Supreme Court of Newfoundland and Labrador, Court of Appeal
R. v. Lasik
Date: 1999-07-27

John Brooks, for the Crown;

David Eaton, for the Accused.

(1997 St. J. No. 3202)

July 27, 1999.

[1] DUNN, J.: On the 5th day of June, A.D., 1999 a jury found the accused, Ronald Justin Lasik, guilty of one count of indecent assault and five counts of buggery upon R.D.; one count of indecent assault upon R.N.; one count of buggery, two counts of indecent assault, one count of gross indecency, and one count of common assault upon J.G.; one count of indecent assault, and one count of common assault upon F.N.; one count of indecent assault, and one count of common assault upon J.P.; one count of common assault upon R.S.; one count of gross indecency, and one count of common assault upon W.H. The offender, therefore, is convicted of six counts of indecent assault; six counts of buggery; two counts of gross indecency; and five counts of common assault. Some of the counts involve multiple assaults upon the complainant.

[2] This is the sentencing decision in respect of the foregoing.

Facts

[3] The offender was transferred to Mount Cashel Orphanage and commenced teaching there in September of 1954. He departed the Orphanage following the school year of 1957. During this period of time he was primarily responsible for teaching Grades 7 and 8 (which were combined into one class) and the tumbling team. His other responsibilities included primary responsibility for the middle dormitory consisting of approximately 40 to 50 boys, and general responsibilities about the Orphanage involving his charges as well as other residents which responsibilities were shared with four other Brothers actively involved in the care of the boys. During the time of Ronald Justin Lasik's tenure at Mount Cashel all of the complainants were in residence for either the whole or part of this period.

[4] Extensive testimony was given at trial in respect of the allegations pertaining to each complainant. I will review these briefly to enable a better understanding of my sentencing decision.

R.D.

[5] Counts No. 1 to 6 pertained to R.D. Count No. 1 is indecent assault, the remaining five are buggery. The indecent assault upon R.D. was comprised of kissing upon the mouth and fondling of his “buttocks-and privates”. The fondling was both inside and outside his clothing. It occurred approximately two to three times a week over the period of a few months.

[6] The incidents of buggery upon R.D. occurred in a variety of locations at Mount Cashel including the farm, the Brothers’ quarters, the band room and the boiler room. R.D. testified that it occurred frequently, believing it to be approximately 200 times or more. The acts of buggery also involved other sexual activity including masturbation and oral sex. Coincidental with some of the incidents were threats by the offender that he would break R.D.’s neck if he told. R.D. was between the ages of 9 and 12 when these crimes were perpetrated upon him.

R.N.

[7] The offender was convicted of one count of indecent assault upon R.N. R.N. testified he was in the top bunk of his dormitory, sick. It was daytime. Ronald Justin Lasik entered and asked why he was there. He then proceeded to put his hand under the blanket and inside R.N.’s pyjamas, massaging his buttocks, penis and touching his genital area. Approximately two or three more acts of indecent assault of a like nature occurred. At the time of the incident R.N. was age 13 or 14.

J.G.

[8] The Jury found Ronald Justin Lasik guilty of one count of buggery in respect of J.G.; two counts of indecent assault; one count of gross indecency and one count of common assault. J.G. testified the offender had anal sex with him. He stated he believed this occurred on three occasions, approximately twice in the furnace room and possibly once in the Grade 7 classroom. As to the indecent assaults, J.G. described these as occurring while he was in the dormitory at night. He indicated the offender would come to his bed, touch his face and then move his hand to his chest and ultimately his private parts, playing with him until he ejaculated. The indecent assaults were accompanied, on occasion, with acts of oral sex by the offender upon him. In addition to the indecent assaults in the dormitory, J.G. described like incidents occurring in the classroom. As to the acts of gross indecency, J.G. recounted episodes of fellatio or oral sex which occurred

approximately two or three times in the dormitory. Finally, J.G. described the common assault perpetrated upon him by the offender. He stated he was strapped while naked with his hands and feet tied. This occurred in a classroom at Mount Cashel. J.G. said that the belt used was made of a horse harness. He was beaten three “whacks” at a time over his body including his buttocks area until the seventeenth time, at which point he fell to the floor. The offender then picked him up and proceeded to strap him three more times for a total of twenty strikings.

F.N.

[9] F.N. described one incident of indecent assault and one incident of common assault inflicted upon him by Ronald Lasik. The indecent assault occurred at night in the dormitory. The offender kissed him on the mouth and fondled his genitals touching his penis and testicles. He indicated the offender told him never to tell anyone of the incident. F.N. also described a brutal common assault inflicted upon him by Ronald Justin Lasik He was taken out of the offender’s class-room to another room, told to strip and beaten with a strap. F.N.’s testimony was that he was in a kneeling position, or fetal position, while being beaten and that he begged the accused to stop hitting him. He believed the number of times he was struck to be approximately forty to fifty, but definitely more than twenty. F.N. said he felt great physical pain as a result of this episode.

J.P.

[10] Ronald Justin Lasik was found guilty of one count of indecent assault and one count of common assault upon J.P. J.P. described Ronald Lasik as having touched and stroked him on his penis. This occurred in the dormitory after he had gone to bed. The offender was also convicted of a common assault which consisted of Ronald Justin Lasik kicking J.P. in the ribs while he was on the floor.

R.S.

