

CANADA / JUDGMENT

R. v. N.S.N.C.

2020 BCSC 1843

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Supreme Court of British Columbia

DECIDED

24 November 2020

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. N.S.N.C.,

2020 BCSC 1843

Date: 20201124

Docket: 81347-3

Registry: New Westminster

Regina

v.

N.S.N.C.

Restriction on publication: Pursuant to s. 486.4 of the Criminal Code, the Court has ordered that any information that could identify the victim or a witness, referred to in this judgment by the initials, N.S.N.C., Mr. C and XY, shall not be published in any document or broadcast or transmitted in any way.

Before: The Honourable Mr. Justice Gomery

Reasons for Sentence

Counsel for the Crown:

J. Henry

Counsel for the Offender:

M.N. Stern

M. Beckett

Place and Date of Hearing:

New Westminster, B.C.

September 9, 2020

Place and Date of Judgment:

New Westminster, B.C.

November 24, 2020

Introduction

- [1] In the spring of 1993, Mr. C sexually assaulted his nephew, XY, on two occasions. Mr. C stands convicted of sexual assault contrary to s.271(1) of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. I am now obliged to sentence Mr. C.
- [2] My reasons for judgment convicting Mr. C are published at 2020 BCSC 404. As in those reasons, when these reasons are transcribed, they will describe the offender as Mr. C and the victim as XY. In giving my reasons today, intending no disrespect and to avoid confusion, I will usually identify the victim by his first name.

Facts

Circumstances of the offences

- [3] When the assaults took place in 1993, Mr. C was 18 years old and XY was five years old. Mr. C and XY were alone together in a family home. XY was a child in Mr. C's care.
- [4] On each occasion, Mr. C removed XY's clothing and his own, rubbed his genitals against XY's genitals while facing him, and anally penetrated XY from behind. The details are fully described in my earlier reasons.

Circumstances of the offender

- [5] Mr. C is now 45 years old. He married in 1999 when he was 25 but has been separated from his wife for the last seven or eight years. Notwithstanding the separation, they maintain a reasonably amicable relationship as co-parents of their three children aged 15, 13, and 8. Mr. C is an involved parent and financially supports his family. His wife describes him as a dedicated father.
- [6] Mr. C is in a long-term stable relationship with a girlfriend. He has been regularly employed since high school and is currently employed as an operations/sales manager by a company owned by his brother. He is a hard worker who gets on well with customers. His co-workers speak highly of him.

- [7] Mr. C grew up in a household with his parents, grandparents, and two brothers. He was the youngest of his parents' children. It was a stable home environment in which he was well-cared-for. Mr. C continued to live at home with his parents until he was well into his twenties and remains close to his parents and his brothers.
- [8] Mr. C was sexually assaulted by a male relative during a family trip to India when he was 9 or 10 years old. The experience affected him greatly. To this day, he cannot watch television shows or movies that address sexual offences. He told Dr. Schweighofer, who assessed him for the sentencing hearing, that he believes that people who sexually assault children should be put to death because "no child deserves to be put through that".
- [9] Mr. C began to abuse alcohol when he was about 16 years old. He skipped classes and his marks deteriorated. He did not graduate on schedule but obtained his high school leaving certificate a few years later. He obtained a business management certificate from BCIT in 2004.
- [10] At the time of the assaults in 1993, Mr. C was nominally attending school, although without much success. He was working in the evenings and drinking in the mornings so that he would not miss work. The evidence does not disclose whether he committed the assaults while under the influence of alcohol.
- [11] Mr. C reduced but did not stop drinking after he married. He eventually began to use alcohol heavily, and also cocaine. In 2014, he attended a 60-day residential drug and alcohol rehabilitation program, followed by a course of outpatient treatment for six months. He still consumes alcohol but no longer, he says, to excess. He says that he has been abstinent from cocaine since 2016.
- [12] In June 2016, Mr. C was convicted of assault with a weapon. This conviction came about in consequence of a confrontation on the road between Mr. C and another driver. While Mr. C has offered different versions of the incident to different people, it is clear that he brandished a weapon. He received a six month conditional sentence. This is Mr. C's only prior criminal conviction.
- [13] Mr. C has a medical history that includes repeated injuries to his head and body from a teenage fight and several car accidents. He takes pain medication. He struggles with anxiety and depression and has been prescribed anti-depressants which he does not always take. Dr. Schweighofer suspects that he suffers from attention deficit hyperactivity disorder.
- [14] Two well-qualified psychologists, Dr. Schweighofer, who was retained by the defence, and Dr. Todd, retained by the Crown, have prepared comprehensive risk assessment reports. They concur that there is a very low risk that Mr. C will commit a future sexual offence. In coming to this conclusion, they place great weight on the length of time - 27 years - that has passed since Mr. C assaulted XY and the absence of any indication that he has committed subsequent sexual offences. Dr. Schweighofer finds that Mr. C does not exhibit pedophilic tendencies. He offers the following tentative explanation of the assaults on XY:

