

**SUMMATION BY MR. LEVESQUE**

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**OPENING REMARKS**

**THE COURT:** Mr. Levesque.

**MR. LEVESQUE:** Yes, good morning, Your Honour.

**THE COURT:** Morning.

**MR. LEVESQUE:** I'm ready to make my submissions on  
sentencing...

**THE COURT:** Yes.

**MR. LEVESQUE:** ...if Your Honour is ready.

**THE COURT:** Yes.

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I'd just like to confirm, Your Honour, that you received a book of authorities that my office mailed to the court here. Hopefully you got that. And I believe my learned friend got a copy.

**MR. POWER:** Correct, Your Honour.

**THE COURT:** Okay. Proceed.

**MR. LEVESQUE:** If you could just hand that up. There were 16 cases that I cited in my book.

**THE COURT:** Yes.

**MR. LEVESQUE:** I'll just be referring to two of them this morning...

**THE COURT:** Sure.

**MR. LEVESQUE:** ...in particular. Okay. Thank you, Your Honour.

**THE COURT:** Go ahead.

**MR. LEVESQUE:** Your Honour, this has been adjourned a few times. But we're proceeding this morning with Mr. Carson, and I believe he's on the phone conference this morning.

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1       **THE COURT:** Mr. Carson is here on the phone. Is that  
2 correct, Mr. Carson?

3       **GLEN CARSON:** Yes. I had my phone on mute, but I'm here.

4       **THE COURT:** Thank you. Go ahead.

5       **MR. LEVESQUE:** Okay. Great. So Mr. Carson has been  
6 convicted of committing a sexual assault under a section 271 of  
7 the *Criminal Court of Canada*. A lot of times, in assessing the  
8 gravity of the offence, we look at what the statute provides as  
9 a penalty. This matter, to my understanding, was preceded by  
10 summary conviction. And under 271(b), the maximum punishment  
11 here is a maximum of 18 months incarceration. So if you're  
12 under 16, the victim is under 16, there's some other sentencing  
13 provisions, but that's not applicable. So we can see that the  
14 parliament thought this was a serious offence when a person  
15 would be subjected to a year and a half of jail at the upper,  
16 upper range of sentencing.

17  
18       Also, Your Honour is well aware, I'm sure, that the common  
19 law principles of sentencing, which existed for a long time,  
20 were codified in the *Criminal Code* in sections 200 – 718 to  
21 718.21, codified all of these prior common law principles.

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So the court today, Your Honour, is dealing with an individual. I believe the presentence report indicates he's 58-years-old, if I recall correctly. And the Crown is submitting that this is an individual who abused the position of authority regarding a female employee to touch her in an inappropriate sexual manner. Mr. Carson was the owner operator of a



in a position of authority over her, and abused that position by sexually assaulting her.

This is an aggravating feature in sentencing under 718.2(iii). It provides that an offender who abuses the position of trust or authority in relation to the victim is an aggravating factor. And the Crown would submit that what makes this even more egregious is the manner in which Mr. Carson reacted subsequent to these actions. And how he really, we would submit, trivialized and made fun of the situation by, by not taking this seriously and telling the victim, well call the Labour Board, which was a gratuitous comment thrown off the cuff. You know, if you don't like what I'm doing, call the

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1 Labour Board. It shows a complete lack of compassion or remorse  
2 towards the, the employee in this situation.

3

4           So in trying to come up with a sentence, one of the  
5 guiding principles is the principle of parity. And that's been  
6 recognized under 718.2(b) of the *Criminal Code*. And that says  
7 basically a sentence should be similar to sentences imposed on  
8 similar offenders for similar offences committed in similar  
9 circumstances. So when we're trying to assess parity, the way  
10 most Crowns proceed, most counsel, is by looking at case law and  
11 jurisprudence to try to get a range of sentencing so that we can  
12 give the court what we consider to be an appropriate range of  
13 sentences which respects the parity principle.

