

R. v. Lizotte, 2007 NWTSC 44

S-1-CR2006000064

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- vs. -

MARVIN NOEL LIZOTTE

Transcript of the Reasons for Sentence by The Honourable
Justice J.Z. Vertes, at Fort Providence in the Northwest
Territories, on June 14th A.D., 2007.

APPEARANCES:

Mr. J. MacFarlane: Counsel for the Crown
Mr. B. Gaunt:
Mr. G. Boyd: Counsel for the Accused

Charge under s. 153(1)(a) Criminal Code of Canada

Ban on Publication of Complainant/Witness
Pursuant to Section 486 of the Criminal Code

1 THE COURT: The offender, Marvin Noel
2 Lizotte, has pleaded guilty to three charges of
3 sexual exploitation, contrary to
4 Section 153(1)(a) of the Criminal Code.

5 The offence of sexual exploitation is
6 committed when an adult person, who stands in a
7 position of trust or authority vis-à-vis a young
8 person, abuses that trust or authority by
9 engaging in sexual activity with that young
10 person. The consent or acquiescence of the young
11 person to that activity is irrelevant as far as
12 the law is concerned. The aim of the law is to
13 put the responsibility on the adult for his or
14 her behaviour.

15 In this case the offender abused a position
16 of trust because he was the school teacher of the
17 three complainants.

18 The jurisprudence demonstrates that teachers
19 who breach their position of trust and authority
20 are treated severely. That is because, as many
21 cases have said, teachers are responsible for
22 maintaining an appropriate and professional
23 relationship with their students. They are the
24 ones responsible for ensuring that the
25 professional relationship does not become
26 distorted with a personal relationship. Those
27 who take the calculated risk of allowing

1 themselves to give in to their personal desires
2 will be punished for their breach of the trust
3 and the duty they owe to their students and to
4 the community.

5 For these reasons, the law places emphasis
6 on deterrence and denunciation as the primary
7 principles in sentencing for this crime.

8 The offences in this case occurred between
9 1999 and 2002 when the offender was a teacher at
10 the Deh Gah Elementary and Secondary School here
11 in Fort Providence. He was between 29 and 31
12 years of age in those years.

13 The first charge relates to one incident of
14 sexual intercourse with the complainant J. M. in
15 2002. The complainant was in Grade 8 and the
16 offender was her physical education teacher. She
17 was 14 years old. J. M. and the offender started
18 by exchanging e-mails. The offender invited her
19 to his residence. She went and they ended up
20 having sexual intercourse.

21 The second charge also relates to one
22 incident of sexual intercourse, this time with
23 the complainant L. L. who was 16 years old at the
24 time. The offender and the complainant exchanged
25 e-mails and eventually he invited her to his
26 residence. She went and they had sexual
27 intercourse. There was little or no contact

1 between the two of them after that.

2 Apparently rumours circulated around town
3 that the two were having some type of
4 relationship because in 2000, a few months after
5 this incident, both the complainant and the
6 offender were interviewed by a police officer.
7 The complainant denied that there was any
8 relationship.

9 The third charge relates to a longer-term
10 series of acts by the offender. In 1999, when
11 the complainant S. M. was 15 years old, she and
12 the offender commenced a relationship that lasted
13 for two years. They had sexual intercourse on
14 numerous occasions. The complainant would sneak
15 out of her home late at night to go to the
16 offender's residence and would usually wait until
17 the offender left for work at the school in the
18 morning before she left the residence. The
19 relationship ended when S. M. got a boyfriend her
20 own age and no longer wanted to see the offender.

21 There is no evidence that the offender, at
22 any time, used violence or threats or any type of
23 coercive behaviour. I accept what his counsel
24 said. The offender was lonely; he started to
25 develop friendships with his students; and he
26 ignored the professional barriers separating his
27 role as a teacher and his personal passions.

1 But, no matter how "consensual" these affairs
2 were, he is still responsible for his breach of
3 trust. That is the essence of what the law means
4 by exploitation.

5 These offences did not come to light until
6 early 2006 when one of the complainants reported
7 to the police. All three are now in their 20s
8 and no doubt they have come to realize that the
9 actions of their teacher was wrong.

10 The victim impact statements filed by the
11 three complainants speak to the harm that the
12 offender caused. They each struggle with
13 feelings of hurt, depression, and shame. They
14 each lack faith in any figure of authority. They
15 each feel violated and abused by someone they
16 trusted. They have been the subject of gossip
17 and accusations. And they have all been involved
18 in counselling.

