THE COURT OF APPEAL FOR SASKATCHEWAN

Citation: 2015 SKCA 48 Date: 2015-05-04

Between: Docket: CACR2374

Her Majesty the Queen

Appellant

- and -

Paul Mary Leroux

Respondent

Between: Docket: CACR2379

Paul Mary Leroux

Appellant

- and -

Her Majesty the Queen

Respondent

[Publication Ban: An order has been made prohibiting publication of any information that could disclose the identity of the complainants pursuant to s. 486.4(1) of the *Criminal Code*.]

Coram:
Richards C.J.S. and Caldwell and Ryan-Froslie JJ.A.

Counsel:
Beverly L. Klatt, for the Crown
Paul M. Leroux, on his own behalf

Appeal:

From:	2013 SKQB 336, 2013 SKQB 337, 2013 SKQB 395, 2013 SKQB 438
Heard:	February 18, 2015
Disposition:	Crown Appeal from Sentence Allowed; Appeal from Conviction Allowed in part
Written Reasons:	May 4, 2015
By:	The Honourable Mr. Justice Caldwell
In Concurrence:	The Honourable Chief Justice Richards The Honourable Madam Justice Ryan-Froslie

Caldwell J.A.

I. INTRODUCTION

[1] The Crown appeals from the three-year sentence of imprisonment imposed on Paul Mary Leroux in consequence of his conviction on eight counts of indecent assault and two counts of gross indecency under the provisions of the *Criminal Code*, SC 1953-54, c. 51. For his part, Mr. Leroux appeals from each of these convictions largely on the basis that the verdicts are unreasonable. The convictions stem from incidents that took place at the Beauval Indian Residential School [the Beauval IRS] in northern Saskatchewan. Mr. Leroux was a boys' dormitory supervisor at the school between September 1959 and June 1967.

[2] One of the convictions must be quashed because it is an unreasonable verdict; but, I find no reason to upset any of the other convictions. As to the sentence imposed, the Crown has compellingly demonstrated that three years' incarceration is wholly unfit in the circumstances. I find a sentence of eight years' imprisonment is a fit sentence in the circumstances of this matter.

II. FRESH EVIDENCE

[3] Before turning to the appeals proper, I will address the fresh evidence application Mr. Leroux has put before the Court. The test for admitting fresh evidence on an appeal is well-known; in *R v Palmer*, [1980] 1 SCR 759 at p. 775, McIntyre J. described it in these terms:

> (1) The evidence should generally not be admitted if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases: see *McMartin v. The Queen* [[1964] SCR 484].

> (2) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issue in the trial.
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> (3) The evidence must be credible in the sense that it is reasonably capable of belief, and
>
> (4) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

[4] What Mr. Leroux proposes to adduce into evidence is largely extracts drawn from: (a) Indian Residential School Independent Assessment Process [IAP] applications, (b) transcripts of testimony before adjudicators acting under the IAP, and (c) transcripts of examinations for discovery in civil proceedings, all of which arose out of the various complainants' residential school sexual and physical abuse claims. Mr. Leroux also seeks to tender evidence to establish that the CBC television program *Man Alive* had been first broadcast in October 1967. And, among other things, he seeks to adduce copies of letters he sent to the Senior Crown Prosecutor handling his trial, some period photographs of former students of the Beauval IRS, and excerpts from the school's newsletter, *Voice of the North*.

[5] In my assessment, the evidence Mr. Leroux proffers satisfies only the third element of the test in *R v Palmer*; that is, for the most part, it is reasonably capable of belief. Looking to the other elements of the test, I observe all of the proffered evidence could have been adduced at trial, none of it bears upon a decisive or potentially decisive issue in the trial, and the evidence is not such that—if believed and when taken with the other evidence adduced at trial—it could reasonably be expected to have affected any of the verdicts.

[6] Rather, it is clear to me from his appeal materials that Mr. Leroux seeks—under the guise of adducing fresh evidence—to present fresh

argument as to why the trial judge ought to have placed very little or no weight on the evidence of each complainant. But, as the transcript of the trial reveals, Mr. Leroux very adeptly challenged each complainant's credibility at length and skilfully sought to undermine the reliability of each complainant's evidence, including by relying on inconsistencies in that testimony when compared to some of the *fresh* evidence he now seeks to adduce in this Court.

[7] In short, I would not admit the so-called fresh evidence into evidence by reason that it fails to meet the *R v Palmer* test.

[8] With that addressed, I turn to the appeals proper.

III. BACKGROUND TO THE APPEALS

[9] At age 19, Mr. Leroux became a dormitory supervisor at the Beauval IRS; a position he held from September 1959 until June 1962 and again from September 1963 until June 1967. While there, he developed and coached intramural and competitive hockey, baseball and softball teams. He started a boys' choir. He had charge of a boys' dormitory. His office and private quarters were adjacent to the boys' dormitory. He supervised the male students at the school, except when they were in class. He meted out discipline. He rewarded good behaviour. He was a parental figure in the male students' lives.

[10] In the fall of 1967, Mr. Leroux became the senior boys' supervisor at Grollier Hall, a residential school in Inuvik, where he had much the same duties and responsibilities as he had had at Beauval. From 1968 to 1979, Mr. Leroux sexually abused boys in his charge at Grollier Hall. Mr. Leroux left Inuvik upon being convicted for contributing to the delinquency of a

juvenile. In 1998, a court convicted Mr. Leroux of sexually abusing 14 boys who had resided at Grollier Hall between 1968 and 1979 and sentenced him to 10 years imprisonment: *R v Leroux*, [1998] NWTJ No 140 (QL) and [1998] NWTJ No 141 (QL).

[11] In 2011, after a lengthy investigation, the RCMP charged Mr. Leroux with the historical sexual abuse of 14 boys who had resided at the Beauval IRS. After trial, the judge convicted Mr. Leroux of abusing eight of the 14 complainants: *R v Leroux*, 2013 SKQB 395 [*R v Leroux* (Trial)]. In the course of the proceedings, the judge made rulings as to the applicability of ss. 7 and 11(d) of the *Charter* by reason of the delay in bringing the matters to trial—*R v Leroux*, 2013 SKQB 336 [*R v Leroux* (*Charter*)]—and as to the admissibility of similar fact evidence arising from the Grollier Hall abuse convictions—*R v Leroux*, 2013 SKQB 337 [*R v Leroux* (Similar Fact)]. After trial, the judge sentenced Mr. Leroux to a total of three years' imprisonment: *R v Leroux*, 2013 SKQB 438 [*R v Leroux* (Sentence)].

[12] The general background to these matters is more particularly set forth in *R v Leroux* (Trial) and in *R v Leroux* (Sentence); however, it is helpful to understand the general circumstances of the offences in question, which the judge set forth in *R v Leroux* (Trial) along with his conclusions as to each complainant's credibility:

> *Count 1 - Indecent assault on G.J.W.*
>
> [74] G.J.W. was born in 1950 and attended Beauval Indian Residential School from September 1957 to June of 1966. G.J.W. testified at his examination for discovery that the first incident happened when he was nine years old. In his evidence to Constable Joy, he indicated he was seven, eight or nine years old and that the sexual assaults happened every week for a number of years. At the end of the examination for discovery, he indicated that when he left at the age of 15½, it had happened a few times. At the trial he indicated the indecent assaults never happened on the top floor, but rather in the second floor dorm. He remembers the accused calling him to the bedroom in the night and offering him coffee. He alleges

the accused played with his penis until he got an erection. He was 10 or 11 years old. He tried to push the accused away. G.J.W. was often scared it would happen again when the accused would walk through the dormitory late at night. He indicated at trial that he was fondled five or six times in his bed. He testified that he could have been 11 or 12 years old. G.J.W. was sure that it was at least the fall of 1963 after the new construction. He would have been 13 years of age. He also indicated that the accused touched him in the bunks and played with his penis five or six times between the time he was 13 and 15 years of age.

[75] G.J.W. was a reserved, straightforward and credible witness. He may have been mistaken about the earlier years and whether he was indecently assaulted in the dormitory on the fourth floor and whether it was an elderly priest to whom he delivered lunch. However, his evidence respecting being fondled in his bunk by the accused five or six times in the final two years when he was between the ages of 13 and 15½ is most credible. A conviction shall be entered to Count 1.

…

Count 3 - Indecent assault on J.E.

[78] J.E. was born in 1949 and attended school at Beauval Indian Residential School from September of 1962 until June of 1965 when he finished his Grade 6. When he commenced Grade 1 he was 13 years of age. J.E. testified that he was only in the accused's office once when the accused took him there in the middle of the night, fondled him, gave him a beer, told him to take off his clothes, took him to his bed and had anal intercourse with J.E., which made him bleed. He believed that he was probably 15 years of age at the time. J.E. was a very credible witness. I accept his evidence with respect to the indecent assault. A conviction shall be entered on Count 3.

Counts 4 and 5 - Indecent assault and act of gross indecency on T.F.

[79] T.F. was born in 1950. He attended Beauval Indian Residential School from September of 1957 to June of 1968 when he obtained Grade 8, and then took Grades 9 and 10 in the "Anne of Green Gables Building" by the rectory. He attended North Battleford Composite High School for his Grades 11 and 12. T.F. made many statements in his testimony which the court accepts that he fully believes. However, many of these statements were proven to be factually untrue, particularly the cause of death of one P.J. and the name of the other individual who won the trip to Quebec. However, the court does accept his testimony respecting three boys being in the accused's office, being provided with an alcoholic drink, shown pornographic magazines of naked women, being taken into the accused's bedroom one at a time, having his pants pulled down and fondled. Also, that T.F. rebuffed further advances by the accused. The court does enter a conviction to Count 4.

