

2020

Breaking the Silence on Father-Daughter Sexual Abuse of Adolescent Girls: A Case Law Study

Janine Benedet

Allard School of Law at the University of British Columbia, benedet@allard.ubc.ca

Isabel Grant

Allard School of Law at the University of British Columbia, grant@allard.ubc.ca

Follow this and additional works at: https://commons.allard.ubc.ca/fac_pubs



Part of the [Criminal Law Commons](#)

Citation Details

Janine Benedet & Isabel Grant, "Breaking the Silence on Father-Daughter Sexual Abuse of Adolescent Girls: A Case Law Study" (2020) 32:2 CJWL [forthcoming].

This Working Paper is brought to you for free and open access by the Faculty Publications at Allard Research Commons. It has been accepted for inclusion in Faculty Publications by an authorized administrator of Allard Research Commons. For more information, please contact petrovic@allard.ubc.ca, elim.wong@ubc.ca.

DRAFT ONLY

(2020) 32:2 Canadian Journal of Women and the Law (forthcoming).

Breaking the Silence on Father-Daughter Sexual Abuse of Adolescent Girls: A Case Law Study

Janine Benedet and Isabel Grant¹

Adolescent girls are targeted for sexual violence at a rate higher than females at any other life stage. Girls most often face sexual violence at the hands of men that they know and trust within their own families, yet this type of abuse has largely evaded scrutiny from the #MeToo movement. In this article, the authors seek to revitalize the discussion of sexual abuse against adolescent girls by their fathers. The article is part of a larger study that examined all Canadian judicial decisions involving sexual offences against girls between the ages of twelve and seventeen inclusive over a three-year period. An examination of these cases shows that more than one quarter of all reported decisions involving sexual assault against adolescent girls were committed by stepfathers and biological fathers. The authors found patterns of violence similar to those of coercive control described by adult women in intimate relationships, with men exerting controlling behaviours that extended beyond the sexual activity itself. While conviction rates were relatively high, they were lower for fathers than for other groups of perpetrators. The authors conclude that sexual abuse by fathers may be the easiest to perpetrate, the hardest to uncover, and the most damaging to victims.

Contents

INTRODUCTION 2

FATHER-DAUGHTER INCEST AS A SITE OF FEMINIST STRUGGLE..... 5

OUR RESEARCH QUESTIONS 10

OUR CASE LAW STUDY 13

Patterns of Abuse: Grooming, Force, Incapacitation and Coercive Control..... 16

The Role of Pornography..... 21

Victim-Blaming..... 22

Consent..... 24

The Role of Mothers 25

Girls in Care..... 28

EFFECTS OF THE ABUSE ON VICTIMS 30

THE JUDICIAL RESPONSE: BARRIERS TO CONVICTION 32

SENTENCING FATHERS WHO SEXUALLY ASSAULT THEIR TEENAGE DAUGHTERS..... 39

¹ Professors of Law, Allard School of Law, University of British Columbia. We would like to thank Gabrielle Berron-Styan for her tireless research assistance on this paper and Professor Elaine Craig for her very helpful comments on an earlier draft. Thanks also to the students involved in the larger project: Madeline MacDonald, Jean Murray, Allison Sharkey, Brett Love, Donna Chapman-Jones and Joanna Stratton. We would also like to thank the Social Sciences and Humanities Research Council and the Law Foundation of British Columbia for their generous support of this work.

SENTENCING OUTCOMES	42
<i>The Role of Risk Assessments</i>	46
<i>Ongoing Abuse</i>	49
<i>Offender’s Background and Criminal History</i>	50
<i>The Role of Gladue</i>	52
<i>Offenders as Victims of Child Sexual Abuse</i>	55
CONCLUSION	56

Introduction

Sexual assault is committed against teenage girls more often than any other demographic group, with 13-14 being the peak age for victimization.² Much of the legal scholarship in this area consists of critiques of the criminal law’s application to sexual activity between teenage girls and young men through so-called “statutory rape” laws, especially in the United States.³ In an earlier article, we outlined our findings from a study of sexual assault against adolescent girls by looking at the types of cases that are coming before Canadian courts.⁴ We examined over 600 judicial decisions involving 625 girls between the ages of 12 and 17 inclusive from all Canadian provinces and territories over a three-year period. We found that prosecutions were not targeting very young men just outside the “close-in-age” exceptions to the age of consent and that, in fact, the average age difference between the complainant and the accused was almost 16 years if family relationships were excluded, and over 19 years when they were included.⁵ We argued that the

² Lucie Ogradnik, *Child and Youth Victims of Police-Reported Violent Crime, 2008*, Canadian Centre for Justice Statistic Profile Series, Catalogue No 85F0033M (Ottawa: Statistics Canada, March 2010) at 12-13.

³ Julie Desrosiers, “Raising the Age of Consent: Renewing Legal Moralism?” in Elizabeth A Sheehy, ed, *Sexual Assault in Canada: Law, Legal Practice and Women’s Activism* (Ottawa: University of Ottawa Press, 2012) 569; Joseph J Fischel, “Per Se or Power? Age and Sexual Consent” (2010) 22:2 Yale Journal of Law and Feminism 279; Larry W Meyer, “Reasonable Mistake of Age: A Needed Defence to Statutory Rape” (1965) 64:1 Michigan Law Review 105; Lucinda Vandervort, “‘Too Young to Sell Me Sex!?’ *Mens Rea*, Mistake of Fact, Reckless Exploitation, and the Underage Sex Worker” (2012) 58:3 Criminal Law Quarterly 335.

⁴ Isabel Grant & Janine Benedet, “The ‘Statutory Rape’ Myth: A Case Law Study of Sexual Assaults against Adolescent Girls” (2019) 31 Canadian Journal of Women in the Law 266 [Grant & Benedet].

⁵ *Ibid* at 282.

focus on age of consent in the literature on sexual assault against adolescent girls risks obscuring the kind of sexual abuse by older adult men that makes up the large majority of these cases.

Media accounts, by contrast, tend to focus on cases of adults with institutional authority abusing large numbers of girls (and sometimes boys), such as sports coaches or priests.⁶ This attention is important; the exposure of sexual abuse within Indian Residential Schools,⁷ religious institutions,⁸ facilities for persons with disabilities,⁹ and sports programs,¹⁰ to name only a few examples, has been instructive as to how power operates to insulate abusers and to silence victims. It has also provided an opportunity to dismantle or change some of these institutions. Our previous research on the sexual abuse of women with mental disabilities and older women has engaged with some of these questions.¹¹

Yet our research revealed that, while a small number of cases involved abusers in positions of institutional authority, like teachers or coaches, the largest number of cases involved

⁶ Michael Salter documents a similar shift in Australia: “The Privatization of Incest: The Neglect of Familial Sexual Abuse in Australian Public Inquiries” in Yorick Smaal, Andy Kaladelfos & Mark Finnane, eds, *The Sexual Abuse of Children: Recognition and Redress* (Melbourne: Monash University Publishing, 2017) available online at <<http://books.publishing.monash.edu/apps/bookworm/view/The+Sexual+Abuse+of+Children/188/chapter8.html>>.

⁷ Truth and Reconciliation Commission of Canada, *The Survivors Speak: A Report of the Truth and Reconciliation Commission of Canada* (Canada: Truth and Reconciliation Commission of Canada, 2015); Rosemary Barnes & Nina Josefowitz, “Indian Residential Schools in Canada: Persistent Impacts on Aboriginal Students’ Psychological Development and Functioning” (2019) 60:2 Canadian Psychological Association 65.

⁸ Karen J Terry, “Stained Glass: The Nature and Scope of Child Sexual Abuse in the Catholic Church” (2008) 35:5 *Criminal Justice and Behaviour* 549; Marie Keenan, *Child Sexual Abuse and the Catholic Church: Gender, Power, and Organizational Culture* (New York: Oxford University Press, 2012).

⁹ Mary Ellen Young et al, “Prevalence of Abuse of Women with Physical Disabilities” (1997) 78:12 *Archives of Physical Medicine and Rehabilitation* 34; Canadian Centre for Justice Statistic, *Violent Victimization of Women with Disabilities, 2014*, by Adam Cotter (Canada: Statistics Canada, March 2018) available online at <<https://www150.statcan.gc.ca/n1/en/pub/85-002-x/2018001/article/54910-eng.pdf?st=wnV2Ia-S>>.

¹⁰ Ingunn Bjørnseth & Attila Szabo, “Sexual Violence Against Children in Sports and Exercise: A Systematic Literature Review” (2018) 27:4 *Journal of Child Sexual Abuse* 365.

¹¹ Janine Benedet & Isabel Grant, “Hearing the Sexual Assault Complaints of Women with Mental Disabilities: Evidentiary and Procedural Issues” (2007) 52 *McGill Law Journal* 515; Janine Benedet & Isabel Grant, “Hearing the Sexual Assault Complaints of Women with Mental Disabilities: Consent, Capacity, and Mistaken Belief” (2007) 52:2 *McGill Law Journal* 243; Isabel Grant & Janine Benedet, “The Sexual Assault of Older Women: Criminal Justice Responses in Canada” (2016) 62:1 *McGill Law Journal* 41.

prosecutions against fathers and other male family members.¹² Almost half of all prosecutions involved an accused who was a male family member of the complainant and, in more than a quarter of all cases, the abuser was the girl's biological, adoptive, step or foster father.¹³ In this paper, we seek to explore father-daughter sexual abuse cases in more detail to see what we can learn about the features of sexual abuse of teenage girls by fathers, the barriers to successful prosecution of this abuse, and the ways in which such cases are treated by the criminal justice system. We use the term "fathers" broadly to refer to biological, adoptive, step and foster fathers. Where we are making distinctions among these groups, we use the more specific language such as biological fathers, stepfathers, and so on.

The cases themselves demonstrate the similar patterns of offending by fathers, which can involve grooming and escalating sexual behaviour over time. We also saw patterns of abuse similar to those described in the literature about coercive control in the context of male intimate partner violence against adult women.¹⁴ The cases reveal the extraordinary barriers these girls have to overcome in order to have their reports believed and acted upon. While conviction rates were relatively high, they were lower for fathers than for other groups of perpetrators. There are still significant numbers of acquittals that are difficult to explain, other than by reference to reasonable doubts that are rooted in suspicions about the truthfulness of teenage girls. While significant sentences are imposed in many cases, there is a lack of consistency and coherence in sentencing these cases. The sentencing judgments also paint a tragic picture of the devastating harm experienced by these girls. The abuse of trust involved in these sexual assaults, which often

¹² Grant & Benedet, *supra* note 4.

¹³ *Ibid* at 277.

¹⁴ Judith Lewis Herman, "Complex PTSD: A Syndrome in Survivors of Prolonged and Repeated Trauma" (1992) 5:3 *Journal of Traumatic Stress* 377 at 383-384 [Herman]. See also Evan Stark, "Looking Beyond Domestic Violence: Policing Coercive Control" (2012) 12:2 *Journal of Police Crisis Negotiations* 199.

continued over months or even years, causes profound harm to its victims which, as demonstrated by the high number of historical cases, can last over a lifetime.

We think it is crucial not to lose sight of the fact that women and girls most often face sexual violence at the hands of men that they know and trust within their own families,¹⁵ an institution that has thus far largely avoided scrutiny in the context of the MeToo movement. Attention to the barriers to successful prosecution of these cases is necessary, as one part of the essential feminist project of how to dismantle the exercise of patriarchal power within the family. We must not slip back into seeing the family as a private sphere beyond scrutiny and feminist critique. In fact, it is the most powerful social institution implicated in sexual violence against girls and we hope that this work can contribute to reinvigorating the discussion of this pervasive problem.

Father-Daughter Incest as a Site of Feminist Struggle

How society recognizes and understands the sexual abuse of children, and in particular the sexual abuse of daughters by fathers, has been contested terrain for many decades. In a 1993 article, Olafson, Corwin and Summit refer to this process as “cycles of discovery and suppression.”¹⁶ They argue that we have passed through repeated periods in which child sexual abuse is the subject of concern and alarm, followed by an attempt to minimize or silence the issue. While the literature in this area is extensive, we offer a brief summary of it here because it demonstrates a pattern of resistance to holding men accountable for the sexual abuse of girls.

¹⁵ Lesleigh E Pullman et al, “Differences Between Biological and Sociolegal Incest Offenders: A Meta-Analysis” (2017) 34 *Aggression and Violent Behaviour* 228 at 228 [Pullman et al].

¹⁶ Erna Olafson, David L Corwin & Roland C Summit, “Modern History of Child Sexual Abuse Awareness: Cycles of Discovery and Suppression” (1993) 17 *Child Abuse Neglect* 7 at 7 [Olafson et al].

Sigmund Freud, who single-handedly created just such a cycle, might well be considered the originator of this tension. In his 1896 work *The Aetiology of Hysteria*, Freud proposed that symptoms of mental illness in adults could be the result of trauma they had endured through sexual abuse as children.¹⁷ Freud suggested that the frequency of “hysteria” in women was the product of girls more frequently being targeted for sexual abuse.¹⁸ He also suggested that incest was more common than previously suspected, and was not limited to poor or otherwise disreputable families.¹⁹

Under criticism from his colleagues, Freud abandoned this theory in favour of the Oedipal complex, in which children, especially daughters, sought sexual contact with their fathers and were troubled by their own unfulfilled fantasies.²⁰ This denial led to a lack of scholarly interest in child sexual abuse,²¹ which was also reflected in the public policy of the time. Although some first-wave feminists in England and the United States tried to press the issue in the domains of criminal justice and public health, they faced stiff opposition.²² Scientists continued to look for explanations as to the outbreak of gonorrhoea in pre-pubescent girls that were attributable to anything other than the

¹⁷ Sigmund Freud, “The Aetiology of Hysteria” in *Standard Edition of The Complete Psychological Works of Sigmund Freud*, vol 3, translated by James Strachey et al (London: Hogarth Press, 1953) at 191-221.

¹⁸ Olafson et al, *supra* note 16 at 11.

¹⁹ *Ibid.*

²⁰ *Ibid* at 11. See also Jeffrey M Masson, *The Assault on Truth: Freud’s Suppression of the Seduction Theory* (New York, NY: Penguin Books, 1985); Corry Azzopardi, Ramona Allagia & Barbara Fallon, “From Freud to Feminism: Gendered Constructions of Blame Across Theories of Child Sexual Abuse” (2018) 27 *Journal of Child Sexual Abuse* 254 at 255 [Azzopardi, Allagia & Fallon]; Rachel Devlin, “‘Acting out the Oedipal Wish’: Father-Daughter Incest and the Sexuality of Adolescent Girls in the United States, 1941-1965” (2005) 38:2 *Journal of Social History* 609 at 616 [Devlin]; Francisco Vaz da Silva, “Folklore into Theory: Freud and Lévi-Straus on Incest and Marriage” (2007) 44:1 *Journal of Folklore Research* 1 at 1-2.

²¹ Lynn Sacco notes that between 1938 and 1962, no articles examining the psychopathology of incestuous fathers can be found in the psychiatric literature: Lynn Sacco, *Unspeakable: Father-Daughter Incest in American History* (Baltimore: John Hopkins University Press, 2009) at 215 [Sacco].

²² Olafson et al, *supra* note 16 at 9.

obvious – that they were being abused sexually by infected adult men, usually within their own families.²³

When researchers did acknowledge the existence of sexual contact between adults and children, they often blamed children.²⁴ In a widely-cited 1937 article, Bender and Blau argued that while the “seduction” of children by adults is a recognized phenomenon, it is relatively harmless to the child.²⁵ Moreover, they “frequently [...] considered the possibility that the child might have been the actual seducer rather than the one innocently seduced.”²⁶ Where the sexual contact was between fathers and daughters, mothers were also blamed. Oedipal theories posited that mothers in these families were neglectful or absent in relation to their marital duties, which encouraged men to turn to their willing daughters to fill this void.²⁷

By the 1970s, however, a second wave of feminist activists and scholars challenged the ideas that father-daughter incest was rare, natural and harmless. These writers argued that prevailing ideas about child sexual abuse were nothing more than a misogynist attempt to maintain patriarchal power within the family and male sexual entitlement more generally.²⁸ While this research was not “intersectional” in the way that term is used today, its explicit focus on white middle-class families served as a rejoinder to the prevailing assumption that such incestuous behaviour was confined to poor, often racialized, families.²⁹ Feminist analysis of child sexual

²³ Sacco, *supra* note 21 at 53-87. See also Carol Smart, “A History of Ambivalence and Conflict in the Discursive Construction of the ‘Child Victim’ of Sexual Abuse” (1999) 8:3 *Social & Legal Studies* 391 at 395.

²⁴ Laretta Bender & Abram Blau, “The Reaction of Children to Sexual Relations with Adults” (1937) 7:4 *American Journal of Orthopsychiatry* 500 at 513-517 [Bender & Blau].

²⁵ *Ibid.*

²⁶ *Ibid* at 514. See also James Henderson, “Is Incest Harmful?” (1983) 28:1 *Canadian Journal of Psychiatry* 34.

²⁷ Devlin, *supra* note 20 at 620.