19 In this case, I have had the benefit of a
20 thorough pre-sentence report.

21 The offender is now 36 years old. He is a
22 Cree Nation Metis from Fort Vermilion, Alberta.
23 He was the youngest of 11 children and grew up on
24 a farm outside of Fort Vermilion. Apparently the
25 family was very poor. The parents abused alcohol
26 and therefore the children bonded together to
27 support each other. Despite these difficulties,

1 the offender went on to university where he
2 obtained a Bachelor of Arts degree in education.
3 He worked as a teacher in Alberta and the
4 Northwest Territories. He has lost his ability
5 to continue teaching due to these charges and now
6 works as a heavy equipment operator in Fort
7 McMurray.

8 The offender's counsel has provided a number
9 of reference letters written on behalf of his
10 client. They all speak to his otherwise good
11 character and integrity, his commitment to his
12 family and community, and his hard work and
13 industry. Everyone who knows the offender said
14 that these actions were out-of-character for him.
15 The offender has a criminal record, a conviction
16 for impaired driving in 1993, that is not
17 pertinent in my opinion to these proceedings.

18 I am required, of course, to consider the
19 circumstances of the offender as an aboriginal
20 person before the Court. I recognize that there
21 are widespread systemic factors of a general
22 nature affecting all aboriginal Canadians that
23 have placed them at a disadvantage. However, in
24 this case, I have not been told of any systemic
25 factors specific to this offender that may have
26 played a part in bringing him before the Court.
27 Quite the contrary, despite the disadvantages of

1 his upbringing he achieved his goal of becoming a
2 teacher. He also has the support of his siblings
3 and friends.

4 Since being charged, the offender has sought
5 counselling through native spirituality in order
6 to address the causes of his behaviour and other
7 personal issues. There is, however, no evidence
8 of any psychopathology.

9 In this case, I have no doubt that the
10 offender is genuinely remorseful for his actions.
11 He apologized to his victims here in open court.
12 He has entered this guilty plea which has spared
13 his victims from going through a trial. I
14 therefore take all this into account as
15 mitigating factors.

16 Crown counsel submitted that this case calls
17 for a term of actual imprisonment. He asked me
18 to impose a sentence of two years less one day
19 plus a period of probation. In the Crown's view,
20 these offences reveal a deliberate pattern of
21 behaviour over a lengthy period of time. It is
22 not a situation of a one-time error in judgment.
23 Therefore a significant denunciatory sentence is
24 required.

25 Defence counsel submitted that this would be
26 an appropriate case for a conditional sentence,
27 (meaning simply that the offender would serve the

1 sentence without going to an actual jail).
2 Counsel argued that deterrence can be satisfied
3 through a conditional sentence because of the
4 public shame of conviction, the imposition of
5 strict conditions, and the denunciatory effect of
6 losing the ability to pursue one's profession.
7 There is, in counsel's submission, no evidence
8 that the offender is a risk to reoffend.

9 There is, as everyone knows, a wide
10 discretion vested in Judges when sentencing for
11 any criminal offence. For this offence, the
12 potential maximum penalty is 10 years in jail.
13 But sentencing is very much an individualized
14 exercise in every case. The overarching
15 principle in sentencing in any case, however, is
16 that the sentence imposed must be proportionate
17 to the gravity of the offence and the degree of
18 responsibility of the offender.

19 In this case, I should make note of the fact
20 that Section 153 of the Criminal Code was amended
21 in 2005 to provide for a mandatory minimum
22 punishment (45 days in jail if prosecuted by
23 indictment). Therefore, a conditional sentence
24 is no longer available for a conviction under
25 this section since a conditional sentence may not
26 be imposed if the offence is one punishable by a
27 minimum term of imprisonment. However,

1 Section 11(f) of the Canadian Charter of Rights
2 and Freedoms provides that "if the punishment for
3 the offence has been varied between the time of
4 commission and the time of sentencing", the
5 accused has the right to the benefit of the
6 lesser punishment. Accordingly, I cannot, and I
7 do not, exclude the prospect of a conditional
8 sentence from my consideration.