[80] Based on the evidence accepted by the court, the court has reasonable doubt respecting the commitment of an act of gross indecency under Count 5 and does dismiss Count 5.

…

Count 7 - Indecent assault on E.G.

[83] E.G. was born in 1946. He attended Beauval Indian Residential School from August of 1954 to 1963. E.G. then attended other residential schools until he obtained his Grade 12 in 1967. Much of the peripheral evidence presented by the accused [*sic*] was obviously believed by him, but which the court does not accept. The court does accept the testimony of the witness relating to him having to masturbate the accused on more than one occasion and the attempted but failed attempt at sodomy.

[84] It is noted that E.G. is the first individual to file a complaint with the RCMP and did so prior to receiving any correspondence from a law firm suggesting he may be entitled to financial compensation.

[85] The court does enter a conviction on Count 7.

…

Count 11 - Indecent assault on N.G.M.

[89] N.G.M. was born in 1951. He started school at Beauval Indian Residential School in September of 1959 and continued until June of 1966. Although the records indicate he has a Grade 8, his recollection is that he only had Grade 7 and left at Christmas at the age of 13½. The testimony of N.G.M. was quite credible, particularly with respect to T.F. and him when they were 11 years of age, being mixed a drink which they referred to as a martini in the office of the accused. Then the boys went to bed and later that evening, the accused stopped at his bunk, fondled his genitals under the blanket and told him to come to his room, where the accused fondled him and he fondled the accused. The witness was very credible and believable and the court accepts his testimony. Therefore a conviction is entered on Count 11.

Counts 12 and 13 - Indecent assault and gross indecency on M.J.M.

[90] M.J.M. was born in 1949 and commenced school at Beauval Indian Residential School in 1956. He was then diagnosed with tuberculosis and was in a sanitarium for 1957, 1958 and 1959, returning in the fall of 1960, obtaining his Grade 8 in June of 1967. He then continued his education in Meadow Lake, obtaining a Grade 11 and subsequently a commercial art course at Red River College. M.J.M. was a very straightforward and credible witness. He told of being given alcohol by the accused, was shown pornographic books to get aroused and then taken to his bedroom, where the accused involved him in both fellatio and anal intercourse on numerous occasions. It seemed like once a month for three years. I accept this evidence as to the facts he related. A conviction will be entered to both Counts 12 and 13.

Count 14 - Indecent assault on M.V.P.

[91] M.V.P. was born in 1949 and attended Beauval Indian Residential School from September of 1956 to June of 1965, obtaining a Grade 8 education. M.V.P. was a member of both the boys' choir and the Warriors hockey team of which the accused was the choir master and the hockey coach. Although M.V.P. had discrepancies in his testimony respecting peripheral issues, he was most believable

> and a credible witness. Whether there was an indecent assault of M.V.P. in the shower or whether there was only an attempt, the court accepts the evidence of M.V.P. that there was in fact an indecent assault in the bedroom of the accused when M.V.P. was approximately 15 years of age, and I find the Crown has proven the charge beyond a reasonable doubt and a conviction shall be entered to Count 14.
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> …
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> *Counts 16 and 17 - Indecent assault and gross indecency on G.R.M.*
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> [93] G.R.M. was born in 1952. After spending two years in school at Onion Lake, he attended Beauval Indian Residential School from September 1962 to the end of 1963 before he returned to the Onion Lake Residential School for 1964 and 1965, returning to Beauval in September of 1965 until June of 1967. He received his Grade 7 education. G.R.M. was a very impressive, straightforward, and credible witness. The court has no doubt that G.R.M. was fondled by the accused and was involved in the acts of fellatio and mutual masturbation with the accused on numerous occasions after October of 1965 until they both left Beauval in June of 1967. A conviction is entered on both counts.

[13] I set out the particulars of sentences imposed as a result of these convictions in my consideration below of the Crown's appeal from sentence, but I turn first to consider Mr. Leroux's appeal from these convictions.

IV. APPEAL FROM CONVICTIONS

[14] There are three aspects to Mr. Leroux's appeal from his convictions. First, he alleges the trial judge erred in his rulings with respect to the admission of similar fact evidence at trial. Second, Mr. Leroux submits the trial judge erred when denying his application for a stay of proceedings by reason of the delay in bringing the charges to trial. Finally, Mr. Leroux says the verdicts are unreasonable. I will address each aspect of the conviction appeal in that order.

A. Similar Fact Evidence

[15] Before trial, the Crown had applied to have the transcript from Mr. Leroux's trial in Inuvik in respect of his Grollier Hall convictions

admitted as similar fact evidence. The Crown also sought to have the evidence it intended to adduce on each count against Mr. Leroux arising out of his time at Beauval admitted as similar fact evidence in relation to all counts against him arising out of his time at Beauval. The Crown made this pre-trial motion in the context of Mr. Leroux's later-rescinded election to be tried by a judge and jury. And, given that context, the judge ruled the prejudicial effect of the similar fact evidence would far out-weigh its probative value. He therefore excluded the evidence, see: *R v Leroux* (Similar Fact). Sometime following this, Mr. Leroux re-elected to be tried by judge alone.

[16] When concluding its case against Mr. Leroux at trial, the Crown reapplied to have similar fact evidence admitted. The application appears to have been limited to evidence arising out of the Beauval offences; it does not appear to pertain to the Grollier Hall trial transcript. The similar fact evidence related to each of the 14 complainants and essentially operated to bolster the credibility of each complainant. The judge reserved his decision.

[17] When rendering his verdicts, the judge delivered his reasons and decision on the Crown's renewed application for the admission of similar fact evidence. The judge said the application was too broad and to allow the evidence of all 14 complainants to apply to all 17 charges before him was too prejudicial to Mr. Leroux and would lead to propensity reasoning (at para. 41). Nevertheless, largely because Mr. Leroux had re-elected (at para. 50), the judge admitted the following evidence as similar fact evidence (at para. 38):

(a) the initial touching involved Mr. Leroux placing his hand under the covers and fondling the victim's genitalia over top of the victim's pyjamas;

(b) the activities occurred at night after the boys were asleep, normally between 9:30 or 10:00 p.m. and 1:00 a.m.;

(c) the touching would escalate on subsequent occasions to Mr. Leroux waking the complainant from sleep and telling him to come to Mr. Leroux's office or bedroom;

(d) Mr. Leroux would take down the victim's pyjamas, fondle the victim's penis, and would ask the victim to stroke Mr. Leroux's penis so that each would eventually have an erection;

(e) as the number of times that the victim was awakened and taken to the office during the night would increase to the point where the accused and the victim were performing fellatio on each other and eventually laying on the bed with the accused behind the victim with his penis between the victim's legs simulating intercourse until ejaculation or performing acts of anal intercourse on the victim; and

(f) often the victims were members of the choir or hockey team.

[18] While Mr. Leroux takes issue with its admission, I find no reversible error on the part of the judge in admitting or weighing this evidence as similar fact evidence in the circumstances of this case.

[19] Evidence of propensity is presumptively inadmissible but may be admitted where its probative value as to a particular issue outweighs the prejudicial effect of its admission: *R v Handy*, 2002 SCC 56, [2002] 2 SCR 908. Given the evidence, the potential for prejudice in this case is quite obvious; but, the judge took great care to ensure that he did not fall into the trap of making propensity-driven conclusions as to Mr. Leroux's guilt based

on the similar fact evidence. The judge even went so far as to say he would not resort to the similar fact evidence in his assessments of the *credibility* of the complainants, fearing that might lead him to propensity reasoning, even though that use would have been open to him: *R v B.(C.R.)*, [1990] 1 SCR 717. Rather, the judge limited its use to whether the *actus reus* of the offences had occurred and the manner in which it had occurred. In this respect, the judge's reasons clearly indicate he understood propensity or bad character were improper purposes for which the similar fact evidence could be adduced.

[20] In my view, the judge's reasons for judgment adequately address the probative value versus prejudicial effect of the similar fact evidence adduced in this case. None of his reasons in respect of any of the complainants indicate that he used similar fact evidence for an improper purpose. In fact, it is clear from his reasons that the judge looked to the evidence of each complainant separately and at times rejected a complainant's allegations on the basis of lack of credibility, even where the allegations were consistent with the similar fact evidence. In my assessment, nothing in the trial decision indicates the judge misused the similar fact evidence as proof that Mr. Leroux was 'the sort of person who would commit these kinds of offences', which is the reasoning addressed by the similar fact evidence rule. For this reason, I would dismiss this ground of appeal.

B. Delay

[21] Early in the proceedings Mr. Leroux had applied for a stay, arguing his rights under ss. 7 and 11(d) of the *Charter* had been infringed by the delay in bringing him to trial on these charges. He alleged prejudice to his right to make full answer and defence on the basis of the death of many witnesses and

the destruction of photographs he said could have assisted in his defence to the charges.

[22] After hearing the parties, the judge found the deceased witnesses could have only provided evidence in relation to collateral issues and that Mr. Leroux had failed to establish the destroyed photographs had any material relevance to the issues at play in the trial: *R v Leroux* (*Charter*). He therefore dismissed the application.

[23] Sections 7 and 11(d) of the *Charter* protect an individual's right to a fair trial, but the accused has the burden of establishing an infringement. Moreover, the fairness of a trial in not automatically undermined by delay, even lengthy pre-charge delay: *R v L.(W.K.)*, [1991] 1 SCR 1091 at 1100; rather, it is the effect of the delay that triggers a breach of ss. 7 and 11(d).

