SUPREME COURT OF YUKON

Citation: *R. v. J.J.P.*, 2018 YKSC 30

Date: 20180628
S.C. No.: 17-01513
16-01514
16-01514A
16-01514B
16-01513
17-00700
Registry: Whitehorse

BETWEEN

HER MAJESTY THE QUEEN

AND

J.J.P.

Publication of information that could disclose the identity of the complainant or witness has been prohibited by court order pursuant to s. 486.4 of the *Criminal Code*.

Before Mr. Justice R.S. Veale

Appearances:
Noel Sinclair and
Susan E. Bogle — Counsel for the Crown
Vincent Larochelle — Counsel for the Defence

REASONS FOR SENTENCE

INTRODUCTION

[1] The Crown applies for a dangerous offender designation and indeterminate sentence for J.J.P. and, alternatively, a long-term offender designation. J.J.P. has been found guilty of 19 Yukon-based sexual offences, one Ontario-based sexual offence and five British Columbia-based sexual offences for a total of 25 sexual offences. The offences took place over a period of approximately seven years from January 1, 2008 to December 27, 2014. Defence counsel opposes the dangerous or long-term offender

designation and submits that a penitentiary sentence of 7 to 9 years should be imposed. The Crown submits that, should I decline to impose an indeterminate sentence, a fit sentence is 14 to 16 years, followed by a long-term supervision order of 10 years.

[2] The Crown also seeks a variety of ancillary orders including an order under s. 161(1) of the *Criminal Code* that J.J.P. be prohibited, for life, from attending certain public places, seeking employment involving persons under 16 years of age, having any contact with persons under 16 years of age and using the internet or other digital network.

[3] The offender's Yukon victims are all young female friends of his daughter who were invited to sleepovers with her. They were subjected to grossly invasive, penetrative sexual contact by J.J.P. while they slept under his care and control. J.J.P. documented his sexual predations of these pre-pubescent young girls in a vast number of still photographs and video recordings which he stored electronically. These gross offences went undetected until his son discovered the pornographic images on his father's computer in 2015, some three years after J.J.P. left the Yukon and relocated in British Columbia. In addition to the Yukon victims, there is one victim in Ontario and two in British Columbia.

[4] The privacy of the victims and witnesses is protected by a court order under s. 486.4 of the *Criminal Code* which prohibits the publication of information that could disclose the identity of a victim or witness. That is the reason this judgment refers to the convicted person as J.J.P. and not his name. I should also mention that the child pornography photographs and video recordings of the child victims have been reviewed by me alone and sealed in the court record. See *R. v. J.J.P.*, 2017 YKSC 66.

[5] The sentencing hearing was scheduled for eight days in order to hear evidence from Dr. Lohrasbe, the expert who prepared the Assessment Report on J.J.P., and two witnesses from the Correctional Service of Canada, as well as to allow 15 highly emotional Victim Impact Statements from victims and their families to be read into the record. Most victims have viewed the proceeding from a remote location.

[6] The focus of an application for a dangerous offender or long-term offender designation is on the risk assessment, treatability and community manageability of the offender. In that regard, as Dr. Lohrasbe is the Court's expert, I permitted both the Crown and defence counsel to cross-examine the expert. See *R. v. J.J.P*., 2018 YKSC 7.

THE YUKON OFFENCES

[7] Before embarking on my analysis, I think it is important to include the full redacted Statement of Agreed Facts. A more concise summary would fail to capture the highly distressing and disturbing nature of the offences. What follows is the text of what was provided to the Court, with some editing for clarity and to ensure that the identities of the victims are protected.

Summary of Offences

[8] Over a period of five years between January 1st, 2008, and July 31st, 2013, J.J.P. committed criminal offences against eleven girls, each to his knowledge under the age of fourteen years-old.

[9] J.J.P. recorded seven of these girls in circumstances where each girl had a reasonable expectation of privacy such as when their bodies were exposed while changing clothes, sleeping or showering.

[10] J.J.P. also recorded video and still images of some of the sexual assaults which he committed against his victims.

[11] In total, nine of the eleven girls were sexually assaulted by J.J.P., while two of the eleven girls were involved only as the subjects of child pornography created by J.J.P. indirectly using a hidden camera.

[12] Specifically, J.J.P. admits to surreptitiously recording two victims and in a situation where privacy would have been expected in a bathroom.

[13] J.J.P. admits to sexually fondling nine victims.

[14] J.J.P. admits to applying a 'sex toy' vibrator to the genital areas of two victims, and a massage vibrator to the genital area of one victim.

[15] J.J.P. admits to digital anal penetration of six victims.

[16] J.J.P. admits to penile anal penetration of three victims and attempted penile anal penetration of a fourth victim.

[17] Five of the girls say they have some recollection of being sexually assaulted by J.J.P. The remainder have stated that they have no recollection of being assaulted but some of them are now aware of these events as a result of their involvement in the ensuing police investigation.

[18] In some of J.J.P.'s recordings and still images of these events the victims have their eyes closed.

[19] All these events occurred at various places where J.J.P. lived or travelled in the Yukon during the period of time he resided there.

[20] In early 2015, one of the Yukon victims disclosed an allegation of sexual misconduct by J.J.P. said to have occurred in British Columbia in late 2014. Investigations commenced both in the Yukon and British Columbia, resulting in criminal charges against J.J.P. in both jurisdictions.

Background Details

[21] J.J.P. resided in the Yukon from 1994 to the end of July 2013 with his wife and his two children. J.J.P. and his family moved to British Columbia in August 2013, and were residing there at the time of his arrest and detention on February 12, 2015.

[22] From 2004 to 2012, J.J.P. and his family lived in a rural area near Whitehorse.

[23] In 2012, J.J.P. and his family moved to a residence in Whitehorse, Yukon, and resided there until they moved to British Columbia in August 2013.

[24] At times young female friends of J.J.P.'s daughter would spend the night at the various residences.

[25] Although working two full time jobs, J.J.P. shared parenting duties with his wife. J.J.P. would on occasion be the one who arranged for sleepovers at their home for one or both of their children.

[26] Due to a medical condition, J.J.P.'s daughter required nightly massage and stretching of her ligaments and tendons in order to retain dexterity in her painful back and limbs. To bring comfort to his daughter J.J.P. would also lay on her bed with her and tell ghost stories or sing songs. Guests visiting J.J.P.'s daughter for sleepovers were present in his daughter's bed during these activities and were often included by J.J.P. in the massage routine.

[27] J.J.P.'s daughter took Echinacea pills as part of her wellness regime. Seven of the victims remember accepting pills or capsules from J.J.P. at bedtime which J.J.P. described as vitamins. Some of the girls shared J.J.P.'s daughter's pills.

[28] On occasion J.J.P. would take his daughter camping with her girlfriends. Mrs. P. would not join them on these outings.

[29] One victim's parents were long time family friends of J.J.P. and Mrs. P., first meeting them in 2005 through their church in the Yukon. They continued to be good friends until the discovery of these offences.

[30] In December 2014, the aforementioned parents travelled to Delta, British Columbia, to visit the family. Joining them on the trip was their ten-year-old daughter.

[31] In January 2015, after the family returned to the Yukon, their daughter disclosed the sexual misconduct of J.J.P. to a school counsellor and a complaint was made to the RCMP.

[32] During investigations by the Whitehorse RCMP and the Delta Police Service, the victim also disclosed that during a sleepover with J.J.P.'s daughter at the residence in Yukon, J.J.P. touched her vaginal area.

[33] The victim has two sisters who also slept over at the residence when the family resided in the Yukon.

[34] When the sisters learned of the incidents in B.C. and the Yukon, they each disclosed that J.J.P. had also sexually assaulted them.

[35] J.J.P. was arrested in Delta, British Columbia, on February 12, 2015. Following his arrest, his home in British Columbia was searched by the police.

[36] J.J.P.'s son spoke to the police that day and advised them that his father had recently removed a number of computers and hard drives from the family residence and that J.J.P. had placed them in a dumpster, apparently because J.J.P. had learned the police were investigating him.

[37] The police learned that the contents of the dumpster had been removed and were likely already in a Washington State landfill.

[38] J.J.P.’s son also told police that a year earlier he had become suspicious of his father and had hacked into his father's personal computer. J.J.P.’s son located on that computer a number of pornographic videos and photographs depicting young females.

[39] J.J.P.’s son recognized many of the girls in the videos and photographs as friends of his sister, including the nine Yukon victims.

[40] J.J.P.’s son transferred these folders and data files from J.J.P.’s computer to his own computer and ultimately provided all of those digital records to the police.

[41] In total, fifty-eight video recordings and six hundred and forty-four still images containing child pornography involving known Yukon-based victims were copied from J.J.P.’s personal computer and later seized and examined by the police.

[42] The digital records seized by the police included document sub-folders titled using female first names consistent with the first names of some of the known victims. Named folders included folders using the first names of seven of the victims.