9 Both counsel supplied me with numerous cases
10 to support their arguments. While these
11 references are helpful, they are of course
12 specific to the facts of each case. What they
13 demonstrate is that in some cases actual jail
14 time was imposed and in others conditional
15 sentences were imposed. Generally speaking,
16 however, they also demonstrate that the
17 sentencing objectives emphasized are deterrence
18 and denunciation, the promotion of a sense of
19 responsibility by the offender, and on the
20 acknowledgment of the harm done to the victims
21 and the community. Conditional sentences have
22 been imposed usually when the breach of trust was
23 not particularly egregious or severe in nature,
24 where the sexual conduct was either a single
25 event or of limited duration, and where the
26 offender acknowledged moral responsibility for
27 the offence.

1 In my opinion, this is not a case that would
2 warrant a jail term of two years or more
3 therefore a conditional sentence is very much a
4 possibility. The real question is whether such a
5 sentence would be consistent with the fundamental
6 purpose and principles of sentencing. I have
7 concluded, considering the circumstances of this
8 case, that it would not be so consistent.

9 This is a case where the offender engaged in
10 a lengthy and repetitive course of deliberate
11 conduct not with one but with three of his
12 students. He knew that what he was doing was
13 wrong because he actively took steps to hide what
14 he was doing. He kept doing it even after he was
15 warned by a police officer. He took advantage of
16 his position of trust in a small school in a
17 small community. He may have all sorts of
18 sterling qualities but he had a complete
19 disregard for the impact of his conduct on his
20 young students.

21 In my opinion, a conditional sentence in
22 this case would send a wrong message to the
23 victims, the offender, others who are in similar
24 situations as the offender, and the community.
25 Young people in Fort Providence, as much as young
26 people anywhere in Canada, need to know that they
27 are protected by the law. People in positions of

1 trust and authority, whether in Fort Providence
2 or elsewhere in Canada, need to realize that they
3 are subject to the control of the law. People in
4 every community need to know that the law exists
5 for their protection and the law must be seen to
6 respond effectively when offences are committed.
7 I have therefore concluded that the sentence must
8 include a term of actual imprisonment.

9 Please stand, Mr. Lizotte.

10 Mr. Lizotte, I know that you are an
11 intelligent man and you are fully capable of
12 following everything that I have said, and I know
13 that you understand and realize the gravity of
14 your conduct.

15 With respect to Count 5 of the Indictment,
16 the offence related to the complainant S. M., I
17 sentence you to serve a term of imprisonment of
18 12 months, to be served in jail.

19 With respect to Counts 1 and 3 of the
20 Indictment, I sentence you to one month on each
21 count, to be served consecutively to each other
22 and consecutive to the sentence on Count 5.

23 The total sentence is therefore 14 months
24 imprisonment.

25 In addition, upon completion of your
26 sentence, you will be on probation for a period
27 of 12 months, subject to the following

1 conditions:

2 1. To keep the peace and be of good
3 behaviour.

4 2. To report to the Court if and when
5 required to do so.

6 3. To report to a probation officer and to
7 report as and when required by the probation
8 officer.

9 4. To attend any programs as directed by
10 your probation officer.

11 5. To have no contact, directly or
12 indirectly, with the complainants or their
13 families.

14 You may sit down.

15 In addition, since this conviction also
16 brings into play various mandatory terms of the
17 Criminal Code, and in the absence of any evidence
18 to suggest that the making of these orders will
19 be grossly disproportionate to the interests of
20 the offender and to society, I make the following
21 further orders:

22 1. There will be an order requiring the
23 offender to provide a sample for DNA analysis and
24 submission to the DNA databank, pursuant to
25 Section 487.051 of the Criminal Code.

26 2. There will also be an order requiring the
27 offender to comply with the provisions of the

1 Sexual Offender Information Registration Act for
2 the designated period of 20 years, pursuant to
3 Section 490.012 of the Criminal Code.

4 Under the circumstances there will be no
5 Victims of Crime fine surcharge.

6 Have I neglected anything, counsel?

7 MR. MacFARLANE: No, Your Honour.

8 MR. BOYD: No, sir.

9 THE COURT: Then, thank you, counsel for
10 your submissions. Mr. Lizotte, I realize it's
11 always difficult to confront the consequences of
12 one's actions from several years ago but from
13 everything that I have heard and read about you,
14 I am sure that you have the strength of character
15 to overcome this upcoming period of incarceration
16 and I am sure that you can restore yourself back
17 into your community and your family as a decent
18 law-abiding person. I wish you luck.

19 We will close court.

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21 Certified to be a true and
22 accurate transcript pursuant
23 to Rules 723 and 724 of the
24 Supreme Court Rules,

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Lois Hewitt, CSR(A), RPR, CRR
Court Reporter