²⁸ Judith Herman & Lisa Hirschman, “Father-Daughter Incest” (1977) 2:4 *Signs* 735 [Herman & Hirschman]; Judith Herman & Lisa Hirschman, *Father-Daughter Incest* (Cambridge, Mass: Harvard University Press, 1981); Sandra Butler, *Conspiracy of Silence: The Trauma of Incest* (San Francisco: New Glide, 1978); Diana E H Russell, *The Secret Trauma: Incest in the Lives of Girls and Women* (New York: Basic Books, 1986) [Russell, *The Secret Trauma*].

²⁹ Herman & Hirschman, *supra* note 28 at 736.

abuse, and father-daughter incest in particular, was responding both to the profoundly sexist psychological literature described above, and to the construction of “stranger danger” as the primary source of documented cases of child rape and murder. Abuse by persons outside the family, especially when it was combined with abduction and homicide, was much harder for law enforcement and the public to ignore, and provided a convenient context to further divert attention away from abuse by male family members.³⁰

This feminist analysis of child sexual abuse met with direct backlash from those who alleged feminists were contributing to unjustified panic and wrongful convictions. Those who directly rejected the need for increased attention to this issue used gendered language of “hysteria” to blame feminists for creating a “moral panic.”³¹ Women were accused of making false complaints of abuse to gain unfair advantage in family law disputes,³² while children’s accounts of abuse were attributed to “false memory syndrome” or “witch-hunt” investigative techniques.³³

The feminist analysis of father-daughter incest also met with indirect resistance from the development of the family systems approach to child sexual abuse. This approach does not deny the existence of sexual abuse within the family, nor that abusers bear some responsibility for this behaviour, but casts the abuse in terms of the dysfunctional or “incestuous family”, all members

³⁰ Elise Chenier, “The Natural Order of Disorder: Pedophilia, Stranger Danger and the Normalising Family” (2012) 16 *Sexuality & Culture* 172 at 174.

³¹ See e.g. Richard A Gardner, *Sex Abuse Hysteria: Salem Witch Trials Revisited* (New Jersey: Creative Therapeutics, 1991) [Gardner]; Richard Ofshe & Ethan Watters, *Making Monsters: False Memories, Psychotherapy, and Sexual Hysteria* (Berkeley: University of California Press, 1996).

³² Gardner, *supra* note 31 at 3-4.

³³ *Ibid* at 127-140. See also Mark Pendergrast “From Mesmer to Memories: A Historical, Scientific Look at the Recovered Memories Controversy” in Sheila Taub, ed, *Recovered Memories of Child Sexual Abuse* (Springfield, Illinois: Charles C Thomas Publisher, Ltd, 1999) 40-55.

of which require treatment.³⁴ The goal is to rehabilitate and reunite the family, not to punish the offender.³⁵

The term “incestuous family” is deeply problematic in that it obscures both gender and power. It also carries with it an element of victim-blaming that echoes earlier theories of the seductive child, as well as mother-blaming that repackages Oedipal theories of the daughter as replacement wife. This approach remains influential. For example, in a 2017 article, Beard et al criticize the “victim advocacy model”, contrasting it with a humanistic approach that rehabilitates fathers without incarceration, thus “maintaining the marriage in the nuclear family and reunification of the family.”³⁶ The authors rest this approach on the conviction that many behaviours labelled abusive may be part of the normal human developmental process (what they call “affection-based incest”) and only harmful when they are labelled as such.³⁷ Mothers are blamed for trapping men in “problematic marriages to women who are unable or unwilling to provide affection” and for tempting men by placing them in the role of caregiver of female children.³⁸ We believe that these profoundly sexist ideas should not continue to determine the appropriate response to what are in fact acts of violence.³⁹

³⁴ James W Maddock & Noel R Larson, *Incestuous Families: An Ecological Approach to Understanding and Treatment* (New York: W. W. Norton 1995) at 173-205.

³⁵ Henry Giarretto, *Integrated treatment of child sexual abuse: A treatment and training manual* (Palo Alto, California: Science and Behavior Books, Inc., 1982); Tamar Cohen, “The Incestuous Family Revisited” (1983) 64:3 *Social Casework: Journal of Contemporary Social Work* 154 at 160-161 [Cohen].

³⁶ Keith W Beard et al, “Father-Daughter Incest: Effects, Risk-Factors, and a Proposal for a New Parent-Based Approach to Prevention” (2017) 24:1-2 *Sexual Addiction & Compulsivity* 79 at 79-80.

³⁷ *Ibid* at 101, 103.

³⁸ *Ibid* at 103.

³⁹ For earlier analysis of the same data, see also Sandra S Stroebel, et al, “Father-Daughter Incest: Data from an Anonymous Computerized Survey” (2012) 21:2 *Journal of Child Sexual Abuse* 176 at 177-178, noting that many incest victims were “not only victims but participants”; that in some cases the behaviour of the mother “could have contributed to the development and duration of [father-daughter incest] (e.g. avoiding sex, emotional unavailability and maternal role abdication)”.

We believe that the insights offered by a feminist analysis of father-daughter sexual abuse are crucial to understanding why this abuse can so often occur with impunity and why it has such a profoundly destructive impact on girls. When large numbers of girls are targeted for sexual abuse by men who are supposed to love and care for them, and who are in positions of both trust and authority, this forms a key component of the male violence against women and girls that creates and sustains the intersecting inequalities of sex and age. In other words, the patriarchal family structure facilitates and shields from view fathers who sexually abuse their daughters.⁴⁰

Our Research Questions

In looking at these cases, we wanted to consider a number of related questions and factors to shed light on this hidden form of sexual abuse. In each of these lines of inquiry, we sought to evaluate whether common assumptions about teenage girls and sexuality were borne out by the case law and, if not, whether they amounted to myths and stereotypes with the potential to distort the response of the criminal justice system. We acknowledge that our sample is not necessarily representative of all sexual abuse of adolescent girls by their fathers, nor even all cases that lead to charges. These cases may be weighted toward more serious forms of abuse, since those are more likely to be reported and prosecuted. We do not have access to jury verdicts that were not appealed, nor cases where the Crown declined to proceed, and we recognize that particular factors may be concentrated in those cases. Nor do we have cases where girls tried to report to some adult but were dissuaded, disbelieved or silenced. However, we believe that with the large number of complainants involved in our study, covering every level of court in every Canadian jurisdiction

⁴⁰ See e.g. Anne Seymour, “Aetiology of the Sexual Abuse of Children: An Extended Feminist Perspective” (1998) 21:4 *Women’s Studies International Forum* 415. Seymour describes male sexual abuse of their daughters as “sexual behaviour in the service of non-sexual needs” such as, for example, the need to dominate.

over a three-year period, we are able to draw some conclusions about the types of abuse being prosecuted in our courts.

First, we wanted to understand what kind of sexual abuse is being perpetrated against girls in these cases – its duration, the extent of the sexual acts involved and its impact on victims. We also wanted to shed some light on the coercive techniques fathers used – were these cases in which girls were groomed so as to normalize the abuse? Were girls subjected to additional force or threats, or assaulted when they were asleep or intoxicated?

Second, we also wanted to consider the role that pornography might play in these cases. We know that many young people are routinely exposed to violent and degrading pornography as part of their online media consumption. Many boys report frequent pornography exposure from a young age,⁴¹ with smaller numbers of girls also having viewed these materials.⁴² What boys and men see in pornography influences their sexual expectations; it can become a “preferred sexual script.”⁴³ Social science research on the effects of pornography continues to demonstrate a link between pornography consumption and acceptance of rape myths, as well as correlation with sexually aggressive or harassing behaviour, especially where the materials present girls and/or women as enjoying or deserving force or violence.⁴⁴ Perhaps most significantly, pornography

⁴¹ Chyng Sun et al, “Pornography and the Male Sexual Script: An Analysis of Consumption and Sexual Relations” (2016) 45 *Archives of Sexual Behavior* 983 at 990 [Chyng Sun et al] (reporting that nearly half of college-aged men had been exposed to pornography before age 13; 13.2% used it daily or almost daily in adulthood). Earlier Alberta research showed that 90% of 13 and 14 year old males had accessed pornographic content at least once, with one-third reporting accessing it “too many times to count”: Sonya Thompson, *Adolescent Access to Sexually Explicit Media Content in Alberta: A Human Ecological Investigation* (MSc Thesis, University of Alberta, 2006) [unpublished] available online at: <https://www.researchgate.net/publication/33688811_Adolescent_access_to_sexually_explicit_media_content_in_Alberta_a_human_ecological_investigation>.

⁴² Magdalena Mattebo et al, “Pornography Consumption Among Adolescent Girls in Sweden” (2016) 21:4 *European Journal of Contraception & Reproductive Health Care* 295 at 298 (54% of girls had viewed pornography at least once and 30% were deemed to be regular consumers).

⁴³ Chyng Sun et al, *supra* note 41 at 990.

⁴⁴ Eric W Owens et al, “The Impact of Internet Pornography on Adolescents: A Review of the Research” (2012) 19:1-2 *Sexual Addiction and Compulsivity* 99 at 104-110; Paul J Wright, Robert S Tokunaga & Ashley Kraus, “A Meta-Analysis of Pornography Consumption and Actual Acts of Sexual Aggression in General Population Studies”

presents the consent of women and girls as omnipresent. Women and girls are never presented as sexually unavailable, even if there is initial refusal or disinterest. Teenage girls are typically portrayed as desiring sex with adult men. We wanted to know whether pornography was present in these cases and, if so, in what ways it impacted the sexual abuse.

Third, we also wanted to examine the role of mothers in these cases. Were girls disclosing this abuse to their mothers or to other third parties? We were interested whether judicial decisions mentioned the reactions of mothers to such disclosures, and in particular whether mothers took steps to remove their daughters from the abuser or were instead described as believing their male partners. We believe that the role of mother-blaming in these cases deserves scrutiny, especially because the role of mothers in father-daughter incest has featured so prominently in the literature. Finally, we wanted to know how often mothers were actually involved in the offending along with their male partner.

Finally, we wanted to examine how our courts dealt with these cases both in determining guilt or innocence and in imposing sentence. Did fathers plead guilty to spare their daughters the trauma of a trial? In cases that went to trial, what arguments did the defence use to attempt to undermine the credibility of the complainant's claim? How did trial judges evaluate these arguments and the complainant's evidence on the stand, and was this approach being informed by an understanding of the impact of prolonged trauma on these girls? We wondered finally whether constructions of teenage girls as seductive or vindictive might be deployed by counsel or the courts, and whether these might influence the verdict or the sentence.

(2016) 66 *Journal of Communication* 183 at 192, 199. One study of men attending a forensic psychotherapy clinic for antisocial and sexually deviant behaviour found that regular pornography use was significantly higher in those who identified as perpetrators of sex offenders against children than in the group of non-perpetrators: Mervin Glasser et al, "Cycle of Child Sexual Abuse: Links Between Being a Victim and Becoming a Perpetrator" (2001) 179 *British Journal of Psychiatry* 482 at 487 [Glasser et al].

Our Case Law Study

In a previous paper, we presented the results of our three-year case law review of sexual assault against girls between the ages of 12 and 17 inclusive.⁴⁵ Of the 625 complainants in the study, 292 girls (47 percent) reported sexual abuse perpetrated by a family member, which included foster and stepfamilies as well as biological family members. One hundred and sixty-eight (27 percent) of these girls reported sexual abuse against a father, with four girls (0.6 percent) also reporting abuse by a mother, in combination with a father.⁴⁶ We found that abuse committed by a family member usually targeted younger girls within this group but often continued over many years.⁴⁷ While on average abuse started around the age of nine or ten, we saw cases where the abuse began as early as four years of age and continued at least until the girl was within that age group under study.⁴⁸ Roughly 20 percent of the prosecutions in the larger study were historical cases, which we defined as cases involving at least a 10 year gap between the abuse and charges being laid.⁴⁹ Abuse by family members generally was overrepresented in the historical cases with 75 of 99 (76 percent) historical cases involving intra-family abuse involving a total of 91 complainants. Of these 91 complainants, 34 (37 percent) alleged sexual abuse by a father. All but one of the cases alleging sexual assault by a foster father were historical cases. These findings are consistent with the assertion that it is particularly difficult for girls to report sexual abuse against a father or to be

⁴⁵ Grant & Benedet, *supra* note 4. We note that the defence of mistake of age will rarely apply to a family member and almost never to a father. See Isabel Grant and Janine Benedet, "Confronting the Sexual Assault of Teenage Girls: The Mistake of Age Defence in Canadian Sexual Assault Law" (2019) 97:1 Can Bar Rev 1.

⁴⁶ There were only three mothers charged but one case involved more than one complainant: *R v JAVC and DAC*, 2015 BCPC 218 [*JAVC and DAC*]; *R c KH*, 2014 QCCA 262 [*KH*]; *R v JV and PV*, 2015 ONCJ 815 [*JV and PV*]. In the larger study, of the 518 accused persons, there were 511 males, six females, and one accused where gender was not indicated.

⁴⁷ Grant & Benedet, *supra* note 4 at 276.

⁴⁸ See e.g. *R v RD*, 2016 MBCA 88 [*RD*] and *R v HB*, 2016 ONSC 6111 [*HB*]. See also *R v GEW*, 2014 BCSC 2597 [*GEW*], where the complainant reported the abuse beginning around the age of six.

⁴⁹ Grant & Benedet, *supra* note 4 at 284.

believed by the authorities when they do.⁵⁰ Girls “in care” may face the greatest barriers in having their allegations believed and taken seriously by child welfare authorities.⁵¹ Girls in these cases sometimes went to extraordinary efforts to reveal the sexual abuse against them after being disbelieved or otherwise silenced for years.⁵²

Conviction rates for each category of fathers were below the overall conviction rates in our study whereas other family members were convicted at a higher than average rate.⁵³ While overall the conviction rate was approximately 71 percent of the cases leading to a verdict, the conviction rates for biological and stepfathers were 65 percent and 61 percent respectively.⁵⁴ In general, we found that when fathers were convicted, significant sentences were being imposed, with the majority of men being sentenced to penitentiary time.⁵⁵ Nonetheless, sexual assaults by strangers were sentenced more severely than those committed by fathers even though the abuse by fathers was rarely an isolated event and often extended over many years.⁵⁶

In the following section we highlight what we found for the 168 complainants in these cases who reported sexual abuse by a father.⁵⁷ Fathers made up the single largest group of accused persons in our case law survey. Approximately 27 percent of the girls in our entire study reported abuse by a father. Put another way, 58 percent of the girls reporting abuse by a family member were abused by a father. Of the cases involving accused fathers, 62 percent of girls reported abuse

⁵⁰ In one case involving an adopted daughter with intellectual disabilities who tried repeatedly to report the abuse, her father used “the adroit use of the medical system and cynical manipulation of the victim’s vulnerabilities to avoid detection”: *R v AL*, 2014 ONCJ 714 at para 9 [*AL*, Ont Ct J].

⁵¹ Grant & Benedet, *supra* note 4 at 280.

⁵² *Ibid* at 280-281.

⁵³ *Ibid* at 288 (see Table 8).

⁵⁴ *Ibid*.

⁵⁵ *Ibid* at 289-290.

⁵⁶ *Ibid*.

⁵⁷ *Ibid* at 278.

against a stepfather and 32 percent against a biological father. The remaining complainants reported abuse against a foster or adoptive father.

We recognize that these categories of fathers are not always distinct categories (for example a stepfather might adopt his stepdaughter) and that the accused men within each category varied in the nature of their relationship to the complainant. It is important that the differences between these formal labels not be overstated. In many cases, the stepfather had lived with the complainant since she was very young and was the only father the girl had ever known.⁵⁸ By contrast, there were biological fathers who only made contact with their daughters when the girls were in their teens, and the sexual abuse commenced almost immediately.⁵⁹ Overall, however, most of the men in both groups were in a clear and usually exclusive male parental role with the victim at the time of the abuse.

Our findings are consistent with other research that suggests stepfathers, in particular, are among the most likely sexual abusers of teenaged girls.⁶⁰ Most of these stepfathers occupied a parental role in relation to the complainant in the sense of supervision and authority, rather than being viewed merely as mother's boyfriend. Why are stepfathers overrepresented relative to biological fathers in these cases? Early research on this topic posited that the "incest taboo" might inhibit some biological fathers from engaging in sexual abuse of their daughters,⁶¹ while more recent research has suggested no difference in incest propensity or disgust toward incestuous

⁵⁸ *R c RG*, 2016 QCCQ 1668 [*RG*]; *R v DN*, 2014 BCSC 1114; *R v AE*, 2016 QCCQ 2822 [*AE*]; *R v SH*, 2016 ONSC 4492 [*SH*]; *R c YM*, 2016 QCCQ 6152; *R v KJM*, 2016 BCPC 306 [*KJM*]; *R v FL*, 2016 ONSC 1215 [*FL*].