14           So what I've done is, in fact, presented a book of  
15 authorities, and there's a total of 16 cases in that book of  
16 authority. And we can see the range of sentences going from a  
17 low to a middle to a high. There's, out of 16 cases, there's  
18 seven cases where a suspended sentence and probation was given,  
19 which is the low end of the range. And then we go to the middle  
20 ground. There's three cases where there's a conditional  
21 sentence order that was given with probation, and on the high

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1 | end, there's six cases that giving incarceration and probation.  
2 | So that's the range we're working in going from a suspended  
3 | sentence up to incarceration.

4 |  
5 |         One of the factors that stands out, and I'm sure Your  
6 | Honour is aware of this, and I'm speaking more for the record  
7 | than probably for the court, but when you look at all of these  
8 | cases, it's clear that courts have consistently recognized that  
9 | in regards to sexual assault, the primary consideration in  
10 | sentencing is denunciation and deterrence. So when I was  
11 | looking at the cases that I had found, there's two cases that  
12 | really jump out that seem to address parity principle very well.

13 |  
14 |         The first case is **R. v. Giovannelli**. It's a 2017 decision  
15 | of the Ontario Court of Justice. Mr. Giovannelli was convicted  
16 | of a sexual assault. He was the owner of a restaurant, and the  
17 | complainant was a, was a waitress. It's at tab six of the book,  
18 | Your Honour, **Giovannelli**. There was a staff party, and I'm just  
19 | highlighting here, there was a staff party. He kissed the  
20 | waitress, touched her breasts, inserted his fingers in her in  
21 | her vagina. That constituted the sexual assault. He was 50-

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1 | years-old.

2 |

3 |           There's a difference in the sense that Mr. Giovannelli had  
4 | four previous convictions, although they were not sexual  
5 | assaults. He had been convicted of threats, mischief, assault  
6 | and breach of conditions. He was in a position of authority.  
7 | He had this prior criminal record, and he was sentenced to 90  
8 | days incarceration, 1 year probation, a DNA order, a 10 year  
9 | SOIRA, and a victim fine surcharge of \$100. He had plead not  
10 | guilty. The court had issue with some comments, which I found  
11 | to be illuminating. And I'm just going to cite a few of them.  
12 | When you look at paragraph 26, Your Honour, the bottom line  
13 | there, it just says:

14 |                   While not a pure breach of trust situation, I  
15 |                   find that there was an abuse of position of  
16 |                   authority component to the offence that is  
17 |                   aggravating.  
18 |

19 |           And then when we go to paragraph 30, this is what it says:

20 |

21 |                   The most important consideration in this case  
22 |                   given the nature and gravity of the offence are  
23 |                   deterrence and denunciation. With respect to  
24 |                   specific deterrence, this appears to have been  
25 |                   addressed with Mr. Giovanelli's arrest and

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1 prosecution of this matter. I must ensure,  
2 however, that a clear message is sent to  
3 employers who would be tempted to engage in  
4 unwanted sexual acts with employees.

5

6 Then paragraph 31:

7

8 I am of the view that a suspended sentence with  
9 probation is inappropriate in the circumstances  
10 of this offence. The question I must decide is  
11 whether a jail sentence is required or whether  
12 a conditional sentence is an appropriate  
13 sentence.

14

15 And then he goes on, Your Honour, at paragraph 38 and 39  
16 and says this:

17

18 Mr. Giovannelli works long hours and often  
19 works weekends. To allow Mr. Giovannelli to  
20 serve his sentence at his restaurant would have  
21 a minor impact on his current day to day  
22 routine and do little to deter him or others.

23

24 Paragraph 39:

25

26 I am of the view that a conditional sentence  
27 would not adequately address the gravity of



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1                   this offence and the fundamental principles of  
2                   sentencing engaged in this case. I find that  
3                   the appropriate sentence in this case is a  
4                   consent custodial sentence of 90 days.  
5

6                   And then at the bottom, we see that there was a DNA sample  
7                   ordered SOIRA for 10 years, and \$100 victim fine surcharge. The  
8                   distinction the Crown makes here is that Mr. Giovannelli had a  
9                   criminal record.

10                  THE COURT: And one for, for violence.

11                  MR. LEVESQUE: Yes, exactly. And Mr. Carson has no  
12                  criminal record.

13                  THE COURT: And the offence was, I would submit, insert,  
14                  inserting digitally penetrating.