It is my hypothesis that his early childhood sexual abuse and subsequent difficulties with emotional and behavioural self-regulation made him vulnerable to acting out his sexual impulses against a vulnerable young male - much as he himself has been sexually abused.

Precipitating factors are difficult to discern but, as noted in the prior psychological assessment, access and opportunity likely played a role. Given that [Mr. C] was also involved in problematic alcohol use at this time (he acknowledged drinking in the morning and evenings) the role of alcohol cannot be ruled out.

[15] I accept Dr. Schweighofer's explanation and view the sexual assaults in this case as the opportunistic actions of an immature and impulsive young man seeking sexual gratification. It is possible that alcohol played a part.

[16] The Crown refers me to R. v. B.S.B., 2010 BCCA 40 at para. 36, and R. v. G.M. 2015 BCCA 165 at para. 29. B.S.B. was a case in which an offender's continuing denial of guilt justified a sentencing judge in refusing to give weight to pre-sentence reports proposing that he posed little or no risk to reoffend. In B.S.B., the psychologists who prepared the reports were unable to explain the offender's actions in committing the offence. In G.M., the Court of Appeal overturned the decision of a sentencing judge who found that an offender was unlikely to reoffend in the absence of a formal risk assessment, referring to the offender's continuing denial of guilt. Neither case stands for the proposition that a reasoned assessment by a qualified expert that an offender is unlikely to reoffend should only be accepted if the offender admits the offence.

[17] Viewed as a legal proposition, it would be wrong to deny to an offender the benefit of a favourable factual finding, simply because the offender continues to assert his or her innocence. Mr. C's denial of guilt may be sincere but unreliable, that is, Mr. C may have mistakenly persuaded himself that he could not have done this terrible thing. Or it may be driven by a desire not to disillusion supportive family and friends, or to preserve a position on appeal. None of these motives would necessarily imply a likelihood to reoffend.

[18] I note that the expert reports of Drs. Todd and Schweighofer were admitted by the consent of both parties. Crown counsel advised that he did not need to cross-examine either expert. Both experts took into account Mr. C's continuing denial of guilt. I accept their opinions, for the reasons given by them, and find that there is a very low likelihood that Mr. C will commit a future sexual offence.

[19] I should note that Dr. Schweighofer expresses some concern that Mr. C may be at risk of committing other kinds of offences. He states:

[Mr. C] has a longstanding history of problematic substance use, impulsivity and difficulties with managing his emotions. As noted, he has made progress in these areas and that is to his credit. Nevertheless, he can certainly develop improved self-management skills as can be gained by, for example, engaging in skills based cognitive-behavioural therapy (CBT). Given his Very Low Risk for a sexual offence, it is my view that he does not specifically require placement in a sex

offender treatment program. Rather, placement in treatment that targets the development of general self-regulation skills and specific CBT skills such as cognitive restructuring would be of benefit to him and would help to address potential concerns in the area of aggression/violence.

Impact on the victim

- [20] XY bled from the anus following the first assault, though there is no evidence that he suffered any lasting physical injury, and Mr. C was not charged with sexual assault causing bodily harm. In a victim impact statement, XY states that he also suffered a post-traumatic stress disorder diagnosed when he entered counselling in 2004. XY says that he has overcome his PTSD, with the help of his support system.
- [21] XY complained to his mother shortly after the second offence took place. His complaint came to the attention of other family members and precipitated a rift that has deepened over time. Family members have taken sides. This has had a lasting impact on XY who feels disappointed and betrayed by relatives who failed to stand up for him.

Legal Parameters

- [22] Under the Code as it stood in 1993, a sexual assault contrary to s. 271(1) is punishable by a term of imprisonment not exceeding 10 years. Section 271(1) has since been amended to increase the maximum term to 14 years, but s. 11(i) of the Canadian Charter of Rights and Freedoms requires that I must not take the greater maximum penalty into account.
- [23] I must bear in mind the purposes and principles of sentencing set out in s. 718 to 718.2 of the Code. Section 718 and 718.1 state:

718 The fundamental purpose of sentencing is to protect society and 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 and the harm done to victims or to the community that is caused by 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 acknowledgment of the harm done to victims or to the community.