[11] The conviction pertaining to R.S. is one count of common assault. R.S. was told by the offender to get in the shower, having arrived late for same. He stated the water was cold and that he flicked a bit on himself and then attempted to leave. Ronald Justin Lasik told him no and indicated that he had to shower again. It is R.S.’s testimony that as he started to back away, Ronald Lasik commenced “slamming him with the belt”. He stated it “hurt like hell”. He indicated he was struck in the lower back, the cheeks of his buttocks and the backs of his legs, approximately five to eight times. He also indicated he was

bruised and there were raised welts. As a result of the striking he found it hard to get his clothes on afterwards and the next day found it difficult to sit down when at band practice.

W.H.

[12] Lastly, the offender was convicted of one count of gross indecency and one count of common assault upon W.H. The gross indecencies occurred in the dormitory at night. The offender would come to W.H.'s bed, fondle his penis until it had hardened and he had ejaculated. He also described occasions when the offender performed oral sex upon him. As to the common assault, W.H. said that Ronald Justin Lasik chased him after he had observed an incident in the Grade 10 classroom, catching him and ultimately punching and beating him. He stated the offender was screaming like a "madman". He believed the beating was tied to what he had witnessed happening in the classroom.

[13] The foregoing is simply a brief outline of the facts pertaining to the offences. The record confirms full, lengthy and complete details of the occurrences.

Issue

[14] The sole issue before me is a determination of the appropriate sentence to be imposed in these circumstances.

Evidence Called On Sentencing

[15] The defence called two witnesses at the sentencing hearing. A preliminary request was made to me to allow testimony as to specific traits of Ronald Justin Lasik known to the witnesses in the areas of violence and sexual behaviour. I ruled that their testimony must consist only of matters relating to Brother Lasik's general reputation and not opinion pertaining to his propensity, or lack of same, to violence and/or deviant sexual behaviour.

[16] The two witnesses called by the defence were Gerald Rohan (a former Christian Brother) and Brother Tom Collins. Mr. Rohan is a retired probation supervisor, having worked with juvenile court in the United States for 23 years. He had been in the Christian Brothers for 27 years and was at St. Bon's College for the period 1948 to 1956. Mr. Rohan stated he knows the offender very well. They both attended the same elementary school although they were not in the same grade. Mr. Rohan said he remained close to Brother Lasik after he had been transferred to Mount Cashel and that they continued to visit each other. He left Newfoundland in 1956 but maintained an ongoing contact with the offender.

The contact as between Ronald Justin Lasik and this witness was sporadic. They were close over the time period both spent in St. John's and also while the offender was a principal at Leo High School. Thereafter, Brother Lasik was out of the general area where Mr. Rohan lived. Mr. Rohan testified that Ronald Justin Lasik had a general reputation for kindness, generosity and civility. He stated he held the offender, and continues to hold the offender, with the highest admiration, describing him as a man of deep faith and integrity. On cross-examination he confirmed Ronald Lasik has never evidenced any remorse for what he has done nor has he indicated any responsibility for his actions. As well, Mr. Rohan had never inquired with other Brothers as to Brother Lasik's general reputation for morality in the 1950's or since.

[17] The second defence witness was Brother Tom Collins. He has been a Brother for 45 years and has known Ronald Justin Lasik since 1966. They lived in community together at different times. He describes the relationship as a very close friendship. Ronald Justin Lasik worked in a school where he was principal for the time period 1970 to 1973. Brother Collins testified he received no complaints of any kind in respect of Ronald Justin Lasik's behaviour over this period of time. He noted today Brother Lasik teaches at a shelter for women and assists them in attaining a high-school equivalency. As well, he tutors children. This is a volunteer position. Brother Collins says that Ronald Justin Lasik is held in high regard and affection by the people who participate in the program, as well as the two Sisters who are responsible for same. He also testified the offender is highly regarded and respected by his colleagues. He confirmed on cross-examination he could not give any testimony pertaining to the honesty and morality of the offender while he was at Mount Cashel. His professional relationship related to work in schools but not in an orphanage environment. When asked to comment on how he had arrived at the conclusion that Ronald Justin Lasik's general reputation had been good, he named three individuals who regarded him highly. He stated he had not discussed with others Ronald Lasik's reputation for honesty and morality. He confirmed he had no involvement with Brother Lasik during the time frame he was at Mount Cashel and has no knowledge in respect of the offender's life at that time. Like Mr. Rohan, he also confirmed that during conversations with the offender, the offender had shown no remorse, nor has he taken any responsibility for his actions.

Analysis

[18] The purpose and principles of sentencing are set forth in s. 718 of the **Criminal Code of Canada:**

"718. Purpose - The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to 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;

(b) to deter the offender and other persons from committing offences;

(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 the harm done to victims and to the community.

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

"718.2 Other sentencing principles - 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,

. . . . .

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

shall be deemed to be aggravating circumstances;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders."

[19] These provisions encapsulate much of what had already been recognized at common law as either principles or considerations on sentencing. In offences involving

sexual assaults upon children, both specific and general deterrence must be considered. Great emphasis has been placed on the latter to ensure that a clear message be sent to members of the community that this type of conduct will not be tolerated. Certain of these provisions are particularly relevant in this sentencing. These include firstly that the court is mandated to consider, as an aggravating factor, the position of trust or authority of Ronald Justin Lasik in respect of the complainants. Not only was he their teacher but also was charged with parental responsibilities in respect of each. As such, it was his job to ensure their mental, physical, emotional, intellectual and spiritual well-being. The trust breached by him not only extended to the boys in his care but also to the community at large and the Province. This breach of trust is at the uppermost end of the trust scale.