⁵⁹ See e.g. *R v CG*, 2015 ONSC 5068 [*CG*], where the accused brought his teenaged daughter to Canada from Jamaica to live with him and started sexually assaulting her shortly thereafter. The accused made his daughter rub cream over his body and this progressed until he eventually forced her to have sexual intercourse with him on a weekly basis. See also *R v RRI*, 2016 NSPC 66 [*RRI*]; *R v WHY*, 2014 ONCJ 757, aff'd 2015 ONCA 682 [*WHY*]; *R v Law*, 2014 BCSC 1854, aff'g 2007 BCSC 2047 [*Law*]; *R v IWS*, 2013 ONSC 4162 [*IWS*].

⁶⁰ See Diana E H Russell, "The Prevalence and Seriousness of Incestuous Abuse: Stepfathers vs. Biological Fathers" (1984) 8 *Child Abuse & Neglect* 15.

⁶¹ *Ibid* at 20. See also Herman & Hirschman, *supra* note 28.

behaviour between these groups, instead positing that the higher incidence of pre-existing indicators of anti-social behaviour in stepfathers may be a better explanation.⁶² It is also possible that some of the difference could be explained by differences in reporting. Where a stepfather has been involved in a girl's life for a shorter period of time, it may be easier to come forward against a stepfather than against a biological one.

The social science research as to whether the kinds of abuse perpetrated by biological fathers differs from stepfathers is also inconclusive and somewhat contradictory. There is some research that indicates that biological fathers who commit acts of sexual abuse are more likely than stepfathers to engage in full vaginal intercourse with their daughters, possibly out of a stronger sense of ownership and control.⁶³ Our cases did not show any difference in this regard; roughly 42 percent of both biological fathers and stepfathers were alleged to have subjected their daughters to intercourse (vaginal and/or anal) as part of the abuse. Notably, we did not find significant differences in terms of the impact of the abuse on complainants, who reported grave and long-lasting harms from abuse by both biological fathers and stepfathers.

Patterns of Abuse: Grooming, Force, Incapacitation and Coercive Control

The cases involving biological fathers demonstrated a number of patterns to the abuse. In some cases, the fathers used prolonged grooming techniques from a young age, creating a sexualized environment in the home beginning at age 9 or 10 and progressing from sexual

⁶² Lesleigh E Pullman, Kelly Babchishin & Michael C Seto, "An Examination of the Westermarck Hypothesis and the Role of Disgust in Incest Avoidance Among Fathers" (2019) *Evolutionary Psychology* 1 at 9 and Pullman et al, *supra* note 15 at 235, who found that nonrelated family members, such as stepfathers, show more antisocial tendencies than biological family members, whereas biological family members had more mental health difficulties.

⁶³ Patricia Phelan, "The Process of Incest: Biologic Father and Stepfather Families" (1986) 10 *Child Abuse & Neglect* 531 at 537.

conversations to massages to sexual activity as the girl reached adolescence.⁶⁴ These acts were explained as sex education, sometimes with the asserted purpose of protecting the daughter from the attentions of other boys or men.⁶⁵ As one complainant testified at trial about her biological father grooming her, “[h]e raised me to be molested.”⁶⁶

For example, in *R v JL*,⁶⁷ the accused began to have conversations about sexual activity with his daughter when she was 9 years old. She testified that he would explain what a male would do to a female during sexual activity and that he would want to touch her breasts and genitals and that she would enjoy that and enjoy looking at and touching a man’s penis.⁶⁸ By the time she was 12, he had progressed to touching and kissing her neck and thigh, ostensibly to simulate what a man might do to indicate his interest in her. This progressed to grinding his erect penis against her and finally to unprotected vaginal intercourse by the time she was 13 years old.⁶⁹ The accused told the complainant that by doing this with him, it would stop her from doing it with other guys who would get her pregnant.⁷⁰ He would give her money from time to time, which she perceived as a bribe to keep quiet.⁷¹ He told her not to tell her mother because she would not understand and would not forgive her. He also used physical violence against other family members, kicking, hitting and throwing objects when he was angry.⁷² When the complainant disclosed the abuse to

⁶⁴ *R c LD*, 2014 ONSC 2398 [*LD*]; *R c ML*, 2014 QCCQ 4412; *R v DAD*, 2014 ONSC 3254 [*DAD*]; *R v LV*, 2014 SKQB 278, aff’d 2016 SKCA 74 [*LV*]; *R v RSW*, 2014 NLTD(G) 134 [*RSW*]; *JV and PV*, *supra* note 46; *JAVC and DAC*, *supra* note 46; *R v RJY*, 2016 BCSC 2151 [*RJY*]; *R c MS*, 2016 QCCQ 15825 [*MS*].

⁶⁵ One father who sexually assaulted his daughter over three years, sometimes with the mother, described it as educational and just “family fun”: *JAVC and DAC*, *supra* note 46 at para 9. In *R v JL*, 2015 ONCJ 777 at para 53 [*JL*], the accused explained to his daughter that he was doing this to her to protect her from boys in the neighborhood. See also *DAD*, *supra* note 64 at para 32.

⁶⁶ *R v RM*, 2015 NSSC 189 at para 20 [*RM*].

⁶⁷ *JL*, *supra* note 65.

⁶⁸ *Ibid* at paras 17-19.

⁶⁹ *Ibid* at para 45.

⁷⁰ *Ibid* at para 47.

⁷¹ *Ibid* at para 55.

⁷² *Ibid* at paras 58-59.

her mother, they left the home and lived in a shelter with her three siblings. By the time of trial, the mother supported the father and pressured the complainant to recant or minimize the abuse to avoid sending the father to jail.⁷³

In other cases, girls came to live with their biological fathers in early adolescence, and the abuse started almost immediately, with fathers using the fact that they had not been involved in their daughters' lives to act like boyfriends rather than parents.⁷⁴ For example, in *R v WHY*,⁷⁵ the accused had no contact with his daughter until she was 13 years of age. She was having some problems and her mother encouraged her to contact her father through Skype. Eventually the complainant and her mother, who were residing in the United States, went to visit the accused at his home in Ontario for a week. The complainant was then sent back to her father the following summer, when she was 14 years old.⁷⁶ Four days after she arrived, her father began to send her text messages saying he wanted to have oral sex and intercourse with her. When she rejected this suggestion, saying that he was her father, he told her to think of him as a boyfriend. He persisted, and for the next two months subjected her to vaginal and oral sex on a daily basis. He also took nude photos of her.⁷⁷ The abuse was discovered when the girl's older half-sister observed the father performing oral sex on the victim while she was intoxicated and asleep.⁷⁸

We did not see a meaningful difference in the kinds of abuse perpetrated by stepfathers as opposed to biological fathers. The age of the daughter and the extent of the parenting role were more important in predicting the techniques used by abusers rather than formal labels. Once again,

⁷³ *Ibid* at paras 275-279, 374.

⁷⁴ *RRI*, *supra* note 59; *Law*, *supra* note 59; *IWS*, *supra* note 59; *CG*, *supra* note 59; *WHY*, *supra* note 59.

⁷⁵ *R v WHY*, *supra* note 59.

⁷⁶ *Ibid* at para 5.

⁷⁷ *Ibid*.

⁷⁸ *Ibid*.

we saw cases in which the abuse was normalized as sex education,⁷⁹ in which additional physical force was used,⁸⁰ or in which the complainants were incapacitated,⁸¹ and some cases combined these features.⁸² The sexual acts that stepfathers inflicted on their stepdaughters included all manner of sexual activities, including touching, oral sex, and vaginal and anal intercourse.

While grooming behaviours were evident in many of the cases, physical force and emotional manipulation were not mutually exclusive. When girls resisted or objected notwithstanding the grooming, fathers simply forced themselves on their daughters.⁸³ There were also a significant number of cases in which fathers sexually assaulted their daughters while the girls were either asleep and/or incapacitated by alcohol or other intoxicants, sometimes supplied by the father.⁸⁴ Out of a total of 168 complainants, 41 (24.4 percent) reported being sexually assaulted by their father when they were asleep or intoxicated. Some girls provided harrowing accounts of trying to stay awake all night or barricading bedroom doors in an attempt to prevent these assaults.⁸⁵

We saw many cases in which fathers assumed an entitlement to control their daughter's sexuality, although this was expressed in different ways. In some cases, fathers purchased sexual aids or sexualized clothing for their daughters and pressured them to use or wear it.⁸⁶ By contrast,

⁷⁹ *R v ETK*, 2016 BCPC 346 [ETK]; *R v OB*, 2016 ONSC 6861 [OB]; *R v RAH*, 2016 PESC 15 [RAH].

⁸⁰ *KJM*, *supra* note 58 at para 4; *R v AL*, 2014 NSSC 402 [AL]; *R v AC*, 2015 ONSC 4472 [AC]; *R v AAG*, 2015 ONSC 7476 [AAG]; *R v DLW*, 2014 BCSC 43 [DLW].

⁸¹ *R v JLM*, 2016 ABPC 285 [JLM]; *R v BJ*, 2016 ONCJ 822 [BJ]; *R v Medeiros*, 2014 ONCA 602 [Medeiros]; *R v Cutcher*, 2016 ABQB 655 [Cutcher]; *R v RRGs*, 2014 BCPC 170 at para 9 [RRGs].

⁸² *BJ*, *supra* note 81; *KJM*, *supra* note 58; *AAG*, *supra* note 80.

⁸³ *KJM*, *supra* note 58; *AC*, *supra* note 80; *AAG*, *supra* note 80; *RAH*, *supra* note 79; *AE*, *supra* note 58; *GEW*, *supra* note 48; *R v MC*, 2016 ONSC 4124 [MC]; *R v RMS*, 2014 NSSC 139 [RMS].

⁸⁴ *IWS*, *supra* note 59; *GEW*, *supra* note 48; *LV*, *supra* note 64; *JLM*, *supra* note 81; *R v DRWH*, 2016 BCPC 27 [DRWH]; *R v OM*, 2014 ONCA 503 [OM]; *R v EGY*, 2014 SKQB 281 [EGY]; *R v JT*, 2015 NWTSC 26 [JT]; *R v TDF*, 2016 BCSC 984 [TDF]; *BJ*, *supra* note 81; *R v RO*, 2015 ONCA 814 [RO].

⁸⁵ *GEW*, *supra* note 48; *LV*, *supra* note 64; *R v HJB*, 2014 NLTD(G) 87 [HJB]; *R c RL*, 2016 QCCQ 7424 [RL].

⁸⁶ *DAD*, *supra* note 64; *RRI*, *supra* note 59; *R v CCP*, 2016 BCSC 520 [CCP]; *R v DB*, [2015] OJ No 1861, 120 WCB (2d) 619 [DB].

in other cases, fathers used their daughters' supposed promiscuity as an excuse to control and restrict them.⁸⁷ For example, in *R c MS*,⁸⁸ the accused was found guilty of sexually abusing the complainant beginning when she was 10 years old. Her father accused her brother, with whom she was very close, of looking at her inappropriately.⁸⁹ He physically attacked the brother and then refused to let the siblings speak to each other or spend time together, including requiring them to eat meals separately.⁹⁰ The sexual abuse of the daughter started at the same time as this forced estrangement from her closest sibling, and consisted of repeated acts of both masturbation and intercourse over the next seven years until she left home. During this time, the accused exerted extreme control over what the complainant wore, forbidding dresses or skirts as too revealing, and sweatpants as too easy to remove.⁹¹ She was not permitted to ride the school bus and was told to hide in her room if a man came to the house.⁹² He justified some of this behaviour under the guise of religion.⁹³

We were struck by how similar the behaviours in these cases were to the patterns of coercive control exhibited by male abusers in cases of domestic violence against their adult female partners. These men were asserting ownership over their daughters in the same way that abusive men assert ownership over their adult female partners, limiting their access to other people and exhibiting behaviours to control their sexuality and other aspects of their lives.⁹⁴ Sometimes men

⁸⁷ *R c JM*, 2014 QCCQ 14073; *JL*, *supra* note 65; *JV* and *PV*, *supra* note 46; *MC*, *supra* note 83; *R v EG*, 2016 ONSC 4884 [*EG*].

⁸⁸ *MS*, *supra* note 64 at paras 7-27.

⁸⁹ *Ibid* at para 9.

⁹⁰ *Ibid* at paras 9-10.

⁹¹ *Ibid* at para 25.

⁹² *Ibid* at para 26.

⁹³ *Ibid* at para 35.

⁹⁴ See e.g. Evan Stark, *Coercive Control: The Entrapment of Women in Personal Life* (New York: Oxford University Press, 2007) at 307-515. See also *MC*, *supra* note 83 at paras 5, 11, where the father tried to control his daughter by physically and sexually abusing her. He limited her access to friends and to the Internet and enrolled her in a private Islamic school for girls. In *KJM*, *supra* note 58 at para 7, the accused isolated the complainant from outside contact, removed her from school so she could be homeschooled, after which she “rarely left [...] unless she

went so far as to describe themselves as their daughters' "boyfriend", but usually these coercive patterns were demonstrated in the context of a clearly authoritarian father-daughter relationship. Just as in male intimate partner violence against women, these behaviours serve to heighten the fear, isolation and helplessness of these girls.⁹⁵

The Role of Pornography

While child pornography offences were charged in only a small minority of cases, pornography was used by some fathers in a number of interrelated ways to sexualize the home environment and to normalize their abusive behaviour. First, girls were sometimes encouraged to view pornography as an instruction manual for how to engage in sexual activity or in the hope of encouraging interest in sexual activity.⁹⁶ Second, in some cases, fathers also made pornography of their daughters, asking for nude photographs or making their own recordings.⁹⁷ For example, in *R v RRI*,⁹⁸ the accused had no contact with his daughter until age 12 or 13. When she began visiting him, he showed her pornography while exposing and touching himself. He gave her a vibrating dildo for her birthday, and both bribed and pressured her to send explicit photos of herself, ostensibly to other men but, in reality, to online accounts he controlled. He rationalized this behaviour as "virtue testing".⁹⁹ Third, in a few cases, the sexual abuse itself included behaviours

was accompanied by the offender." If she did have contact with age-appropriate males, the accused would call her "a slut," at para 8.

⁹⁵ Herman, *supra* note 14, described the similarities among the techniques used by perpetrators and the impact on victims in the contexts of intimate partner violence, child abuse, hostage-taking, and even concentration camps.

⁹⁶ *RJY*, *supra* note 64; *DAD*, *supra* note 64; *DB*, *supra* note 86; *JV* and *PV*, *supra* note 46; *RL*, *supra* note 85; *OB*, *supra* note 79.

⁹⁷ *LV*, *supra* note 64; *WHY*, *supra* note 59; *RRI*, *supra* note 59; *R v LVR*, 2014 BCCA 349; *R c LC*, 2015 QCCQ 4510; *R v TVD*, 2015 ONCJ 435 [TVD]; *R c MB*, 2014 QCCA 1643; *R c YM*, 2015 QCCQ 2708, *aff'd*, 2016 QCCA 555 [YM].

⁹⁸ *RRI*, *supra* note 59.

⁹⁹ *Ibid* at para 14

commonly seen in pornography, such as shaving pubic hair,¹⁰⁰ penetration with objects,¹⁰¹ and sex with animals.¹⁰²

Victim-Blaming

The ways in which adolescent girls can be socially constructed as sexual temptresses were visible in the ways that fathers rationalized the abuse. In many of these cases, fathers blamed the daughters for initiating the sexual activity or coming on to them.¹⁰³ These were clearly cognitive distortions based on the facts; we did not see any cases in which girls spontaneously initiated sexual activity with their fathers. In fact, in very few of these cases did the girls even acquiesce in the sexual activity without objection, and in most cases the accused had to use some combination of threats, pressure, coercion and/or physical force.¹⁰⁴ This included cases in which the accused hit, kicked or choked his daughter, and/or used violence toward other family members.¹⁰⁵ Girls were also pinned down or physically confined in some cases.¹⁰⁶ Some men persisted with these cognitive distortions even during sentencing.¹⁰⁷

For example, in *R v CG*,¹⁰⁸ the accused got a court order in Jamaica compelling his 16-year-old daughter to live with him in Ontario. He initially did not enroll her in school and stayed

¹⁰⁰ *DAD*, *supra* note 64 at para 15. See also *R v BJT*, 2015 ONSC 7293, rev'd in part, 2019 ONCA 694 [*BJT*]. The Court of Appeal in *BJT* held, at para 53, that the reasons of the trial judge did not demonstrate that he had addressed his mind to whether shaving the daughter's pubic hair was done for a sexual purpose.

¹⁰¹ *DAD*, *supra* note 64; *DB*, *supra* note 86; *AL*, *supra* note 80.

¹⁰² *JV and PV*, *supra* note 46; *DB*, *supra* note 86; *DLW*, *supra* note 80.

¹⁰³ *LV*, *supra* note 64; *CG*, *supra* note 59; *JV and PV*, *supra* note 46; *CCP*, *supra* note 86; *DLW*, *supra* note 80; *R v PGG*, 2014 ONCJ 369 [*PGG*]; *R v GRH*, 2016 BCPC 365 [*GRH*].

¹⁰⁴ In *DRWH*, *supra* note 84, the accused used bribes, threats and physical violence to carry out the sexual abuse against his daughter. He coerced his daughter into having sex with him in exchange for food, cigarettes, marijuana, treats, and the continued provision of shelter. See also: *RL*, *supra* note 85 at para 7, where the accused threatened to leave his daughter on a river bank during a canoeing trip if she continued to refuse his sexual advances.