Detailed Description of Offences

[43] J.J.P. sexually assaulted the girls individually during their overnight sleepovers with his daughter. Sometimes the sleepovers included more than one of the girls at the same time.

[44] J.J.P.’s daughter was often present, asleep in the bed during the sexual assaults and can be observed in some of J.J.P.’s video recordings and still photographs. J.J.P.’s daughter has no recollection of any of the sexual offences committed by her father.

[45] In some of J.J.P.’s recordings his victims are awake and moving about. In many other recordings they have their eyes closed and could appear to be asleep.

Victim #1 DOB 2004

[46] J.J.P.'s digital records of Victim #1 include one hundred and one pornographic photographs and one video recording.

[47] The photographs include images of Victim #1 with her eyes closed lying on a bed with her pyjamas cut open. J.J.P. removed the pyjamas by cutting them as they had been ripped earlier that night.

[48] Some of J.J.P.'s photographs depict Victim #1's breasts, vaginal and anal areas.

[49] Some photographs show J.J.P.'s finger inserted into Victim #1's anus.

[50] Some photos show the tip of J.J.P.'s penis inserted into Victim #1's anus.

[51] What appears to be massage lotion is present on Victim #1's buttocks.

[52] Victim #1 recalls J.J.P. touching her vaginal area with his hand. She remembers another incident in which J.J.P. applied a vibrating palm massager over her vagina. She recalls him asking her how the vibrator felt to her. This event took place under the pool table at one of the Yukon residences during a sleepover. Victim #1's sister was also present at this sleep over.

[53] On one occasion, J.J.P. made a video of Victim #1 showering while naked and alone in one of the bathrooms. J.J.P. is seen in the recording, setting up and adjusting the video camera, unknown to the victim.

Victim #2 DOB 2001

[54] J.J.P.'s digital records include nineteen photographs and four video recordings.

[55] Photographs show Victim #2 apparently sleeping with her breasts exposed. J.J.P.'s hand is apparent in a number of the photographs, moving Victim #2's clothing to expose her breast area. Some of the photographs show J.J.P.'s daughter in bed beside Victim #2.

[56] There are also similar video recordings which show Victim #2 with her eyes closed in the lying position with her breasts exposed.

[57] Victim #2 remembers a number of different occasions when J.J.P. fondled her breasts while she lay in bed. J.J.P. also masturbated on top of her and she remembers seeing his penis. She did not tell anyone about these incidents until interviewed by the police in connection with the investigation of J.J.P.

Victim #3 DOB 1999

[58] No photographs or video recordings of Victim #3 were found in J.J.P.'s digital child pornography collection. Victim #3 remembers J.J.P. giving her a massage and waking up during a sleepover to J.J.P. touching her breasts.

Victim #4 DOB 2001

[59] J.J.P.'s digital records include seventy-nine photographs and seven video recordings involving Victim #4.

[60] J.J.P. took photographs and video recordings of Victim #4 on three occasions, twice when Victim #4 slept over at the residence and once on a trip to Dawson City at the Downtown Hotel.

[61] On one of these occasions, J.J.P. touched the tip of his tongue to her clitoris and also applied massage cream to her vaginal and anal areas. The room was dark and J.J.P. used a flashlight at times to illuminate his video recordings and photographs.

[62] J.J.P. also inserted the tip of his finger an inch or so into Victim #4's anus, applied a purple vibrator over her vaginal area and inserted the tip of the vibrator approximately an inch into Victim #4's anus.

[63] During the same video recorded incident, J.J.P. admits to rubbing his penis and attempting a number of times to insert his penis into Victim #4's anus.

[64] During the same video recorded incident, J.J.P. applied massage lotion onto Victim #4's vaginal area while he was stroking his penis.

[65] Victim #4 remembers sleepovers with J.J.P.'s daughter during which J.J.P. touched her vagina and breasts and once when he touched her with his penis. She had never told anyone about these events until interviewed by the police in connection with their investigation of J.J.P.

[66] J.J.P. also made a video in which Victim #4 is observed to be naked and showering in one of the bathrooms. The video shows J.J.P. setting up the camera prior to the victim entering the bathroom and unknown to the victim.

Victim #5 DOB 1999

[67] J.J.P.'s digital records include two hundred and seventy-six photographs and twelve video recordings involving Victim #5.

[68] J.J.P. admits taking photographs of Victim #5 while she and J.J.P.'s daughter were playing in the bathtub and while sitting on the toilet on the same occasion. J.J.P. is heard on a video recording interacting with Victim #5 and his daughter while the images are being recorded.

[69] J.J.P. admits to openly taking photographs of Victim #5 after the bath when she and J.J.P.'s daughter were naked and playing in the recreation room.

[70] Other photographs show close up images of Victim #5's vaginal and anal areas.

[71] Some photographs show J.J.P.'s hand separating Victim #5's buttocks to focus-in on her anus. Some photographs depicting a silver 'bullet' type vibrator inserted into Victim #5's anus with J.J.P. holding her buttocks open.

[72] A video recording captures J.J.P. digitally penetrating Victim #5's anus with his pinkie finger.

[73] In the same incident, a series of videos show Victim #5 while J.J.P. inserts his penis into her anal region. A bottle of lotion is present on the bed sheet. Victim #5 is observed moving and he immediately removes his penis. After a moment, J.J.P. re-inserts the end of his penis into Victim #5's anus a number of times.

[74] One video records J.J.P. inserting the vibrator into Victim #5's anus, and the other shows J.J.P. masturbating onto the right buttocks of Victim #5.

[75] Other videos show Victim #5 naked in the bathtub and changing her clothes.

Victim #6 DOB 2000

[76] J.J.P.'s digital records include one hundred and sixteen photographs and twelve video recordings involving Victim #6.

[77] J.J.P. admits to taking photographs of Victim #6's vaginal, anal and breast areas while Victim #6 is lying on a bed, eyes closed, with J.J.P.'s daughter sleeping nearby. Massage lotion is positioned nearby.

[78] Prior to the recorded incident, Victim #6 complained of pain in her stomach and vagina, and can be heard sobbing during the video. J.J.P. massages her chest area and stomach area. Victim #6 holds open her vagina as directed by J.J.P. He admits to touching her labia.

[79] After this incident, Victim #6 asked to go the washroom and J.J.P. walked with her to the outhouse where he filmed her. It was cold and snowy outside. After returning inside the cabin J.J.P. re-joined Victim #6 and took the pictures noted in paragraph 76, pulled down her pyjamas, exposed his penis, masturbated and eventually ejaculated onto her bare buttocks.

[80] Another video recording which J.J.P. recorded from the outside through a window into a downstairs basement area shows Victim #6 changing her shirt.

[81] Victim #6 states she has no recollection of any conversations with J.J.P. which are recorded in the video, nor of the walk to the outhouse, nor of J.J.P. touching her before or after their walk to the outhouse, or of the recording of her changing her shirt.

Victim #7 DOB 2000

[82] J.J.P.'s digital records include twenty photographs and two video recordings of Victim #7.

[83] Victim #7 remembers J.J.P. massaging her back, thigh and pubic area. She also remembers J.J.P. digitally penetrating her while J.J.P.'s daughter was asleep beside her on the bed.

[84] J.J.P. admits to massaging Victim #7's back, thigh and pubic area on three different occasions. On one occasion, he did so over her panties. On another occasion, in a hotel room in Watson Lake, Yukon, he did so under her panties. On the third occasion, he did so under her panties and digitally penetrated her anus.

[85] J.J.P. admits to taking photographs of Victim #7's vagina and anal area while she lay on her back during a massage.

[86] J.J.P. is depicted inserting his pinkie finger part way into Victim #7's anus.

[87] J.J.P. admits to making a video recording of Victim #7 as she showered. The video recording shows J.J.P. setting up the camera equipment in the bathroom unknown to the victim.

Victim #8 DOB 2000

[88] J.J.P.'s digital records include thirty-three photographs and sixteen video recordings of Victim #8.

[89] J.J.P. admits to taking a video and photographs showing Victim #8's breast, vaginal and anal areas. He admits to touching his tongue to Victim #8's right breast as well as touching and squeezing her nipple area.

[90] In some of the video recordings Victim #8 has her eyes closed. J.J.P. uses a flashlight to illuminate his recordings in a dark bedroom.

[91] J.J.P. is recorded masturbating beside Victim #8’s naked waist and leg area. While J.J.P. is touching the victim, his erect penis is evident in the recording.

[92] Recordings also show J.J.P. applying a white lotion while rubbing and penetrating Victim #8's anus with his thumb. Shortly after this, J.J.P. penetrates Victim #8's anus with his penis. Victim #8's right leg flinches during penetration and J.J.P. stops his sexual activity.

[93] Another video recording shows J.J.P. rubbing Victim #8's vagina with his hand. A white lotion is present around Victim #8's genital area.

[94] J.J.P.’s digital records include another series of images in which Victim #8 is observed changing her clothes in J.J.P.’s vehicle during what appears to be a camping expedition. The photographs depict Victim #8 removing her shirt and changing her white sports bra.