[20] Where possible a court looks to and considers whether or not the offender, through the sentencing process, can make reparation to the victims of the crime. In this instance it is simply not possible to achieve this objective as the offender, Ronald Justin Lasik, refuses to take any responsibility for his actions and, indeed, shows no remorse whatsoever. In so doing, he has foreclosed the ability of the court to achieve an objective that serves not only the sentencing process, but also the healing process of the victims.

[21] Brother Lasik has been convicted of 19 of the 24 offences contained in the indictment. The nature of the offences is at the higher end of seriousness in terms of both sexual and common assaults. Therefore, ss. 718.1 and s. 718.2(b) and (c) must be applied. Section 718.1 will ensure that the sentence is proportionate to the gravity of the offences. Section 718.2(b) gives recognition to the principle of consistency as being part of the sentencing process. The sentence must fall reasonably within the range of sentencing imposed upon other offenders in like circumstances, at other times, including sentences imposed upon other Christian Brothers, or former Christian Brothers, arising out of incidents occurring during the 1970's. Finally, subsection (c) of this provision recognizes that where consecutive sentences are imposed, a combined sentence should not be unduly long or harsh. There is a danger of this where the offender is convicted of numerous offences, involving multiple counts, the nature of which are abhorrent in our society, as is the case here.

[22] In addition to the foregoing, both counsel agree the general principles of sentencing set forth in **R. v. Atkins (K.J.)** (1988), 69 Nfld. & P.E.I.R. 99; 211 A.P.R. 99 (Nfld. C.A.) remain applicable in the sentencing process. In that case Chief Justice Goodridge stated:

> "There are many factors to be considered in imposing sentence in any case. In cases of sexual assault these factors include the extent of the assault (for sexual assault encompasses a very wide range of human behaviour), the degree of violence or force used, the impact of the crime upon the victim, the family of the victim and the offender, the degree of trust involved, public abhorrence to the type of crime involved, the attitude of the offender to what he has done, his plea, the biological and psychiatric factors that lead to the commission of the offence, the need for specific and general deterrence, the prospect of successful rehabilitation, the antecedents and age of the offender, the time spent in custody prior to trial and sentences imposed by other courts in Newfoundland and elsewhere in Canada.
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> . . . . .
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> "Vengeance is not a factor. A sentence is designed to protect the public, not to abate its anger at a particular crime. As has frequently been said, protection is attained through a balance of deterrence and rehabilitation. Neither should overwhelm or negate the other. The proper balance will vary from case to case."

[23] The mitigating factors identified by both Crown and defence counsel include that the offender, Ronald Justin Lasik, has no criminal record and there is no suggestion of crimes having been committed since those occurring in the mid to late 1950's at Mount Cashel. As well, consideration may be given to the age of the offender. In this instance the offender is 68 years old. He is in good health and there is no evidence before me of any physical infirmity. Likewise, there is no evidence of psychiatric factors that might be relevant in the sentencing of Brother Lasik. Finally, the good character evidence tendered by the defence is to be considered.

[24] The primary aggravating factor is that the breach of trust in these circumstances is at the highest end of the trust scale. I accept that Ronald Justin Lasik acted in the place of a parent to the boys at Mount Cashel. These individuals had already come from unhappy circumstances and as is evidenced by their testimony, many felt they had nowhere to turn for help. Mr. Justice Wells, in his decision on sentencing of August 21, 1998, in **R. v. Barry** (G.K.) (1998), 167 Nfld. & P.E.I.R. 65; 513 A.P.R. 65 (Nfld. T.D.) considers the total control that the perpetrator of the offence had over the complainants. He references his discussion on this issue arising out of **R. v. Thorne (H.)** (1991), 92 Nfld. & P.E.I.R. 310; 287 A.P.R. 310 (Nfld. T.D.). Suffice it to say I am satisfied the control factor identified in these decisions is akin to the highest level of breach of trust which exists between parent and child and a guardian acting in a parental capacity. The control is the same, the breach of trust very serious.

[25] As stated in **Atkins,** sexual assaults encompass a wide range of human behaviour. The sexual assaults, particularly those of buggery and gross indecency, are the

most intrusive amongst sexual offences. Buggery involves an act of physical intrusiveness and penetration not only likely to result in serious psychological harm, but which, on the testimony of some complainants, caused physical pain at the time. The facts pertaining to the common assaults leads me to conclude the nature of the assaults are at the upper end of severity for such offences. It is particularly disturbing that the sexual assaults were combined, in respect of a number of the complainants, with physical assaults and/or threats. Sexual assaults themselves are regarded as inherently violent. However, overt and aggressive violence, combined with threat, could only create an atmosphere of terrorizing those complainants subjected to same. The degradation inflicted upon F.N., J.G. and R.S. in being beaten while nude, almost defies human comprehension.

[26] Such behaviours must be considered along with the offender's total lack of remorse and failure to take responsibility for his actions. That reparation is recognized as a valid objective in sentencing is to also recognize the benefit derived to the victims and the community where such reparation can be achieved. Unfortunately, the chapter in Mount Cashel affairs, pertaining to Ronald Justin Lasik's tenure there, must close without the benefit of this objective having been achieved both for the sake of the victims and the community as well as the offender.