15                  MR. LEVESQUE: Right.

16                  THE COURT: The victim is, is, not to say this isn't  
17                  serious, but a far more serious offence than this one.

18                  MR. LEVESQUE: Right. So the other case that I found to  
19                  be very illustrative, and it's at tab nine, it's the case of **Her**  
20                  **Majesty the Queen v. J.P.** This is a decision of the Nova Scotia  
21                  Provincial Court by His Honour Judge Marc Chisholm. It's got  
22                  quite a lot of similarities also. The accused was convicted of  
23                  two sex assaults. He was a supervisor at a motel and the

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1 complainant was an employee, a housekeeper. Both assaults  
2 occurred on the same day.

3  
4 The first incident he put his hand up her skirt and tried  
5 to pull down her tights. And in the second incident, he kissed  
6 her on the cheek and fondled her breast. Pretty close to what  
7 we have here. In this case though, he plead guilty, so there  
8 was no, no trial. He was 51 years old, had no criminal record,  
9 there was a power imbalance that was noted, and he was given a  
10 four month CSO for each offence, consecutive, for eight months  
11 conditional sentence order. The victim in that case was similar  
12 to the ones we deal with here, in her early twenties. There's  
13 some paragraphs here that I found to be interesting. Paragraph  
14 54, the court noted the aggravating factors; two offences of  
15 sexual assault, accused being 46 to 49, and the victim in her  
16 early twenties, accused being a supervisor at her place of  
17 employment, and then the position authority vis-à-vis the  
18 victim. The accused's abuse of the power imbalance in the  
19 workplace. The abuse of interpersonal trust, example, a hug  
20 would lead to fondling of breasts, that the accused knowingly  
21 isolated the victim, further enhancing the victim's sense of

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1 | vulnerability in the workplace, and deterring a complaint by  
2 | telling her he controlled the video recording. And I would add  
3 | here, I think the same situation existed by the accused here  
4 | saying, well, call the Labour Board. The accused stopped, his  
5 | conduct stopped only because of the charges. He did not stop of  
6 | his own accord.

7 |  
8 |           Then when we go on at paragraph 65, I would just refer to  
9 | the bottom three lines of that paragraph states:

10 |  
11 |                   A discharge would fail to give proper emphasis  
12 |                   to denunciation and deterrence and would fail  
13 |                   to address the seriousness of the offences and  
14 |                   fail to address the accused's moral  
15 |                   blameworthiness. The application for a  
16 |                   discharge is denied.

17 |  
18 |           Then at paragraph 66, the court said again that:

19 |  
20 |                   In sentencing the accused in this case, the  
21 |                   primary factors to be considered are the  
22 |                   denunciation of the accused's behaviour and  
23 |                   deterrence, specific and general.

24 |  
25 |           And at the bottom line, it says the following:

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Women's sexual integrity must be respected.  
Sentences for persons who sexually assault a  
woman must reflect this.

And when we go to paragraph 68 the court there, His Honour  
Judge Chisholm said:

A message of general deterrence must be sent to  
others who would violate a woman's sexual  
integrity (or a man's). I conclude that a non-  
custodial sentence would fail to adequately  
address the need for denunciation and  
deterrence, both specific and general. The  
sentence must be of imprisonment.

**THE COURT:** Do you think Judge Chisholm is saying that,  
there that anytime there's sexual integrity that's been  
interfered with you have to have jail?

**MR. LEVESQUE:** I don't believe so. I don't believe the  
judge is going that far. I think he's saying in this case,  
because, you know, there's no cookie cutter approach to  
sentencing. And each case has its different components. So  
here, you had two incidences of sexual assaults, and I think  
what the judge is saying here is that in this particular

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1 | situation, the sentence must be of imprisonment. But I don't  
2 | think that can be stretched to the point of saying all the cases  
3 | have to be imprisonment, because as I mentioned, in the book of  
4 | authorities, there's seven cases of suspended sentence, there's  
5 | three cases of CSO.

