sexual offender assessment. In making this decision I am keeping in mind the invasive nature of the assessment, my duty to sentence in a fashion that is least restrictive and reasonable in the circumstances and the circumstances of this case, where there was more opportunistic rather than predatory conduct.

[64] There will be a victim fine surcharge of $100 payable within six months of today's date.

Catherine M. Benton, JPC