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

- [24] Section 718.2(b) requires that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. This is described in the cases as the principle of parity.
- [25] Section 718.2(d) requires that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances.
- [26] In the case of a victim under the age of 18 years, s. 718.01 requires the court to give primary consideration to the objectives of denunciation and deterrence. Section 718.01 only came into force in 2005 and does not have a retrospective application to this case; *R. v. D.G.*, 2014 BCCA 84 at para. 16. Nonetheless, common law principles require me to pay particular attention to the objectives of denunciation and deterrence in this case; *D.G.* at para. 17; *R. v. S.B.T.*, 2010 BCCA 145 at para. 16; *R. v. A.E.S.*, 2018 BCCA 478 at para. 54.
- [27] Counsel agree that there are certain ancillary orders I am required to make and one order that I may make. I will deal with the ancillary orders at the end of this decision. Counsel agree that, in the circumstances of this case, I must impose a term of imprisonment. The main question I must address is the length of the prison term.

Positions of the Crown and the Defence

- [28] The Crown seeks a sentence of four to four-and-a-half years in jail. The defence seeks a sentence of between two years less a day and three years imprisonment. The defence asks me to pay particular attention to the possibility of a sentence of two years less a day followed by a term of probation that would require Mr. C to attend for counselling recommended by Dr. Schweighofer and Dr. Todd.
- [29] The Crown and the defence agree that aggravating factors include the fact that XY was only five years old, that XY was a member of Mr. C's immediate family, and that, in assaulting XY, Mr. C abused a position of trust or authority in relation to XY. These are identified as aggravating factors in s. 718.2 of the Code. While they reflect amendments to the Code since 1993, the amendments codify previous caselaw; *D.G.*, at paras. 16-17; *R. v. S.B.T.*, 2010 BCCA 145 at para. 16. I am satisfied that counsel are correct to consider these as aggravating factors.
- [30] The Crown maintains that the following are further aggravating factors: the impact on XY, that the assaults involved anal penetration, an act of violence, that the assaults took place in the home, where XY was entitled to feel safe, secure and protected, that the assaults had what the Crown describes as a predatory nature, Mr. C's awareness from his own experience of what it is like to be a victim of a sexual assault, and Mr. C's criminal record.
- [31] The Crown and the defence agree on the presence of mitigating factors including: Mr. C's own history as a victim of sexual abuse; his engagement in society, stable work history and substantial community support; and Mr. C's compliance with bail conditions since his arrest on June 27, 2018. I agree that these are mitigating factors.

- [32] The defence maintains that there are further mitigating factors: Mr. C's young age and lack of maturity when he committed the assaults, his very low risk to reoffend, and the collateral impact of this proceeding on his three young children.

The authorities

- [33] The parity principle requires me to identify the range of sentences imposed on similar offenders for similar offences in similar circumstances. A sentencing range is a guideline, not a straitjacket; *R. v. Friesen*, 2020 SCC 9 at paras. 108-111.
- [34] At a high level of generality, the range of sentences for sexual assault involving intercourse is two to six years; *R. v. G.M.*, 2015 BCCA 165 at para. 22. One would expect the range of sentences in cases where the victims are children to be at least as severe. *Friesen* directs that the range of sentences imposed historically in cases involving sexual offences committed against children has been too low and must be reconsidered.
- [35] Unfortunately, there is some difficulty applying *Friesen* in cases of offences committed many years ago. *Friesen* gives two reasons why an increase is necessary: first, the sentences imposed must reflect the courts' current, better understanding of the wrongfulness and impact of sexual offences against children; and second, sentences should increase to reflect increases in the maximum sentences available for certain sexual offences. In the case of an offence committed in 1993, the first of these reasons is applicable, but the second is not because, pursuant to s. 11(i) of the Canadian Charter of Rights and Freedoms, Mr. C has the right to have his sentence determined on the basis of the maximum sentence in 1993 (10 years) as opposed to the higher current maximum of 14 years.
- [36] The Crown quotes a direction from *Friesen* at para. 114 that "mid-single-digit penitentiary terms for sexual offences against children are normal and that upper-single digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances". This direction is based on both parts of the reasoning in *Friesen*, and only half of that reasoning carries weight in this sentencing. Indeed, a double-digit sentence above 10 years would not be legal in this case, because it would exceed the maximum, and a high single-digit sentence could not be justified.
- [37] As a starting point, what I must take from *Friesen* is its recognition of the harm done by and moral blameworthiness of sexual assaults such as those which Mr. C committed. Giving judgment for the court, the Chief Justice and Justice Rowe stated (with citations omitted):
- [90] The fact that the victim is a child increases the offender's degree of responsibility. Put simply, the intentional sexual exploitation and objectification of children is highly morally blameworthy because children are so vulnerable. As L'Heureux-Dubé J. recognized in *R. v. L.F.W.*, "As to moral blameworthiness, the use of a vulnerable child for the sexual gratification of an adult cannot be viewed as anything but a crime demonstrating the worst of intentions". Offenders recognize children's particular vulnerability and intentionally exploit it to achieve their selfish desires. We would emphasize that the moral