[24] As the Court noted in *R v L.(W.K.)* at pp. 1100-1101, staying proceedings on the basis of the mere passage of time would be equivalent to imposing a judicially created limitation period for a criminal offence. Here, the delay in bringing charges against Mr. Leroux is directly tied to the nature of the offences and the context in which the offences occurred. The offences involve conduct that humiliates the victims and they are therefore discomfited and reticent, which often manifests as delay in reporting the offences. An artificial limitation period would work injustice in such circumstances.

[25] Nevertheless, the judge considered the effect of the delay in this case on Mr. Leroux's ability to make full answer and defence to the charges he faced. In this respect, the judge keyed particularly on the fact some witnesses, who Mr. Leroux said could have contradicted what some of the complainants had said, had died and the fact some photographs had been lost or destroyed in the

intervening years. The judge noted the witnesses could, at best, have proffered evidence about matters collateral to the issues at trial. That their evidence could only have gone to complainant credibility, and then only to a small degree; whereas, Mr. Leroux had failed to establish the lost photographs had any relevance whatsoever: *R v Leroux* (*Charter*) at para. 10.

[26] The Crown submits the judge's findings in this respect are unassailable and I agree. The deceased witnesses did not witness the alleged offences or the events and could not have provided any exculpatory evidence on the issue of the assaults. As the judge put it, at best the deceased witnesses could have testified to matters collateral to offences, having no direct bearing on Mr. Leroux's guilt or innocence. Nothing before the Court suggests he erred in that finding or in his conclusion that the photographs were not relevant. For this reason, I find no reversible error in the judge's decision not to stay the proceedings on the basis of delay.

C. Unreasonable Verdict

[27] Lastly, Mr. Leroux says the judge's verdicts of guilt are unreasonable because there are too many inconsistencies in the witnesses' evidence.

[28] When assessing the reasonableness of a verdict, an appellate court cannot simply substitute its own view of the circumstances for that of the trial judge. Rather, it must determine, on the whole of the evidence, whether the trial judge's verdict is one that a properly instructed jury, acting judicially, could reasonably have rendered: *R v Biniaris*, [2000] SCC 15, [2000] 1 SCR 381, and *R v Yebes*, [1987] 2 SCR 168 at p 186. Nevertheless, the process will require the appellate court to re-examine and to some extent reweigh and consider the effect of the evidence.

[29] Here, the judge's verdicts of guilt beyond a reasonable doubt rest largely in his findings that the complainants were credible and that their evidence was reliable as to the offences for which he entered convictions. A trial judge's findings of credibility are subject to appellate deference, largely because the trial judge has the opportunity to see and hear the witnesses directly, which is said to be a formidable advantage: *R v W.(R.)*, [1992] 2 SCR 122. As a finding of fact, a credibility assessment is not subject to appellate reversal unless it is the product of a palpable and overriding error: *Housen v Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235, and *R v Gagnon*, 2006 SCC 17, [2006] 1 SCR 621. Moreover, as Jackson J.A. noted in *R v Kearn*, 2014 SKCA 15, 433 Sask R 105:

> [8] As a first principle, it must be made clear that a trial judge can convict based on some of the evidence of a witness who was found to be untruthful in other respects. Much will depend upon the context, including the witness and the charges being considered. In this case, a number of safeguards were present. The trial judge identified the inconsistencies in the testimony of S.S.; he was fully aware of her motive to lie and that she had either lied or was mistaken about other aspects of the evidence pertaining to the sexual assault; and he was fully aware of the amount of alcohol she had consumed on the night in question. Most importantly, he identified and referred to the controlling authorities with respect to the determination of a reasonable doubt. He also specifically cautioned himself that if he did not know whom to believe, he would have to have a reasonable doubt and find Mr. Kearn not guilty (para. 19).
>
> [9] It is difficult for an appeal court to state the trial judge has not applied the test for determining reasonable doubt in such circumstances. The trial judge's remarks in relation to finding Mr. Kearn guilty of assault causing bodily harm must be read in light of these very clear directions as to his obligations in relation to the determination of whether he had a reasonable doubt.

That is, a trial judge may convict based on some of a witness's testimony, even if that witness has been found to be untruthful or mistaken in other aspects of the witness's testimony. For this reason, when assessing a decision for error, it is important to determine whether the trial judge properly instructed himself or herself on the law.

[30] In this respect, the judge clearly identified credibility as the central issue in Mr. Leroux's trial and squarely placed that issue in the context of *R v W.D.*, [1991] 1 SCR 742, when he said this:

> [67] Credibility of the witnesses is of major significance in this trial. Reasonable doubt applies to the issue of credibility. I may believe a witness, disbelieve a witness or I may not fully believe or disbelieve one witness or a group of witnesses. If I have a reasonable doubt about the accused's guilt arising from the credibility of the witnesses, then I must find him not guilty. The accused testified on his own behalf and I must as well assess his testimony the same as any other witness keeping in mind the credibility of witnesses. I may accept all, part or none of the accused's evidence. If I believe his testimony that he did not commit the offences charged, I must find him not guilty. Even if I do not believe his testimony and it leaves me with a reasonable doubt about his guilt or about an essential element of the offences charged, I must find him not guilty. If I do not know who to believe, it means I have a reasonable doubt and must find him not guilty. Even if his testimony does not raise a reasonable doubt about his guilt or about an essential element of the offence, if after considering all of the evidence I am not satisfied beyond a reasonable doubt of his guilt, I must acquit.

[31] Here, in the circumstances of historical sexual assaults, the judge went further and instructed himself on the inherent frailties of testimony that often arise by reason of the effluxion of time. In doing so, he had regard for the fact 40 or 50 years had elapsed since the offences in question. He was mindful that the complainants had filed statements of claim and IAP applications, had given statements to the police, had participated in examinations for discovery, and had testified at the preliminary hearing and at trial. He observed the inconsistencies among the claimants' various claim documents and testimonies. Having noted all of this in general terms, the judge instructed himself in this manner:

> [68] …I must determine what effect any of the differences have on my overall assessment of the witnesses' credibility. They may have a huge effect or no effect or somewhere in between. Not every difference is important. I must consider the extent and nature of any difference. Was it a central point or something peripheral? I must consider any explanation the witness has given and whether the explanation was satisfactory. I must also consider the complainants' explanations as to why when they first revealed the alleged complaints against the accused in approximately 2000, they did not report the offences to the RCMP until, in the case

> of most complainants, 2009 and only after considerable coaxing from Constable Joy.
>
> [69] I have heard 14 complainants testify about events that occurred when each of them was a child. I must remember that persons giving testimony in court, of whatever age, are individuals whose credibility and evidence must be assessed by reference to standards appropriate to their mental development, understanding and ability to communicate. When generally speaking, when adults testify about events that occur when they were a child, their credibility should be assessed according to standards that are applicable to them as adult witnesses. But when the evidence of such witnesses relates to events that occurred in their childhood, then the presence of inconsistencies, such as those relating to time and location, I should take into account the age of the witnesses at the time those events happened. I must examine the testimony of each of the 14 complainants separately where it deals with events that happened when he was a child by taking into account the circumstances as a child at the time of those events.

[32] While the judge did not return to make express findings of credibility or reliability as to each element of each witness's testimony, he indicated with respect to each complainant where he found their evidence to be reliable and not credible, rendering verdicts of "not guilty" on counts where he found the evidence was either not credible or not sufficiently reliable to ground a conviction. In total, the judge dismissed charges relating to six complainants, presumably on the basis of credibility or reliability given the nature of the evidence at trial.

[33] Moreover, on counts where he convicted Mr. Leroux in the face of inconsistent testimony from the complainant, the judge generally offered a brief explanation as to why he found the complainant credible despite the inconsistencies in that evidence. And, by and large, it was because the inconsistencies in a complainant's testimony arose in relation to matters or events peripheral or collateral to the assaults alleged by the complainant. As examples, some complainants had testified to the existence of rules prohibiting them from using their home language or of extreme corporal punishment at Beauval IRS, which Mr. Leroux's evidence suggests was not

the case, and sometimes a complainant was uncertain as to his age or on what floor of the dormitory he had been sleeping at the time of the assaults. For the most part, however, the judge did not find that inconsistencies of this nature significantly detracted from the credibility of the complainant. Nevertheless, on at least two occasions, he did find that the number or nature of the inconsistencies in a complainant's testimony was such that the complainant was not credible or the complainant's evidence was unreliable.

[34] In particular, the judge said (at para. 77) that H.J.A.'s testimony was "sufficiently inconsistent in his earlier sworn statements at the examination for discovery and preliminary hearing in comparison with the testimony at trial that the court has a reasonable doubt as to the guilt of the accused respecting this count." And, with respect to D.L., the judge found:

> [87] …Much of the testimony of the complainant is inconsistent with earlier sworn testimony and although I am quite sure the witness believed the truth of what he was testifying in court, much of it leaves considerable doubt about the reality, leaving the court with a reasonable doubt. Therefore, Count 9 is dismissed.

[35] As can be seen from a complete review of his reasons, when assessing each complainant's allegations, the judge focussed his attention on the consistencies and inconsistencies within the complainant's testimony *as to the sexual assaults* Mr. Leroux had allegedly perpetrated on the complainant, comparing and contrasting trial testimony and previous statements and particularly noting consistencies in the testimonies as to the sexual acts themselves. For example, J.E. had consistently testified throughout civil and criminal proceedings to only one incident of anal intercourse, but J.E. acknowledged his IAP application had alleged multiple incidents of anal intercourse. In response to this, J.E. explained his lawyer or someone else had typed out his IAP application—it was not in his words. At trial, J.E. confirmed

there had only been one incident. The judge accepted this explanation and convicted Mr. Leroux in respect of the one incident.