¹⁰⁵ *DRWH*, *supra* note 84; *R v DV*, 2016 MBQB 121 [*DV*]; *R v JWH*, 2012 CanLII 44705 (ON SC), 104 WCB (2d) 690, aff'd 2015 ONCA 617 [*JWH*]; *R c ST*, 2015 QCCQ 5553 [*ST*]; *JV and PV*, *supra* note 46; *AAG*, *supra* note 80.

¹⁰⁶ *CG*, *supra* note 59; *MC*, *supra* note 83; *DRWH*, *supra* note 84; *AAG*, *supra* note 80.

¹⁰⁷ *CG*, *supra* note 59 at para 23; *GRH* *supra* note 103 at para 41; *CCP*, *supra* note 86 at paras 63-64; *DLW*, *supra* note 80 at para 10.

¹⁰⁸ *CG*, *supra* note 59.

home with her during the day while his wife was at work. He started the abuse by making the complainant put cream on his body. This soon progressed to intercourse during which he would pin down her arms and force her legs apart. The abuse continued for several years, and the complainant became pregnant twice. The children were placed for adoption. Despite DNA evidence of his paternity, the accused maintained that the children were not his and that the complainant was “loose” and a “bad girl”.¹⁰⁹ After the first child was born, the complainant told her aunt that her father was abusing her, but recanted when he threatened her that she would be left alone with no one to care for her.¹¹⁰ The accused’s warning was prophetic, as family members continued to support the accused and blame the complainant, leaving her without family supports at the time of trial. We saw many cases in which fathers warned girls that they would not be believed and would get in trouble, or that reporting these activities would destroy the family.¹¹¹

In many cases, defence counsel sought to undermine the complainant’s credibility by pointing to her bad behaviour in other contexts, such as skipping school or lying.¹¹² For example, in *R v SH*,¹¹³ the accused argued unsuccessfully that the complainant fabricated her abuse allegations to deflect attention from a shoplifting charge. In some cases, this type of evidence was relied on in acquitting the accused.¹¹⁴ In other cases, however, judges recognized that such behaviour is both common in adolescence and may even be the product of the abuse:

That KB had difficulties at school, had been acting out in one way or another, had been involved in drug use, perhaps sexual relationships with other girls, and generally that she had issues, is of no assistance here. It is not evidence of a propensity to fabricate sexual assault allegations, and is more likely to be evidence

¹⁰⁹ *Ibid* at para 12.

¹¹⁰ *Ibid* at para 13.

¹¹¹ *CCP*, *supra* note 86; *RJY*, *supra* note 64; *DRWH*, *supra* note 84; *AAG*, *supra* note 80; *ETK*, *supra* note 79; *YM*, *supra* note 97; *R c YS*, 2015 QCCQ 5100 [*YS*].

¹¹² *R v WEM*, 2013 ABQB 680, *aff’d* 2015 ABCA 7 [*WEM*]; *RO*, *supra* note 84; *JV and PV*, *supra* note 46; *R v MM*, 2016 ONSC 5027 [*MM*]; *R c PP*, 2016 QCCQ 4305 [*PP*]; *R v LM*, 2014 ONCJ 680 at para 145.

¹¹³ *SH*, *supra* note 58.

¹¹⁴ *R v GH*, 2016 NBPC 4 [*GH*]; *EG*, *supra* note 87; *MM*, *supra* note 112.

that she was subject to considerable stress such as, for example, long term sexual abuse. In the absence of expert evidence, however, I am not prepared to conclude that her acting out is evidence of anything except that she was a young teenager facing personal challenges.¹¹⁵

Consent

Before starting this study, we wondered if we might see cases in which the defence would try to rely on the complainant's apparent consent to her stepfather, given the lack of a biological connection. We knew of cases from the 1990s, when the age of consent was 14, where some appellate courts found that consent could exist in such circumstances.¹¹⁶ Since 2008, the *Criminal Code* has provided that a girl younger than 16 cannot consent to sex with an adult. In most of our cases involving fathers, the abuse began well before the complainant reached the age of consent. There were only a few cases where the defence made such arguments, either with older girls or to mitigate the sentence imposed.¹¹⁷ In *R v FOR*,¹¹⁸ the accused pled guilty to sexual exploitation of a young person in relation to the 17-year-old complainant. He had been in a relationship with her mother from the time the complainant was 8 years old until she was 12. During this time the accused and the complainant's mother had two children, half-siblings to the complainant. The accused kept in touch with the family, and ultimately engaged in an intimate relationship with

¹¹⁵ *R v DPH*, 2016 ABPC 262 at para 41. See also *R v WR* 2016 ONSC 1243 [*WR*] at para 91: "...this business about alleged prior discreditable conduct on the part of SS is...unmeritorious." In this case, the trial judge memorably stated at para 91: "Although they may prove that SS is not quite Laura on *Little House on the Prairie*, they hardly rise anywhere close to making her unworthy of belief or an unsavoury witness."

¹¹⁶ See e.g. *R v MLM*, 1992 NSCA 30, rev'd [1994] 2 SCR 3, [1994] SCJ No 34. See also *R v RHJ*, [1993] BCJ No 2438, 27 CR (4th) 40 (BC CA).

¹¹⁷ See e.g. *R v RTK*, 2014 ABCA 349 [*RTK*], where defence counsel argued in the sentencing appeal that the jury, which convicted a stepfather of sexual exploitation but acquitted him of sexual assault, may have found that the complainant agreed to sexual contact. The appellate court held that it was unhelpful to speculate on why the jury acquitted. The Court stated, at para 17: "[c]onsent is no defence to a charge of sexual exploitation, nor is it a reason to conclude the four-year starting point in sentencing should not apply upon conviction." The language of consent is troubling here given that the complainant was 15 years old when the abuse began. The Court of Appeal upheld the three-year sentence imposed by the trial judge.

¹¹⁸ *R v FOR*, 2016 BCPC 223 [*FOR*].

complainant for a few months beginning just prior to her 18th birthday.¹¹⁹ The accused was sentenced to 90 days intermittent incarceration plus probation, one of the most lenient sentences we saw in our study.

The Role of Mothers

The reaction of mothers who received reports of abuse was varied. We recognize that the extent to which judges comment on the complainant's mother in their reasons may itself be a product of deeply embedded beliefs about "good" and "bad" mothers. As Azzopardi, Allagia and Fallon note: "[n]onoffending mothers of children who have been sexually abused have implicitly and explicitly borne the burden of blame for the transgressions of predominantly male offenders in the professional and public discourse, both historical and contemporary."¹²⁰ Mothers are blamed for precipitating the abuse through their absence from their expected roles, and blamed for prolonging the abuse by taking the side of the abuser in an attempt to preserve their relationship. As these authors recognize, the factors that influence child sexual abuse, and mothers' roles in responding to that abuse, are complex and constructed in a context of gendered power:

While the nature of blame may have shifted over the years from claims of collusion and complicity to judgments of failure to protect, nonoffending mothers continue to be held accountable, ideologically and legally, for the violent actions of men and social obligations of the state. These unreasonable expectations fail to take into account cultural variations in mothering and the challenges of women's everyday lives, often characterized by limited social and material resources, intimate partner violence, conflicted loyalties, and the debilitating effects of trauma, not to mention highly effective perpetrator tactics to conceal crimes and silence victims.¹²¹

¹¹⁹ The facts of this case were not typical in that the sexual contact first occurred when the victim was 17 and several years after the stepfather and mother's relationship had ended. In almost all of the other cases the abuse started when the complainant was much younger and while the relationship between the parents was ongoing.

¹²⁰ Azzopardi, Allagia & Fallon, *supra* note 20 at 254.

¹²¹ *Ibid* at 261.

While there were certainly a number of cases where the mother of the complainant sided with her husband or male partner and asserted that the complainant's allegations were fabricated or overstated,¹²² we also saw cases in which mothers immediately called police and separated themselves and their children from the abuser.¹²³ In some cases, the mother confronted the father but then did not go to the police and instead took (sometimes futile) steps to protect her daughter, like putting a lock on the girl's bedroom.¹²⁴ There were still other cases where the complainant's mother was not present in her life due to addiction or illness, death, physical distance or other barriers,¹²⁵ or where the complainant had a particularly difficult relationship with her mother.¹²⁶ These girls disclosed the abuse to friends, teachers and other trusted adults. Overall, many girls went to extraordinary efforts to report the abuse against them.¹²⁷

While in some cases the abuse occurred when mothers were absent from the home due to work,¹²⁸ divorce or other reasons, in only a small minority of cases were the girls taking on the

¹²² See e.g. *R v JD*, 2015 ONCJ 683 at para 61, where even at sentencing the mother was "effusive" in praise of her husband and believed that her daughter concocted the story for revenge. In *R v IPW*, 2016 ONSC 5919 at para 5, the complainant's mother and her step-grandmother all sided with the accused stepfather at sentencing, portraying the complainant as a "scheming teenager intent of (sic) being able to leave the home." See also *R c GL*, 2015 QCCQ 4445 at para 33 [*GL QCCQ*]; *EG*, *supra* note 87 at para 4; *R v Akbari*, 2014 ONSC 5198 at paras 4-5 [*Akbarki*]; *RTK*, *supra* note 117 at para 5; *YS*, *supra* note 111 at para 23; *R v WGM*, 2015 MBQB 55 at para 10 [*WGM*]; *PGG*, *supra* note 103 para 7; *R c RE*, 2015 QCCQ 1181. In *R v NP*, 2014 ONSC 6793 at para 54, [*NP*] the mother confronted the accused, her boyfriend, after her daughter revealed the abuse, but did not go to the police because she was afraid that the Children's Aid Society would take her daughter away. The mother continued to date the accused for several months and encouraged her daughter to spend time with the accused "so that no one would think anything was wrong."

¹²³ See e.g. *LV*, *supra* note 64 at paras 13, 20, where after questioning her daughter and reading the diaries of her husband, the mother went to the police to report the sexual assaults. The mother testified that the accused behaved more like a jealous boyfriend than like a father to the complainant. See also *JL*, *supra* note 65 at para 56; *R v DD*, 2014 ONSC 5577 at para 23; *R v JJ*, 2014 ONCA 759; *WEM*, *supra* note 112.

¹²⁴ *RMS*, *supra* note 83 at para 6; *LV*, *supra* note 64 at para 95.

¹²⁵ *BJ*, *supra* note 81 at para 4; *CG*, *supra* note 59; *IWS*, *supra* note 59; *Medeiros*, *supra* note 81; *RTK*, *supra* note 117; *AAG*, *supra* note 80 at para 89.

¹²⁶ *R v RRDG*, 2014 NSSC 223 at para 52 [*RRDG*]; *TVD*, *supra* note 97 at para 61; *DV*, *supra* note 105 at para 10.

¹²⁷ See e.g. *RMS*, *supra* note 83 at paras 10-11, where the complainant went to her mother and her sister on more than one occasion, but the stepfather's denials resulted in them taking no steps as he described the abuse as massage therapy. The complainant ultimately escaped during a particularly violent assault, which included choking, and went to the police.

¹²⁸ *R v PEM*, 2014 ONSC 2565 [*PEM*]; *R v PDB*, 2014 NBQB 213 [*PDB*]; *R v GL*, 2015 ONSC 385 [*GL ONSC*]; *HJB*, *supra* note 85; *WR*, *supra* note 115.

main housekeeping or caregiving responsibilities. In a significant number of cases, the abuse started when the girl was very young and continued into adolescence, which is inconsistent with the “surrogate wife” construction of abuse favoured by some earlier researchers.¹²⁹

Some of the cases involved families who were poor or isolated, but there were also many cases of families whose situation appeared to be more affluent. The cases portrayed many dysfunctional and chaotic households,¹³⁰ but also many that appeared to be quite ordinary, in which the adults did not suffer from any addictions, there was adequate and stable housing, as well as employment providing sufficient income for family vacations and extra-curricular activities.¹³¹

We note that there were also three cases in our sample, involving four girls, in which biological mothers were convicted of sexual offences against their teenage daughters.¹³² These cases were among the most serious in our sample in that they involved prolonged and repeated sexual and physical abuse and neglect. In all of these cases, the abuse was carried out along with a male spouse. In two of the cases, there was evidence that the father was physically violent to the mother and he was clearly the main perpetrator of the sexual abuse, although the mothers also participated in sexual activity on at least one occasion and at other times facilitated the fathers’ sexual access or tried to intimidate the girls into keeping silent.¹³³ In neither case, however, did the defence argue that the mother was threatened to such an extent that she should be entitled to a defence of duress. In the third case, the mother was described as the instigator of the sexual abuse,

¹²⁹ See e.g. Cohen, *supra* note 35 at 156-157; Linda Gordon, “Incest and Resistance: Patterns of Father-Daughter Incest, 1880-1930” (1986) 33:4 *Social Problems* 253 at 255.

¹³⁰ *AAG*, *supra* note 80; *AC*, *supra* note 80; *JV and PV*, *supra* note 46; *R v CPP*, 2016 BCSC 520 [*CPP*].

¹³¹ *R v WJ*, 2015 ONSC 266 [*WJ*]; *AL*, *supra* note 80; *WEM*, *supra* note 112; *PGG*, *supra* note 103; *PP*, *supra* note 112; *R v DI*, 2014 NSSC 323 [*DI*].

¹³² *JAVC and DAC*, *supra* note 46 (mother and father together); *KH*, *supra* note 46 (mother charged alone); *JV and PV*, *supra* note 46 (mother and father together; two girl complainants). There were no cases in which accused mothers were acquitted.

¹³³ *JV and PV*, *supra* note 46; *JAVC and DAC*, *supra* note 46.

and had sought out a male partner with similar inclinations.¹³⁴ The devastating impact of these cases for the girls involved is obvious with the complainant losing both her parents and having to deal with the impact of their betrayal without any parental support.¹³⁵

Girls in Care

Our cases included seven girls alleging sexual abuse by a foster father in a total of six cases.¹³⁶ Some of these cases involve the abuse of other biological or stepchildren along with the foster daughter.¹³⁷ The foster father cases were particularly tragic cases with some girls who had been sexually assaulted in multiple homes by different foster fathers.¹³⁸ All but one of these cases¹³⁹ were historical prosecutions, demonstrating how difficult it is for these girls to come forward or to have their stories believed when they do.

The complainants in the foster father cases showed remarkable courage in trying to get some adult to listen to what was happening. Some of these girls did try to tell someone about the sexual assaults by a foster father, but nothing was done. In *R v HS*,¹⁴⁰ for example, the complainant, who was 15 years old at the time of the sexual offences against her, had lived in 22 homes, many of which had been abusive, prior to being placed in the home of the accused.¹⁴¹ She testified that she had felt “[the accused’s] home provided the stability that she had been so wanting from her

¹³⁴ *KH*, *supra* note 46. In this case, the mother seems to have been an enthusiastic participant in extreme acts of sexual abuse against her son and two daughters, including making pornography of these acts, and apparently sought out a male partner who would also be interested in these activities. This case attracted one of the highest sentences in our sample (appeal from sentence of 9 years dismissed).

¹³⁵ *Ibid.*

¹³⁶ *R v HS*, 2013 ONSC 1825 [*HS*], appeal from sentence allowed, 2014 ONCA 323; *R v AFJ*, 2014 YKTC 60 [*AFJ*]; *R v CAS*, 2015 BCPC 241 [*CAS*]; *R v Dedam*, 2016 NBQB 223 [*Dedam*]; *R v HP*, 2015 ONSC 2104 [*HP*]; *R v CJC*, 2016 OMSC 1768 [*CJC*].

¹³⁷ There were two cases in which a foster father also sexually abused his biological daughter or stepdaughter: *CAS*, *supra* note 136; *HP*, *supra* note 136.

¹³⁸ *HS*, *supra* note 136; *AFJ*, *supra* note 136; *CAS*, *supra* note 136; *Dedam*, *supra* note 136; *HP*, *supra* note 136.

¹³⁹ *HP*, *supra* note 136.

¹⁴⁰ *HS*, *supra* note 136.

¹⁴¹ *Ibid* at para 4.

previous homes.”¹⁴² However, shortly into her time there, the accused began having unprotected sexual intercourse with her. She became pregnant and was removed from the home and placed in a home for unwed mothers by the Catholic Children’s Aid Society. She testified that she went to the Society’s social workers for help and was called a liar.¹⁴³ These events were not reported to the police at that time. The accused had known the complainant was pregnant when she was removed from his home, and clearly knew he had had unprotected sex with her on more than one occasion, but testified that he did not know he was the biological father of her child until 35 years later when the complainant notified police and a DNA test was performed. There were other cases where girls testified to having made reports earlier which were not acted on and ultimately using DNA tests on a child to convict a foster father in a historical prosecution.¹⁴⁴

In a study of sexual abuse against children and youth in care in British Columbia, the BC Representative for Children and Youth, Mary Ellen Turpel-Lafond, found that there was a lower standard for Ministry investigations of sexual violence when children and youth were in care than when they were not.¹⁴⁵ Turpel-Lafond also found that Indigenous girls were significantly overrepresented in the population of girls subjected to sexual abuse while Indigenous boys were not.¹⁴⁶ Sadly, our study supports this finding that our most vulnerable girls are having the most difficult time getting their allegations of sexual assault taken seriously.