blameworthiness of the offender increases when offenders intentionally target children who are particularly vulnerable, including children who belong to groups that face discrimination or marginalization in society.

- [91] These comments should not be taken as a direction to disregard relevant factors that may reduce the offender's moral culpability.
- [38] I must also take into account the list of significant factors to determine a fit sentence provided by Friesen at paras. 121 to 154. They include the following points of particular significance in this case:
- a) The offender's likelihood to reoffend is important. The higher the offender's risk to reoffend, the more the court needs to emphasize the sentencing objective of separating the offender from society (at para. 123). Courts should encourage efforts toward rehabilitation, which may weigh in favour of a reduced term of incarceration followed by probation, since a community environment is often more favourable to rehabilitation, but only where the need to provide immediate and short-term protection to children is not compromised (at para. 124).
 - b) Abuse of a position of trust or authority is important. Positions of trust or authority arise in varied circumstances and should be viewed as falling along a spectrum (at para. 125). Any abuse of trust is likely to increase the harm to the victim and thus the gravity of the offence (at para. 126). It also increases the offender's degree of responsibility and moral blameworthiness (at para. 129). All other things being equal, an offender who abuses a position of trust to commit a sexual offence against a child should receive a lengthier sentence than an offender who is a stranger to the child (para. 130).
 - c) The duration and frequency of sexual violence is important. It can significantly increase the harm to the victim, magnifying the severity of the offence and increasing the offender's moral blameworthiness (at para. 131). Sexual violence against children that is committed on multiple occasions and for longer periods of time should attract significantly higher sentences that reflect the full cumulative gravity of the crime (at para. 132).
 - d) The age of the victim is important. The younger the child, the more pronounced the vulnerability and power imbalance. The moral blameworthiness of the offender is enhanced when the victim is particularly young (paras. 134-135).
 - e) The degree of physical interference with the victim is a recognized aggravating factor (para. 138). Penetration can be an aggravating factor, because it may cause the victim physical harm (para. 139). However, sentencing ranges should not be based on penetration or the specific type of sexual activity at issue (para. 140). Courts should not assume that there is any clear correlation between the type of physical act and the harm to the victim (para. 141). There is no hierarchy of physical acts from least to most serious (para. 146).

- [39] Accordingly, the features of this case to which I should pay particular attention in sentencing are:
- a) Mr. C's very low likelihood of reoffending, which may weigh in favour of a reduced term of incarceration followed by probation;
 - b) Mr. C committed the offence by abusing a position of trust as a babysitter within the family home, which increases his moral blameworthiness;
 - c) The offence involved two distinct sexual assaults over a relatively short period. The case is therefore difficult to compare to cases involving sexual offences committed repeatedly over many months or years;
 - d) At five years of age, XY was a particularly young and vulnerable victim, which enhances Mr. C's moral blameworthiness; and
 - e) The assaults involved anal penetration causing bleeding in one case. This is an aggravating factor, but I must not over-emphasize the physical acts in assessing the harm done to XY.
- [40] In this light, the cases presented by Crown and defence are relatively unhelpful where the circumstances differ from those in this case on multiple axes, for example, involving victims who were significantly less vulnerable, or actions taking place over a prolonged period. Of the cases cited in argument, I find the following are most helpful in framing a range of possible sentences, so far as one can be discerned.
- [41] In *R v. Scott*, 2001 BCCA 231, the offender was convicted of counts of buggery involving anal intercourse with two complainants, and other less serious sexual offences where the complainants were boys aged 8 to 13 and he was their soccer coach. The offender was 17 to 22 years old at the time of the offences and was in his early 40s at the time of trial. The trial judge sentenced him to three years, and the Court of Appeal reduced the sentence to two years less a day, to permit the sentence to be served in a provincial institution. Speaking for the Court, Justice Hall emphasized that the offender had for many years maintained a stable lifestyle and a stable family situation, and that a prolonged period of incarceration would cause his family difficulty.
- [42] In *R. v. C.*, 2005 NSSC 3, a 31 year old father was convicted of sexually assaulting his four year old daughter in her bed. The assault involved placing the penis in the vaginal and anal areas. There was no penetration but there was pain, and the incident had a devastating effect on the child. The father had a significant criminal record involving acts of violence and threats of violence, including a sexual assault of his wife. Hall J. sentenced the offender to three years in prison.