[36] While he may not have specifically rejected or accepted any of Mr. Leroux's evidence—or at least not in clear terms with regard to particular aspects of that evidence or in respect of a particular offence—the judge must be taken to have rejected, at least in broad terms, Mr. Leroux's blanket denial as to his commission of the offences alleged. Moreover, as the judge properly instructed himself as to the principles set forth in *R v W.(D.)*, he must be presumed to have properly applied those principles in his assessment of Mr. Leroux's guilt on each count in the absence of evidence to the contrary.

[37] In practical terms, as set out above, the judge said he would acquit Mr. Leroux: (1) where he had rejected Mr. Leroux's testimony, if it nevertheless left him with a reasonable doubt about Mr. Leroux's guilt or about an essential element of an offence; (2) if he was uncertain as to who to believe; or (3) where after considering all of the evidence he was not satisfied beyond a reasonable doubt of Mr. Leroux's guilt. I find support for the conclusion that the judge properly applied *R v W.(D.)* in the judge's dismissal of a number of the counts against Mr. Leroux, at least two of which—cited above—were expressly said to be on the basis of a lack of credibility in the complainant's testimony.

[38] At the end of the day, the judge had to decide whether each of the complainants had told the truth about Mr. Leroux assaulting them. While a witness may not tell the truth for any number of reasons, inconsistencies in a witness's evidence given at different times is not necessarily indicative of falsehoods. The trier of fact must decide whether—and notwithstanding such things as inconsistencies—to believe the witness, in whole, in part, or not at

all. Here, the judge undertook that determination in respect of each complainant and did so recognizing not only the significance of the inconsistencies in each complainant's various testimony or claims, but also the inherent frailties of the complainant's evidence arising by reason of the long delay between the events in question and the trial. He also had clear regard for the demeanour of each complainant and his own common sense and experience in assessing witness credibility. And, barring one exception, I have found no reversible error in his findings of credibility with respect to the complainants. In the context of the trial and this appeal, this means the convictions cannot be overturned by reason that they are unreasonable.

[39] The one exception—where I would set aside the conviction and enter an acquittal—is with respect to the alleged indecent assault on T.F. In that respect the judge said (at para. 79):

> …T.F. made many statements in his testimony which the court accepts that he fully believes. However, many of these statements were proven to be factually untrue, particularly the cause of death of one P.J. and the name of the other individual who won the trip to Quebec. However, the court does accept his testimony respecting three boys being in the accused's office, being provided with an alcoholic drink, shown pornographic magazines of naked women, being taken into the accused's bedroom one at a time, having his pants pulled down and fondled… The court does enter a conviction to Count 4.

I find the judge erred because the evidence does not support his conclusions as to the facts of the assault. Rather, he appears to have misapprehended testimony of N.G.M. and J.R.M. as being corroborative of T.F.'s account of Mr. Leroux's indecent assault on T.F., when, in fact, it was inconsistent with that account.

[40] Briefly, T.F. alleged Mr. Leroux had taken T.F., N.G.M. and J.R.M. to his office where he plied them with wine and martinis, showed them pornographic materials, and later separately took each of the boys behind a

bookcase to fondle the boys' genitals. However, while N.G.M. claimed to have consumed "martinis" in Mr. Leroux's room along with T.F., he denied J.R.M. was there, denied seeing pornography there and testified he and T.F. had left soon after having the drinks. Moreover, N.G.M. said he was alone when Mr. Leroux had later assaulted him *in his own bunk*. For his part, J.R.M.—whose personal allegations of assault by Mr. Leroux were dismissed by the judge—had made no mention of ever being in Mr. Leroux's office or bedroom with N.G.M. and T.F. or either of them and, in fact, testified he had never seen alcohol or pornography in Mr. Leroux's room. In cross-examination, J.R.M. acknowledged he had been in Mr. Leroux's room for disciplinary reasons, but confirmed he was unaware of and had not observed any sexual abuse *of anyone*. To be fair, in the Crown's closing remarks at trial, the prosecutor mis-described the evidence of N.G.M. and J.R.M. and labelled it as being corroborative of T.F.'s account of sexual acts occurring in Mr. Leroux's room. Nevertheless, by treating it as such, the judge committed a palpable error.

[41] Moreover, I find the palpable mischaracterisation of this evidence is overriding in its effect with respect to this conviction. I say this chiefly because the judge clearly rejected T.F.'s uncorroborated evidence as to Mr. Leroux's later commission of a gross indecency on him. While expressed in terms of reasonable doubt (at para. 80), the judge appears to have rejected T.F.'s evidence pertaining to this allegation—at least in some part—due to T.F.'s evidence being "factually untrue". If the whole of the evidence with respect to the alleged indecent assault on T.F. is re-examined in the light of this circumstance and without corroboration by N.G.M. and J.R.M.—which, to some extent, calls for a reweighing of the inconsistencies between T.F.'s evidence and that of J.R.M. and N.G.M.—I conclude the judge's verdict is one

that a properly instructed jury, acting judicially, could not have reasonably rendered.

[42] For these reasons, I would set aside only the conviction on Count 4—indecent assault on T.F.— and enter an acquittal therefor. I find no basis upon which to interfere with the convictions on the other counts.

[43] I turn now to address the Crown's appeal from sentence.

V. CROWN APPEAL FROM SENTENCE

[44] The Crown submits the three year sentence of imprisonment imposed upon Mr. Leroux is demonstrably unfit because it is not proportionate to the gravity of the offences he committed, having regard to the gross breach of trust, the duration of the assaults, and other aggravating factors. At Mr. Leroux's sentencing hearing, the Crown had invited the judge to consider the seriousness of Mr. Leroux's offences and to sentence him accordingly on those offences he found to be major sexual assaults, initially suggesting an aggregate sentence of 25 years' imprisonment, which—after taking into account the totality principle—it reduced to 11 years' imprisonment. Mr. Leroux made no submissions as to a fit sentence for his offences.

[45] To set the framework for the Crown's appeal, an appellate court may not disturb the sentence imposed by a sentencing judge in the absence of an error in principle, a failure to consider a relevant factor, an overemphasis of an appropriate factor, unless it is otherwise demonstrably unfit: *R v M.(C.A.)*, [1996] 1 SCR 500.

[46] In the circumstances of this case, I have no hesitation disturbing the sentence imposed after trial because it is, in my assessment, demonstrably

unfit on all of the footings set forth in *R v M.(C.A.)*. It is unfit because the sentencing judge committed fundamental errors of principle, overlooked aggravating factors, and misapprehended factors as mitigating when they were not, all of which led him to craft a sentence that does not reflect the gravity of the offences and the responsibility of the offender in committing them. It is easiest to explain this conclusion by working through the sentencing decision itself, but, before doing so, it is important to understand how the context in which these offences were committed elevates their gravity and elevates Mr. Leroux's responsibility for their commission.

A. The gravity of the offences and the degree of responsibility of the offender

[47] As general context, it is well-known that the children who attended so-called Indian residential schools often lived in remote places, away from their familial homes, largely subsumed in a foreign culture and language. They had little opportunity to leave that unfamiliar world or to complain about harms that had befallen them there. If they left, the authorities often returned them for punishment as truant students. If they complained, at best they were ignored—at worst, the harms got worse. The legacy left by the Indian residential school system is unmistakably crushing. Although the schools themselves have since closed, the criminal courts still see generations of Aboriginal victims of crime and of Aboriginal offenders, all of whom who are evidence of the cultural and social devastation wrought by the Indian residential school system itself. This general context is important because, as noted, Mr. Leroux was a dormitory supervisor at the Beauval IRS when he sexually assaulted young boys under his charge.

[48] When it comes to sentencing an offender, Parliament has been clear that the circumstances I just described are aggravating and must be taken into consideration in sentencing. In particular, s. 718.2 of the *Criminal Code* instructs a sentencing judge to take into consideration the principle that:

> (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,
>
> (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,

[49] In my assessment, the general context in which Mr. Leroux committed his offences lends significant gravity to them. In broad terms, the physical and sexual abuse that occurred at Indian residential schools is grimmer by reason of the exceptionally vulnerable nature of its victims and the utter imbalance of power as between the Aboriginal victims of that abuse and their families, on the one hand, and the church, the state, and their respective agents—the latter of which usually includes the abuser—on the other. In this way, the general context must also factor into any assessment of Mr. Leroux's responsibility for committing these crimes, *i.e.*, it speaks to his moral culpability. This is so because, by reason of the Indian residential school system, Mr. Leroux knew he could abuse the children in his charge—largely with impunity—and he did so in violation of the trust reposed in him by virtue of that system and in violation of his duty to protect the children in his care.

[50] Having put the general background in place, I turn now to explain the errors that led the judge to impose an unfit sentence. I will do so by working through the sentencing decision itself.

B. Sentencing Decision

[51] After reviewing the facts and the general circumstances of the offences, the judge considered the factors he found relevant to the sentence, which I have broadly categorised as:

(a) aggravating and mitigating circumstances;

(b) classification of the offences as sexual assault or major sexual assault;

(c) sentencing by class for sexual assault and a major sexual assault; and

(d) the totality principle of sentencing.

I address each of these broad categories in my reasons below because the judge's determination as to how each factor affected the fitness of the sentence he imposed in the circumstances at hand was borne of error.