[95] Victim #8 states she has no memory of any sexually assaultive behaviour by J.J.P. and was unaware of these events until she was interviewed by the police in connection with their investigation of J.J.P.

Victim #9 DOB 1998 and Victim #10 DOB 1998

[96] Victim #9 and Victim #10 stayed in the cabin on J.J.P.'s rural Yukon property and remember J.J.P. staying in the cabin with them. Both were thirteen years old at the time.

[97] J.J.P.'s digital records include one video recording showing the two girls changing clothing in a bathroom, along with photographs of Victim #9 and Victim #10's breasts, genitals and anal regions. These two girls were not touched by J.J.P. for any sexual purpose.

Victim #11 DOB 1999

[98] J.J.P.'s digital records include three video recordings in which Victim #11, another friend of J.J.P.'s daughter, is identified.

[99] One video recording depicts J.J.P. rubbing white lotion on Victim #11's buttocks. One video recording depicts J.J.P. digitally penetrating Victim #11's anus while she is sleeping and the third video recording depicts Victim #11 while she is changing her shirt.

[100] Victim #11 was unaware of these events until interviewed by the police in connection with their investigation of J.J.P.

THE ONTARIO OFFENCE (Victim #12)

[101] Between July 29, 2012, and August 26, 2012, Victim #12, who was 11 years old at the time, was with her mother, her sister, and her mother's boyfriend for the annual family gathering in Ontario. J.J.P. was also present and he is related to her mother's boyfriend.

[102] Victim #12 was playing in the lake with the accused and his son. The kids were launching off the accused's hips into the water. The victim launched off the accused's hips about 5 to 10 times and each time the accused would place his hands on the inside of her thighs and rub her thighs. Each time the accused would get closer to her vaginal area. The last time the victim set up to launch, the accused placed his hands on the inside of her crotch area touching the bottom portion of her bathing suit and his thumbs

were touching the top of her vaginal area outside of the bathing suit. She tried to swim away feeling very uncomfortable at this point but the accused grabbed her right ankle and pulled her back through the water. She struggled free and kicked away from him and he released her.

[103] The victim started crying as she exited the water and walked to her campsite. Her mother saw that she was upset and followed her and asked her what was wrong. She immediately disclosed to her mother what had happened. Her mother's boyfriend was not at the park at that point as he had left for town to pick up fuel. When he returned, the mother waited until the accused had left the park before she told her boyfriend what had happened.

[104] The couple sent an email to the accused outlining what the child had told them and telling him that he was no longer welcome to come near the family and he needed to get help. They did not receive a response until November or December of 2012 when the accused said that the mother was crazy and the victim was lying. The accused also refused the offer to speak with the mother about the incident.

[105] The mother and the victim decided not to report the matter to the police as they wanted to forget about the incident and not have to deal with it over and over again.

[106] On December 7, 2015, an officer with the Ontario Provincial police was assigned to conduct an investigation after the OPP was notified that the accused had confessed to this incident while being interviewed about his offences in British Columbia and Yukon.

[107] Victim #12, her mother and the mother's boyfriend all gave statements to the OPP outlining the above incident and charges were sworn in late December 2015, and a warrant issued for his arrest.

THE BRITISH COLUMBIA OFFENCES

[108] Between December 22 – 27, 2014, Victim #1 travelled with her parents from the Yukon to visit with J.J.P's and his family over Christmas.

[109] Victim #1 was 10 years old in December 2014.

[110] On January 20, 2015, Victim #1 disclosed to a school guidance counsellor that J.J.P. had touched her in a sexual manner.

[111] The matter was reported to Children and Family Services and the Whitehorse RCMP.

[112] Whitehorse RCMP began an investigation which led to contact with the Delta Police Department for assistance as the offence had happened in Delta, B.C.

The Delta police Investigation led to the arrest of J.J.P., who provided statements; and to child pornography being located which belonged to J.J.P.

Statement of Victim #1

[113] Victim #1 said that she was visiting J.J.P.'s family in Delta and that she and J.J.P.'s daughter were sharing a room.

[114] Victim #1 said that she recalled J.J.P. had brought them snow cones in bed. She said that afterwards his daughter fell asleep.

[115] Victim #1 said that J.J.P. came back into the room and sat beside her. He asked if she wanted a massage, and she said yes.

[116] Victim #1 said that she thought J.J.P. believed she had fallen asleep. She said she was wearing pajama bottoms and a grey shirt. She said that J.J.P. tried to pull her pajama bottoms down and that's what woke her up.

[117] Victim #1 said that J.J.P. pulled down her pajama bottoms and touched her vagina. She saw a flash, then he continued touching her vagina and her “butt” or “bottom”.

[118] Victim #1 said that his hand went inside her “a little bit”.

[119] Victim #1 said that she was “freaked out” but it had happened before when J.J.P. lived in the Yukon.

Statement of Victim #13

[120] Victim #13 met J.J.P.’s daughter during the summer of 2014.

[121] Victim #13 advised that she would sleep over at the P. residence and J.J.P. would drive her and his daughter to riding stables on Saturday morning.

[122] She advised that J.J.P. had massaged her neck, back, arms and legs.

[123] Victim #13 recalled a sleepover at the P. residence after the daughter’s dog had died. J.J.P. came into the room after she had fallen asleep and she woke up to him massaging her neck. She advised the massage continued for “5-10 minutes” and that J.J.P. also massaged her back, arms and legs.

[124] She advised that the massage occurred over top of her clothes and the bed covers.

[125] She advised that the next morning J.J.P. told her to have a shower, which she did.

[126] Victim #13 later told her mother that J.J.P. was “creepy” and she did not want to return to the P. residence.

[127] She advised that J.J.P. continued to contact her. He and his daughter came to her residence on one occasion and asked her to come for a sleep over at the P. residence. She declined the invitation.

[128] J.J.P. and Victim #13 exchanged 151 text messages between March 26, 2014 and August 14, 2014. After May 16, 2014, Victim #13 declined J.J.P.'s invitation or made excuses not to attend the P. residence.

[129] Victim #13 appeared in still photographs and video showering at the P. residence. She was not aware that she had been filmed while using the shower until advised by the police.

[130] The photographs depict Victim #13's nude body in a shower. The camera is positioned below her at approximately knee to mid-thigh level and is directed upward. The camera is positioned to capture the genital or buttock area upwards to the face of the subject. The camera is facing towards the shower head from the back of the shower area.

Child pornography

[131] After obtaining and executing search warrants, police recovered thousands of photographs and well over a hundred videos depicting child pornography from computers and other storage devices at the P. residence. Detailed descriptions of some of these are included in the Admissions of Fact filed with respect to the B.C. charges. The children in these videos range from 6-8 to 10-13 years of age. In one video, a 10-12 year old child is depicted as being rendered unconscious and bound and gagged. Once roused, she has a dildo inserted into her mouth and rubbed on her vagina and anal region.

[132] In another video, a sobbing 6-8 year old has her buttocks and vagina forced apart by an adult woman and is forced to touch the erect penis of another adult.

[133] There are other videos that capture sexual text and video chats between an unidentified user and pubescent and pre-pubescent girls from Eastern Europe. J.J.P. denies being the user.

Judge's Impression

[134] I have reviewed the Agreed Statements of Fact and reviewed the photographs and videos of the offences. In addition to the shocking nature and staggering number of the sexual offences on these young girls, I am struck by the elaborate and meticulous staging and exhibition of these deplorable acts. J.J.P.'s conduct was not opportunistic or random but rather incredibly well-organized and planned criminal activity in the pursuit of his predatory and devastating ends. He had, in effect, created a personal library of film and video of the most intrusive sexual acts on his young and vulnerable female victims for his personal gratification.

Victim Impact Statements

[135] The Victim Impact Statements were generally read in by the Crown, family or friends. One was read by a victim herself. The following are excerpts that I will not attribute to a particular person. They give a particular view of the impact of these predatory acts on the victims and their families, who all trusted the offender with their daughters.

[136] From a mother:

> You, [J.J.P.], raped my daughter. How dare you even touch her. She was perfect, innocent and only 9 years old at the time. Only a monster, would harm a precious child the way you did. I will never understand the evil that motivated you as a grown adult family man and businessman in our community, to do these acts of depravity. They are despicable. Your entire life was lived in a duplicitous manner to provide children for your pedophilic desires. It looks like

> you did nothing to deter your feelings or to find help or you wouldn't be sitting in the courtroom today.
>
> …
>
> The day I found out that you had sexually assaulted my daughter, something changed inside of me. I began to look at people in a different way. For about one year, I could hardly go grocery shopping as every man that I saw in the store, looked like a pedophile. I couldn't believe how many there were. After awhile I had to put my head down while shopping for food and not look at any men. It was the only way I could survive. Sometimes I wished I could live in a place surrounded only by women. Then I would feel like my family was in a safer place. I hated men for quite some time. Eventually, I was able to get help from a psychologist and get back to a healthier state of mind

[137] From a father:

> The way you took advantage of our daughter and our family has deeply shaken us. Hiding behind a facade of family and religious values, you were willing to lie, use and betray your friends and family, and carefully plan and carry out your assault regardless of the damage caused. You did not care about your victims, their families, or your family. We cannot understand your selfish and cruel behaviour. We were all victimized by the evil predator, which you are.
>
> Even now, I am often flooded with feelings of anger and hatred for you. I feel a deep sadness for my daughter, and guilt that we failed to protect her by allowing ourselves to trust you, and your family with her care.

