

JPY

COURT OF JUSTICE

5

B E T W E E N:

HER MAJESTY THE QUEEN

10

and -

LIFFORD MATHESON

15

---Before the
jury, commenced
Toronto court

Justice G. Ferguson with a
panel of 12, on June 26, 1997, at the Metropolitan

20

Proceedings

25

APPEARANCES:

J. Ramsey, Esq.

For the Crown

A. Gold, Esq.

For the Accused

30

THE COURT: The accused, George Clifford Matheson, is now before this Court for sentence. He has been found guilty and convicted by me on two charges of sexual assault. One charge relates to Martha McKeown, during the period from March 15th, 1992 to August 14th, 1992, and one charge relates to Patricia Derragh, during the period from March 1st, 1987 to April 1st, 1989. My judgment was given in this Court on March 26th.

For the purpose of sentence, a presentence report has been filed with the Court, and for the purpose of sentence, Dr. Tana Dineen, a licenced psychologist who has lived with the accused since 1992 and who now lives with him in Victoria, British Columbia, testified. She and the accused met as professional colleagues. She has stated to this Court that as a result of the consequences of the accused's conduct, the accused has "lived through hell." Those are her words and not mine. She also states that the accused now has nothing left.

On the matter of sentence, Mr. Gold stresses the current circumstances under which the accused has hit bottom, has lost his licence to practice psychology, and is still coping with civil litigation. Mr. Gold states that the only, as he calls it, negative factor here in sentencing is the seriousness of the offences. He also states that a

suspended sentence with probation would be sufficient here,
5 but that in the alternative, any sentence that is imposed
should be in the range of three to six months and be
conditional because he states there is no need here for
incarceration of the accused.

10 Mr. Ramsey, for the Crown, seeks a low
penitentiary sentence of about three years. He stresses
that the crimes committed do involve a pervasive breach of
trust over a period of time by a highly educated, trained
individual who, as described by the Crown, is a predator.
15 The Crown states that any reformatory sentence, if imposed,
by the Court should not be conditional.

The curriculum vitae of the accused has been
filed with the Court, as was a resume of the practice of
20 investigative and forensic hypnosis conducted by the accused
for a substantial number of years. The accused is now
forty-eight years of age. The presentence report confirms
that he has had three failed marriages, two sons, earned a
25 Ph.D. in clinical psychology and that since 1974, he has
maintained a successful and prominent career in clinical
psychology and hypnosis. For the preparation of the report
filed with the Court, the accused admitted that on a
30 professional level, he is guilty of breaching ethics and,
thus, he took professional responsibility by pleading guilty

5 to the ethics complaints and gave up his licence to practice
as a psychologist.

10 The accused did not testify at his trial, but
he has reiterated that position when asked to address this
Court on sentence. The accused still stands by his not
guilty plea with respect to the two serious criminal charges
for which I have convicted him. The accused continues to
believe that he did not breach the law. In the presentence
report, it is stated that the accused, while admitting to
15 sexual relations including sexual intercourse during
professional therapy with Martha McKeown, knew that what was
happening was a terrible mistake and professionally wrong,
but that both he and his patient, as a health nurse, knew
the boundaries. He could not provide any explanation for
20 his conduct other than to suggest that he had weakened, and
for the report he said that he felt both sorry and trapped,
that he had apologized to Martha McKeown and has paid back
to her all of her money. Those comments about weakening or
25 being trapped certainly do not impress me, and they are, to
me, very troublesome.

30 With respect to the charge involving Patricia
Derrough, for the purpose of the presentence report, the
accused expressed regret, expressed the fact that he feels
hurt and is angry and fearful of Patricia Derrough. He has

5 stated that she and he had a long-term relationship, that he
did a lot for her and trusted her, but now she seems to be
out to ruin him. While according to the presentence report,
the accused was devastated when charges of sexual misconduct
were launched against him with the Ontario Board of
10 Examiners in Psychology, he did accept professional
responsibility and surrendered his licence to practice as a
psychologist.

15 The accused before the Court has no criminal
record. During his career as a psychologist, he has
undergone psychoanalysis on numerous occasions for training
and learning purposes. To me, it is not inappropriate to
state a conclusion that the submissions made and material
filed on behalf of the accused are generally aimed at
20 attempting to convince me that the accused is now a victim
of his regrettable but unprofessional sexual lust. Yes,
there are two victims, but the accused is not one of them,
but he seems to be portrayed as a victim at this time both
25 by his counsel and by Tana Dineen.