C. Aggravating and mitigating factors

[52] In crafting his sentence, the judge identified these circumstances as aggravating (*R v Leroux* (Sentence), at para. 14):

> (i) The age of the victims: The victims were young boys at the residential schools.
>
> (ii) Breach of trust: The offender was in a position of authority over his victims.
>
> (iii) The offender is not remorseful.
>
> (iv) The offences occurred more than once.
>
> (v) The offences had a profound affect upon some of the victims.

[53] In juxtaposition, the judge found these circumstances as mitigating (*R v Leroux* (Sentence), at para. 14):

> (i) The offender is now 73 years of age.
>
> (ii) The offender has not reoffended in the last 40 years.
>
> (iii) The offender has taken the sexual offender courses within the criminal justice system and as evidenced, has not reoffended since 1974, and has worked at controlling his sexual propensities towards boys between the ages of eight and 16. There were no threats, force or coercion against the victims.
>
> (iv) The offender rebuilt his life notwithstanding the incredible public vilification and notoriety which he and his sexual misconduct had attracted as a result of his trial in the Northwest Territories in 1998.
>
> (v) The offender has been publicly embarrassed.
>
> (vi) The offender has already served his 10-year sentence for subsequent similar offences in 1998.
>
> (vii) In spite of having served the above sentence, these offences are a first offence.
>
> (viii) The offender has, since being sentenced in 1998, done everything his sentence has asked of him. He has rehabilitated, not reoffended, and has come back to face these offences and take responsibility for them.
>
> (ix) Returning the offender to prison is not necessary for his personal rehabilitation or deterrence.
>
> (x) The offender scores extremely low in likelihood to reoffend, in fact, almost negligible.

[54] Although he did not return to these aggravating and mitigating circumstances until much later in his reasons, I start here because the judge screened the crafting of what he saw as a fit sentence through a sieve of the errors he committed in his assessment of these aggravating and mitigating circumstances.

[55] In its practical result, the judge found the aggravating and mitigating circumstances in this case had *no effect* on the individual or overall duration of the sentences he imposed. This was because, even though he found more mitigating than aggravating circumstances, he concluded the aggravating ones

were more severe and thereby "balance[d] out" the mitigating ones. He said nothing more on the subject. He simply did not increase or decrease the sentences on the basis of the aggravating and mitigating circumstances he had identified. As to this approach, I will simply say that the crafting of a fit sentencing is not a mathematical endeavour. It requires careful thought, meaningful consideration and, yes, an on-balance weighing of the mitigating and aggravating circumstances; but rarely—I expect—will such a process fail to give rise to *some* adjustment—whether up or down—to a sentence. If it did so here, then the judge ought to have explained that. Regardless, his approach—or the insufficiency of his written reasons—is largely irrelevant because the judge misconstrued so many of the circumstances before him as mitigating when they were not and minimised the nature of the circumstances he had correctly identified as aggravating. He thereby completely and improperly discounted the overall weight of the aggravating circumstances. Let me explain.

[56] First, without addressing the weight to be given to each circumstance, I have no doubt the judge properly saw the ages of Mr. Leroux's victims (s. 718.2(a)(ii.1)), his breach of trust (s. 718.2(a)(iii)), the fact there were multiple offences (s. 718.1), and the impact of those offences on Mr. Leroux's victims (s. 718.2(a)(iii.1)) as aggravating circumstances. However, he failed to recognise as aggravating the fact Mr. Leroux had used alcohol to ply some of his victims and that these offences were recurring for some victims, sometimes over a span of years. These circumstances all counted toward an increased sentence.

[57] Moreover, the judge misconstrued some aggravating circumstances as mitigating. Here, I speak chiefly to his conclusion that Mr. Leroux had not

used threats, force or coercion in the commission of his offences, which utterly ignores the context in which the offences took place and is entirely at odds with the trial judge's own finding that at least one victim had bled after being anally raped by Mr. Leroux. These circumstances count toward an appreciably increased sentence.

[58] In addition to this, it appears the judge may have improperly weighed some mitigating circumstances and misapprehended some neutral circumstances as counting in mitigation of sentence. Here, I refer to the fact Mr. Leroux had not offended in 40 years—some of which time he had spent in incarceration or on parole—which merits some credit, but is a minor consideration given that the instant circumstances involve multiple offences committed in respect of multiple victims over multiple years.

[59] I also refer to the judge's determination that Mr. Leroux's public embarrassment at being charged with these offences somehow counted in his favour when it came to sentencing. This is a counterintuitive conclusion given the circumstances of the offences in this case elevate the objectives of denunciation and general deterrence to paramountcy in the crafting of fit sentences. Where this occurs, the impact of adverse publicity on the offender will normallyhave little weight. So too must fall the judge's evaluation of the "public vilification and notoriety" that befell Mr. Leroux after his Grollier Hall convictions as somehow operating in mitigation of his sentence for offences committed at the Beauval IRS. This is so because notoriety is a natural and public consequence of addressing the objective of general deterrence when sentencing for those offences. Put simply, this is not a case of a 'fall from grace', as was contemplated in *R v McLachlan*, 2014 SKCA 58 at para 62 aff'g 2013 SKQB 332; here, we are not dealing with a

formerly-trusted and -respected community leader who might hope to obtain special mitigation of sentence by reason that the fact of being charged and convicted has given rise to adverse publicity and public shaming that has resulted in a broad and devastating impact in the community on the offender and the offender's family, where the offender has accepted responsibility, pled guilty and demonstrated remorse. That is far removed from what occurred in this case.

[60] Likewise, the simple fact Mr. Leroux served a 10-year sentence for the Grollier Hall offences is not mitigating *per se*. It could have no effect whatsoever on the gravity of his pre-occurring offences at the Beauval IRS or on his moral culpability in committing those offences. And, while it is something that must be worked into the mix of considerations, given what is already in the mix in this case, it has no appreciable effect on sentence here. In this same vein, the fact Mr. Leroux's offences at Beauval might be characterised—as the judge did—as *first* offences cannot be given much credit in mitigation of sentence where there were multiple offences occurring over many years in respect of a number of victims. Indeed, for his actual *first* convictions of a similar nature—for the offences he committed at Grollier Hall—Mr. Leroux received a 10 year sentence.

[61] That said, in the circumstances of these historical offences, unlike the judge, I would place little weight on the fact that Mr. Leroux has complied with the terms of his statutory release from prison under the sentence for the subsequent-in-time Grollier Hall offences. Similarly, while the fact he might have successfully completed programs aimed at his rehabilitation while serving his sentence for the Grollier Hall offences is a mitigating circumstance relating to the offender, it can add but little to the mitigation of

sentence in the context of the particular crimes he committed while at Beauval. Again, this is by reason that those particular crimes in the circumstances of this case thrust the objectives of denunciation and general deterrence to the forefront when it comes to sentencing. As such, although these facts affect sentence, in these circumstances, they operate only marginally in mitigation of it.

[62] Further, the judge misconstrued a neutral consideration as aggravating. Here, I speak to his conclusion that Mr. Leroux's lack of remorse was aggravating in its nature. Where an offender has a sense of responsibility for his or her offences and acknowledges the harm done to his or her victims and to the community (s. 718(*f*)), that circumstance may act in mitigation of sentence; however, the corollary—that the absence of remorse acts in aggravation of sentence—is rarely true: *R v Hawkins*, 2011 NSCA 7 at para 33; *R v. Nash*, 2009 NBCA 7 at paras 30-33; *R v K.A.* (1999), 137 CCC (3d) 554 at paras 48-49 (Ont. CA) and *R v Caulfield* (1999), 124 BCAC 287 at para 12, among others; see also *R v Valentini* (1999), 43 OR (3d) 178 (CA). This is so because an accused individual is always entitled to rely on the right to remain silent, the presumption of innocence and the right to make full answer and defence, etc. In other words, accused individuals are entitled to maintain their innocence, plead not guilty and conduct a full trial on the charges without repercussion at sentencing for doing so.

[63] inally, I conclude the judge completely misapprehended the circumstances in which Mr. Leroux came to be convicted in his court by saying Mr. Leroux ought to be credited for returning to "face these charges and take responsibility for them." He did nothing of the sort. In fact, the charges came about by reason only of the diligence and persistence of the

RCMP and, once charged, Mr. Leroux was compelled to answer to the charges. Moreover, as we have seen, Mr. Leroux put the victims to testify at a trial and to this day denies that he committed the offences. If they affect sentence, these circumstances are aggravating, not mitigating.

[64] On the whole of it, the aggravating circumstances present in this case ought to have accounted for a significant increase in the sentences imposed in respect of Mr. Leroux's offences. Quite simply, there are few mitigating circumstances to point to here—and none of any great significance. Where the judge concluded otherwise, he was in error.

D. Classification of the offences

[65] As to the seriousness of these offences, the judge simply concluded that a "major sexual assault" was one that involved penetration and, on that basis, he divided the offences committed by Mr. Leroux into two broad classes: major sexual assaults (penetration) and those that were not (no penetration).

[66] This broad classification of the offences as major sexual assaults on the basis of penetration alone runs counter to this Court's *dicta* on sentencing in cases of sexual assault, particularly *R v Roberts* (1995), 128 Sask R 158 at para. 9; *R v H.(M.J.)*, 2004 SKCA 171 at para 16, 257 Sask R 1; and *R v S.(J.L.)*, 2006 SKCA 95 at paras 24-25, [2006] 10 WWR 642, which are directly to the effect that penile penetration is *not* required to constitute a major sexual assault; see also: *R v Bighetty*, 2005 SKCA 94, 269 Sask R 108; and *R v Van De Wiele*, [1997] 3 WWR 477. The judge erred in principle when he thought otherwise.