¹⁴² *Ibid* at para 6.

¹⁴³ *Ibid* at para 35.

¹⁴⁴ See e.g. *AFJ*, *supra* note 136, where the accused sexually abused his foster daughter while she was in his care from 1975-1976 and she became pregnant but gave birth after she had moved back in with her biological mother. She allegedly reported the assault in 1990 but the police found no record supporting this. She contacted the police again in 2012, which led to the DNA test establishing the accused as her daughter’s father, and then leading to the charges against him.

¹⁴⁵ British Columbia, Representative for Children and Youth, *Too Many Victims: Sexualized Violence in the Lives of Children and Youth in Care* by Mary Ellen Turpel-Lafond (Victoria: Representative for Children and Youth, October 2016) at 36 [Turpel-Lafond].

¹⁴⁶ *Ibid* at 12.

Effects of the Abuse on Victims

Consistent with the literature, sexual abuse by a father had a particularly devastating impact on the girls in our study.¹⁴⁷ Girls reported an inability to develop trusting relationships with other adults¹⁴⁸ and profound impacts on every aspect of their lives. The abuse affected their school performance,¹⁴⁹ interest in extracurricular activities,¹⁵⁰ and their self-image and sense of self-worth.¹⁵¹ Some girls expressed guilt, blaming themselves for what happened to the accused or their families as a result of reporting.¹⁵² Others engaged in self-harming behaviours such as cutting themselves¹⁵³ or overeating in an attempt to make themselves unattractive.¹⁵⁴

There were 19 pregnancies arising out of the sexual abuse in our study, across 625 complainants. Nine of these pregnancies were the result of abuse by a father. These girls had to either terminate the pregnancy,¹⁵⁵ give birth and place the child for adoption,¹⁵⁶ or raise the child themselves,¹⁵⁷ with each option leading to distinct and serious harms.

¹⁴⁷ See e.g. Lori Haskell, *First Stage Trauma Treatment: A Guide for Mental Health Professionals Working with Women* (Canada: Centre for Addiction and Mental Health, 2003). See also Pullman et al, *supra* note 15 at 228-229.

¹⁴⁸ *MC*, *supra* note 83 at para 14; *CG*, *supra* note 59 at para 30; *JT*, *supra* note 84 at para 13; *Law*, *supra* note 59 at para 94; *RMS*, *supra* note 83 at para 34.

¹⁴⁹ *RMS*, *supra* note 83 at para 34; *TVD*, *supra* note 97 at para 17; *YM*, *supra* note 97 at paras 20, 23; *R v DP*, 2014 ONSC 386 at para 17 [*DP*]; *R v GB*, 2016 ONSC 3146 at paras 27-28 [*GB*].

¹⁵⁰ *Akbari*, *supra* note 122 at para 18;

¹⁵¹ *DB*, *supra* note 86; *Law*, *supra* note 59 at para 94; *DP*, *supra* note 149 at para 17; *DLW*, *supra* note 80 at paras 15-17; *HJB*, *supra* note 85 at para 30; *RRGS*, *supra* note 81; *R v JM*, 2016 ONSC 5139 at para 32 [*JM*].

¹⁵² *R v SN*, 2015 NUCJ 25 at paras 7, 19; *R v SAH*, 2017 ONSC 51 at para 14 [*SAH*].

¹⁵³ *DRWH*, *supra* note 84; *CCP*, *supra* note 86 at para 20; *HJB*, *supra* note 85 at para 30; *R v GKN*, 2014 NSSC 150 [*GKN*]; *DLW*, *supra* note 80; *SAH*, *supra* note 152 at para 14; *YM*, *supra* note 97 at para 22.

¹⁵⁴ *DB*, *supra* note 86 at para 9, where the complainant testified that she thought her father abused her because she was too attractive, so she began to overeat to make herself less attractive. Others reported an eating disorder in response to the sexual abuse: *DLW*, *supra* note 80 at para 16.

¹⁵⁵ *AL* (Ont Ct J), *supra* note 50; *Cutcher*, *supra* note 81; *LD*, *supra* note 64; *R v TJO*, 2015 MBQB 143 [*TJO*].

¹⁵⁶ *CG*, *supra* note 59; *R v Long*, 2014 ONSC 38 [*Long*].

¹⁵⁷ *AFJ*, *supra* note 136; *HS*, *supra* note 136.

Some girls were removed from their family home by child protection authorities,¹⁵⁸ while others had to leave their family home.¹⁵⁹ Some were on medications to deal with the impact of the abuse;¹⁶⁰ others struggled with drug and/or alcohol addiction.¹⁶¹ In a few cases, girls attempted suicide.¹⁶² Consistently, these girls speak of a lost childhood and an inability to trust.¹⁶³ Where prosecutions involve complainants who are still teenagers at the time of sentencing, the full extent of this harm may not yet be evident. We know, for example, that girls who are sexually abused in childhood are at higher risk of sexual assault as adult women.¹⁶⁴ The historical cases also demonstrate the potentially lifelong trauma these complainants experience.¹⁶⁵ The following excerpt from a victim impact statement poignantly articulates the harm to one Indigenous girl who, 18 years old at the time of sentencing, described her abuse as beginning at the age of six while she was sleeping. While this is just one girl's story, it is typical of the types of harm described by these girls:

For as long back as I remember I have been afraid. As a young child I was always afraid with my dad and I was afraid when I wasn't with him because I knew I would be forced to be with him again. His abuse of me was so normalized for me that I was afraid of other adults.

I remember the wait for him to pick us up, the long drive to his house, and assaults that accompanied all interaction during those long visits. There were no hugs or cuddles or childhood games like hide and seek that were not perverted by him. He robbed me not only of a childhood but of ever knowing what a

¹⁵⁸ *R v RJB*, 2016 BCCA 428 at para 19 [*RJB*]; *JAVC and DAC*, *supra* note 46 at para 11; *CCP*, *supra* note 86 at paras 19-20; *Long*, *supra* note 156 at para 6; *GKN*, *supra* note 153 at para 18.

¹⁵⁹ *PP*, *supra* note 112; *RMS*, *supra* note 83; *GH*, *supra* note 114; *SAH* *supra* note 152; *R v PK*, 2016 NLTD(G) 33.

¹⁶⁰ *DB*, *supra* note 86 at para 11; *GEW*, *supra* note 48 at para 17; *GKN*, *supra* note 153; *DLW*, *supra* note 80, *YM*, *supra* note 97 at para 19.

¹⁶¹ *GL QCCQ*, *supra* note 122 at para 15; *GKN*, *supra* note 153; *DP*, *supra* note 149 at para 17; *DLW*, *supra* note 80 at para 17; *JT*, *supra* note 84 at paras 11-12.

¹⁶² *JV and PV*, *supra* note 46; *JT*, *supra* note 84 at para 11; *MS*, *supra* note 64 at para 31; *SAH*, *supra* note 152 at para 14; *R v PC*, 2014 QCCQ 2270; *GL QCCQ*, *supra* note 122 at para 15; *HJB*, *supra* note 85 at para 30; *PGG*, *supra* note 103 at para 16.

¹⁶³ *DB*, *supra* note 86; *GEW*, *supra* note 48; *HJB*, *supra* note 85 at para 30; *Long*, *supra* note 156 at para 22; *TVD*, *supra* note 97 at para 18.

¹⁶⁴ Lori Haskell, *Revictimization in Women's Lives: An Empirical and Theoretical Account of the Links Between Child Sexual Abuse and Repeated Sexual Violence* (Doctor of Education, University of Toronto, 1999).

¹⁶⁵ *DB*, *supra* note 86; *GEW*, *supra* note 48.

childhood should be. As a little girl I had to concern myself with strategies to keep safe like staying awake all night and when I just couldn't manage that anymore, attempting to block his access to me by barricading the bedroom door with whatever furniture I was strong enough to move.

As I grew up I came to recognize that his power was so great that others either could not or would not stop him from hurting me; despite my child like pleas for help (acting out) ...no one ever rescued me and he just kept on hurting me.

As an adolescent this fear and shame was recognized as anger and rebellion and my instinct to survive and lack of understanding about the consequences of this horrible breach of trust led to me surviving by self-destruction. When other young girls were planning for first love, first dates, first jobs, I was entrapped in self-harm, and substance use. I was not successful in school because I was dealing with not only the abuse itself but also the confusion and fear and shame of being repeatedly hurt by the very person who was supposed to protect and honour me. I had no sense of my right to boundaries and had grown accustomed to being misused, abused, and hurt.

I do not know who I might have been or should be; I continue to have flashbacks and nightmares; I struggle with low self-esteem and high self-doubt. My family has been divided by the process of holding my dad accountable for the damage he caused which has added another level of pain and loss for me. Despite my counseling I continue to struggle with these effects daily in nearly every area of my life and I have no idea if and when I will ever fully recover.¹⁶⁶

The harm to the complainant can have a ripple effect throughout the entire family. Some victim impact statements from mothers indicated their sense of betrayal and their guilt about not having been able to protect their daughters or the degree to which their relationship with their daughter had subsequently suffered.¹⁶⁷ Other siblings have their lives disrupted by the shattering of their families as a result of the abuse of their sister.¹⁶⁸

The Judicial Response: Barriers to Conviction

¹⁶⁶ *GEW*, *supra* note 48 at para 17.

¹⁶⁷ *DB*, *supra* note 86; *DLW*, *supra* note 80; *DP*, *supra* note 149 at para 17; *RMS*, *supra* note 83 at para 34; *GB*, *supra* note 149 at para 29; *AC*, *supra* note 80 at para 53; *RJY*, *supra* note 64 at para 56; *R v MSJ*, 2015 NWTSC 43 at paras 27-28 [*MSJ*].

¹⁶⁸ *CCP*, *supra* note 86 at para 20; *DLW*, *supra* note 80 at para 14; *R v SN*, 2015 NUCJ 25 at paras 5-6. In *SAH*, *supra* note 152 at para 14, the complainant describes in her victim impact statement how her little brothers blame her that they cannot grow up with their father.

A majority of the cases in our sample were convictions and, as will be discussed below, many attracted serious sentences. It is also true that acquittals were not rare and, in stepfather cases, amounted to nearly one-third of cases that went to trial. Overall, excluding sentencing cases, stepfathers were somewhat more likely to be acquitted than biological fathers (31 percent of stepfathers versus 23 percent of biological fathers) but we do not have enough information to evaluate whether and why this gap might be significant. There were also fewer guilty pleas among the stepfather cases (27 percent) than in those involving biological fathers (33 percent).

If we look at just those cases in our sample where fathers were acquitted, we can make a number of observations. First, in general, the allegations and the patterns of abuse reported in these cases were similar to those in the conviction cases. Having said that, some of these acquittals involved less serious allegations, with the acquittal cases less likely to involve vaginal or anal intercourse than the conviction cases. Second, we saw a range of arguments being deployed to undermine the complainant's credibility. In addition to relying on evidence showing the complainant was a "bad girl", defence counsel argued that complainants were being pressured by mothers who sought advantage in family law proceedings or other forms of revenge;¹⁶⁹ that they were troubled girls who had been already damaged or exploited by other men;¹⁷⁰ or that they held animosity toward the accused for reasons other than sexual abuse.¹⁷¹ In one case, for example, the defence alleged that the complainant falsely disclosed the sexual assault to her mother because her mother was yelling at her for losing her iPod.¹⁷²

¹⁶⁹ *MM*, *supra* note 112; *R v NTT*, 2015 ONSC 1386 at paras 105-11 [*NTT*].

¹⁷⁰ *RG*, *supra* note 58.

¹⁷¹ *NP*, *supra* note 122; *WJ*, *supra* note 131; *R v MWS*, 2015 MBQB 192 [*MWS*]; *GH*, *supra* note 114; *R v JN*, 2015 NUCJ 29 at para 20 [*JN*].

¹⁷² *MM*, *supra* note 112 at para 17.

Third, we observed a blurring of reliability and credibility in some of these cases. Credibility refers to an assessment of the honesty of the witness whereas reliability goes to the accuracy of her testimony. A judge may, for example, believe that a witness is telling the truth (credibility) but her testimony may be found to be inaccurate nonetheless (reliability). In this group of cases, girls were not often explicitly disbelieved or called liars. In fact, in the acquittal cases, judges often made reference at the end of their decisions to the possibility that the allegations could be true but that reasonable doubt required an acquittal.¹⁷³ Yet it was the small inconsistencies in the complainant's testimony, usually unrelated to whether the sexual activity actually happened, that led judges to conclude that on a *W.(D.)*¹⁷⁴ analysis, the evidence was not sufficiently reliable to prove the offence beyond a reasonable doubt. In many cases, we found that judges were explicitly relying on concerns about reliability but that the underlying concern was that they did not believe the complainant that the sexual abuse happened.

It is easier to see the way that myths and stereotypes about girls and women can be deployed when a teenage complainant's credibility is attacked, in that she is being accused of "crying rape." Unreliability is a more elusive concept and the potential for discriminatory reasoning is more difficult to dismantle. Yet reliability assessments are also vulnerable to stereotypical assumptions about how we expect girls to recall and recount private and traumatic events, often years after they took place. Judges are not immune from the effects of cycles of suppression and may simply be reluctant to believe that otherwise normal and respectable men

¹⁷³ See e.g. *MM*, *supra* note 112; *NTT*, *supra* note 169 at para 165; *WGM*, *supra* note 122; *R v PDW*, 2015 BCSC 660.

¹⁷⁴ *R v DW*, [1991] 1 SCR 742, 12 WCB (2d) 551.

could engage in such acts. While judges focused on inconsistencies in testimony, there was a strong undercurrent, although rarely explicit, that these girls were fabricating their stories.¹⁷⁵

In *R v PDB*,¹⁷⁶ for example, the complainant disclosed more than once that her stepfather, who had adopted her, repeatedly came into her room at night starting around age 12, undid her nightdress, and sometimes touched her breasts. He testified that he just came in to turn out her nightlight. The daughter, testifying when she was 28 years old, had given inconsistent accounts of whether she opened her eyes during the first incident or only afterwards when the father was leaving the room. There were also inconsistencies about whether her mother, who travelled often, was away during the first incident. These small inconsistencies, which were described in terms of reliability, were really about whether the judge believed the complainant that the sexual abuse happened. In general, where girls were asserting sexual abuse over an extended period of time it was often difficult to remember precisely when the abuse began, exactly how old they were or where they were living at the time.¹⁷⁷ These inconsistencies played a prominent role in the acquittals.¹⁷⁸ In one case, for example, the complainant incorrectly stated at the preliminary hearing that her father was circumcised but later admitted that this testimony had been a guess because she did not know what the word “circumcised” meant.¹⁷⁹

¹⁷⁵ For such an exceptional case, see *GH*, *supra* note 114. This blurring of credibility and reliability in the sexual assault context may be raised before the Supreme Court of Canada in the appeal from the Ontario Court of Appeal decision in *R v Slatter*, 2019 ONCA 807, a sexual assault case, not involving a father, dealing with a young woman with an intellectual disability. The accused had denied the sex took place and did not argue consent. The trial judge in this case believed the complainant and convicted the accused. A majority of the Court of Appeal overturned the conviction on the basis that the trial judge did not adequately address the reliability of the complainant given her apparent high level of “suggestibility”. The only way in which this was truly a finding about reliability, and not credibility, was if the complainant actually believed she had had sex multiple times with the accused but that she was mistaken in that belief.

¹⁷⁶ *PDB*, *supra* note 128.

¹⁷⁷ *WJ*, *supra* note 131; *NTT*, *supra* note 169.

¹⁷⁸ *HP*, *supra* note 136.

¹⁷⁹ *MWS*, *supra* note 171.

Some of the cases in which reasonable doubt favoured the accused did not take much to create that doubt. For example, in *R v RSW*,¹⁸⁰ the father was charged with physically abusing his daughter and his son and with sexually abusing the daughter. The judge accepted the testimony of the complainants on the assault charges, which the father admitted but argued unsuccessfully were within the bounds of justifiable discipline. He was acquitted on the sexual assault counts because he had denied sexual abuse consistently since he was interviewed by police. The accounts of abuse by the daughter were detailed and consistent with patterns we saw other cases. The mere consistency of the father's denials was enough to raise a reasonable doubt.

In other cases, the fact that the girl continued to have a relationship with the father and to spend time with him influenced the judge's assessment of her evidence.¹⁸¹ For example, in *R v HP*,¹⁸² the complainant had the opportunity to move out of the house in which her allegedly abusive stepfather lived with her mother to go and live with her biological father, but chose not to. The trial judge concluded that this decision did not "make any sense" and "defied reason."¹⁸³ Instead, the trial judge believed the brother who indicated that, while the two complainants had reported the abuse to him repeatedly, he had not believed them.

Sometimes the defence also relied on a lack of opportunity to commit the offence on the part of the accused, although such arguments were rarely successful on their own.¹⁸⁴ In other cases, the judge disbelieved that the accused would take the risk described by the complainant. For

¹⁸⁰ *RSW*, *supra* note 64.