[27] It is perhaps appropriate at this time to discuss briefly the Victim Impact Statements. Mr. Justice Goodridge in **Atkins** recognizes the impact upon the victim of the crime is one of the factors to be considered in sentencing. R.D. states in his statement:

> "I could not maintain any intimate relationships because of the fear, suspicion, low self-worth and anger.
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> . . . . .
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> "To date, I have struggles with low self-esteem, depression and 'normal' socializing. I am now in my 50's and have missed out on my childhood, youth and could not experience the joy of parenthood. I still experience nightmares and sleep poorly."

J.P. stated:

> "Being under Lasik's care did not teach me anything good about myself and only added to the belief that I was no good and not much of a human being. He brought me to rock bottom as far as human value is concerned. I have always felt a great deal of shame and anger towards myself for being so trusting and naive as to believe in Lasik even when I knew better but that's what comes of fear and desperation. … I lived on the edge of fear every day I spent with him. It is strange but even now I have feelings inside me just sitting in the same room with him and that is after over 40 years."

[28] Somewhat similarly to the foregoing, W.H., in his Victim Impact Statement, commented:

> "I have hated myself because I did not prevent what happened to me. I want to realize that it was not my fault. I was only a little boy, not a man."

If I recall correctly, it was W.H. who, in his testimony, indicated that Ronald Justin Lasik had an opportunity in those years to be a "hero" to the residents.

[29] If reparation were an achievable objective, it might assist R.D., W.H. and J.P. coming to terms with the fact that they were innocent children and have no personal responsibility in respect of the offences, nor does it reflect on who they are in any way whatsoever. When an offender accepts responsibility for his offences he immediately sends a message to the victim that the fault lies with him, thereby enhancing the healing process.

[30] A secondary area worthy of comment arising out of the Victim Impact Statements is that of both J.G. and R.N. J.G. stated:

> "I can't trust people. I don't make friends easy. I don't attend any churches or anything when it comes to any religious faith. I have lived alone because of it, for twenty-five years, and a very lonely, solitary life at that."

Similarly, R.N. says:

> "I feel that any spirituality that I might have had had been raided because of my lack of trust for any religious persons. In my heart, I am a Christian and a believer, but I could not and would not participate in congregational affairs because of my lack of trust. Earlier in life this didn't seem as important as it does today when I see the contentment and camaraderie from people who do practice their religious belief."

R.S., who had entered the order of the Irish Christian Brothers having chosen this life as a vocation in the hope of improving life at Mount Cashel ultimately concluded

> "I had to quit because my vocation would not allow me to forget the anger and hatred I felt inside."

It is evident from the foregoing that the spiritual and religious side of these three complainants has so negatively impacted them as to deprive R.S. of his chosen vocation, and J.G. and R.N. of the solace which arises through participation in religion and/or a religious community. I am satisfied the impact upon these victims has been enormous and continues to this day and will likely continue for all of their lives. This is not to hold Ronald Justin Lasik responsible for all of the sufferings of these individuals. However, in light of

the nature of the offences and their being accompanied by physical violence, in some instances, and/or threats, it is not too difficult to conclude the psychological impact would be very serious. As stated by Mr. Justice Puddester in **R. v. French (E.G.) (No. 3)** (1991), 93 Nfld. & P.E.I.R. 34; 292 A.P.R. 34 (Nfld. T.D.), and quoted in a number of cases after, “It defies common sense to think otherwise.”

[31] In order to achieve consistency as required by s. 718.2(2) of the **Criminal Code,** it is appropriate to look at sentences meted out in similar circumstances. Below is a table summarizing some of the comparable cases in Newfoundland at both the Trial Division and Court of Appeal levels.

SUMMARY OF SENTENCING - MOUNT CASHEL CASES DECISIONS OF NEWFOUNDLAND TRIAL DIVISION AND COURT OF APPEAL				
ACCUSED	CONVICTIONS	OFFENCE	PLEA AT TRIAL	SENTENCE
French	3	Indecent Assault	Not Guilty	1 Year
Rooney	6	Indecent Assault Gross Indecency Att. Buggery	Not Guilty	6 Years
Thorne	4	Indecent Assault Gross Indecency Buggery	Not Guilty	6 Years
Ralph	11	Indecent Assault Gross Indecency	Guilty	6 Years
English	15	Indecent Assault Assault Causing Gross Indecency	Not Guilty	10 Years
Kenny	7	Indecent Assault	Not Guilty	7 Years
Barry	4	Indecent Assault Gross Indecency	Not Guilty	3 Years