[138] From a mother:

> … I am constantly trying to remember details from years ago when the crimes were committed. It sickens me that so many other young girls were abused as well by this pedophile [J.J.P]. I have read the list of crimes and it deeply sickens me to know that [J.J.P.] used children for his own sexual pleasure and in doing so hurt them. The sexual abuse will affect them and those that care about them for the rest of their lives. I feel it is important to make clear to everyone involved in this court proceeding and particularly to the perpetrator [J.J.P.] the devastation this has caused myself and my family. …

[139] From a mother:

> Our daughter is not well.
>
> Beginning the day this whole mess came to light, our daughter's life has gradually fallen apart. She now has an anxiety disorder and cannot deal with the slightest stress. She has zero self-confidence. She is unable to do the simple things that other teenagers easily do. She has quit participating in the sports that she loved and excelled at because she is unable to attend events. She is so anxious that she is unable to attend her classes or write tests at school – she has had to withdraw from most of her courses. She will not graduate high school with her friends. Many days it is impossible for her to simply leave the house. There is no chance that she will do many things, such as getting a driver's license.
>
> Everything in our household revolves around trying to support our daughter. She tried therapy for about a year, but these sessions caused stress and now she simply cannot go, she is not comfortable sharing and now refuses to talk to anyone.
>
> We are still discovering all the ways that the abuse suffered by our daughter has damaged her. It has set her life off course and destroyed the normal childhood and teenage years that every kid deserves.
>
> Finding out about this was like a bomb going off – blowing our normal happy family to pieces. It was inconceivable – we were numbed, angry and are just sick with remorse for not having protected our child.
>
> Our family and our daughter have been damaged and will never be the same.

[140] From a victim:

> Do you realize the trauma and grief that I have suffered because of you? That all of the other victims and their families and even the family support systems have suffered because of your monstrosity? The damage suffered has been tremendous and I have never really been the same since I found out about this.

[141] From a father:

> There is a toxic side effect to this pain, this intense suffering. It is a toxic substance that corrodes things. It corrodes everything. This dark, oozing, seemingly sentient matter seeks out and destroys all that is good and light. It destroys relationships. It destroys joy. It kills happiness. It tortures innocence, and it annihilates truth. It seeks out all that is light and fair and brings cold, hard, pitiless darkness in its stead.
>
> I speak of the poisoned gift that [J.J.P.] has brought us. All of us in this courtroom today, have in one way or another, been exposed to this human being who seems intent on bringing such pain and suffering into the world, that it defies imagination. It leaves me speechless. The profound scale of the harm he has caused and inflicted upon us all seems to be impossible to understand.

[142] From a mother:

> - Yes, for a while, you made a loving father unable to show affection to his daughters, for fear of being perceived as a pervert. And yes, to this day, he will not get close to other people's children, for that same reason.
>
> - Yes, you made us feel guilty and inadequate as parents, and the stress of the last three years has caused me to suffer several episodes of depression. I have gotten used to having moments when random triggers will make me think of what happened and I start crying uncontrollably at church, at work, in my car [or] even at the grocery store.
>
> - Yes, we have withdrawn from our social life and many of the activities we used to enjoy, because we constantly carry this pain with us, and are unable to talk about it with most people.
>
> - Yes, you have cause incredible trauma to our daughters, who have spent the last three years in therapy. Among other things, the older siblings have had to deal with terrible feelings of guilt, thinking that if they had spoken up sooner, their baby sister might have been spared…

- Yes, you have taken something from them that wasn't yours to take, and it is too soon to know what long term effects this will have.

- Yes, what you have done has changed our family forever.

RISK ASSESSMENT

[143] Dr. Lohrasbe prepared a psychiatric assessment report for the Court pursuant to s. 752.1 of the *Criminal Code.* He has practiced forensic psychiatry in British Columbia since 1985. He has testified as an expert in more than 140 Dangerous Offender/Long-Term Offender hearings and has been qualified as an expert in this Court on numerous occasions.

[144] Dr. Lohrasbe was provided with the Statement of Agreed Facts, Admissions of Fact, the replacement indictment, transcripts of J.J.P.'s interviews and other witness statements, including victims. He did not review the photographs or videos. He interviewed J.J.P. for 2 ½ hours, somewhat shorter than his usual interviews because of the detailed description of offences in the Statement of Agreed Facts.

[145] Dr. Lohrasbe described J.J.P. as earnest and sincere and highly motivated to understand himself, his offences and the steps he needs to take to ensure that he never offends again. He found him remorseful and stated that J.J.P. repeatedly spoke of his betrayal of trust of the victims, their families and his community. He did not report any manipulation or controlling or lack of genuineness or honesty and in defence cross-examination, answered as follows:

> Q Now, I just want to run through a list of some of the descriptors you used in your report for [J.J.P.].
> You described him as fully cooperative?
> A Yes.
> Q Spontaneous?
> A Yes.

Q Disclosive?
A Yes.
Q That he responded to all questions without hesitation?
A Yes.
Q That he was at no time evasive, manipulative, or otherwise controlling?
A Yes.
Q That you established rapport readily?
A Yes.
Q And that you maintained rapport?
A Yes.
Q That he was entirely genuine?
A Yes.
Q That he was earnest?
A Yes.
Q That he was sincere?
A Yes.
Q That he was eager to confess?
A Yes.
Q That he was eager to seek guidance regarding treatment?
A Yes.
Q He was highly motivated to understand himself?
A Yes.
Q To understand his offence – offences?
A Yes.
Q And the steps he needed to take to ensure that he never offends again?
A Yes.
Q That he has made a conscious effort to avoid all deviant fantasies?
A Yes. That is his self-report, yes.
Q Yes. And these impressions, again, you reach on the basis of the interview that you had with him?
A Yes.
Q The review of the material that was provided to you?
A No, most of the descriptors you've just used are my interview with him, not based on the materials that I reviewed.

(Transcript February 15, 2018, p. 4, l. 22 to p. 5, l. 14)

[146] In his unstructured professional opinion (i.e. without the application of actuarial measures), Dr. Lohrasbe confirmed that J.J.P. is a pedophile which means, in his case, that he has intense urges to have sexual contact with young girls. The intensity of

J.J.P.'s deviancy is confirmed by the sexual acts he performed and his 20-year interest in accessing sexual child pornography and making his pornographic images and videos of his sexual assaults of young girls. Dr. Lohrasbe states that J.J.P. has a life-long sexual deviancy that cannot be cured but it is not necessarily synonymous with sexual offending assuming successful treatment and management of this risk.

[147] Dr. Lohrasbe did not diagnose a psychopathic disorder but found overtones of it. He also observed overtones of avoidance personality, narcissism, and voyeurism. He acknowledged that those disorders could be diagnosed over time. He considers J.J.P.'s sexual deviancy to be intense and enduring, because his offences were planned and occurred in a variety of geographic locations over a period of six years. It continued after a substantial break after he left the Yukon.

[148] Dr. Lohrasbe confirmed that J.J.P. is addicted to child pornography and that the younger the children, the more deviant the addiction. Dr. Lohrasbe also expressed the general comment, also applicable to J.J.P., that the psychiatric profession simply does not understand how the viewing of pornography is shaping human behaviour. He stated the following in answer to a Crown question:

> Q A child pornography consumer is somebody who's on the internet and looking at pictures and collecting pictures and so forth versus an offender who is actually making pornography for themselves.
>
> A Yeah. That's a really great and complicated question because child porn has taken us in my profession by complete surprise. Like it did not arise during the course of my training. You had to be a kind of dirty old man going into, you know, places with trench coats and so on, it was such a rare thing.
>
> Then along came the internet, and now the explosion of porn, including child porn, has caught my profession completely off stride.
>
> And because the internet is evolving as rapidly as it has, research is always playing catch-up, so the

> book written by Michael Seto, one of Canada's leading researchers on pedophilia and internet offending, is sort of currently the benchmark, but even he, you know, during a presentation last year, said a lot of the research is already outdated.
>
> So I'll just make that general comment, that we don't understand what's happening. We don't understand how pornography is shaping human behaviour, adult as well as child. What we know is that it has caught us all by surprise.
>
> …
>
> A By the very nature of child porn, we can't track the data because so much of it is hidden. And of course, much of internet offending is not just child porn, but all the chat rooms and the exchanges and peer-to-peer files being shared and so on.
>
> So now coming to your question, we don't have clear guidelines about differentiating risk between passive consumers of already produced commercial porn versus those who upload porn themselves. But intuitively, the latter seems like a far more intrusive process. <u>Making your own porn with your own victims and potentially uploading it intuitively implies that the person is more deeply entrenched in deviancy, but we don't know how that translates into risk just yet.</u>
>
> (my emphasis)
>
> (Transcript, February 13, 2018, p. 44, l. 13 – 31; p. 44, l. 42 – p. 45, l. 5)

[149] Dr. Lohrasbe was clear that the combination of planning by J.J.P. in terms of arranging sleepovers for his victims creates a higher level of risk.