¹⁸¹ *GL ONSC*, *supra* note 128 at para 69; *HP*, *supra* note 136 at para 70. See also *NP*, *supra* note 122 at para 80, where the court reasoned that the fact that the mother maintained a relationship with the accused after her daughter disclosed the abuse meant that she probably disbelieved her daughter: "Ms. I.'s behavior in continuing her relationship with Mr. P. and permitting him to stay with her in the home she shared with V. is more consistent with a mother who did not in fact believe what V. told her or that no complaint was even made by V. of an assault."

¹⁸² *HP*, *supra* note 136 at para 70.

¹⁸³ *Ibid* at para 71.

¹⁸⁴ *DI*, *supra* note 131; *NTT*, *supra* note 169; *AL*, *supra* note 80.

example, in *R v GH*,¹⁸⁵ the trial judge doubted that the accused would engage in such conduct while the complainant's mother was awake in the room next door. In a very small number of cases where there was only a single allegation of abuse, judges found a reasonable doubt as to whether the actions of the accused had been misinterpreted or the touching was accidental.¹⁸⁶

While there were a few cases where the evidence was simply not sufficient to rise to proof beyond a reasonable doubt,¹⁸⁷ overall, we found many of the acquittal cases troubling. The stories reported by these girls at a very young age were remarkably consistent with the stories in the conviction cases. These girls often had very little to gain and so much to lose from coming forward. Girls have a heavy burden to meet when fathers consistently deny the abuse and there are no corroborating witnesses; the testimony of a teenager or young adult, sometimes years after the fact, describing events she may not fully have understood or processed as a child, may fare poorly up against a consistent denial from her father who is entitled to the benefit of any doubt. Even where a mother is eventually supportive of her daughter's allegations, convictions were not inevitable. In *R v WGM*,¹⁸⁸ for example, the complainant had disclosed the alleged sexual abuse by her stepfather twice to her mother, to a family friend and years later to her fiancé, all before going to the police. The mother eventually corroborated some of her evidence and testified that, on one occasion, the accused had admitted the abuse to her. Nonetheless, while the trial judge did not explicitly disbelieve the complainant, there were inconsistencies between the mother and the daughter's

¹⁸⁵ *GH*, *supra* note 114 at para 106.

¹⁸⁶ See e.g. *R v JP*, 2015 ABPC 186, where the father alleged that the one incident of sexual touching resulted from him mistaking his daughter for his wife in his bed. See also *JN*, *supra* note 171 at para 22.

¹⁸⁷ *GH*, *supra* note 114.

¹⁸⁸ *WGM*, *supra* note 122.

testimony and the daughter had continued her relationship with her stepfather. The possibility of fabrication, while rarely explicit, is never far from the surface in the reasoning.¹⁸⁹

Finally, we saw little in these cases to suggest that judges understand the impact of profound and repeated trauma on the ability of these girls to remember and report details surrounding sexual abuse and, in particular, details that may be extraneous to the abuse itself. Research suggests that those who go through a traumatic event may have heightened memory for the most traumatic aspects of the assault, often at the beginning of the assault – what have been referred to as “flashbulb memories” – while memories of contextual details surrounding the circumstances of the assault are often fragmented.¹⁹⁰

When the hippocampus is in this fragmented mode, it encodes (converts) fragments of sensory memory without contextual details. As a result, a sexual assault victim might not recall the layout of the room where the rape happened. The hippocampus might not encode time sequencing information because its functioning is altered during a traumatic event.¹⁹¹

As Haskell and Randall explain: “few peripheral details, little or no context or time-sequence information, and no words or narrative surrounding the memory may be recalled.”¹⁹² One can anticipate the distortions in memory when the trauma is repeated against a young child. Which house was the girl living in, was her mother home at the time, what day of the week was it, exactly when did she close her eyes? The impact on memory of repeated trauma and the passage of time

¹⁸⁹ *Ibid* at paras 70-73. See also *NP*, *supra* note 122, where the complainant disclosed the sexual assault to her mother, who believed her daughter, but did not go to the police because she was afraid that the Children’s Aid Society would take her daughter away. The mother’s evidence corroborated some of her daughter’s testimony, but the court relied on some inconsistencies to acquit the accused. The court, at para 79, described the mother’s actions following her daughter’s disclosure as “nonsensical and incredible.”

¹⁹⁰ Department of Justice Canada, *The Impact of Trauma on Adult Sexual Assault Victims*, by Lori Haskell and Melanie Randall (Ottawa: Department of Justice Canada, 2019) available online at: < http://publications.gc.ca/collections/collection_2019/jus/J4-92-2019-eng.pdf>.

¹⁹¹ *Ibid* at 21

¹⁹² *Ibid*.

may blur the incidents together and peripheral details may be lost. Yet it is these gaps in memory that defence counsel focus on to undermine the credibility of the complainant and to create reasonable doubt in the minds of judges. We are not suggesting that judges should not acquit where they have a reasonable doubt as to the accused's guilt. Rather, we are suggesting care before basing a reasonable doubt on "common sense" about the impact of trauma or how a "real" sexual assault complainant would behave, in light of the demonstrated risk of discriminatory reasoning.

Sentencing Fathers Who Sexually Assault Their Teenage Daughters

The sentencing decisions are particularly revealing because they go into more detail about the harm to the victim as well as the perpetrator's background and criminal history. As we reported in our earlier paper, where fathers were convicted, most of these crimes were being taken seriously, with only a very small number of cases receiving noncustodial sentences and the majority being sentenced to penitentiary time.¹⁹³

We recognize that it is difficult to compare sentences in cases across jurisdictions with a wide range and number of charges, sometimes involving multiple victims. Crown charging practices in these cases varied considerably, sometimes involving multiple counts for one complainant and, on other occasions, a smaller number of counts even though the abuse took place over a number of years. Most judges sentence an accused by count but occasionally a judge will sentence globally.¹⁹⁴ Thus, where we do provide numbers, we do so only to demonstrate comparisons or to provide examples and the numbers should be considered with these limitations in mind. All sentences are presented prior to the calculation of credit for pretrial custody and,

¹⁹³ Grant & Benedet, *supra* note 4 at 289-290.

¹⁹⁴ *R v JW*, 2014 ONSC 4606 [*JW*].

where an accused had a different relationship to different complainants, we have used the most serious sentence imposed to calculate averages.

There are a number of provisions in the *Criminal Code* that make clear that these offences are particularly serious. Section 718.01 requires that, when sentencing an individual for a crime committed against a person under the age of 18, a judge must give primary consideration to denunciation and deterrence in imposing that sentence over other purposes of sentencing such as rehabilitation.¹⁹⁵ Section 718.2(a) has a number of mandatory aggravating factors that will apply to sentencing in these cases such as the fact that the complainant was under 18,¹⁹⁶ the breach of trust,¹⁹⁷ and the harm to the victim.¹⁹⁸

Sentencing information was available for 298 offenders convicted of sex crimes against adolescent girls in our study. Eighty-eight (30 percent) of these cases involved fathers, with two (0.7 percent) sentencing cases also including mothers as co-offenders.¹⁹⁹ Where we refer to average sentence length, we included only the 83 cases where a determinate period of incarceration was imposed and do not include noncustodial sentences, which were rare, especially for biological fathers, or indeterminate sentences as a dangerous offender. Within the family, we found that mothers received the harshest sentences (on average 78 months) but because this included only two cases, no conclusions can be drawn from this observation. The average sentence for biological fathers and stepfathers were very close, with biological fathers averaging 57 months (32 cases)

¹⁹⁵ *Criminal Code*, RSC 1985, c C-46, s 718.01.

¹⁹⁶ *Ibid*, s 718.2(a)(ii.1).

¹⁹⁷ *Ibid*, s 718.2(a)(iii).

¹⁹⁸ *Ibid*, s 718.2(a)(iii.1).

¹⁹⁹ See Table 10 in Grant & Benedet, *supra* note 4 at 290. This table does not include the two indeterminate sentences or the three CSOs imposed on fathers.

and stepfathers 56 months (47 cases).²⁰⁰ By way of comparison, other family members, which included brothers, uncles and grandfathers, received on average 40 months. The only group in our study that received harsher sentences than fathers overall, aside from the two mothers, were strangers to the victim, who received on average 74 months. The considerations judges weighed in reaching those sentences were overwhelmingly similar among different types of father relationships. Given this fact, we will discuss these categories together, acknowledging differences where they exist.²⁰¹

We note that, during much of the period under study in this article, conditional sentence orders (CSOs) were not available for most of the relevant offences, either because they were explicitly excluded by statute²⁰² or because the presence of a mandatory minimum sentence precluded them. Given that many mandatory minimums for child sexual offences have now been struck down as unconstitutional,²⁰³ and a constitutional challenge to limits on CSOs is working its

²⁰⁰ Part of this difference could be attributable to the fact that stepfathers cannot be charged with incest, a crime with a five-year mandatory minimum sentence. Six of the fathers in our sentencing cases were convicted of incest: *GEW*, *supra* note 48; *CCP*, *supra* note 86; *WHY*, *supra* note 59; *CG*, *supra* note 59; *RM*, *supra* note 66; *MC*, *supra* note 83.

²⁰¹ We also had sentencing information for two adoptive fathers that we included in this category.

²⁰² Section 742.1(f)(iii) explicitly excludes CSOs for sexual assault. This provision was enacted in 2012 although sexual assault was also excluded under the regime between 2007-2012. Until recently, offences that took place prior to 2007 would get the benefit of a CSO even if the offence took place before CSOs were introduced in 1996. The Supreme Court of Canada has now held that s. 11(i), which guarantees an offender the benefit of the lesser punishment where that punishment changes between the commission of the offence and sentencing, is a binary right which compares the available sentence at the date of the offence with that at the date of sentencing and not the entire period in between. See *R v Poulin*, 2019 SCC 47.

²⁰³ For example, the one year mandatory minimum sentence for sexual interference when the Crown proceeds by indictment in s. 151(a) has been struck down by appellate courts in British Columbia (*R v Scofield*, 2019 BCCA 3), Alberta (*R v Ford*, 2019 ABCA 87), Manitoba (*R v JED*, 2018 MBCA 123), Nova Scotia (*R v Hood*, 2018 NSCA 18 [*Hood*]), and Quebec (*Caron Barrette c R*, 2018 QCCA 516). Appellate courts have disagreed on the one-year mandatory minimum for sexual exploitation in s. 153(1.1)(a). The Nova Scotia Court of Appeal found it unconstitutional in *Hood* but the Alberta Court of Appeal upheld the mandatory minimum in *R v EJB*, 2018 ABCA 239, leave to appeal to the SCC denied. Although unlikely to apply to a father, the Ontario Court of Appeal has recently upheld the mandatory minimum for child luring in *R v Cowell*, 2019 ONCA 972.

way through the Ontario courts,²⁰⁴ it is possible that we will see a resurgence in community-based sentencing in the future.

Sentencing Outcomes

A number of aggravating factors are clear from the cases on sentencing fathers. Sexual abuse that continued over an extended period of time,²⁰⁵ that started at a particularly young age,²⁰⁶ that involved multiple victims,²⁰⁷ that included grooming activities,²⁰⁸ that included intercourse,²⁰⁹ that was accompanied by additional violence or threats of violence to ensure

²⁰⁴ *R v Sharma*, 2018 ONSC 1141. At the time of writing, this case has been heard by the Ontario Court of Appeal and is under reserve.

²⁰⁵ *CAS*, *supra* note 136; *FL*, *supra* note 58; *MSJ*, *supra* note 167; *DLW*, *supra* note 80; *BJ*, *supra* note 81; *YM*, *supra* note 97; *R v AEB*, 2016 BCPC 100 [AEB]; *R v WV*, 2016 ONSC 7661 [WV]; *R c LF*, 2014 QCCQ 9890 [LF].

²⁰⁶ *RJY*, *supra* note 64; *CAS*, *supra* note 136; *FL*, *supra* note 58; *WV*, *supra* note 205; *BJ*, *supra* note 81; *LF*, *supra* note 205; *TJO*, *supra* note 155; *RL*, *supra* note 85.

²⁰⁷ *JT*, *supra* note 84; *R v JRAC*, 2014 BCSC 2163; *HJB*, *supra* note 85; *CAS*, *supra* note 136; *GB*, *supra* note 149 at para 34; *LF*, *supra* note 205. Courts were not entirely consistent about whether multiple victims demanded consecutive sentences and this was further muddled by the fact that some judges sentenced offenders globally, imposing one sentence for all of the counts (see e.g. *CAS*, *supra* note 136), whereas other judges gave shorter sentences, but made them consecutive for each victim (see e.g. *HJB*, *supra* note 85). There were also inconsistencies when dealing with one victim with multiple counts. Some judges imposed concurrent sentences of a longer length (see e.g. *DP*, *supra* note 149), whereas other judges imposed consecutive sentences of shorter length (see e.g. *GKN*, *supra* note 153 and *RMS*, *supra* note 83).

²⁰⁸ See e.g. *RRI*, *supra* note 59 at para 34, where the trial judge rightly recognized that the atmosphere which had “enveloped” the complainant since she was 12 or 13 could not be separated from the two sexual assaults themselves: “The accused groomed C.L. in an attempt to desensitize her to the sexual transactions. Had she not objected to being touched sexually by her father in the course of two so-called ‘massages’, he may well have thereafter attempted to push this boundary still further. As it was, after the massages he pushed it in an equally troubling (albeit different) direction, by having her send explicit pictures of herself online to both himself and to someone whom he represented to be a bisexual friend.” See also *Medeiros*, *supra* note 81; *RRDG*, *supra* note 126 at para 53; *RJY*, *supra* note 64 at para 32; *AC*, *supra* note 80 at para 82; *R v DaCosta*, 2016 ONSC 7483 at para 49.

²⁰⁹ *WV*, *supra* note 205 at para 14; *TJO*, *supra* note 155 at para 30; *Dedam*, *supra* note 136 at para 44. The degree to which intercourse is an aggravating factor can be seen in *RJB*, *supra* note 158, where the British Columbia Court of Appeal reduced a six-year sentence to approximately four and a half years because the sentencing judge had wrongly relied on the fact that the abuse involved intercourse contrary to the jury acquittal on the incest charge.

compliance,²¹⁰ the use of pornography,²¹¹ and continuing to deny responsibility or shift it onto the complainant at sentencing²¹² were the most commonly cited aggravating factors.

Certain mitigating factors also take on particular significance in this context. Pleading guilty, for example, is often considered a mitigating factor in sentencing, but takes on particular importance when doing so spares the complainant from testifying against her father about his sexual violence against her.²¹³ However, a guilty plea that is not timely, for example entered after the complainant has been required to testify at a preliminary inquiry or at trial, may lose its mitigating value.²¹⁴ In some cases, the fact that the accused “had the support of his family” was considered to be a mitigating factor in sentencing, even though this frequently meant that the complainant had lost her family support as a result.²¹⁵

²¹⁰ See e.g. *R v SM*, 2014 BCPC 363 [SM]. See also *RMS*, *supra* note 83 at para 56, where the complainant had severe bruising to her neck area from prolonged choking by her stepfather.

²¹¹ In the exceptional case where pornography charges were laid against the accused it will be less of an aggravating factor. See e.g. *DLW*, *supra* note 80. In *R v LVR*, 2016 BCCA 86, the Court of Appeal upheld the appropriateness of consecutive sentences for pornography related charges

²¹² Courts handle this issue carefully because an accused person has a right to go to trial and an absence of remorse is not an aggravating factor: *R v Dreger*, 2014 BCCA 54. See also *R v Nash*, 2009 NBCA 7. However, a lack of insight into the harm caused to a complainant can be an aggravating factor. See e.g. *GRH*, *supra* note 103 at para 92. We also see cases where an absence of accepting responsibility post-conviction aggravates sentence without explicitly being called an aggravating factor. In *MSJ*, *supra* note 167 at para 29, the court was careful to note that the absence of remorse is not an aggravating factor but that what it meant in this case was that there were no mitigating factors for this particular accused. Another way a lack of responsibility was manifest was in the tendency to blame daughters for the sexual abuse against them. See e.g. *CCP*, *supra* note 86. One father blamed his years of offending on his excessive marijuana use even though he was fully employed at the time and his offending showed a significant degree of planning: *HJB*, *supra* note 85. All of these ways of shifting responsibility away from the offender may also be relevant to risk *i.e.* someone with no insight into his crimes may be seen as more likely to commit further crimes in the future. See e.g. *SM*, *supra* note 210. In *RMS*, *supra* note 83 at para 33, the sentencing judge describes the accused as “quick to blame everyone but himself for what he does.” See also Linda A Wood & Clare MacMartin, “Constructing Remorse: Judges’ Sentencing Decisions in Child Sexual Assault Cases” (2007) 26:4 *Journal of Language and Social Psychology* 343.

²¹³ *HS*, *supra* note 136 at para 46; *HJB*, *supra* note 85 at paras 42, 51; *SM*, *supra* note 210. Although we note that even where an accused has pleaded guilty, there may be some necessity for the complainant to testify at a sentencing hearing where the Crown is attempting to prove aggravating factors beyond a reasonable doubt in what is referred to as a *Gardiner* hearing: *R v Gardiner*, [1982] 2 SCR 368, 140 DLR (3d) 612. See e.g. *GRH*, *supra* note 103 at para 12.