[67] To be clear, the occurrence of penetration will always count toward the increased gravity of a sexual assault as an aggravating circumstance. But,

when it comes to the sustained sexual abuse of a child, the absence of penetration cannot be said to discount the seriousness of the offence. Rather, the absence of penetration is a circumstance that must be considered when determining the seriousness of the offence in question, along with all of the other circumstances, including the age of the victim, the physical and psychological harm done to the victim, the duration of the abuse, the nature of the abuse, the abuser's position with respect to the victim, etc. See, for example, *R v S.(J.L.)*, where this Court varied a sentence of two years less a day to three years' incarceration on the basis the sentencing judge had over emphasised lack of penetration and thereby misjudged the gravity of three-and-one-half years of weekly sexual abuse of an eight-year old girl by her father.

[68] This error in principle on the part of the sentencing judge led him to further error in his determination of the so-called starting point sentences for sexual assaults and major sexual assaults.

E. Sentencing by class of offence

[69] After classifying the offences, the judge determined that the starting point sentence for the class of "major sexual assault" is three years and 18 months or less for other sexual assaults. Crafting a sentence in this way gives rise to error for a couple of reasons.

[70] Certainly, this Court has said that in major sexual assaults involving adult offenders and victims a sentencing judge would start with three years' imprisonment, following a guilty plea on a first offence committed by "a mature individual of good character", and increase or decrease the term of imprisonment according to the aggravating or mitigating circumstances of the

case: *R v Bird* (1992), 105 Sask R 161 (CA), *R v A.W.C.*, 2007 SKCA 87, 304 Sask R 224, and *R v Minogue*, 2012 SKCA 95; *R v G.J.N.* (1997), 152 Sask R 158 at para 5; *R v Cappo* (1993), 116 Sask R 15 (CA); see also *R v Sandercock*, [1986] 1 WWR 291 (Alta CA).

[71] But there is no basis for the judge's apparent conclusion that the lesser of Mr. Leroux's offences did not require a sentence in excess of two years less one day or for pinning the appropriate sentence at 18 months for the majority of the lesser sexual assaults in this matter. He seems to have arrived at this common sentence by referring to several cases involving isolated incidents of abuse of a single victim where the offender was not in a position of trust *vis-á-vis* the victim (see *R v Leroux* (Sentence) at para. 17). On that basis, the judge concluded (at para. 18): "The normal sentence for non-major sexual assaults by a person in authority based upon these decisions would, in most instances, be 18 months." This is erroneous. The sexual assault of a child by an adult normally calls out for a penitentiary term of imprisonment: *R v J.L.S.*, and *R v D.L.M.*, 2001 SKCA 39, 207 Sask R 228. The sexual assault of a child being akin to the sexual assault of a sleeping or intoxicated adult: *R v Revet*, 2010 SKCA 71 at paras 25-26, 256 CCC (3d) 159 (*per* Sherstobitoff J.A.).

[72] The judge correctly ruled out a conditional sentence by reason of the authorities, the gravity of the offence, the abuse of a position of trust, the victims' ages, the intrusiveness of Mr. Leroux's conduct, the long-term psychological effects on the victims, and the primacy of the sentencing objectives of denunciation and deterrence in such circumstances (at para. 19).

[73] However, the judge erred because this Court has clearly rejected the sentencing-by-classification approach taken here precisely because it gives rise to unfit sentences by preventing a sentencing judge from crafting a

proportionate sentence, one that is fit in all the circumstances of the case: *R v N.M.*, 2014 SKCA 126 at para. 12. Put simply, the principle of proportionality requires that a sentencing judge actually consider all of the aggravating and mitigating factors in a case of sexual assault, not merely its general classification as a major or non-major sexual assault.

[74] Indeed, in the circumstances of sexual abuse of children, this Court has been steadfastly determined not to fetter the discretion of sentencing judges by establishing a range of sentences, preferring that they craft their sentences after giving full consideration to the aggravating and mitigating circumstances of the case. This is so because of the wide range of variables in respect of the nature of the offence and the circumstances of the offender and of the victim in child abuse cases: *R v Revet* at para. 16 (*per* Sherstobitoff J.A.).

[75] Here, no doubt Mr. Leroux's offences at Beauval were similar in many respects; but, they were dissimilar in other respects. They were all serious crimes. Some of his victims endured far more over far longer periods than others. Some endured anal rape, others forced-fellatio, others fondling. None of the circumstances of these offences were identical. The significant impact on the victims, considering their respective ages and other personal circumstances, including their health and financial situation, is palpable for all, but also different for each. Some are afflicted by alcohol- and drug-abuse. Another has isolated himself from the world. Many speak of failed relationships, involvement in crime, and attempts at suicide. Their Victim Impact Statements are poignant. Yet, all of these aggravating circumstances were largely and improperly marginalised by the sentencing-by-classification approach taken in error by the judge.

F. The totality principle

[76] Under this consideration, I would first note that the judge addressed the matter of consecutive versus concurrent sentences, resolving the issue with these words:

> [25] The Court does accept that in the multiple counts before it where there are two counts respecting the same victim, both counts relate to the same acts against the same individual in the same time parameters. Therefore, these should be sentenced concurrently. All other counts in which there is one count and one victim should be sentenced consecutively as these are separate individuals, separate circumstances and, in some situations, separate and distinct time parameters. Then, the Court must look at the total sentence one more time and apply the principle of totality.

[77] On the basis of his classification of Mr. Leroux's offences as major (or not) based on whether there had been penetration (or not), the judge imposed his sentences for each offence:

(a) G.J.W. (not major): 18 months' imprisonment, consecutive;

(b) J.E. (major): three years' imprisonment, consecutive;

(c) T.F. (not major): six months' imprisonment, consecutive;[1]

(d) E.G. (major): three years' imprisonment, consecutive;

(e) N.G.M. (not major): 18 months' imprisonment, consecutive;

(f) M.J.M. (major): three years' imprisonment, consecutive;

(g) M.V.P. (not major): 18 months' imprisonment, consecutive; and

(h) G.R.M. (major): three years' imprisonment and one year's imprisonment, concurrent.

[1] I would set aside this conviction.

[78] As the aggregate of the consecutive sentences called for a 17-year term of imprisonment, the trial judge addressed the totality principle of sentencing and ordered that Mr. Leroux should serve all of his sentences concurrently. In so doing, he simply said a 17-year sentence would be unduly harsh and so he summarily reduced it to the length of the longest of the consecutive sentences imposed, namely, three years' imprisonment.

[79] As noted, the Crown had recommended an aggregate sentence of 25-years' imprisonment, but it had also said a cumulative term of 11 years was appropriate taking into account the totality principle of sentencing.

[80] As is evident, the reduction of sentence here on the basis of the totality principle is in error. As Lamer C.J.C. put it in *R v M.(C.A.)* at para. 42:

> … The totality principle, in short, requires a sentencing judge who orders an offender to serve consecutive sentences for multiple offences to ensure that the cumulative sentence rendered does not exceed the overall culpability of the offender. As D.A. Thomas describes the principle in *Principles of Sentencing* (2nd ed. 1979), at p. 56:
>
> > The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate sentence is 'just and appropriate'.
>
> Clayton Ruby articulates the principle in the following terms in his treatise, *Sentencing*, [4th ed., (Toronto: Butterworths, 1994], at pp. 44-45:
>
> > 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'. A cumulative sentence may offend the totality principle if the aggregate sentence is substantially above the normal level of a sentence for the most serious of the individual offences involved, or if its effect is to impose on the offender 'a crushing sentence' not in keeping with his record and prospects.

[81] Lamer C.J.C.'s reasoning is reflective of the fundamental principle that a sentence must be proportionate to the gravity of the offence and degree of responsibility of the offender (now codified in s. 718.1) and the secondary principle that "where consecutive sentences are imposed, the combined

sentence should not be unduly long or harsh" (as codified in s. 718.2(c)). In practical terms, this means a sentencing judge *must* analyse the circumstances to determine whether the totality principle applies and, if so, to what extent it applies, given the gravity of the offences and the moral culpability of the offender in committing them. As he did not do this, the judge erred in principle.

[82] The absence of analysis from the sentencing decision in this case also runs afoul of several of the propositions set forth in *R v Sheppard*, 2002 SCC 26, [2002] 1 SCR 869, with respect to the duty of a trial judge to give reasons. Namely, reasons were important here to clarify the basis for the extent of application of the principle of totality. I say this because—from the record—it is not apparent to me how the judge came, in his application of the principle of totality, to reduce the overall sentence by 14 years. The lack of reasons also left the Crown without much assistance in considering a potential appeal on this basis. Thus, there is both a functional need and an appellate need to know why the principle of totality operated so as to reduce the sentence as it did. The decision is in error because it lacks a basis for meaningful review of its correctness, whether by the Crown, an appellate court or the public. And that does not address s. 726.2 of the *Criminal Code*, which generally requires sentencing judges to give reasons for judgment when imposing a sentence.