R. v. French (E.G.) (No. 3) (1991), 93 Nfld. & P.E.I.R. 34; 292 A.P.R. 34 (Nfld, T.D.)

R. v. Rooney (1991), 90 Nfld. & P.E.J.R. 72; 280 A.P.R. 72 (Nfld. T.D.)

R. v. Thomé (H.) (1991), 92 Nfld. & P.E.I.R. 310; 287 A.P.R. 310 (Nfld. T.D.)

R. v. Ralph (1993), 105 Nfld. & P.E.I.R. 220; 331 A.P.R. 220 (Nfld. C.A.)

R. v. English (E.) (1994), 122 Nfld. & P.E.I.R. 15; 379 A.P.R. 15 (Nfld. C.A.)

R. v. Kenny (D.) (1996), 142 Nfld. & P.E.I.R. 250; 445 A.P.R. 250 (Nfld. C.A.)

[32] With respect to the foregoing, it should be noted that Ralph's and Kenny's sentences were increased from four to six years and five to seven years respectively by the Newfoundland Court of Appeal. English's sentence was reduced from 13 to 10 years by that same court. The Crown submitted Brother Lasik's offences are the most severe to date arising out of Mount Cashel. In his opinion this case is most comparable to **English.** English was charged with numerous assaults and sexual abuse offences involving residents of the Orphanage. He was convicted of nine counts of indecent assault, two counts of gross indecency, and two counts of assault causing bodily harm respecting 11 boys. In a separate trial he was also convicted of one count of gross indecency and one count of indecent assault respecting two boys. The offences of indecent assault are very similar in that there was fondling both in and outside of the clothing of the private parts of the complainants. In some instances, in **English,** this was combined with oral sex. The gross indecencies committed by Brother English included forcing a victim's face onto Brother English's private parts and Brother English ejaculating. As to the assaults causing bodily harm, these offences are more serious than the common assaults in the present case. Particulars were given as to the physical harm caused. However, the nature of the beatings before me, particularly that some of the complainants were stripped naked and struck over their body is, in my view, at the highest end of a common assault.

[33] A recent example of the general trend in Trial Division toward the higher range of sentence with regard to abhorrent sexual assault offences is evidenced by **R. v. Bromley (R.)** (1998), 167 Nfld. & P.E.I.R. 212; 513. A.P.R. 212 (Nfld. T.D.). Father Bromley was convicted of four counts of gross indecency, five counts of indecent assault and one count each of sexual assault and buggery involving four former residents of the Whitbourne Boys' Home. He served in a position of trust, but not the high level of trust as Brother Lasik at Mount Cashel. The factual situation was somewhat comparable. However, there were fewer complainants and fewer incidents of buggery and gross indecency. Mr.

Justice O'Regan imposed individual sentences on each of the 11 counts, all of which were to be served consecutively, for a total of 78 months.

[34] In addition, the **Bromley** case is helpful in its analysis of the offender's subsequent record, if any, and character evidence. At para. 14 Mr. Justice O'Regan states:

> "The accused does not have a criminal record and character evidence showed that he had a lot of respect in the various parishes. This is a classic situation where the accused sought out vulnerable victims but for all intents and purposes others perceived him as a model priest in their communities. Not surprisingly, this is how people such as the accused obtain the trust of the vulnerable and, in cases such as this, exploit their weaknesses."

[35] The difficulty, of course, with sexual offences is that they are covert. Character evidence is of minimal assistance as, generally speaking, members of the community are not apprised, either through observation or verbal comment, of the offender as to his private behaviours. It is a side that offenders studiously work to hide, so much so that it may account for such offenders' failure to show remorse and make reparation in that to do so is to admit before the world such practices.

[36] Both the **Bromley** and **Barry** cases also consider the mitigating factor of age of the offender, along with the fact that he has no criminal record and appears to have lived productively and responsibly since the occurrences of the offences. Neither judge appeared to place any great emphasis on these two areas in the sentencing process. Brother Barry was of a comparable age to Brother Lasik. He was charged with four offences involving gross indecency and indecent assault upon one complainant. The total sentence imposed was three years. Although the offender herein is of relatively advanced years, he is in good health. I am of the opinion that although age may be considered as a factor in sentencing, s. 718 mandates that similar sentences be imposed for similar offences upon similar offenders and the sentences be proportionate to the gravity of the offences. I am not persuaded that advancing age alone should cause any reduction in the normal range of sentence. I do not view this approach to be the "life sentence" argued by the defence. Rather, I recognize that the offender has had the benefit in his more youthful years of a free lifestyle without having been called upon to account for his criminal activities.

[37] The plea of the accused was not guilty in respect of all counts. This necessitated full and complete disclosure of very difficult events by each of the complainants. In so

testifying they showed courage and emotional strength in revealing the personal secrets that had so long plagued them.

[38] With respect to specific deterrence it may be argued that Ronald Justin Lasik, with advancing age, and in light of an apparently unblemished record between the offences and the present date, will not engage in such behaviours in the future. This may be so. I am of the view, however, that Brother Lasik, upon release, should not work in any capacity, whether tutoring or otherwise, with children or youths of either sex. In short, he ought not to be involved with individuals under the age of 18 years.

[39] This brings me to the primary principles for sentencing. The need for specific deterrence is somewhat minimized by virtue of my earlier comments. However, the need for general deterrence remains paramount. A message must continually be sent to the community that this type of abhorrent behaviour will not be tolerated. Children and youths, being amongst the most vulnerable people in our society, must be protected and other individuals discouraged from engaging in like activities.

[40] The defence advanced the argument that a sentence between 6 and 1.0 years would serve to accomplish the principles of sentencing equally as well as a sentence in the area of 13 years. I do not believe that this suggested approach is appropriate in the sentencing process. The **Criminal Code** in s. 718 clearly mandates considerations upon sentencing. Rehabilitation as a sentencing objective is perhaps less relevant due to the age of the offender and is, as well, frustrated by his attitude as outlined previously. This sentence will achieve the objectives as outlined in (a), (b) and (c). The Fundamental Principle found in s. 718.1 sets forth the parameters in which I must stay and negates the argument advanced by the defence that a lesser sentence may be imposed simply because it will achieve the same objective as a lengthier sentence. Further rebutting this defence argument is the mandated requirement contained in s. 718.2(b).