²¹⁴ See e.g. *TDF*, *supra* note 84 at para 43; *BJ*, *supra* note 81 at para 48; *CPP*, *supra* note 130 at para 77.

²¹⁵ *R v ADT*, 2015 ABPC 28 at para 30 [ADT]; *JLM* *supra* note 81 at para 32; *Dedam*, *supra* note 136 at para 49; *RTK*, *supra* note 117 at para 3; *FOR*, *supra* note 118 at para 33; *JM*, *supra* note 151 at paras 33, 49.

While in general we saw significant sentences involving penitentiary time, the Ontario Court of Appeal has suggested that, in sentencing those who abuse young people, five to six years should be the minimum sentence where there is one victim, where the abuse included intercourse, and where there is a serious breach of trust.²¹⁶ Higher sentences are required where there is more than one child being abused.²¹⁷ *R v DD* is still the leading case cited in many of the sentencing decisions involving fathers, even though it involved a man who groomed and sexually assaulted four boys over a considerable period of time and who was sentenced to eight years' incarceration.²¹⁸ Moldaver JA, as he was then, set out some guidelines regarding sentencing of sexual offences against young people involving a profound breach of trust, a passage which is cited in many of these cases:

To summarize, I am of the view that as a general rule, when adult offenders, in a position of trust, sexually abuse innocent young children on a regular and persistent basis over substantial periods of time, they can expect to receive mid to upper single digit penitentiary terms. When the abuse involves full intercourse, anal or vaginal, and it is accompanied by other acts of physical violence, threats of physical violence, or other forms of extortion, upper single digit to low double-digit penitentiary terms will generally be appropriate. Finally, in cases where these elements are accompanied by a pattern of severe psychological, emotional and physical brutalization, still higher penalties will be warranted.²¹⁹

Yet, we saw some reluctance to impose these higher sentences on fathers as compared to, for example, strangers.

²¹⁶ *R v MD*, 2012 ONCA 520 at para 44.

²¹⁷ *R v DD*, (2002) 163 CCC (3d) 471 (Ont CA), 2002 CarswellOnt 881 [*DD*].

²¹⁸ *Ibid*.

²¹⁹ *Ibid* at para 44. In *R v Woodward*, 2011 ONCA 610 at paras 37-39, the court clarified that *DD*, *supra* note 217, also applied to cases involving one victim, one incident, and no additional violence. Numerous trial judges rely on *DD*, even outside Ontario. See e.g. *DLW*, *supra* note 80.

For biological fathers, sentences ranged from one CSO²²⁰ to a period of indeterminate detention as a dangerous offender.²²¹ Five years was the most common sentence imposed, although a few biological fathers received sentences of seven years.²²² The most severe sentence imposed on a biological father, aside from one case involving an indeterminate sentence, was ten years for a man who abused both his daughter and his stepdaughter.²²³ Another father received a sentence of nine years in a very serious case involving sexual abuse, including intercourse against his daughter which began at the age of four and escalated over the years.²²⁴

There was a wider range of sentences for stepfathers, with more sentences on the lower end²²⁵ and a few on the very high end. While there were no cases involving biological fathers that proceeded by summary conviction, there were at least three such prosecutions against stepfathers.²²⁶ This may be in part because there were more cases with stepfathers involving

²²⁰ *DAD*, *supra* note 64. One adoptive father also received a conditional sentence order even though his daughter had what was described as developmental disabilities: *ADT*, *supra* note 215. While the trial judge explicitly relied on s.718.2(e) for the general principle of restraint, there is nothing in the judgment to indicate that the father was Indigenous nor was there any mention of a Gladue report or any Gladue related background factors. One foster father also received a conditional sentence order: *HS*, *supra* note 136. This was a historical prosecution.

²²¹ *JWH*, *supra* note 105.

²²² *JT*, *supra* note 84, involved the abuse of a daughter and stepdaughters; *GEW*, *supra* note 48, involved the abuse of two daughters. In both of these cases, the fathers were Indigenous. See also *CCP*, *supra* note 86 involving the abuse of one daughter. In our one sentencing case involving an adoptive father, *AL* (Ont Ct J), *supra* note 50, the accused was also sentenced to seven years for years of abuse against his adopted daughter who had an intellectual disability.

²²³ *RD*, *supra* note 48.

²²⁴ *RJY*, *supra* note 64.

²²⁵ See e.g. *RRGS*, *supra* note 81, where an Indigenous stepfather was sentenced to 90 days intermittent. See also *GKN*, *supra* note 153, where the sentence imposed was 18 months incarceration. In *JLM*, *supra* note 81, the accused stepfather was sentenced to six months plus probation for approximately 15 sexual assaults against his stepdaughter. The mitigating factors in this case were that he turned himself in to police even though his wife and stepdaughter had decided not to report the matter, made a full confession, pleaded guilty and sought therapy. Nonetheless the trial judge at paras 85-86 concluded that a community-based sentence would be inconsistent with the principles of sentencing that require denunciation and deterrence to be the predominant factors in the sexual abuse of children. In *R v JWC*, 2015 BC PC 88, the accused was sentenced to one year plus probation for the sexual assault of his stepdaughter even though the offence involved digital penetration. In *R v AR*, 2015 ONSC 5055, the accused was sentenced to five months plus probation. In *AEB*, *supra* note 205, the accused was sentenced to six months incarceration plus probation. In *FOR*, *supra* note 118, the accused was sentenced to 90 days intermittent plus probation. Aside from one case with a conditional sentence order, *DAD*, *supra* note 64, there were no cases of biological fathers with sentences in this range

²²⁶ *AEB*, *supra* note 205; *JLM*, *supra* note 81; *FOR*, *supra* note 118.

isolated instances of abuse than there were with biological fathers, and because the limitation period for summary conviction offences means that the victim would have to complain very soon after the assault. On the other end, one stepfather received a cumulative sentence of 16 years for very serious sexual abuse against two stepdaughters including for convictions related to bestiality and child pornography.²²⁷ The Crown brought dangerous offender proceedings against two stepfathers, both of whom had significant criminal records involving violence.²²⁸

The involvement of multiple complainants was generally, but not always, considered more serious. In *R v JM*,²²⁹ for example, the accused sexually assaulted his daughter, his daughter's friend while she was living under his care, and a girl who frequented an arcade which he operated. The daughter was abused from the age of nine until her late teens. The girls testified to the devastating impact of the abuse.²³⁰ A five-year sentence was imposed for the abuse of all three girls. Yet, five years was also sometimes imposed for the abuse of one daughter.²³¹ There is no question that, where multiple complainants are involved, concerns about totality resulted in lower sentences overall than if the cases had been tried separately.

The Role of Risk Assessments

There was a tendency in these cases to label fathers as at lower risk of reoffending than those who sexually assault girls outside of the family, particularly strangers.²³² The absence of violence in these cases was sometimes highlighted without recognizing that additional violence is

²²⁷ See e.g. *DLW*, *supra* note 80, where the sentence included consecutive sentences on charges related to pornography and bestiality. See also *JW*, *supra* note 194, where the accused was sentenced to 12 years.

²²⁸ An indeterminate sentence was imposed in *PEM*, *supra* note 128 and, in *R v Munro*, 2014 ONCJ 226 [*Munro*], the accused was sentenced to six years with a long-term supervision order.

²²⁹ *JM*, *supra* note 151.

²³⁰ *Ibid* at paras 31-35.

²³¹ See e.g. *WHY*, *supra* note 59; *HB*, *supra* note 48; *MC*, *supra* note 83.

²³² *DB*, *supra* note 86.

often unnecessary to overcome the will of a terrified teenager at the hands of the very man she should be able to trust.²³³ While occasionally a lack of insight and remorse was relied upon to characterize the accused as being at higher risk,²³⁴ several men who lacked insight were still characterized as low-risk.²³⁵

There is some literature to support the suggestion that men who sexually assault girls outside of the family have a higher recidivism rate than men who exclusively sexually assault their daughters or stepdaughters.²³⁶ Thus, it is perhaps not surprising that judges often refer to risk assessments that put fathers at a relatively low risk of reoffending.²³⁷ However, our cases demonstrate that these are not two distinct categories, where men either sexually assault daughters or nonfamily members. While some of the men in our study only sexually assaulted their daughters, some sexually assaulted daughters, adopted daughters and foster daughters²³⁸ or their daughters and other girls.²³⁹ Others had a history of sexual assault against a range of women and girls²⁴⁰ and/or a history of domestic violence.²⁴¹ The idea that men target exclusively either their own family members or nonfamily members is not supported by our cases.

²³³ *GKN*, *supra* note 153.

²³⁴ *DLW*, *supra* note 80; *AC*, *supra* note 80 at para 81, where even though the offender was at low risk of reoffending, the judge held that his lack of insight or remorse meant that no weight should be given to rehabilitation.

²³⁵ *DAD*, *supra* note 64.

²³⁶ See e.g. Marnie E Rice & Grant T Harris, "Men Who Molest Their Sexually Immature Daughters: Is a Special Explanation Required?" (2002) 111:2 *Journal of Abnormal Psychology* 329 [Rice & Harris].

²³⁷ See e.g. *IWS*, *supra* note 59 at para 20; *DAD*, *supra* note 64 at para 18; *R v JL*, 2015 CarswellOnt 14716, 124 WCB (2d) 369 at para 13; *RM*, *supra* note 66 at para 7; *GEW*, *supra* note 48 at para 54.

²³⁸ *CAS*, *supra* note 136. See also *JT*, *supra* note 84, where the accused abused his daughter and two stepdaughters.

²³⁹ *WHY*, *supra* note 59; *JM*, *supra* note 151; *PEM*, *supra* note 128; *JW*, *supra* note 194.

²⁴⁰ *EGY*, *supra* note 84; *JWH*, *supra* note 105; *Law*, *supra* note 59; *Munro*, *supra* note 228; *PEM*, *supra* note 128; *R c Guindon*, 2015 QCCQ 7659 [Guindon].

²⁴¹ *RM*, *supra* note 66; *PEM*, *supra* note 128; *JW*, *supra* note 194; *JWH*, *supra* note 105; *R v WR*, 2016 ONSC 2362; *R v Burgess*, 2016 ONCJ 531.

Defence counsel often asserted the low risk of reoffending as relevant to sentencing. In the only case involving a biological father where a CSO was imposed, the court relied heavily on the fact that the accused had a low risk of reoffending.²⁴² The judge acknowledged a number of important aggravating factors – the abuse of trust, the vulnerability of the 14-year-old complainant, the accused’s “unpredictable rages”,²⁴³ his attempts to isolate the complainant from other adults, his relentlessness in pursuing her sexually for at least a year, and his complete lack of insight into the harm he had caused his daughter. One might think that these aggravating factors would warrant a harsh sentence. However, the judge went on to stress that, because there was only one complainant, no intercourse, no physical aggression (despite the “unpredictable rages”), and the fact that the accused did not pose an ongoing threat as a sexual predator, a community-based sentence was appropriate.²⁴⁴ It is not until the judge comes to his discussion of ancillary orders, including whether to impose restrictions on his ability to work or communicate with children, that we learn that the accused “appeared to take an interest in the sexual development of other players” on his daughter’s soccer team.²⁴⁵ Clearly this judge had some concerns about the risk the offender presented to other children even though he repeatedly referred to the low level of risk. In the exceptional case where a father is evaluated as moderate or high risk of sexual offending, higher sentences generally follow.²⁴⁶

²⁴² *DAD*, *supra* note 64.

²⁴³ *Ibid* at para 32.

²⁴⁴ *Ibid* at paras 33-34.

²⁴⁵ *Ibid* at para 41.

²⁴⁶ See e.g. *CCP*, *supra* note 86, where the accused vaginally and anally raped his daughter multiple times over the course of a summer. He was labelled as moderate to high risk of reoffending and received a sentence of seven years imprisonment.

The fact that all six father cases where the Crown made a dangerous offender application involved men who also assaulted girls outside of their families, in addition to their daughters, is consistent with the suggestion that risk is more visible to prosecutors and courts where nonfamily members are targeted.²⁴⁷

Ongoing Abuse

What makes sexual abuse by fathers particularly devastating for complainants is that these crimes often continue and even escalate over a long period of time. These girls are quite literally trapped in their own homes and often assaulted over a period of years. The long-term nature of many of these crimes is always a serious aggravating factor in sentencing and one which should lead to sentences harsher than for most one-time sexual assaults against adolescents. Almost all of the stranger sexual assaults in our sample involved a single incident of sexual assault, and yet they received sentences on average 17 months longer than fathers who were often found to have committed multiple sexual assaults over an extended period of time. We suspect that the deeply embedded stereotype about stranger sexual assaults being the most serious is influencing the sentences along with the fact that fathers were generally perceived as being at lower risk of recidivism than strangers.

However, the fact that many cases involved years of abuse should not lead to the conclusion that it is mitigating when the sexual abuse takes place over a shorter, but nonetheless considerable, period of time. In *R v WHY*,²⁴⁸ for example, the father had almost daily sexual intercourse for a period of six weeks with his daughter who had come to stay with him in the summer in an attempt

²⁴⁷ Four of these cases involved biological fathers (*EGY*, *supra* note 84; *JWH*, *supra* note 105; *Law*, *supra* note 59; *Guindon*, *supra* note 240) and two involved stepfathers (*PEM*, *supra* note 128; *Munro*, *supra* note 228). The men in *JWH* and *PEM* received indeterminate sentences whereas the other men were given long-term supervision orders in addition to a determinate sentence.

²⁴⁸ *WHY*, *supra* note 59.

to “improve her lifestyle choices.”²⁴⁹ The almost daily intercourse only ended because the father was caught by the complainant’s older half-sister. The accused, who had two prior convictions for sexual offences against young girls, was sentenced to five years imprisonment.²⁵⁰ The Court of Appeal, in rejecting the Crown appeal of sentence, acknowledged the insidious nature of this abuse and the fact that it only stopped because he was caught, but nonetheless went on to consider the “relatively compact period of time” over which the offences occurred.²⁵¹ Had this offender been a stranger who had sexually assaulted a child almost daily for six weeks, we suspect the sentence would have been higher.

We agree that a father who sexually abuses his daughter on one occasion should generally be sentenced less severely than a father who sexually abuses his daughter over a number of years although, sadly, cases of an isolated sexual assault by a biological father in particular were rare in our cases. However, six weeks of almost daily intercourse is not a short period of time to be raped by one’s father. The frequency and ongoing nature of this abuse should have been considered as seriously aggravating, not mitigating.

Offender’s Background and Criminal History

The absence of a criminal record is also seen as a mitigating factor in these cases,²⁵² but we urge that this factor be considered with caution. A man who sexually assaults his daughter over a number of years should not benefit from being a first offender in light of years of sexual offending. This reasoning was a particular benefit to men prosecuted in historical cases. For

²⁴⁹ *Ibid* at para 3.

²⁵⁰ *Ibid* at para 53.

²⁵¹ *Ibid* at para 12. See also *CCP*, *supra* note 86 at para 88, where the judge noted that the offences only took place over one summer before the Ministry of Children and Families got involved rather than over the course of a number of years, even though the father had vaginally and anally raped his daughter, with force, five times.

²⁵² *HJB*, *supra* note 85 at para 41 *TJO*, *supra* note 155 at para 34; *R c CC*, 2014 QCCQ 6104 [CC].

example, in *R v CAS*,²⁵³ the father, who was 73 years old by the time of sentencing, had been convicted of sexual offences against his daughters, adoptive daughters and foster daughters, all of which took place over a number of years. The trial judge found his absence of a criminal record mitigating and he was sentenced to 42 months incarceration. In *R v HB*,²⁵⁴ the accused sexually assaulted his daughter for 15 years, beginning when she was 4 years old, and was able to conceal this fact for decades. He was 80 years old at the time of sentencing and was described by the sentencing judge as having “no prior criminal record and [he] has led an exemplary life looking after his family and the community.”²⁵⁵ He was sentenced to five years of incarceration.²⁵⁶ In *R v CC*,²⁵⁷ the accused sexually abused his daughter and three granddaughters over a period of 39 years. The abuse of his granddaughters did not begin until he was 73 years old. He was 77 years old at the time of sentencing. The sentencing judge held that the only mitigating factor was his absence of a criminal record and he was sentenced to 28 months’ imprisonment. While these fathers received significant sentences, especially given their ages, the portrayal of these men as first offenders is troubling. This concern is not limited to historical prosecutions of older men. In *R v AL*, the accused, after seeking out a girl to adopt (he and his wife had twin boys), abused his daughter with intellectual disabilities over a number of years resulting in a pregnancy. The trial judge described the lack of a criminal record as “important mitigation”.²⁵⁸ Whether in a historic

²⁵³ *CAS*, *supra* note 136.

²⁵⁴ *HB*, *supra* note 48.

²⁵⁵ *Ibid* at para 6.