> … What I'm saying is that impulsive sexual offending offers, obviously, a risk, as does planned, deliberate sexual offending. But the latter tells us more about the pathology of the individual.
>
> Q What does it tell us?
>
> A It tells us that he is able before being sexually aroused to plan and manipulate a situation to meet his sexual needs.
>
> Q And how does that translate in terms of the assessment of risk?
>
> A A wider range of possibilities.
>
> Q A higher level of risk?

> A That's a fair –
> THE COURT: Offending possibilities, are you –
> A A wider range.
> THE COURT: Of offending possibilities?
> A Of offending possibilities, yeah.
> If a person has the wherewithal to plan and sort of structure his day or his relationships rather than simply responding to what's available, that obviously widens the pool of potentially offending situations.
>
> MR. SINCLAIR:
> Q And does it speak to the intensity of the sexual deviation:
> A Often it does.
> Q How so:
> A It means that even in neutral situations, that person is planning ahead to his next sexual exploitation.
> Q So does it suggest a more deeply ingrained sexual deviation?
> A Preoccupation, yes. (my emphasis)
> (Transcript, February 13, 2018, p.45 l. 32 – p. 46, l. 10)

[150] Dr. Lohrasbe also provided his structured professional judgment using the Risk for Sexual Violence Protocol ("RSVP"). He acknowledged that with a history devoid of prior convictions of any kind, a lengthy marriage, a lack of psychopathic features and his age (48), the RSVP actuarial instrument will inevitably place J.J.P. in a subgroup of sexual offenders with anticipated low rates of recidivism. Indeed, in a letter to counsel, Dr. Lohrasbe opined: "In my opinion, actuarial assessments are only helpful in a minority of cases and are of limited value in this one." Appling the RSVP, he rated J.J.P. as "highly manageable upon his release into the community":

> To summarize the application of the RSVP to [J.J.P.]: eight of twenty two risk factors are present, a substantial but not overwhelming proportion; four of the five domains are represented; and he is rated as highly manageable upon his release into the community. The chronicity of his offending (even after having a natural 'break' due to a move) as well as the diversity of offenses indicate that his pedophilic urges/fantasies are intense and established. Established and

> intense pedophilic urges/fantasies are the single most important risk factor in this case. They point to caution in making assumptions as to the effectiveness of treatment (there is no 'cure' for pedophilia) and balance the optimistic risk-reducing, treatability, and risk-management considerations discussed below. (my emphasis)
> (p. 20, Dr. Lohrasbe's report)

[151] In cross-examination by the Crown, Dr. Lohrasbe acknowledged that there was an element of escalation of sexual violence with J.J.P. that he initially said was absent. However, he remained steadfast in his opinion that J.J.P., although initially denying responsibility to the police, "he has since embraced legal, physical, moral and psychological responsibility for his actions."

[152] Dr. Lohrasbe candidly admits that he could possibly be conned or have the wool pulled over his eyes, although he does not think that is the case. In cross-examination, he stated:

> … Virtually all sex offenders at the time of their offending are engaging in various forms of denials and minimization of responsibility. By the time I interview them, they may have progressed to the point of saying "Yeah, I pled guilty but, you know, it's being made out to be worse than it was" or "I did it, but it really didn't hurt the girls that much" or "I did it and yes, it did hurt the girls but, you know, I'm otherwise a good guy".
>
> This man, as best as I could assess, he not only accepts legal responsibility, physical responsibility for his acts, but he has made it, at least, very apparent to me that he feels awful for the damage that he has done to the girls psychologically, their futures, and the moral transgression involved.
>
> So unless he is a very good actor and conned me, I think that he's come a very long way from the denial that is apparent, say, in the first police interview. (my emphasis)
> (Transcript of February 13, 2018, p. 54, lines 29 – 42)

[153] Dr. Lohrasbe further elaborated on the treatment and risk management aspect of his opinion:

> Right. I don't know how better I can explain this point.
> This risk factor looks at whether the individual is entrenched in a system or has the – a lack of capacities to engage in realistic planning. He certainly has no problems with his capacities.
> The assumption I will make, and I think it's a realistic one, is that going forward in the community, he is not going to be able to have the kind of setup that allowed him to access victims in the past. And he will get assistance and presumably take that assistance in making more realistic plans to stay away from the kind of situation that allowed him access to victims in the future.
> This is – there's a crystal ball aspect of this. This is looking ahead, making assumptions about the impact of assistance he's going to get, and the monitoring and supervision he will get when he's back in the community.
> (my emphasis)
> (Transcript of February 13, 2018, p. 62, lines 28 – 41)

[154] Dr. Lohrasbe acknowledges that his opinion on treatment and risk management rests upon the assumption that J.J.P. will participate and benefit from treatment and that he will require a long period of supervision when J.J.P. is back in the community. Dr. Lohrasbe was very clear that J.J.P., from a therapeutic perspective, requires supervision for the rest of his life and he was critical of the limitation of the 10-year maximum for a long-term supervision order. Critical, because those in his profession generally agree that long incarcerations are not necessarily helpful but supervision for longer than 10 years would be helpful in protecting the public and assisting the offender.

[155] Dr. Lohrasbe also acknowledged the unknown contingencies of life that are "absolute unknowns":

> Is that even with the best techniques that we have to assess risk, even with the most experienced assessors, what we're left with is a kind of black hole of entirely unpredictable contingencies, some dependent on the offender and his efforts, some out of his control and dependent simply on life events.
> And so there is a sharp limit to what we can agree, meaning psychiatrists as assessors, of people with risks for

> different kinds of violence can speak to. There's always that black hole that will get filled in with life events.
>
> So in [J.J.P.'s] case, much will depend when he is back in the community on things like where he resides, with whom he resides, how much loneliness he encounters, how successful he has been in identifying the kinds of things that got him into trouble in the first place, on and on and on, and then the things that he will encounter in terms of health and changes in the world of pornography, so many things.
>
> So it is a recognition that even in the case of cardiovascular problems where the risk factors are far more concrete than they are with sexual deviancy, far more out in the open, some people take that information and they implement changes for a while and then fall. Some people take that information, implement it over time and live long lives.
>
> So there is a need to be modest in terms of how confident one can be in terms of anticipating what's coming down the road. (my emphasis)
> (Transcript of February 13, 2018, p. 72, line 37 to p. 37, line 11)

[156] Dr. Lohrasbe addressed a final note of caution as follows:

> Sometimes we have people who have done apparently all the right things, gone through all the treatment programs that can be offered, seemingly have done very well under supervision in the community, and then, to the surprise of people supervising them, relapse with another offence.
>
> So because – and just going back to what I said earlier, because our knowledge of the nature and persistence and power of sexual deviancy is incomplete, it would not be appropriate to say that even the best candidate for treatment who has done everything we expect of him, one can guarantee that he will not offend again. There's always got to be a caution that there are things we don't understand about pedophilia and its power and that we may not be able to head off a future victim. (my emphasis)
> (Transcript of February 13, 2018, p. 76, line 15 – 26)

[157] Dr. Lohrasbe summarized his risk assessment opinion in his report as follows at page 23:

> i. If [J.J.P.] had not been apprehended, it is likely that he would have continued with both contact and

internet offending. Left alone and without sustained intervention, he was at high risk to reoffend.

ii. The legal consequences of his conviction are by themselves likely to have a salutary effect on risk. In addition, ageing is likely to reduce risk.

iii. It is anticipated that he will be offered a full-dress sex offender treatment program once sentenced. He is likely to benefit from such a program, and it is [reasonable] to anticipate that his risk will be reduced to levels that are manageable in the community.

iv. At that point, he will fall within a statistical subgroup of sex offenders who [are] at low risk to recidivate with another sexual offense.

v. It is anticipated that he will be a good candidate for risk management in the community.

vi. Even if future risk assessments confirm the above expectation that his risk will then be low, a lengthy period of supervision in the community is recommended, given the potential for lifelong persistence of pedophilic urges and fantasies. Legally mandated supervision brings with it resources that may not otherwise be available to him when back in the community.

[158] I find the following facts:

1. J.J.P. is an incurable life-long pedophile with an intense sexual deviance confirmed by these 25 convictions for sexual offences on prepubescent girls.

2. His deeply entrenched sexual deviancy has endured for 20 years of accessing child pornography and the creation of his personal pornographic library of photographs and videos of his victims.