[41] In order to be true to the provisions of s. 718, any sentence imposed must fall logically withing the sentencing structure of like sentences imposed on Christian Brothers, or former Christian Brothers, acting in loco parentis to the residents of Mount Cashel and abusing that trust through the commission of like offences.

[42] Because there are seven complainants and 19 offences, I must also give consideration to the three principles of sentencing: proportionality, disparity and totality. These were discussed at length by Mr. Justice Steele of the Court of Appeal in **R. v.**

English (E.) (1994), 122 Nfld. & P.E.I.R. 15; 379 A.P.R. 15 (Nfld. C.A.) at pp. 21, 22, and 23:

> "In **Sentencing** (3rd Ed.), Ruby appears to prefer the term 'appropriate to the offence' rather than 'proportionality'. At p. 24 he comments that the basic notions of fairness demand that the sentence, since it is imposed on an individual, must be one that is primarily and essentially appropriate to the offence committed. This means proper consideration of both the nature of the crime and the particular circumstances of its commission.
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> "Proportionality in sentencing entails a full awareness of the seriousness of the crime and the need for deterrence, remembering nonetheless that reason, impartiality and a sense of balance as between the offender and the offence are imperative elements. Disparity in sentencing (or perhaps more accurately, avoiding disparity in sentences) is a different notion, one that is injected into the sentencing process to preserve and ensure fairness by avoiding disproportionate sentences as between convicted persons where essentially the same facts and circumstances indicate equivalent or like sentences. Cameron, J.A., in **McGinn** at p. 143 expresses the disparity principle as follows:
>
> > 'As for equity in sentencing we have to be careful to avoid disparity, that is warrantless or irrational variations in sentences for the same or a similar crime committed in the same or similar circumstances. This has prompted the courts to work their way, over time, and wherever reasonably possible, toward ranges of sentences for this offence or that; and then to sentence within those ranges, moving up or down the range as the presence or aggravating or mitigating circumstances suggest. This does not mean, of course, that sentences must invariably fall within the range, when one exists. From time to time, extraordinary circumstances present themselves, justifying departure at either the low or the high end of the range. And so rational variations both within and without the range are not only permissible, according to the variation in circumstance, they are necessary to achieve justice. But remaining within the range in the absence of the extraordinary is equally necessary to attaining justice, for otherwise disparity sets in.'
>
> "Proportionality and disparity in sentencing are principles that usually arise on the most sentencing hearings. Where, however, the indictment contains multiple counts and two or more convictions result in consecutive sentences, the total of the sentences (imprisonment) imposed may well assume consequences never contemplated by the sentencing judge. …"

[43] Mr. Justice Steele then goes on to discuss the totality principle at paras. 30 and 31 as follows:

> "**Ruby,** at p. 38, describes the purpose of the totality principle and the duty of a sentencing judge when consecutive sentences are imposed"
>
> > 'The totality principle requires an assessment of the total impact of the sentence being imposed in relation to the seriousness of his conduct and the impact upon

the offender. As the English Court of Appeal has said in **Bocskei** (1970), 54 Cr. App. R. 519:

> "When consecutive sentences are imposed the final duty of the sentencer is to make sure that the totality of the consecutive sentences is not excessive."

'The purpose is to ensure that a series of sentences, each properly imposed in relation to the offence to which it relates, is in aggregate "just and appropriate" …'

"This court has on occasion explained the need to blend consecutive and concurrent sentences arising from multiple convictions to attain a totality properly reflecting an appropriate punishment, one in keeping with the principles of sentences. In **R. v. Crocker (B.J.)** (1991), 93 Nfld. & P.E.I.R. 222; 292 A.P.R. 222 (Nfld. C.A.). At p. 227, Goodridge, C.J.N., explains the position this way:

> 'The imposition of fit sentences for each of several offences may result in a total term of imprisonment so lengthy as to be unrealistic or disproportionate to the conduct of the accused. Where there are multiple convictions and sentences, the sentences must be added together to see whether they are, in totality, excessive. If they are, it becomes necessary to deter-. mine what term of imprisonment is not excessive and to make some of the sentences imposed concurrent to each other, but only for the purpose of achieving a proper totality.
>
> 'In summary, consecutive sentences should be imposed unless there is a valid reason not to do so. Each sentence should be an appropriate one for the offence. Concurrent sentences may, but are not required to be, imposed where multiple convictions arise out of several offences which constitute a single criminal adventure, and may also be imposed to achieve proper totality for multiple convictions.'"

[44] In arriving at my decision, I have taken into consideration the comments of Mr. Justice Steele in these three areas. These comments represent amplification of the sentencing provisions already referred to by me in s. 718. It is interesting that, in the appeal judgment, Mr. Justice Steele presented a chart by way of comparison of similar convictions against Christian Brothers and the sentences imposed. In his analysis he notes that the culpability of individual offenders varies, as does the range of seriousness of the offences. However, he utilized the comparative approach to determine whether or not the appellant's punishment was inordinately severe. Any sentence imposed by me should withstand similar scrutiny and be found to be logically reasonable in the circumstances and fall within a range which would be deemed appropriate should a similar analysis be embarked upon. My final duty, at the end of the day, having determined the sentence, is to ensure that their totality is not excessive.