- [43] R v. J.N.P., 2020 BCSC 570 involved a conviction for sexual interference arising from the offender's conduct towards his 15 year old niece who spent a great deal of time in his house and helped care for his children. The conduct involved oral sex and caused the victim great emotional harm. The offender was a 46 year old indigenous man. Relying on Friesen and referring to the offender's conduct as a complete betrayal of a close family relationship, Justice Iyer sentenced the offender to three years in prison.
- [44] In R. v. Wesley, 2014 BCCA 321, the offender was 25 years old when he sexually assaulted his girlfriend's seven or eight-year-old niece. The assault involved 3 episodes of sexual touching while unclothed. They were not impulsive acts and they involved an abuse of authority. The offender had a significant criminal record involving non-sexual assaults. There was a high risk that the offender would reoffend. Mitigating factors were that the offender was a First Nations person of limited mental ability who had suffered a disadvantaged background and probably suffered from fetal alcohol spectrum disorder. The Court of Appeal upheld a sentence of five years in prison imposed by the trial judge.
- [45] Giving judgment for the Court, Justice Saunders noted that counsel had referred to cases involving sentences ranging from two to eight years. At para. 26, she described the case before her as lying between the least and most egregious of circumstances, but tending to the more serious given the surrounding circumstances of the offender's "familial type of relationship" to the child. She noted that the offence took place at the aunt's residence "where the child, in the care of the aunt, could have anticipated safety, not danger".
- [46] In R. v. C.C.H., 2020 BCCA 162, the victim was not a child but was as vulnerable as a young child: she was a disabled woman in her 20's with a mental age of six or seven who was confined to a wheelchair. The offender, a man in his 70s, was a long-time friend of the family who was employed as the victim's caregiver. He was convicted of sexual exploitation of a disabled person, by sexual touching. The victim suffered serious psychological harm. The offender pleaded guilty and expressed heartfelt remorse. The offence had a maximum sentence of five years. Applying principles set out in Friesen, the Court of Appeal upheld the trial judge's sentence of three years imprisonment.
- [47] Reviewing these cases in light of Friesen, in my view, the range of sentences in circumstances involving one or two distinct sexual assaults against a young child involving an abuse of trust or authority, is in the range of two to five years. This range assumes a 10 year maximum sentence. I have considered whether the sentence of two years less a day imposed in Scott still lies within the range given recent developments in the jurisprudence. I think that it does, given the express acknowledgement in Friesen at para. 124 that consideration of rehabilitation may weigh in favour of a reduced term of incarceration followed by probation. This is a result that is only possible in the case of a sentence of less than two years.

Assessment

- [48] The dominating considerations, in this case, are the objectives of denunciation and deterrence of others. The offence took place 27 years ago, more than half of Mr. C's lifetime. He is not the same man he was, but he is responsible for that man's crimes. The length of time that has passed contributes to my finding that there is a very low risk that Mr. C will re-offend. It means that he does not need to be deterred from committing sexual offences, and he does not need to be separated from society for his rehabilitation. However, the length of time that has passed does not diminish the need for denunciation of his crime by a significant prison term that is proportionate to the gravity of his offence and his moral blameworthiness.
- [49] The offence was a serious one, not only inherently, but in particular because of the harm done to XY. He was assaulted in his home. His faith that his family would protect him was damaged at far too young an age. This harm is ongoing even today.
- [50] Mr. C is notably blameworthy because XY was very young, vulnerable, and trusted him, because the assaults were impulsive, selfish acts, and because having assaulted XY once, causing him to bleed, he repeated the assault on a separate occasion. I think that the second assault must be considered a more blameworthy act than the first, because Mr. C had an opportunity to reflect on what he had done, and he could have repented of it.
- [51] I accept the defence argument that Mr. C's blameworthiness is mitigated, to a degree, by the fact that he was a very young adult, only just turned 18.
- [52] Because a sentence served within the provincial system falls within the range, albeit at the very low end of two years less a day, I must consider that possibility. It has distinct features. The defence urges me to consider that Mr. C would encounter less serious offenders while in prison, as Mr. Stern put it, "a better peer group". I could impose a term of probation of up to three years and make it a term of the probation order that Mr. C attend for counselling with CBT therapy, as recommended by Dr. Schweighofer.
- [53] While there is much that is attractive in this, it is only possible if a sentence of two years less a day is justifiable from the point of view of the dominating considerations of denunciation and deterrence of others. I do not think that is possible, considering the familial relationship, XY's age, that the offence took place at the home Mr. C shared with XY, and that the offence was repeated. These features of the case in combination warrant a penitentiary term.
- [54] The only case before me involving a sentence that fell short of a penitentiary term is Scott. The circumstances I have just noted are more serious than were present in Scott. Mr. C's recent history, which includes a conviction for assault and a struggle with substance abuse, is not quite so favourable as the offender's stable lifestyle noted in Scott.