²⁵⁶ Historic prosecutions tended to see slightly lower sentences overall, sometimes because of age or ill health, and defence counsel often asked for a conditional sentence order. In one of a handful of sentencing cases involving a foster father, *HS*, *supra* note 136, the accused, sentenced almost 40 years after the offences which led to his young foster daughter becoming pregnant, was given a conditional sentence order. The judge was somewhat dismissive of the complainant’s decades of suffering, stating at para 50 that sending the accused to jail would not “cure her state of being”. Nonetheless, judges still imposed penitentiary time in many of these cases: *GB*, *supra* note 149; *HB*, *supra* note 48.

²⁵⁷ *CC*, *supra* note 252.

²⁵⁸ *AL* (Ont Ct J), *supra* note 50 at para 4. The judge indicated, at para 9, that the starting point would have been 10 years but for the guilty plea, counselling, remorse, and his “first offender status”. See also *HJB*, *supra* note 85.

prosecution or otherwise, a man should not be able to conceal a long history of sexual offending and then be able to point to his first offender status.²⁵⁹ The insidiousness of child sex abuse is heightened by the efforts men engage in to conceal it. Successful concealment over years or even decades, should be considered aggravating, not mitigating.

The Role of Gladue

As reported in our earlier paper, there was a disproportionate number of Indigenous men in our study and this was also true in the context of fathers.²⁶⁰ When sentencing Indigenous men, it is important to take *R v Gladue*²⁶¹ and s. 718.2(e) of the *Criminal Code* into account. While *Gladue* received considerable attention in our cases, courts struggled with how to take *Gladue* factors into account in these cases. We also know that Indigenous girls are disproportionately targeted for sexual violence,²⁶² a fact that was not acknowledged in the father cases.

The degree to which Indigenous men have themselves been victims of sexual violence, either through residential schools directly²⁶³ or through the intergenerational impact of residential schools and colonialism on their family members,²⁶⁴ came up in a number of the sentencing cases involving fathers. Overall, however, we found that *Gladue* had little impact on the length of sentences imposed.²⁶⁵ To the contrary, we found that Indigenous men received some of the

²⁵⁹ *AL* (Ont Ct J), *supra* note 50. The accused was sentenced to a total of 42 months for sexual offences against five girls which was reduced from 60 months on the basis of totality. The Crown in this case had only asked for a sentence of two years, presumably because of the accused's age.

²⁶⁰ Grant & Benedet, *supra* note 4 at 292.

²⁶¹ *R v Gladue*, [1999] 1 SCR 688, [1999] SCJ No 19.

²⁶² Turpel-Lafond, *supra* note 145.

²⁶³ See e.g. *EGY*, *supra* note 84.

²⁶⁴ *RRGS*, *supra* note 81; *JT*, *supra* note 84 at paras 21-22; *GRH*, *supra* note 103 at para 31.

²⁶⁵ One possible exception to this is *RRGS*, *supra* note 81, where the accused was sentenced to 90 days intermittent plus probation largely on the basis of *Gladue* factors. For a case involving a stepfather where *Gladue* did seem to play a role, see *GRH*, *supra* note 103.

harshest sentences in our study.²⁶⁶ While our numbers are too small to draw any broad conclusions, we found that, for the four Indigenous biological fathers who received a determinate sentence, the average sentence was 80 months, while the 28 non-Indigenous biological fathers who received a determinate sentence received an average sentence of 54 months. The average sentence for the five Indigenous stepfathers who received determinate sentences was 68 months while the average sentence for the 42 non-Indigenous stepfathers was 54 months. No Indigenous fathers received non-custodial sentences, although one Indigenous father was allowed to serve his sentence intermittently.²⁶⁷ Judges sometimes noted explicitly that *Gladue* could not make much difference given the seriousness of the offence.²⁶⁸ In one case, for example, where the judge imposed an eight year sentence, the court expressed difficulty relating the Indigenous background of the offender to the sexual assault of his stepdaughter.²⁶⁹ The accused had been adopted by a non-Indigenous couple as a child, had developed alcohol problems at the age of eleven or twelve, and had ended up in a group home, which he left at the age of sixteen. He never saw his adoptive parents again but was later able to reconnect with his birth family. Despite the clearly traumatic effects of being adopted out of his culture and community, the Court stated that there was no evidence that his substance abuse was linked to his Indigeneity because there was no evidence of substance abuse in his birth family, a misguided understanding of the impact of colonial trauma.²⁷⁰

²⁶⁶ See e.g. *Long*, *supra* note 156, where the Indigenous accused was sentenced to eight years for the sexual abuse of his stepdaughter. While this was a particularly serious case because it resulted in a pregnancy, this sentence appeared to be somewhat out of line with sentences given in other cases. See also *GEW*, *supra* note 48, where a father sexually assaulted two of his daughters. The total sentence was reduced to seven years on the basis of the principle of totality. In *TJO*, *supra* note 155, accused received an 8-year sentence for sexually abusing his stepdaughter for a period of 26 months, five to six times a week, abuse which led to the complainant having two abortions. (The accused received another 8 years for aggravated assault and break and enter into a dwelling house with intent to commit sexual assault of a child.)

²⁶⁷ *RRGS*, *supra* note 81.

²⁶⁸ *JT*, *supra* note 84 at paras 27-28. In this case the accused received seven years for abuse against his daughter and two stepdaughters.

²⁶⁹ *Long*, *supra* note 156.

²⁷⁰ *Ibid* at para 36.

We also note that the Crown brought dangerous offender applications in four cases involving biological fathers, at least two of which involved Indigenous men,²⁷¹ including the only biological father given an indeterminate sentence.²⁷² This finding is consistent with our findings in the larger study where 5 of the 16 (31 percent) accused who were found to be dangerous offenders were Indigenous as were 2 of the 5 (40 percent) men given indeterminate sentences.²⁷³ By contrast, only one of 22 (5 percent) noncustodial sentences imposed in the larger study was given to an Indigenous man.²⁷⁴

It is important to recognize that sometimes the information that is provided as background to explain the impact of colonialism and residential schools in a *Gladue* report can be a double-edged sword in sentencing for violent offences and judges need to be attuned to this reality. For example, it may be mitigating in sentencing where an accused asserts that he was a victim of sexual abuse as a child. However, it may also be characterized as a risk factor for future offending, and then be used to justify a harsher sentence.²⁷⁵ For some of the Indigenous men convicted in our study, chaos and disruption in their own early lives, and/or a history of substance abuse, may have contributed to them being perceived as a greater risk or made them less able to express remorse.²⁷⁶ We note that the only community-based sentence given to a biological father in our sample was given to an (apparently Caucasian) man with “a stable and positive childhood” with two parents in the home and a supportive relationship among his siblings.²⁷⁷

²⁷¹ *JWH*, *supra* note 105; *EGY*, *supra* note 84.

²⁷² *JWH*, *supra* note 105. One stepfather was also given an indeterminate sentence as a dangerous offender: *PEM*, *supra* note 128. The accused in this case was described at para 11 as having “borderline intelligence, mild mental retardation or intellectual disability.”

²⁷³ Grant & Benedet, *supra* note 4 at 283.

²⁷⁴ *R v LI*, 2014 MBPC 59. See also Grant & Benedet, *supra* note 4 at 283.

²⁷⁵ See e.g. *EGY*, *supra* note 84.

²⁷⁶ *GEW*, *supra* note 48.

²⁷⁷ *DAD*, *supra* note 64 at para 7. One adoptive father also received a conditional sentence order: *ADT*, *supra* note 215. It should be noted that conditional sentence orders are no longer available for these offences except where the

Offenders as Victims of Child Sexual Abuse

Allegations that the father had himself been a victim of childhood sexual abuse were not limited to Indigenous men in our sample. It was not uncommon to see assertions that the accused had been sexually assaulted as a child,²⁷⁸ although evidentiary support for these assertions was only rarely mentioned in these cases.²⁷⁹ Similarly, a number of judges cited a passage from *DD* describing how those abused in childhood are more likely to themselves become abusers.²⁸⁰ In some cases, this was treated as a mitigating factor.²⁸¹ This is a complex issue, the resolution of which is beyond the scope of this paper. We accept that adult male sex offenders against children as a group may be more likely to have been victims of child sexual abuse than non-offenders, although estimates of the difference vary widely depending on the method used to study this impact.²⁸² However, judges often cite this factor as if there is an inevitable link²⁸³ and fail to recognize that an increased incidence does not prove a causal role, and especially does not do so in any individual case. In other words, just because a man was sexually abused as a child and becomes a perpetrator himself does not mean that one caused the other. There may be intervening variables that impact risk, such as physical neglect and witnessing violence in the home, that help explain why some male sexual abuse victims are more likely to become abusers.²⁸⁴ Importantly,

crime took place prior to the enactment of restrictions on conditional sentence orders or the introduction of mandatory minimum sentences for these offences which had the same effect.

²⁷⁸ *AL* (Ont Ct J), *supra* note 50 at para 7; *WHY*, *supra* note 59 at para 19; *DAD*, *supra* note 64 at para 34; *BJT*, *supra* note 100 at para 29; *SM*, *supra* note 210 at para 21; *AEB*, *supra* note 205 at para 13; *CCP*, *supra* note 86 at para 36; *CC*, *supra* note 252 at para 14.

²⁷⁹ For a rare exception, see *GB*, *supra* note 149 at para 15.

²⁸⁰ *DD*, *supra* note 217 at para 37.

²⁸¹ *GB*, *supra* note 149 at para 25; *WHY*, *supra* note 59 at para 19; *DAD*, *supra* note 64 at para 34.

²⁸² Ashley F Jespersen, Martin L Lalumière & Michael C Seto, “Sexual Abuse History Among Adult Sex Offenders and Non-Sex Offenders: A Meta-Analysis” (2009) 33 *Child Abuse & Neglect* 179; Chelsea Leach, Anna Stewart & Stephen Smallbone, “Testing the Sexually Abused-Sexual Abuser Hypothesis: A Prospective Longitudinal Birth Cohort Study” (2016) 51 *Child Abuse & Neglect* 144 at 150-51.

²⁸³ *DAD*, *supra* note 64 at para 34; *AL* (Ont Ct J), *supra* note 50 at para 7. See also *DD*, *supra* note 217 at para 37.

²⁸⁴ Daniel Salter et al “Development of Sexually Abusive Behaviour in Sexually Victimized Males: A Longitudinal Study” (2003) 361 *The Lancet* 471 at 475.

a majority of adult male perpetrators do not have a history of child sexual abuse and a majority of victims of such abuse do not become abusers.²⁸⁵ Nor is this cycle of abuse seen in female victims of child sexual abuse, who make up the large majority of victims but who rarely go on to become abusers themselves. The reality is that incest is primarily committed by fathers against girls;²⁸⁶ female incest against boys is comparatively rare²⁸⁷ as is a father sexually abusing his son.²⁸⁸ The patterns of offending we saw in these cases suggest that much more is at play than the fact that some of these men were sexually abused as children. We continue to raise boys in a culture in which male aggression is celebrated and male violence against women is eroticized. Men's sense of sexual entitlement to the bodies of women and girls finds an outlet in the patriarchal family structure, which is complicit in father daughter sexual abuse. These accused, whether or not they reported having been abused as children, groomed their daughters, controlled them, isolated them from children their own age, and often behaved more like abusive boyfriends than fathers. These same gendered power dynamics were found in these cases regardless of whether there were reports of past sexual abuse of the father in childhood.²⁸⁹

Conclusion

The father cases as a whole demonstrated a number of features that we consider significant, especially when viewed in light of the history of feminist engagement with the issue of men's sexual abuse of girls. The first is that the cases we saw clearly demonstrated that fathers are in many cases acting out a sense of patriarchal control over their daughters through acts of sexual

²⁸⁵ Glasser et al, *supra* note 44 at 488.

²⁸⁶ Rice & Harris, *supra* note 236 at 329.

²⁸⁷ Glasser et al, *supra* note 44 at 488.

²⁸⁸ Rice & Harris, *supra* note 236 at 330.

²⁸⁹ In handing down one of the most severe sentences imposed in our cases, the judge in *DLW*, *supra* note 80 at para 8, even commented on the absence of sexual abuse in the background of the offender. In this case, the accused received a 16-year cumulative sentence for sexual interference, pornography and bestiality charges.

abuse. Fathers rationalized their behaviour as natural, protective, corrective or educational, and the controlling behaviours sometimes extended well beyond the sexual abuse to permeate the entire relationship between the father and daughter. There were similarities between this behaviour and patterns of coercive control exercised by some men in intimate relationships with adult women.

Second, these cases made clear that the abuse in question was almost always openly rejected and demonstrably unwanted by the daughters at the time it took place, and that harm was compounded for these girls by their guilt and shame over the possible consequences of disclosure. These were not cases in which fathers failed to resist the sexual overtures of their daughters, or in which the girls considered their stepfathers to be in a boyfriend-type relationship with them. In most cases, the fathers ended up having to resort to force, threats, or attacking girls when they were asleep or otherwise defenseless.²⁹⁰ There were a very small number of cases in which the grooming behaviour was sufficiently effective to make the girls believe that they were engaging in some kind of special activity.²⁹¹ Yet, in almost every case, it was the daughter who disclosed the abuse, rather than it being discovered by a third party observer, suggesting that even those girls who were manipulated into thinking the activity was normal came to understand that what was being done to them was wrong and harmful. Cases where girls were tricked into going along with the abuse resulted in a particularly profound breach of trust for the victims.²⁹²

Third, only a very small number of these cases involved mothers as perpetrators. We had three mothers in our sample, and in all of those cases, the mother was acting in concert with the

²⁹⁰ *IWS*, *supra* note 59; *DRWH*, *supra* note 84; *OM*, *supra* note 84; *LV*, *supra* note 64; *EGY*, *supra* note 84; *GEW*, *supra* note 48; *JT*, *supra* note 84; *Medeiros*, *supra* note 81; *MC*, *supra* note 83; *DV*, *supra* note 105; *JWH*, *supra* note 105; *ST*, *supra* note 105; *JV* and *PV*, *supra* note 46. See also *HJB*, *supra* note 85, where the accused told the complainant that he had burned a CD of their chat history which he would show her mother if she did not acquiesce to sex. This chat history apparently contained comments about smoking, alcohol, drugs and boys.

²⁹¹ *RJY*, *supra* note 64; *R v Laramée*, 2016 MBQB 165.

²⁹² *RJY*, *supra* note 64; *GEW*, *supra* note 48; *WHY*, *supra* note 59; *JAVC* and *DAC*, *supra* note 46; *RAH*, *supra* note 79.

father. All the mothers were convicted, and they received the highest sentences on average of any group of perpetrators, including strangers. Beyond that, the role of mothers is complex in these cases. In some cases, the mother did immediately go to police when their daughters reported the abuse. In other cases, the mothers denied the abuse for a period of time but eventually supported their daughters, while in others the mothers took the side of the accused and girls were left without any parental support to work their way through the criminal justice process.

Fourth, the impact of this abuse on the girls in these cases was devastating and more severe than we saw in any other category of sexual offences against adolescent girls. We did not see a single case where a girl reported only minimal harm and disruption of her life, or that she had been able to put the abuse behind her. Instead, there were stories of lives being upended in the most profound ways. The abuse also had a devastating impact on families, the brunt of which falls on these girls. The girls in these cases showed tremendous courage and persistence in reporting their abuse in the face of threats from their perpetrators and a lack of belief on the part of some family members or other adults.

Finally, it is difficult to reach an unambivalent assessment of how our courts are handling these cases. On the one hand, conviction rates are reasonably high, although lower for fathers than for most other groups of offenders. Those who are convicted received relatively harsh sentences, albeit less serious than strangers, despite the abuse of trust involved and the fact that fathers were much more likely to have perpetrated their abuse over a considerable period of time. Nonetheless, there is a sense of arbitrariness in some of the decisions, both on conviction and sentencing. While there were a small number of cases where a reasonable doubt was not surprising, there were also acquittals where judges latched on to small inconsistencies in testimony or minor issues of credibility in order to acquit. With the sentencing cases, while many fathers received harsh

sentences, there was no consistent approach to sexual assaults that took place over a number of years or to cases involving multiple victims. We also found that Indigenous men were sentenced more harshly in these cases, a finding that warrants future research.

Our purpose in writing this paper was to share some of these girls' stories to reinvigorate the discussion around sexual abuse within the family, which has up until now evaded scrutiny from the #MeToo movement. We worry that the recent revelations about the prevalence of sexual abuse in other social institutions may have overshadowed research and interest in the family as a primary site for sexual violence. The sheer number of cases involving fathers in our sample should give pause because our sample represents just the tip of the iceberg of actual sexual abuse by fathers.

Our study undermines a number of longstanding stereotypes about father-daughter sexual abuse: that violence and force are rarely used by fathers, that girls initiate sexual activity, that mothers are consistently to blame for such abuse, and that it is harmless to the girls involved. Instead, we found that sexual abuse by fathers may be simultaneously the easiest to perpetrate, the hardest to uncover, and the most damaging to victims. These stereotypes about father-daughter sexual abuse continue to influence scholarly approaches to this subject, obscuring recognition of the exercise of male power. Given all of the barriers to reporting that these girls have had to overcome, systems must be in place that facilitate disclosures about sexual abuse within the family and make clear that such abuse cannot be committed with impunity.