[45] There are three cases tendered by the defence, not included in the Crown's factum, which I would like to comment on before sentencing. The first is **R. v. Mootrey** (1992), 99 Nfld. & P.E.I.R. 99; 315 A.P.R. 99 (Nfld. T.D.). This is a decision of Mr. Justice Woolridge wherein he imposed a four-year sentence for buggery and two-year sentence for gross indecency to be served concurrently. There is no suggestion by counsel that this sentence was appealed. It is clearly at the low end, if not the lowest end, of the spectrum for sentencing where there is a significant breach of trust by a father against his son and assaults of such an abhorrent and intrusive nature. The offender was 64 years of age, had no criminal record, and displayed no remorse for what he had done. The victim had suffered and was a member of Alcoholics Anonymous. The trial judge recognized the maximum penalty for buggery is 14 years, stating that the maximum was to apply to a worst offender under the worst circumstances. He went on to state:

> "… Again, one is challenged to conceive of an act of buggery more deserving of the maximum that the case at bar, unless perhaps it be committed against an even younger child than age nine.
>
> "Absent the lack of record and the passage of time, the offences of the accused were extremely serious and prolonged examples of child molestation of the worst kind. It is not surprising that such maltreatments by one's own parent had such pitiful and profound consequences on the helpless victim.
>
> "Due to the passage of time and the nature of the offences, however, a concurrent sentence is in my view appropriate."

[46] It appears that his basis for imposing a lesser sentence related to the passage of time and lack of record. This case cannot be easily reconciled with sentences imposed and outlined herein. There is no authority, nor for that matter reasoning, in the **Mootrey** case which persuades me that the conclusion arrived at is appropriate and I reject it as authority for the imposition of a lower sentence. In **R. v. Cooper (I.)** (1994), 39 B.C.A.C. 227; 64 W.A.C. 227 (C.A.), a Roman Catholic priest was sentenced to one year on 12 counts of indecent assault, three years on one count of gross indecency, and four years on one count of buggery. The trial judge ordered the sentence be served concurrently with the result that the overall sentence was four years of imprisonment. The appeal, on sentence, was dismissed. This sentence again, as in **Mootrey**, is at the lower end of the spectrum. However, it is distinguishable in that the offender pleaded guilty to 14 of the counts, contesting evidence in respect of two only. The Appeal Court recognized the priest was a pedophile. In assessing the risk of this individual reoffending, the court noted that for a

period of 30 years the appellant was able to suppress his urges. The court also stated at para. 26:

> "I think that some significant consideration in sentencing ought to be given to the fact that for a period of about 30 years the applicant was able to refrain from acting out his pedophilic tendencies and to refrain from injuring his young parishioners. I consider that the sentencing judge in this case took that period of 30 years into account and gave it its correct significance in imposing the sentences which he did."

[47] In **Mootrey** the appeal was by the offender for a reduction in sentence. There is no suggestion there was a cross-appeal by the Crown for an increase in sentence. The British Columbia Court of Appeal did conclude that the 30 year blemish-free period of this individual, a diagnosed pedophile, had been appropriately considered. It also noted the offender had voluntarily returned to Canada to stand trial and, in so doing, had disrupted rehabilitative steps being undertaken by him. The fact the individual recognized his wrongdoing, was a diagnosed pedophile, and apparently accepted the diagnosis and was being treated for it, leads me to conclude the trial judge appropriately placed some emphasis on this aspect of sentencing. Such is not the case before me.

[48] The defence also tendered the case of **R. v. Plint,** [1995] B.C.J. No. 3060, Nanaimo Registry No. 18047. This case was offered particularly for comments made at paras. 45, 46, 47 as follows:

> "Some time ago when these earlier offences began to be prosecuted, I was hearing one of the cases and I was concerned that an isolated incident that occurred some many, many years before was now being brought before the court and the accused was being subjected to punishment after many years of an exemplary life.
>
> "The prosecutor in that case responded to my inquiry by saying that it does not matter who you are, it does not matter where you are, it does not matter what kind of an offence you have committed, when it deals with sexual imposition upon children it will be drawn to the attention of the court and will be prosecuted, for no other reason than any persons in this community, or in this Province, who think they can get away with this type of conduct for one year, two years, ten years, twenty years, will find out that it cannot be done.
>
> "The sentence that is to be imposed after all these years upon this accused is one that must reflect a deterrence on other people who might think they can get away with this type-of-thing. A sentence must reflect the determination of the court to back up those who, as children, have been inflicted with such conduct."