[83] Moreover, the judge *appears* to have erroneously understood the principle of totality as operating to reduce the overall sentence to that of the highest of the consecutive sentences he had imposed, namely, three years. In other words, he seems to have thought it operated to artificially cap the aggregate term of imprisonment under the consecutive sentences he had imposed at three years. If that is the case, he acted on an error in principle. As

Watson J.A.—dissenting in the result, but not on the principles—noted in *R v Tasew*, 2011 ABCA 241, 282 CCC (3d) 260:

> [74] … [T]he principle of totality reflected in s. 718.2(c) of the *Code* does not contemplate some sort of routinized rounding down to sentences leading to results that are fundamentally unrelated to proportionality. Worse, the results of doing so can communicate the appearance, if not the fact, of virtually no sentence for some crimes. Parliament certainly does not contemplate a "free ride", or, worse, a near incentive for aggravating the crime or for committing more crimes. That sort of outcome may be encouraged, if not intended, by unconsidered application of such a "global sentence" notion. Moreover, such lack of mental effort is linked to the practice of doing the totality analysis backwards, because it motivates the court to adopt a large number first, and then attempt to parse that out amongst counts. That approach is not only contrary to well established authority for how to do totality analysis but is also contrary to the terms of s. 718.2(c) of the *Code.*

See also: *R v Hutchings*, 2012 NLCA 2 at para 56, 316 Nfld & PEIR 211, and *R v Clement* (1991), 3 BCAC 226 at para 5.

[84] Section 718.1 demands, because it is the *fundamental* principle of sentencing, that a sentencing judge craft a cumulative sentence that addresses the moral culpability of the offender and the gravity of the offences in the particular circumstances before the sentencing judge. In this way, a cumulative sentence may yet exceed the most serious of the individual sentences imposed—without offending the totality principle—if it remains a proportionate reflection of the gravity of the offences and the moral culpability of the offender in committing them. See *R v Laprise*, 2009 SKCA 46 at para 18, 324 Sask R 263, *R v Abrosimo*, 2007 BCCA 406 at para 31, 225 CCC (3d) 253, and *R v Traverse and Ladouceur*, 2008 MBCA 110, at paras 70 and 71, 238 CCC (3d) 330.

[85] For these reasons, I find the judge erred in his approach and consideration of the totality principle in the circumstances of this case.

G. A fit sentence

[86] Having established error on the part of the judge in crafting his sentence, it remains to determine a fit sentence for Mr. Leroux. In doing so, I will not repeat the analysis that led to the conclusions I have drawn with respect to the judge's sentencing decision; however, I summarise some of the conclusions where appropriate.

[87] To start, the maximum sentence for each of the offences for which Mr. Leroux has been convicted (namely, indecent assault on a male and gross indecency) has remained unchanged since 1967, apart from the fact offenders are, sensibly, no longer subject to a whipping—as was the case in 1967. Under the *Criminal Code* as it was in 1965, the offences of indecent assault and gross indecency carried liability to imprisonment for respective maximum terms of ten years and five years. Under the current *Criminal Code*, on indictment, the offences of sexual exploitation (s. 153), anal intercourse (s. 159), and sexual assault (s. 271) each carry liability to imprisonment for a maximum term of ten years; whereas, on an indictable basis, the offence of sexual interference (s. 151) carries a maximum sentence of five years.[2] While until recently the offences express no minimum sentence, as a general rule, the sexual assault of a child by an adult demands a term of incarceration in a penitentiary: *R v J.L.S.* and *R v D.L.M.* Moreover, denunciation and deterrence are the primary objectives of the sentencing court when sentencing for crimes that involve the abuse of a person under the age of 18 years: s. 718.01, *Criminal Code*.

[88] Turning to the particulars of this case, Mr. Leroux committed multiple sexual assaults on multiple child victims in the context of the Indian residential school system and he re-victimized several of them, sometimes

[2] Since 2012, all of these offences have carried liability to a *minimum* sentence of one year's imprisonment.

over a span of years. These are considerably aggravating circumstances that call for an appreciable increase from any threshold sentence for such offences. Furthermore, this Court has indicated that a serious sexual assault involving a child committed by an individual in a position of trust or authority with respect to the victim—such as a dormitory supervisor at a residential school—must attract a more severe sentence than would a major sexual assault of an adult by an adult in similar circumstancs: *R v D.G.H.* (1990), 88 Sask R 115 (CA) at para 25. As noted earlier, sexual assault of an adult by an adult will attract a starting point sentence of three years: *R v A.W.C.*, 2007 SKCA 87, 304 Sask R 224, among others.

[89] While there is no established range of sentences in Saskatchewan for offences of the nature committed by Mr. Leroux, a review of the case law indicates that a sexual offence involving children generally warrants three or more year's imprisonment: *R v Bird* —3 years, there called a "threshold" sentence; *R v G.J.N.*—3 years; *R v D.L.M.*—2.5 years; *R v E.S.*, 2001 SKCA 38, 213 Sask R 312—3.5 years; *R v E.G.K.* 2001 SKCA 77, 207 Sask R 198—3 years; *R v M.S.T.* (1995), 131 Sask R 311 (CA)—4 years; *R v D.G.H.*—5 years; *R v W.J.V.* (1991), 90 Sask R 110 (CA)—5 years; *R v P.D.* (1997), 158 Sask R 154 (CA)—3 years; *R v V.J.C.* (1997), 158 Sask R 241 (CA)—3 years; *R v H.L.J.* (1994), 125 Sask R 234 (CA)—3 years; *R v V.L.G.*, 1994 SKCA (SentDig) 29—3 years; *R v Laplante* (1990), 89 Sask R 152 (CA)—28 months; see also: *R v C.(S.P.)* 2002 SKCA (SentDig) 63—offender appeal against 5-year sentence dismissed; *R v Witchekan*, 1998 SKCA (SentDig) 1—offender appeal against 5-year sentence dismissed; *R v McDonnell*, 1996 SKCA (SentDig) 54—offender appeal against 6-year sentence dismissed; *R v Redwood*, 1992 SKCA (SentDig) 26—offender appeal against 4-year sentence dismissed; *R v J.M.K.* (1991), 90 Sask R 119 (CA)—offender appeal from

dangerous offender designation and indeterminate sentence dismissed; *R v W.W.B.* (1991), 90 Sask R 108 (CA)—offender appeal against two concurrent 5-year sentences dismissed.

[90] On the other hand, where such offences are historical or dated, the offender has plead guilty, the offender was elderly at the time of sentencing and poses low or no risk of reoffending, and the victim suffered no trauma or adverse effects, the sentencing court has taken these factors into consideration in mitigation of sentence, *e.g.*: *R v J.H.C.* (1997), 158 Sask R 265 (CA)—appeal from 18 month sentence dismissed.

[91] With general reference to circumstances akin to those at hand, Parliament has codified certain longstanding principles of sentencing to direct the Court's attention, in this case, to:

(a) evidence that Mr. Leroux, in committing the offences, abused persons under the age of eighteen years (s. 718.2(a)(ii.1)),

(b) evidence that Mr. Leroux, in committing the offences, abused a position of trust and authority in relation to the victims (s. 718.2(a)(iii)), and

(c) evidence that the offences had a significant impact on the victims, considering their ages and other personal circumstances, including their health and financial situation (s. 718.2(a)(iii.1)),

as aggravating circumstances that must increase the duration of a sentence fit for Mr. Leroux's offences.

[92] As to his personal mitigating circumstances, I can say Mr. Leroux appears to have responded well to rehabilitation and treatment programming while incarcerated. The trial judge found he has worked at controlling his

sexual propensities toward boys, has been rehabilitated, does not appear to have reoffended since his time at Grollier Hall, and has a low recidivism risk. These factors diminish the importance of the objective of specific deterrence in sentencing. Furthermore, Mr. Leroux appears to have made something of his life after serving his sentence for the Grollier Hall offences. Mr. Leroux is 74 years of age; a factor that militates in his favour under s. 718.2; but, in this case his advanced age has a greater effect on sentence—as will become evident—when it comes to the application of the principle of totality. He was a young man at the time he committed these offences, but that can have but negligible effect on his sentence given the of his offences. On the other hand, there is an absence of other mitigating factors, *e.g.*, he is not remorseful and has not accepted responsibility for his crimes.

[93] At this point in the assessment, it is appropriate to determine a fit sentence for each of Mr. Leroux's individual offences given their particular circumstances, following which I will address the principles of totality and parity:

(a) Count 1—Indecent assault on G.J.W.: G.J.W.'s evidence was somewhat inconsistent and the judge appears to have rejected G.J.W.'s allegation of multiple serious sexual assaults, finding only that Mr. Leroux had fondled G.J.W. five or six times while G.J.W. was in his own bed in the dormitory. At these times, G.J.W. was between 13 and 15½ years of age. A fit sentence for this offence is in the range of three years.

(b) Count 3—Indecent assault on J.E.: J.E. testified to one incident in Mr. Leroux's office when he was 15 years old. He said Mr. Leroux plied him with alcohol and told him to take his clothes off,

whereupon Mr. Leroux took J.E. to his bed and had anal intercourse with him. The assault caused J.E. to bleed from his anus. A fit sentence in the circumstances would be in the range of six years.

(c) Count 7—Indecent assault on E.G.: The judge rejected much of E.G.'s evidence but accepted that he had been forced to masturbate Mr. Leroux on more than one occasion and that Mr. Leroux had attempted but failed to sodomise him. A fit sentence here would be in the range of five years.

(d) Count 11—Indecent assault on N.G.M.: N.G.M. testified to being plied with a "martini" in Mr. Leroux's office following which Mr. Leroux attended at N.G.M.'s bed in the dormitory and fondled his genitals under the blanket. He then had N.G.M. come to his room, where they fondled each other. A fit sentence for this offence would be in the range of three years.

(e) Counts 12 and 13—Indecent assault and gross indecency on M.J.M.: M.J.M. testified to having been given alcohol by Mr. Leroux and shown pornography for arousal purposes, whereupon Mr. Leroux took him to his bedroom and involved him in fellatio and anal intercourse. This occurred multiple times. A fit global sentence for these two offences would be in the range of seven years.