6 |       **THE COURT:** It's a wide range.

7 |       **MR. LEVESQUE:** Oh, exactly. Yeah. So at paragraph 69 the  
8 | court said:

9 |  
10 |               While deterrence and denunciation are primary  
11 |               factors, the Court must consider all factors.  
12 |               In addition to the mitigating factors, I have  
13 |               considered that the sentence will include:  
14 |               \*A SOIRA order, registration for life.  
15 |               That's because there was two offences. So the second  
16 | offence has to do....

17 |       **THE COURT:** Yeah. Yeah, we only have one here.

18 |       **MR. LEVESQUE:** Yep. DNA sample, there was a firearm  
19 | prohibition order there and a victim fine surcharge. And then  
20 | other comments at paragraph 76, 78, 79 are interesting. 76 it  
21 | says:

22 |               To impose a Conditional Sentence, the Court  
23 |               must be satisfied that the accused would not  
24 |               pose a danger to the community and such a  
25 | sentence would address the purpose and

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1 principles of sentencing.  
2

3 **THE COURT:** And at paragraph 78 it states:  
4

5 The more difficult question is whether a  
6 Conditional Sentence would address the need to  
7 denounce the offences and deter the accused and  
8 others who may act as he did. While I have some  
9 hesitation in so concluding, I am persuaded  
10 that a Conditional Sentence Order for a period  
11 of eight months with sufficient restrictions on  
12 the accused's liberty can address the need for  
13 denunciation and deterrence. In reaching this  
14 conclusion, I have considered how a sentence of  
15 straight time would negatively affect his wife  
16 and four children.  
17

18 And then at 79:  
19

20 The Court has determined that a fit sentence is  
21 four months' imprisonment on each offence,  
22 consecutive, for a total of eight months to be  
23 served on a Conditional Sentence Order. There  
24 will be a SOIRA order for life, a DNA order, a  
25 victim fine surcharge of \$1,000 on each count  
26 and a firearms prohibition order for 10 years.  
27

28 So the court really gave a fairly high victim fine  
29 surcharge that's, in my experience, it's sort of way above what,  
30 what we normally see. But in any event, that was the finding of

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1 the court in regards to that. So it boils down to four months,  
2 a conditional sentence order, per offence.

3

4 Now in trying to work out a sentence here, Mr. Power and I  
5 have had several discussions, and I believe and leave it to him  
6 to confirm, but I believe we have a joint recommendation...

7 **THE COURT:** Oh, okay.

8 **MR. LEVESQUE:** ...to make to the court.

9 **THE COURT:** Okay.

10 **MR. POWER:** Correct. Your Honour.

11 **THE COURT:** Great.

12 **MR. LEVESQUE:** Yeah. So the joint recommendation is  
13 within the range of sentences that I've just submitted to the  
14 court in our book of authorities. And that range of sentence,  
15 as I mentioned, goes from suspended sentence up to 90 days  
16 incarceration. And relying on the Nova Scotia Provincial Court  
17 case of **R. v. J.P.**, what we're recommending to the court is a  
18 four month conditional sentence order of house arrest. And I'll  
19 provide the court with some paperwork. What we're suggesting  
20 for exceptions are medical emergencies and one period of four  
21 hours per week for personal necessities. There would be no

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1 other exceptions. It would be -

2 **THE COURT:** And I assume all your conditions have been  
3 checked off on a...

4 **MR. LEVESQUE:** Yeah.

5 **THE COURT:** ...on a form?

6 **MR. LEVESQUE:** Yeah.

7 **THE COURT:** Good. Okay.

8 **MR. LEVESQUE:** I'm pretty sure. The conditional sentence  
9 order would be followed by a six month's probation order, which  
10 would compel him to report to probation services, and also no  
11 contact direct or indirect with [REDACTED]. There would be a  
12 10 year SOIRA order and a DNA order also, which is a mandatory  
13 order under a primary designated offence. A victim - a victim  
14 fine service (*sic*) victim fine surcharge. I think I'd just  
15 leave that to the court's discretion.