[49] The trial judge also dealt with the effects of lapse of time referencing the Alberta Court of Appeal case, **R. v. Spence (S.); R. v. Fraser (D.L.)** (1992), 137 A.R. 301; 25 W.A.C. 301 (C.A.), at paras. 57 and 58:

> "This was a case of the Alberta Court of Appeal, and it was put in this way with respect to the substantial lapse of time between the commission of the offence and prosecution I earlier dealt with it from the point of view of deterrence, and the Alberta Court of Appeal has dealt with it from the point of view of general deterrence and denunciation in this way. It says:
>
> "Even a substantial lapse of time does not in anyway render inapplicable the principles of general deterrence and denunciation. If the court was to impose a lenient sentence because of the passage of time, some members of the community might regard the sentence as a judicial condonation of the conduct in question. Any substantial mitigation of what would have been the sentence many years earlier might be seen by other potential offenders as an invitation to commit a sexual offence in such a way as to make it improbable the prompt reporting of the offence, such as by threatening the victim with reprisal if she reports it to a parent or the police. … The only sentencing principles which may be affected by the lapse of time are those of individual deterrence and rehabilitation. If the accused, during the intervening years, has led an exemplary life and after the matter is reported and during the resulting investigation and prosecution he is remorseful, then the principles of individual deterrence and rehabilitation may arguably, by themselves, not justify a stern sentence of the kind which would have been obligatory many years earlier."
>
> "The court is saying, in dealing with the rehabilitation of the accused, if he has led an exemplary life in all the intervening years, it is only to that effect that the matter should be taken into consideration."

[50] I am in agreement with the position taken by the Court of Appeal in **Spence.** A lenient sentence should not be imposed simply because of the passage of time. However, if an offender does have an unblemished subsequent history and is remorseful, then reduction in sentence can be considered. The evidence before me indicates Ronald Justin Lasik has led a good life since his years at Mount Cashel. However, his failure to show remorse remains a serious stumbling block to the defence's argument for substantial reduction of sentence in these circumstances.

[51] In the **Plint** case the offender pleaded guilty. In considering his age, which was 77 years, the court stated at para. 63:

> "The prison accommodates people of all ages, and your health, sir, will be taken care of by the penal system. You need not be concerned about your health or your age in the penal system. There are prisons, Mountain Institution is one of them, William Head is another in which each prisoner can be accommodated without the rigors of the more stringent institutions. I am taking your age into consideration, but only in light of what I have just said."

[52] The global sentence imposed by the trial judge was 11 years' imprisonment for 16 counts of indecent assault, including forced sodomy upon victims.

[53] This case also deals with the defence argument that if I am to impose a lengthy sentence upon Ronald Justin Lasik, it would be akin to a life sentence upon him due to his age. The same argument was advanced by defence counsel in **Plint** who suggested a range of sentence between two to six years submitting any further time would be unfair in the circumstances. The approach was rejected by the trial judge in light of the global sentence imposed.

[54] At the time the offences were committed the maximum penalties were, for buggery, 14 years; for gross indecency, five years; for common assault, two years; and indecent assault, 10 years. Sections 147, 148, 149 and 231, (1953 - 1954), Chapter 51, **Criminal Code.**

[55] In arguing sentence the Crown did not take a particular position as to the method to be adopted by me in arriving at same. That is, whether to impose sentence on the basis of groupings of the types of offences, being four categories, or to impose sentence for each individual count by complainant in a manner somewhat similar to that adopted by Mr. Justice O'Regan in **Bromley.** Whatever mode adopted must be analyzed in terms of its overall global implication as stated by Mr. Justice Steele in **English.**

[56] I believe it is appropriate herein to arrive at sentencing based on each count, or counts, as they apply to the individual complainants. I also intend to adopt the approach expounded by Goodridge, C.J.N., in **R. v. Ralph** at para. 63 which states:

> "Sentences for different offences, notwithstanding that they are the same nature, should generally be consecutive unless the totality is disproportionate."

He then goes on to deal with the **Ralph** case stating the following:

> "The total of all the sentences in this case was 31 years and obviously this would be disproportionate and counterproductive. To some extent, therefore, there have to be concurrent sentences."

[57] In order to achieve an appropriate total sentence, the sentences will be concurrent in respect of the same offence, that is buggery, gross indecency, indecent assault and common assault.

[58] Sentencing is as follows:

R.D.

Count No. 1-	Indecent Assault	1 year

Count No. 2-	Buggery	5 years
Count No. 3-	Buggery	5 years
Count No. 4-	Buggery	5 years
Count No. 5-	Buggery	5 years
Count No. 6-	Buggery	5 years
R.N.		
Count No. 7-	Indecent Assault	6 months
J.G.		
Count No. 8-	Buggery	4 years
Count No. 9-	Indecent Assault	6 months
Count No. 11-	Indecent Assault	6 months
Count No. 12-	Gross Indecency	3 years
Count No. 13-	Common Assault	2 years
F.N.		
Count No. 14-	Indecent Assault	1 month
Count No. 15-	Common Assault	2 years
J.P.		
Count No. 18-	Indecent Assault	4 months
Count No. 20-	Common Assault	6 months
R.S.		
Count No. 22-	Common Assault	2 years
W.H.		
Count No. 23-	Gross Indecency	3 years

Count No. 24- Common Assault 2 years

[59] All of the sentences in respect of buggery are to be served concurrently for a total sentence under this category of five years. All of the sentences for indecent assault are to be served concurrently for a total sentence under this category of one year. All of the sentences for gross indecency are to be served concurrently for a total sentence of three years. All of the sentences for common assault are to be served concurrently for a total sentence of two years. The sentences in each category are to be served consecutively.

[60] The total sentence arrived at is 11 years. However, the offender has been in custody since the jury rendered its verdict on June 5, 1999; therefore, I have reduced the sentence to reflect the remand time to a total sentence of 10 years six months imprisonment in Her Majesty's Penitentiary.

Accused sentenced.