30 I have carefully studied the two victim impact
statements filed with the Court. They are both statements
of depth of feeling, and they are explicit. Both victims
have suffered substantially from the accused's breach and
abuse of trust. I am satisfied that that is so. Patricia

5 Derragh is angry. She is depressed and not optimistic
about her future. As a result of the scheme whereby the
accused acquired an interest in the title to her home, she
is stuck with a large mortgage which is draining her
resources, and while she has sued the accused in civil
10 court, she understands that he will file and declare
bankruptcy resulting in her never being able to recover
financially. She says she now lives in a state of
helplessness and stress. She states that she no longer
feels joy or a love of life, and that the accused stole her
15 hope.

Martha McKeown describes the accused's crimes
as being premeditated and carefully planned and carried out
with a callous disregard for her well-being, and that the
20 accused's breach of the trust has had, and still has, a
negative impact on every aspect her of her life. She states
that her pain is too personal to share. She says that the
legal process has already stripped her of everything that is
25 personal and private. She believes that the accused still
remains a threat to the public. She emphasizes the damaging
result of psychological manipulation. It has taken her a
long time to overcome her distrust of her new therapist.

30 The Court has learned that the accused now
resides in Victoria, British Columbia, where he lives with

5 Dr. Tana Dineen, who does not practice, but who is working on a second book, and who owns a small bed and breakfast house. The accused has been actively engaged in the affairs of that business. The accused has stated that he has no intention to practice psychology.

10 Let me deal with the circumstances and facts of this case. In my prior judgment I outlined sixteen facts or factors involving Martha McKeown and twenty facts or factors involving Patricia Derragh. While it is certainly not appropriate to repeat them here, I wish to briefly summarize them.

15 First about Martha McKeown. Being desperately in need of therapy for her mental condition and having provided the accused with a comprehensive details of her background, she submitted herself to therapy by the accused for a period of about five months. His therapy incorporated a progressive pattern of touching, then embracing, having her on his lap, advising her it was not necessary to tell her husband everything, and then stroking which aroused her sexually, telling her that there was nothing wrong with such arousal. All of that lead her to believe and to assume that the accused wanted to have sex with her, and that lead up to the occurrence of sexual intercourse with her in his office or in his apartment, altogether some five or six times while

20
25
30

5 so-called therapy continued on a regular basis. He
constantly confirmed her need for therapy. He participated
with her in a bogus billing arrangement to deceive her
husband. When she wanted to stop therapy, he told her that
10 she was close to becoming better, while encouraging a lack
of disclosure to her husband. Martha McKeown was vulnerable
and, accordingly, she was seduced and manipulated. She was
groomed by a person of superior power although she is an
intelligent nurse. Her mind was controlled by overpowering
15 seduction by a specialist in exercising control over the
mind. Every time the accused had sex with her, he knew it
was wrong.

Patricia Derraugh was also in a desperate
20 mental condition. She went to the accused for treatment.
She too was vulnerable and had a fragile state of mind.
After about a year in which nothing sexual occurred, she had
then unconditional trust in the accused, but the accused
25 pressed her to get rid of her husband, and told her that she
would never get better if she did not comply with that
direction. Then later, the accused concocts the financial
plan which would provide her with funds to pay her husband
off, and she falls for that scheme even against the advice
30 of her own lawyer, even though it did involve the accused
not putting up any of his own money, but did give him an

5 interest in the title to her house. The accused blatantly
and deceitfully pressured her not to go to another
therapist, in or out of the hospital. When she tells him
that she wants therapy and not sex, there is then repeated
sexual activity. He says he falls in love with her, and
10 although she tells him that she does not want to see him,
the sexual relationship continues, and when travelling in
Europe with his family, he subjects Patricia Derrrough to a
barrage of passionate letters and gifts, and when the
so-called therapy ceased, she and the accused then have a
15 long-term living and sexual relationship, which ended when
she found the accused with another woman, as I understand
being the person with whom he is now living.

20 Here again Patricia Derrrough was groomed or
orchestrated or seduced by the mental exercise of authority
of the accused while alleging to be her therapist to help
her mental condition. Here again, the accused knew that he
was wrong in having any sexual relationship with Patricia
25 Derrrough while she was his patient.

30 This case, in my view, involves overwhelming
evidence that the accused being in position of authority
over both Martha McKeown and Patricia Derrrough, knowingly
and intentionally exercised that authority for the purpose
of sexual intercourse. Therefore, there was no consent

5 involved, and so there was proof beyond a reasonable doubt
of two offences of sexual assault. There was no issue in
this case as to whether sexual intercourse occurred or as to
the frequency of that event.