16  
17 I would make a few comments on the presentence report.  
18 It's generally favorable in regards to Mr. Carson. There's been  
19 some complementary comments made from him. And, and that's not  
20 really surprising because they're made by the offender's friend,  
21 his daughter, his mother, and his former common-law partner. So



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1 | it's not surprising to, to see that these people have, I guess,  
2 | a high regard in regards to, to Mr. Carson.

3 |

4 |

5 | not share that kind of attitude or view towards, towards Mr.

6 | Carson. And also, the court here heard, I guess, one witness, A

7 |

8 | and also a former employee, , they

9 | certainly had a different view of Mr. Carson than what the

10 | mother, friend and, and daughter had. What, what I found I

11 | guess, interesting and when, when, when you've done a number of

12 | sex assault cases it, it really doesn't surprise you. At page

13 | six of the PSR, when we're looking at character behavior and

14 | attitude, the second paragraph there. It says:

15 |

16 | [As Read] The offender sees himself as the  
17 | victim of false allegations and spent quite a  
18 | bit of time and energy attempting to convince  
19 | the writer of his innocence, as well as in his  
20 | efforts to discredit the victim. He is adamant  
21 | in his denial of any wrongdoing.

22 |

23 | And that is something that we see -

24 | **THE COURT:** Yeah. He has a right to, to say that. I

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1 | can't...

2 |       **MR. LEVESQUE**: Oh, definitely. He has a right to say  
3 | that.

4 |       **THE COURT**: ...I can't take a negative aspect...

5 |       **MR. LEVESQUE**: No.

6 |       **THE COURT**: ...to that.

7 |       **MR. LEVESQUE**: Not at all. But it's not surprising to see  
8 | that attitude because the majority of sex assault cases, when  
9 | there is a conviction, the accused keeps professing his  
10 | innocence. And when I was looking here, at the case law,  
11 | there's 16 cases there. There's only 3 accused who pled guilty.  
12 | There's 13 accused who plead not guilty. So we often times see  
13 | individuals, charged with sex assaults, pleading not guilty and  
14 | continuing to maintain their, their innocence -

15 |       **THE COURT**: As they have an absolute constitutional right  
16 | to do.

17 |       **MR. LEVESQUE**: That's, that's completely correct. And I  
18 | don't...

19 |       **THE COURT**: So.

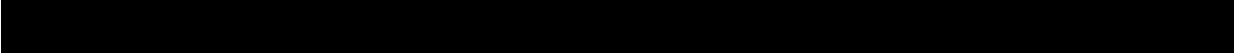
20 |       **MR. LEVESQUE**: ...I don't take opposition to that. I'm  
21 | just pointing out that this kind of comment, that adamant denial

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1 of wrongdoing –

2 **THE COURT:** What are you telling me I should take from  
3 that? That it should be –

4 **MR. LEVESQUE:** It's, it's a common occurrence. It's, it's  
5 Mr. Carson has the right to say, you know, I'm still professing  
6 my innocence, but I'm just saying that that's not out of the

7 

8 did not choose to file a victim impact statement. So we don't  
9 have that before the court. What I have here, Your Honour, is a  
10 disposition form, the listing of the agreement. There's a form  
11 for the conditional sentence order. There's a form for the  
12 SOIRA order. And there's a form for the DNA order. And I  
13 provided my learned and frank –

14 **MR. POWER:** I've reviewed those, Your Honour.

15 **THE COURT:** Okay. Thank you.

16 **MR. LEVESQUE:** So I'll just provide the court with these.

17 **THE COURT:** Okay.

18 **MR. LEVESQUE:** And as I mentioned to Your Honour, Mr.  
19 Power and I have had several discussions regarding this, and I  
20 believe this is a true joint recommendation made by counsel...

21 **THE COURT:** Sure.

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1           **MR. LEVESQUE**: ...after having deliberated the issue and,  
2 and considered all of the purposes and principles of sentencing.

3           **THE COURT**: Thank you.

4           **MR. LEVESQUE**: If Your Honour has any questions, I'll be  
5 pleased to address them, but those are.

6           **THE COURT**: Okay. Mr. Power.

7           **MR. LEVESQUE**: Thank you.

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