3. The sexual assaults were orchestrated in the sense that he took advantage of his victims during sleepovers with his daughter.

4. The sexual assaults and their preservation in still and video images on his computer were meticulously and elaborately planned in terms of the arrangement of sleepovers, and the location of cameras and lighting. J.J.P. committed these sexual assaults over a period of seven years, while maintaining a public veneer of a religious and trustworthy person.
5. Dr. Lohrasbe acknowledges that psychiatry does not fully distinguish differences between the risk posed by consumers of already-created child pornography and that posed by offenders that make their own pornography with their own victims.
6. J.J.P. is not opportunistic, in the sense that he is able to plan and manipulate a situation to meet his sexual needs before being sexually aroused. This increases the risk of him being in situations where he is able to victimize children.
7. The RSVP actuarial instrument is of limited value in this case because J.J.P. has no prior convictions, a lengthy marriage, a lack of psychopathic features and an age of 48 years.
8. J.J.P. has lied to everyone in his family and community for 20 years, and acknowledges “I was always good at selling myself” and “I thought I could do anything I wanted to do.”
9. J.J.P. admitted guilt and became remorseful and desirous of treatment only after he realized the police had his computer photos and videos in the second interview with the police on February 12, 2015.
10. In Dr. Lohrasbe’s opinion, J.J.P. has come a long way from his denial of these offences in the first police interview.

11. J.J.P. is at high risk to reoffend “without sustained intervention”.

    Dr. Lohrasbe anticipates that after an intense sexual offender treatment program, J.J.P.’s risk of reoffending will be reduced to levels that are manageable and he will be a good candidate for supervision in the community.

12. As Dr. Lohrasbe candidly acknowledged, there is a “black hole of entirely unpredictable contingencies” that could result in J.J.P. re-offending.

13. Dr. Lohrasbe, for therapeutic reasons, would keep J.J.P. under supervision for the rest of his life.

14. J.J.P. is not intractable from a treatment perspective but his intense pedophilia is not curable. He will always be a pedophile.

Correctional Service of Canada Programs and Community Supervision

[159] Kandace Goldstone, the Regional Program Manager for the Correctional Service of Canada in Abbotsford, British Columbia, testified in a general way about the responsibilities of institutional and community Parole Officers, the parole decision-making process, the process of making recommendations to the Parole Board of Canada, and ongoing issues with offenders subject to a long-term supervision order. She filed a lengthy affidavit which includes Program Descriptions of the Integrated Correctional Program Model as well as a report on the Correctional Service of Canada and long-term supervision orders.

[160] Upon admission to federal prison, an offender is screened through a Specialized Sex Offender Assessment. The offender will be classified as high, medium or low risk based upon information from the Court and the Static 99R recidivism tool. The intake officer can override a low risk assessment for the Static 99R based on a court

recommendation or expert opinion. The referral of the parole officer is independent from the court's risk assessment. A parole officer, not a guard, is then assigned to assess programming and other needs of the offender.

[161] The high intensity national Sex Offender Program targets male sex offenders who have been assessed as having a high risk to re-offend sexually. It typically consists of 75 or more group sessions and up to seven individual sessions. Referrals to this program go on the waitlist. Each program session has 12 participants with supervision by two correctional program facilitators.

[162] A dangerous offender serving an indeterminate sentence can earn conditional release on an unescorted temporary absence, day parole or full parole. Full parole for a person serving an indeterminate sentence cannot be granted until the offender has served seven years from the date of arrest. Any condition may be imposed that is reasonable and necessary to protect society and to facilitate the offender's successful reintegration into society.

[163] After expiration of custody, the conditions of a long-term supervision order are determined by the Parole Board, which may impose special terms including a residency condition which does not provide 24-hour supervision and addresses the reasonable possibility of eventual control of risk in the community.

[164] Mr. Sadafi is the supervisor of federal parole officers in the Vancouver office of the Correctional Service of Canada. He reviewed the affidavit of Kandace Goldstone in preparing to give his evidence.

[165] Mr. Sadafi supervises an operational unit of seven parole officers in Vancouver, who conduct parole supervision of any type of release in the community granted

through the Parole Board, including the supervision of dangerous and long-term offenders.

[166] He testified that at the intake assessment there would be another full psychological assessment by a Correctional Service psychologist who is familiar with the offender population and the resources to manage the risk. When the offender goes before the Parole Board, a further psychological assessment may be required.

[167] The intake assessment before the Parole Board includes a Criminal Profile Report detailing the criminal history (both official and offender's version) precipitating factors to criminal behaviour, high risk situations, outstanding charges, institutional history, escape/attempted escape history, community supervision history, psychological/psychiatric/mental health history, family violence history and preliminary assessment of whether the offender meets the criteria for detention, information, as well as commenting on offender attitude and remorse.

[168] Full parole eligibility occurs when the offender serves 1/6 of his sentence and after serving 2/3 of a sentence, offenders are typically granted parole. Victims and their families may appear at parole hearings.

[169] When the institutional parole officer presents a case to the Parole Board, the community parole officer prepares a strategy for release of the offender into the community without regard to the recommendation of the institution. The Parole Board is likely to agree with the recommended plan of the community parole officer.

[170] A release on parole for a sexual offender of children typically considers all the reports from police through to court and the institution, and the conditions imposed are based on the needs of that specific offender.

[171] A high risk individual would likely have a requirement to live at a halfway house. There is also maintenance programming for those offenders who have done an intensive treatment program. However, the majority of interaction with parole officers depends on trust.

[172] Mr. Sadafi advised that it was very difficult to supervise access to computers and the internet for offenders convicted of accessing or making child pornography because the community parole officer do not have the resources and skills to keep up with technology unless special powers are granted by the Parole Board.

[173] He stated that the community parole officers have a particularly difficult time breaching offenders under the long-term supervision orders as it is a *Criminal Code* process requiring police assistance as opposed to breach of parole under the *Correctional Conditional Release Act*.

[174] Mr. Sadafi clearly stated that there are many operational challenges to have the right training to monitor long-term supervision orders.

DESIGNATION OF DANGEROUS OFFENDER

[175] The applicable section of the *Criminal Code* for a dangerous offender finding for a sexual offender is the following:

> 753 (1) On application made under this Part after an assessment report is filed under subsection 752.1(2), the court shall find the offender to be a dangerous offender if it is satisfied
>
> …
>
> (b) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (b) of the definition of that expression in section 752 and the offender, by his or her conduct in any sexual matter including that involved in the commission of the offence for which he or she has been

convicted, has shown a failure to control his or her sexual impulses and a likelihood of causing injury, pain or other evil to other persons through failure in the future to control his or her sexual impulses.

Sentence for dangerous offender

(4) If the court finds an offender to be a dangerous offender, it shall

(a) impose a sentence of detention in a penitentiary for an indeterminate period;

(b) impose a sentence for the offence for which the offender has been convicted — which must be a minimum punishment of imprisonment for a term of two years — and order that the offender be subject to long-term supervision for a period that does not exceed 10 years; or

(c) impose a sentence for the offence for which the offender has been convicted.

Sentence of indeterminate detention

(4.1) The court shall impose a sentence of detention in a penitentiary for an indeterminate period unless it is satisfied by the evidence adduced during the hearing of the application that there is a reasonable expectation that a lesser measure under paragraph (4)(b) or (c) will adequately protect the public against the commission by the offender of murder or a serious personal injury offence.

If offender not found to be dangerous offender

(5) If the court does not find an offender to be a dangerous offender,

(a) the court may treat the application as an application to find the offender to be a long-term offender, section 753.1 applies to the application and the court may either find that the offender is a long-term offender or hold another hearing for that purpose; or

(b) the court may impose sentence for the offence for which the offender has been convicted.

[176] The first stage of this proceeding pursuant to s. 753(1)(b) is called the designation stage.

[177] In the recent case of *R. v. Boutilier*, 2017 SCC 64 ("*Boutilier*"), the Supreme Court of Canada set out a clear test for a finding of dangerousness at para. 46:

> In sum, a finding of dangerousness has always required that the Crown demonstrate, beyond a reasonable doubt, a high likelihood of harmful recidivism and the intractability of the violent pattern of conduct. A prospective assessment of dangerousness ensures that only offenders who pose a tremendous future risk are designated as dangerous and face the possibility of being sentenced to an indeterminate detention. This necessarily involves the consideration of future treatment prospects. …

[178] In *Boutilier*, the Court was addressing the constitutionality of the dangerous offender designation following amendments made to the section in 2008. The Court referred back to its conclusion in *R. v. Lyons*, [1987] 2 S.C.R. 309 ("*Lyons*"), that the designation is constitutional if it meets four criteria:

1. The offender has been convicted of a "serious personal injury offence";
2. The predicate offence is part of a broader pattern of violence;
3. There is a high likelihood of harmful recidivism; and
4. The violent conduct is intractable.