(f) Count 14—Indecent assault on M.V.P.: M.V.P. testified to two incidents of indecent assault (one occurring after he had left the school), but the judge convicted Mr. Leroux on the basis of a

single incident of kissing and fondling in Mr. Leroux's bedroom when M.V.P. was 15 years old. A fit sentence in the circumstances would be in the range of two years.

(g) Counts 16 and 17—Indecent assault and gross indecency on G.R.M.: Mr. Leroux assaulted G.R.M. multiple times. The assaults involved fondling, fellatio and mutual masturbation. A fit global sentence for these offences would be in the range of four years.

[94] As the individual sentences arise with respect to offences committed on different victims, at different times, and in somewhat different circumstances, the sentences with respect to each victim ought to be served consecutively to each other; however, that would account for a cumulative period of imprisonment of 30 years. Given Mr. Leroux is now 74 years old, a sentence of 30 years imprisonment would self-evidently equate to a life sentence and is therefore unduly long. For this reason alone, the principle of totality must be applied here so as to reduce the cumulative period of imprisonment.

[95] The Crown has said a cumulative sentence of 11 years' imprisonment is a proportionate response to Mr. Leroux's crimes given their gravity and his moral culpability in committing them. The Crown says 11 years is on par with offenders in other cases of residential school abuse or abuse of children in similar circumstances. In support, the Crown directs the Court to:

(a) *R v Maczynski* (1997), 120 CCC (3d) 221 (BCCA): 16-year sentence upheld for a 67-year old former residential school supervisor in ill-health convicted of 29 counts of indecent assault, gross indecency, and buggery, occurring between 1952 and 1967,

having previously received seven and four years consecutive sentences for similar offences at other schools;

(b) *R v Plint*, [1995] BCJ No 3060 (BCSC) (QL): 11-year sentence for a former residential school supervisor who pled guilty to 18 counts of indecent assault committed between 1948 and 1968;

(c) *R v English* (1994), 122 Nfld & PEIR 15 (NFCA): 13-year sentence reduced to 10 years for a Christian brother at Mount Cashel Orphanage convicted after trial of 12 indecent assaults, five acts of gross indecency, and two assaults causing bodily harm, committed in the mid-1970s on 12 boys—reduction merited by reason of disparity between the sentences received by the other Christian brothers convicted of similar offences;

(d) *R v Lasik* (1999), 180 Nfld & PEIR 125 (NLSCTD): 11-year sentence for a 68-year old former teacher and dormitory supervisor at Mount Cashel Orphanage convicted after trial of 14 counts of buggery, indecent assault and gross indecency, and five counts of assault committed on seven boys from 1954 to 1957—offender had lived productively thereafter and had not committed further offences; and

(e) *R v Smith*, 2013 NLTD(G) 43, 333 Nfld & PEIR 1: 11-year sentence less credit for pre-sentence custody resulting in a net sentence of nine years and 347 days, for a 75-year-old priest who pled guilty to abusing 13 boys between 1969 and 1989 while holding a position of trust.

[96] For his own part, Mr. Leroux proffered several cases—not in counterpoint to those submitted by the Crown, but to show that sentences for

sexual abuse have significantly increased since 1967, being the year of his last offence at Beauval. The cases he submitted ranged from the early 1980s to 2000 and carried sentences ranging from eight months (with two years' probation), through an 18-month conditional sentence order, to various terms of incarceration in a penitentiary. He cited no sentencing decision from the last 15 years. Unlike the Crown's examples, a few of Mr. Leroux's examples were from Saskatchewan courts. The following are noteworthy:

(a) *R v Pannell* (2000), 188 Sask R 254 (PC): 12-month sentence with a two-year probation order imposed on a 70 year old doctor in ill health who pled guilty to using his position as a doctor to indecently assault and sexually assault five males aged 11 to 28 years between 1972 and 1987, where the Crown had recommended two years' less a day—the court said a reduction from the three year threshold sentence was warranted by reason of the guilty plea at the earliest opportunity and the offender was prepared to deal with his offending, and had voluntarily ceased practising medicine well before the charges were laid.

(b) *R v Greer* (20 January 2000) Regina, CR7848 (SKCA)—unreported: This Court denied the Crown leave to appeal from five conditional sentence orders of 18 months each (concurrent) imposed by the Provincial Court upon a 65 year old priest after his guilty plea to five counts of gross indecency (mutual masturbation) against five boys between 1968 and 1974, where the Crown had sought a sentence of 18 months to two years less a day.

(c) *R v Hickey* (1988), 74 Nfld & PEIR 70 (Nfld Prov Ct): Five years' imprisonment imposed on 55 year old priest after guilty pleas to five acts of gross indecency, seven sexual assaults and eight indecent assaults on teenage boys between 1980 and 1988.

(d) *R v Blancard* (1992), 12 BCAC 90 (BCCA): Three-year sentence reduced to one year's imprisonment for a former priest after guilty pleas to five indecent assaults on children between 1967 and 1980—reduction warranted by reason that inadequate weight had been given to accused's determination to rehabilitate himself.

(e) *R v Douglas* (1993), 40 BCAC 28 (BCCA): Nine year sentence reduced to six years—because the sentencing judge erred in relying on decisions involving *serious* sexual assaults—where 62-year-old Salvation Army minister had committed historic acts of gross indecency (fondling/masturbation/fellatio) in respect of seven teenage boys.

(f) *R v Cooper* (1994), 39 BCAC 227 (BCCA): Four year global sentence upheld on convictions for 12 indecent assaults, one act of gross indecency and one act of buggery, where a 61-year-old priest had taken rehabilitative steps, had voluntarily returned to Canada to stand trial and had not offended for approximately 30 years.

(g) *R v MacNeil* (1996), 32 WCB (2d) 300 (Ont Ct J (Gen Div)): Two-and-one-half year sentence for a 60-year-old priest who had pled guilty to seven indecent assaults between 1968 and 1973 on boys aged nine to 11—where there were significant mitigating

circumstances, such as accused-initiated rehabilitation, demonstrated remorse, "complete openness in accepting responsibility"; but, the offences nevertheless required a penitentiary term.

(h) *R v Kowch* (1989), 3 YR 303 (YT Sup Ct): 15 months' imprisonment and two years' probation for a school teacher convicted of indecently assaulting (fondling) seven male students aged 10 and 11 years between 1971 and 1975—where no threats of violence and the accused did not continue the activity if the victim objected.

(i) *R v Collins* (1987), 62 Nfld & PEIR 279 (Nfld CA): Two years' imprisonment and three years' probation imposed after the 46-year-old paedophile United Church minister and medical doctor appealed a five-year sentence following his guilty pleas to seven sexual assaults and four indecent assaults on 11 children over an 11-year period—reduction warranted because the sentencing judge erred by affording little weight to a favourable prognosis for successful treatment, concentrating solely on punishment.

[97] As can be seen, the cases cited by Mr. Leroux differ in one way or another from the circumstances at hand. In addition to those cited above, several were from a bygone era where conditional sentence orders or suspended sentences and probation orders were often imposed for offences more minor in nature than some of those Mr. Leroux committed at Beauval, *e.g.*, *R v. Bremner*, 2000 BCCA 345, 146 CCC (3d) 59, *R v Crampton* (1987), 22 OAC 47; *R v R.L.H.*, 2000 BCCA 148, 136 BCAC 284. He cited a lower

court case from Ontario where the Court of Appeal had overturned the convictions upon which the sentences had rested: *R c Pagé* (1994), 76 OAC 39 (Ont CA). And, in *R v Hands* (1996), 30 WCB (2d) 31 (Ont Ct J (Gen Div)), the four-year sentence resulted from a joint submission. Regardless, the circumstances of the offences in the cases Mr. Leroux cited were sufficiently dissimilar to distinguish them from the offences at hand.

[98] Having considered all of this, and having particular regard for the many aggravating and few mitigating circumstances of this matter, I find that a cumulative sentence of eight years imprisonment is proportionate to the gravity of the offences committed by Mr. Leroux and his moral culpability in committing them. This sentence is fit because it recognises the seriousness of the offences, the ages of the victims, the repeated nature of the offences, the multiplicity of victims, the residential school context in which the offences were committed, the effects of the offences on the victims, the abuse of a position of trust in relation to the victims, the absence of remorse, among other aggravating circumstances; and it is crafted to achieve the primary objectives of denouncing Mr. Leroux's unlawful conduct and deterring Mr. Leroux and other persons from committing offences of this nature. The sentence also satisfies the principle of parity as it is similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. The sentence is fit because it also responds to Mr. Leroux's advancing age and his personal circumstances in mitigation of its cumulative duration.

VI. CONCLUSION

[99] Mr. Leroux's appeal from conviction with respect to T.F. is allowed, the conviction is quashed and an acquittal shall be entered on that charge. His appeals from the other convictions are dismissed.

[100] The Crown is granted leave to appeal from sentence. The Crown's appeal from sentence is allowed and the sentence of three years imprisonment is hereby varied to eight years' imprisonment, but remains unaffected in all other respects.

[101] Mr. Leroux shall have two clear days from the date hereof to report to the nearest detachment of the RCMP or a local police service.

DATED at the City of Regina, in the Province of Saskatchewan, this 4th day of May, A.D. 2015.

"Caldwell J.A."
Caldwell J.A.

I concur. "Richards C.J.S."
Richards C.J.S.

I concur. "Ryan-Froslie J.A."
Ryan-Froslie J.A.