[55] I am not persuaded that denunciation and deterrence of others require a sentence in the range proposed by the Crown. I give substantial weight to the mitigating factors of Mr. C's own history as a victim of sexual abuse, his engagement in society, stable work history, and substantial community support. It matters that he has strong support from his family, including his separated spouse, and is at a very low risk to reoffend.

Sentence

[56] Mr. C, would you please stand.

[57] Having regard to the considerations I have reviewed, I sentence you to three years in prison.

[58] You were in jail for one day before you were released on bail and will be credited with two days off your custodial sentence.

Ancillary orders

[59] The Warrant for Committal shall be endorsed with the following order. Pursuant to s. 743.21(1) of the Code, you must have no contact or communication with XY while you are in custody.

[60] You stand convicted of a primary designated offence as defined in s. 487.051 of the Code. Pursuant to s. 487.051(1), I authorize the taking of samples of bodily substances from you. The substances will be taken from you while you are in custody and you must submit to the taking of the samples.

[61] Pursuant to s. 490.012 of the Code, you are required to comply with the Sex Offender Information Registration Act, S.C. 2004, c. 10, for 20 years.

[62] Pursuant to s. 109 of the Code, you are prohibited from possessing:

- a) Any firearm, other than a prohibited firearm or restricted firearm, and any cross-bow, restricted weapon, ammunition and explosive substance for a period of 10 years following your release from prison, and
- b) Any prohibited firearm or restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

[63] The Crown seeks an order pursuant to s. 161 of the Code that would prevent you for 10 years from being within 500 m of certain places where XY is likely to be, attending in public places where there are persons under the age of 16 years, or obtaining employment or volunteering in a position where you would be in a position of trust or authority with persons under the age of 16 years. The Crown seeks this order based on the circumstances of your offence against a child who was in your care. It cites *R. v. Miller*, 2017 NLCA 22 at para. 11 for the proposition that I must assess the extent of the risk to children, taking into account a number of factors including the circumstances of the offence.

- [64] Notwithstanding the circumstances of the offence and your conduct in 1993, Drs. Schweighofer and Todd agree that the risk to children in your case is minimal. I accept their assessment for the reasons they have given. In light of your offence against XY, I think that you should be prevented from coming into contact with him, but that is the extent of the s. 161 order I think is justified.
- [65] Accordingly, pursuant to s. 161 of the Code, you are prohibited for 10 years commencing on the date you are released from custody from being within two kilometers of any residence, school or workplace of XY, except in the following circumstances:
- a) Under the supervision of a person approved in writing by the Court, your parole officer, or the person to whom you are reporting under the Sex Offender Registration Act. You must carry a copy of the written permission with you.
 - b) Lawful employment, where the nature of your employment has been approved in advance in writing by your parole officer, or the person to whom you are reporting under the Sex Offender Registration Act. You must carry a copy of the written approval with you.
 - c) As approved in advance in writing by the Court, your parole officer, or the person to whom you are reporting under the Sex Offender Registration Act. You must carry a copy of the written approval with you.
- [66] Mr. C, I have concluded that a penitentiary sentence is necessary as an expression of society's condemnation of your conduct. This will be difficult for you. To your credit, your family and friends are standing by you. I ask you to remember your family and friends and strive to be worthy of their trust and confidence in you in the challenging days ahead, not only while you serve your sentence in prison, but also afterwards as you return to life in society. Good luck.

"Gomery J."

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Prepared on 25 October 2026 · Esheria