[179] In *Lyons*, Justice La Forest ruled that a court must be satisfied that the offender's pattern of conduct is substantially or pathologically intractable before there can be a dangerous offender designation. This requires the judge to conduct a prospective assessment of dangerousness. Cote J. in *Boutilier* determined that the word "intractable" means that the offender is unable to surmount the harmful conduct.

[180] In *Boutilier,* the Supreme Court of Canada has, in effect, confirmed the overbreadth analysis conducted in *Lyons* and clarified that s. 753(1) continues to apply

to a very small group of offenders for whom the risk of indeterminate preventive detention is constitutional. This restricted application had been called into question by a number of lower court authorities following the 2008 amendments.

[181] At the designation stage of a dangerous offender hearing, the court is concerned with assessing the future threat posed by the offender.

[182] Although *Boutilier* addressed s. 753(1)(a), the following comment made reference to s. 753(1)(b), the sexual assault subsection, applicable in the case at bar:

> Reference to the other category of dangerousness based on sexual conduct, under s. 753(1)(b), reinforces the conclusion that s. 753(1)(a) mandates a prospective assessment. This category requires, in addition to evidence of a pattern of past conduct, an independent assessment of future risk:
>
>> The offender must be shown to have failed in the past "to control his or her sexual impulses" and, in the future, that there is "a likelihood of causing injury, pain or other evil to other persons through failure in the future to control his or her sexual impulses". [Emphasis added; citation omitted.]

[183] In *Boutilier,* the sentencing judge had designated Boutilier as a dangerous offender. Boutilier had a lengthy criminal record, and the predicate offences that gave rise to the dangerous offender application were two robberies and an assault with a weapon. Boutilier had not injured anyone and the gun he used to threaten his victims was an imitation firearm. He had been physically and sexually abused as a child and was provided with alcohol and illegal substances as early as six or seven. He was using drugs weekly by the time he was 14. The sentencing judge considered his ongoing drug use and inability to overcome his crippling addictions to be central to his criminality which was extensive. The sentencing judge found that the Crown had established the statutory criteria for designation as a dangerous offender beyond a reasonable doubt.

The sentencing judge did not consider treatability at the designation stage. He sentenced Boutilier to an indeterminate sentence as he found his prospects for successful treatment to be nothing more than an "expression of hope" and that no lesser sentence would adequately protect the public.

[184] The Supreme Court of Canada found that the sentencing judge had committed an error of law in failing to consider his treatment prospects before designating him as a dangerous offender. However, the Supreme Court of Canada found that the error of law did not result in a substantial wrong or miscarriage of justice. The court stated at para. 86:

> The judge concluded that Mr. Boutilier is not a psychopath or a sexual offender, but rather a drug addict that becomes impulsive and dangerous when using drugs - one who is at a high risk of committing offences when he is in a state of relapse, since he will do whatever is needed to obtain drugs. The judge concluded that, when he commits offences, he puts other people's physical safety and lives at risk. The judge inferred the depth and intractability of his addiction in part from the fact that he continued to use drugs while in custody despite having overdosed numerous times in his life. The judge concluded that the prospect of successful treatment of Mr. Boutilier's addiction did not rise above an expression of hope, as his positive experience at Belkin House was a brief positive interlude in a 35-year history: 2015 BCSC 901, at paras. 203-10. Mr. Boutilier does not argue that these findings of fact are unsupported by the evidence.

Crown Submission

[185] The Crown makes several arguments about the Crown's burden of proof at the designation stage in a dangerous offender proceeding:

1. it submits, based on a dissent in *R. v. Wormell*, 2005 BCCA 328, that there is no traditional burden of proof with respect to the assessment of future risk at the designation stage. If the Crown is submitting that it does

not have to prove beyond a reasonable doubt that the offender is intractable from a treatment perspective, this submission would conflict with the clear burden on the Crown as set out in *Boutilier* and quoted above.

2. the Crown submits that *R. v. Paxton*, 2013 ABQB 750, at para. 411, stands for the proposition that the Crown is not required to negate the prospect of treatment in order to prove that the offender should be designated as a dangerous offender. In my view, that flies in the face of the requirement in *Boutilier* that the Crown must demonstrate beyond a reasonable doubt that the offender is intractable, i.e. not susceptible to future treatment to reduce the risk to the public.

3. the Crown submits that the standard of "intractability" required at the designation stage of a dangerous offender application ought not to be construed so broadly as to require proof beyond a reasonable doubt of "hopelessness". While the Supreme Court of Canada did not use the word "hopeless" as it applies to treatability or treatment prospects, it did say, at para. 45 that:

> … offenders will not be designated as dangerous if their treatment prospects are so compelling that the sentencing judge cannot conclude beyond a reasonable doubt that they present a high likelihood of harmful recidivism or that their violent pattern is intractable: …

It appears to me that in *Boutilier*, the Supreme Court of Canada, in requiring proof beyond a reasonable doubt of the offenders' intractability, did so to ensure that the designation of dangerous offender "… does not

capture offenders who, though currently a threat to others, may cease to be in the future, notably after successful treatment."

[186] The Crown submits that J.J.P.'s pedophilia is intractable for the following reasons:

1. J.J.P.'s pedophilia is at the high end of harmful pathological deviancy and co-morbid with a voyeurism personality disorder.
2. In addition to his "deeply entrenched", "enduring", and "strong" deviant sexuality, J.J.P. has overtones of personality dysfunctions which include avoidant personality traits; poor stress tolerance; a persistent preoccupation with sexual thoughts and fantasies; a persistent misuse of religious affiliation which interferes with self-examination and empathy.

[187] The Crown submits that the intense level of J.J.P.'s pedophilia which is incurable and requires lifelong supervision proves beyond a reasonable doubt that he has a high likelihood of recidivism and the intractability of his conduct.

[188] The Crown relies on the fact that Dr. Lohrasbe candidly admitted that his opinion that J.J.P. is amenable to future treatment is subject to a "black hole of entirely unpredictable contingencies". In other words, future events may prove him wrong in his opinion.

[189] The Crown also casts doubt on Dr. Lohrasbe's assessment that J.J.P. was genuine and sincere in his desire for treatment to ensure that he never offends again.

[190] The Crown submits that Dr. Lohrasbe's risk assessment and opinion about treatability is "substantially infirm" based upon J.J.P.'s lying to the Delta Police Department in his first interview when the police did not have his personal computer

collection of photos and videos. This is followed by his second interview when he asked the investigator if “there is any advantage if I just spill to you?” J.J.P. then confides:

> You’re the last person in the world who still wants to talk to me right now. The reason I lied to you before, just so you know, I was hoping that I’d get bail, see my family one more time. When I got downstairs I realized that I didn’t deserve that. That’s why I wanted to talk to you. My lawyer’s probably gonna kick my ass for talking to you. I don’t know him from Adam. He’s too expensive for me too. And legal aid’s gonna do nothing for me. It’s life. I don’t deserve help, right? But maybe I’ll get some. (SIGHS) I don’t know if I was abused when I was young. I don’t know if I’d call it abuse. I was seven years old and I’m telling you this story not to make you feel sorry for me …
>
> …
>
> … I was always good at selling myself. I was always good at uh, psychological games. I could make people do things, buy things at Grade 9, basically. I always had amazing jobs, made good money. Just kind of I guess. And I thought I could do anything I wanted to do. Seriously. … (my emphasis)

[191] The Crown submits that this evidence directly from J.J.P. supports their submission that he is deceptive, manipulative and highly untrustworthy. In particular, J.J.P. was still denying some of the offences to the police in the second interview.

[192] None of this evidence changed Dr. Lohrasbe’s opinion that J.J.P. was treatable but he explicitly acknowledged that J.J.P. was just at the starting point of understanding himself and he could not say he would be successfully treated which requires a “brutal degree of honesty” but rather that if he keeps up with his present momentum “he would be a good candidate for risk management”.

[193] Dr. Lohrasbe did make a key admission that “… if I had my way as a psychiatrist, I would have him under supervision for the rest of his life if it came to his therapeutic needs only.” To be fair to Dr. Lohrasbe, put in context, he was not abandoning his

opinion that J.J.P. was treatable and a manageable risk in the community. Rather, he said this, in part, as a criticism of the 10-year maximum period for a long-term supervision order. Dr. Lohrasbe never testified that J.J.P. was intractable as regards to future treatment prospects.

[194] I have concluded from the evidence of Dr. Lohrasbe that J.J.P. is not intractable or untreatable as that term is defined in *Boutilier.* Based on the opinion of Dr. Lohrasbe about J.J.P.'s current appreciation of his offending and his willingness to participate in treatment, I cannot find beyond a reasonable doubt that J.J.P. is unable to surmount his sexual offending against children. Having said that, I understand the concern of the victims and their families that no amount of apology and rehabilitation will ever make J.J.P. a suitable person to return to the community. Although he is undoubtedly at a high risk to re-offend if untreated, Dr. Lohrasbe is clear that he is a good candidate for treatment and risk management in the community. While the Crown and victims would argue that there is no certainty that he will not re-offend, that is not the test for designation for a sexual offender as a dangerous offender. The Crown has failed to prove beyond a reasonable doubt a high risk of harmful recidivism and the intractability of his conduct, in the context of the expert evidence about his treatment prospects.