10 There was expert evidence given at the trial
with respect to the matter of authority and therapy, and as
to when therapy ends when sexual activity with a patient
begins. There was certainly no dispute by anybody to the
proposition that when a psychologist has sex with a patient,
15 then therapy comes to an end or, as stated by one of the
expert witnesses, therapy goes out the window. While there
was a degree of conflict in the expert testimony about the
type or degree of authority or power enjoyed by a
psychologist over a patient or the circumstances which
20 create authority or the varying degree of authority. There
is no issue here for the purpose of sentence, as to whether
this case involved a breach of trust. As the experts state,
that when a psychologist engages in a sexual relationship
with a patient, then the therapy is immediately over.
25

30 This case involves two separate offences where,
in my view, there was blatant long-term breach of trust by a
highly intelligent and experienced psychologist regarding
two patients who, as a result of his unprofessional and
criminal activity, have suffered harm. The sentence in my

5 view must reflect the accused's responsibility and type of crimes.

10 For the purpose of sentence, the Court must, as I have, carefully consider all of the well-known and well recorded factors on sentence including specific deterrence, general deterrence, denunciation and rehabilitation. Those assessments are all important and all have been considered by me in dealing with this case. The relationship between the accused and his victims is comparable to the relationship between a medical practitioner and his patients. It, above all, incorporates a fiduciary relationship or a trust, being a trust that the professional person who has assumed superior power and authority will exercise that power and authority only for the good and interest of the person with inferior power. Professional people occupying such a place occupy a privileged place in society because the law and their own professional associations permit them to exercise a great deal of authority and, thus, impose a high duty in return for a privilege, and when there is gross breach of trust, even by a first offender, then in the absence of significant, mitigating factors, in my view, a jail sentence is justified.

30 When the Court is dealing with a matter of

5 sentence for a highly trained and experienced professional
with an impeccable past, the Court so often emphasizes, as I
do, the principle of general deterrence and denunciation and
the factor of breach of trust as being a serious and
aggravating factor. The length of time during which the
10 sexual activity occurred is an aggravating factor in this
case as was the number of incidents. The sexual
exploitation in this case involved the use of professional
skill and planning because, in my view, the victims were
groomed while under the mental domination and authority of
15 the accused. The accused's loss of his professional licence
is a mitigating factor in this case. His remorse for
professional misconduct resulted in the loss of his licence.
There is no remorse for any criminal act. The fact that the
20 accused has no criminal record is a mitigating factor. The
length of time over which the offences occurred and the
frequency of the offences are of course aggravating factors.
Having regard to the more recent amendments to the Criminal
25 Code, I have certainly given serious consideration to the
those amendments.

30 It is important in my view in this case to
emphasis the type of relationship which existed between the
accused and his victims, having regard to the background of
the accused in having such a sophisticated in-depth

5 sentence for a highly trained and experienced professional
with an impeccable past, the Court so often emphasizes, as I
do, the principle of general deterrence and denunciation and
the factor of breach of trust as being a serious and
aggravating factor. The length of time during which the
10 sexual activity occurred is an aggravating factor in this
case as was the number of incidents. The sexual
exploitation in this case involved the use of professional
skill and planning because, in my view, the victims were
groomed while under the mental domination and authority of
15 the accused. The accused's loss of his professional licence
is a mitigating factor in this case. His remorse for
professional misconduct resulted in the loss of his licence.
There is no remorse for any criminal act. The fact that the
20 accused has no criminal record is a mitigating factor. The
length of time over which the offences occurred and the
frequency of the offences are of course aggravating factors.
Having regard to the more recent amendments to the Criminal
25 Code, I have certainly given serious consideration to the
those amendments.

30 It is important in my view in this case to
emphasis the type of relationship which existed between the
accused and his victims, having regard to the background of
the accused in having such a sophisticated in-depth

5 deemed to be an aggravating circumstance. This case in each
count involves a serious and continuing abuse of a position
of trust or authority by the accused. The core of this case
is the abuse of authority and exercise of authority.

10 Therefore, it is my conclusion, having assessed all the
well-known factors on sentencing, that a prison term is
judicially appropriate and entirely warranted here.

15 From time to time, there has been uncertainty
or disagreement about the process or assessment of factors
which apply in determining whether a conditional sentence is
appropriate. Having regard to the most recent amendment to
the Criminal Code, enacted this month on May the 2nd, the
imposition of a conditional sentence would not, in my view,
be consistent with the fundamental purposes and principles
20 of sentencing, having regard to the principle of totality,
and, in my view here, the requirement for consecutive
sentence. It is my view that a penitentiary term of
incarceration is judicially warranted, but having regard to
the substantial professional work that the accused has done
25 for public institutions for his profession and for law
enforcement agencies, I reached the conclusion that the
total sentence imposed should be for a minimum penitentiary
term.

30 Dr. Matheson, on count number one, I sentence

to you a term of one year. On count number two, I sentence
5 you to a term of one year consecutive. Therefore, the
sentence is two years in the penitentiary.

10
Certified correct:

15 

B.A. Farrell, CSR, RPR
Official Court Reporter

20
By _____