[195] The fact that J.J.P. has an incurable pedophilia, overlain by an intense desire to visualize the sexual assaults he has committed, causes me great concern that J.J.P. may be playing the deceitful game he played while secretly committing these sexual assaults. In other words, I am concerned that he is putting on a good show to avoid the application of the principle that the best predictor of future behaviour is past behaviour. The victims and their families are entirely justified in suggesting that the circumstances

actually suggest he is really intractable because he has been so manipulative that he is just pulling the wool over everybody's eyes again.

[196] However, the only evidence before me specifically on future treatment prospects, is that or Dr. Lohrasbe, J.J.P.'s two police interviews and the apology of J.J.P. at the end of the sentence submissions. Dr. Lohrasbe concluded quite clearly that J.J.P. is not intractable with respect to treatment but in fact is a good case for treatment and management in the community. J.J.P. presents an unusual case in the sense that he has no criminal record and no previous history of compliance or not with treatment.

[197] The expert evidence of Dr. Lohrasbe, the person with psychiatric expertise who has interviewed J.J.P., is that pedophiles can be treated and managed in the community and that J.J.P. is a good candidate because he is genuinely remorseful, has accepted legal and moral responsibility and feels awful for the damage he has done to the young victims and their families.

[198] The Crown has made a great effort to demonstrate that there are no guarantees in the predictive behaviour business. The Crown has established that the pedophilia of J.J.P. is intense and incurable but it has failed to prove beyond a reasonable doubt that J.J.P. is intractable from a treatment perspective. That is the standard set by the Supreme Court of Canada. It is a high standard, and particularly in the circumstances of a first offender, is a difficult burden to meet.

[199] The distinguishing feature of the facts in *Boutilier* is that Boutilier, on the evidence, was not a psychopath or a sexual offender, but a drug addict whose addiction was intractable. He would do anything to obtain drugs. He had benefitted from numerous interventions, and any prospect of overcoming his addictions was 'an expression of hope'. That is not the evidence before me with respect to J.J.P.

[200] In *R. v. Ackerman,* 2002 BCSC 1323, the trial judge designated Ackerman as a dangerous offender and sentenced him to an indeterminate term of imprisonment based on the following findings of fact, at para. 119:

> (a) He denies the offences which are of a multiple nature over a very long period of time.
>
> (b) He believes that sex with children is normal.
>
> (c) He believes that his behaviour is educational.
>
> (d) There is an absence of any interest or motivation to admit responsibility and accept treatment.
>
> (e) The accused has expressed anger and an abusive demeanour toward various psychologists and probation officers.
>
> (f) There is no appropriate family or other community support.

[201] Although the British Columbia Court of Appeal in *R. v. Ackerman*, 2004 BCCA 434, ordered a new trial as the trial judge erred in his assessment of a defence expert on the issue of treatability, the findings of the trial judge are a good example of considerations relevant to a determination of intractability. On the evidence before me, J.J.P.'s attitude is significantly different from that of Mr. Ackerman.

[202] I turn to whether J.J.P. should be designated a long-term offender.

DESIGNATION AS LONG-TERM OFFENDER

[203] The long-term offender provision of the *Criminal Code* permits the court to impose a sentence for the offences J.J.P. has been convicted and order that he be subject to a long-term supervision order that does not exceed 10 years.

[204] The long-term offender provisions are as follows:

> 753.1 (1) The court may, on application made under this Part following the filing of an assessment report under subsection

752.1(2), find an offender to be a long-term offender if it is satisfied that

(a) it would be appropriate to impose a sentence of imprisonment of two years or more for the offence for which the offender has been convicted;

(b) there is a substantial risk that the offender will reoffend; and

(c) there is a reasonable possibility of eventual control of the risk in the community.

Substantial risk

(2) The court shall be satisfied that there is a substantial risk that the offender will reoffend if

(a) the offender has been convicted of an offence under section 151 (sexual interference), 152 (invitation to sexual touching) or 153 (sexual exploitation), subsection 163.1(2) (making child pornography), 163.1(3) (distribution, etc., of child pornography), 163.1(4) (possession of child pornography) or 163.1(4.1) (accessing child pornography), section 170 (parent or guardian procuring sexual activity), 171 (householder permitting sexual activity), 171.1 (making sexually explicit material available to child), 172.1 (luring a child) or 172.2 (agreement or arrangement — sexual offence against child), subsection 173(2) (exposure) or section 271 (sexual assault), 272 (sexual assault with a weapon) 273 (aggravated sexual assault) or 279.011 (trafficking — person under 18 years) or subsection 279.02(2) (material benefit — trafficking of person under 18 years), 279.03(2) (withholding or destroying documents — trafficking of person under 18 years), 286.1(2) (obtaining sexual services for consideration from person under 18 years), 286.2(2) (material benefit from sexual services provided by person under 18 years) or 286.3(2) (procuring — person under 18 years), or has engaged in serious conduct of a sexual nature in the commission of another offence of which the offender has been convicted; and

(b) the offender

> > (i) has shown a pattern of repetitive behaviour, of which the offence for which he or she has been convicted forms a part, that shows a likelihood of the offender's causing death or injury to other persons or inflicting severe psychological damage on other persons, or
> >
> > (ii) by conduct in any sexual matter including that involved in the commission of the offence for which the offender has been convicted, has shown a likelihood of causing injury, pain or other evil to other persons in the future through similar offences.
>
> Sentence for long-term offender
>
> (3) If the court finds an offender to be a long-term offender, it shall
>
> > (a) impose a sentence for the offence for which the offender has been convicted, which must be a minimum punishment of imprisonment for a term of two years; and
> >
> > (b) order that the offender be subject to long-term supervision for a period that does not exceed 10 years.

[205] Under s. 753(5), if the court does not find an offender to be a dangerous offender, the court may consider the long-term offender section 753.1.

[206] There is no doubt that the terms of s. 753.1(1)(a) have been met as it is appropriate to impose a sentence of two years or more.

[207] To be satisfied that s. 753.1(b) has been met, I must find that there is a substantial risk that the offender J.J.P. would reoffend. Section 753.1(2) (b) (ii) requires a finding that J.J.P. "has shown a likelihood of causing injury, pain or other evil to other persons in the future through similar offences." This section does not require a consideration of the Crown proving beyond a reasonable doubt that J.J.P. is intractable with respect to future treatment or management in the community, as required in a dangerous offender application. See *R. v. Wormell*, cited above. The wording "satisfied"

in s. 753.1(2) does not require the Crown to satisfy a burden of proof beyond a reasonable doubt but, rather, that the sentencing judge must be satisfied, having regard to the whole of the evidence, that the public threat could be reduced to an acceptable level through either a long term supervision order or a determinate sentence. See *R. v. (F.E.)* (2007), 84 O.R. (3d) 721 (Ont. C.A.) I am satisfied from Dr. Lohrasbe's evidence that without treatment there is a substantial risk that J.J.P. will reoffend.

[208] With respect to a finding in s. 753.1(c) that there is a reasonable possibility of eventual control of risk in the community the court must be satisfied that the containment or management of risk is reasonably possible rather than the eradication of risk.

[209] To be satisfied that J.J.P. can meet the requirement of reasonable possibility of eventual control of his risk in the community, I must be satisfied that he can meet the requirement within the time frame of the long-term supervision order which follows J.J.P.'s determinate sentence. See *R. v. B(D.V.)* (2010), 254 CCC (3d) 221.

[210] I am satisfied that Dr. Lohrasbe clearly anticipated that J.J.P. would be a good candidate for risk management in the community following "a lengthy period of supervision in the community." In my view, Dr. Lohrasbe was implicitly recommending the maximum 10-year supervision. Dr. Lohrasbe's statement that J.J.P. is a lifelong pedophile does not detract from his conclusion that J.J.P. would be a good candidate for risk management after treatment.

[211] I conclude that J.J.P. should be a long-term offender, and that his sentence should include the maximum 10-year period of community supervision under a long-term supervision order, which begins when J.J.P. finishes serving his sentence on terms to be set by the Parole Board.

The Determinate Sentence

[212] As indicated at the outset, Crown counsel submits that a global sentence of 14-16 years is appropriate. Defence counsel submits that the range is 7-9 years. Both have provided me with a table breaking out the sentences they say are applicable to each individual offence.

[213] As set out by the Manitoba Court of appeal in *R. v. D.C.,* 2016 MBCA 49, and *R. v. Arbuthnot*, 2009 MBCA 106, in a case where sentence is being imposed on multiple counts, the sentencing judge must first determine whether any or all of the offences are to be served consecutively, and if so, must impose the appropriate sentence for each offence or group of offences. Then, the total of the consecutive sentences should be reviewed and a "last look" taken to ensure that it is not unduly long or harsh. To make this determination, the sentencing judge should consider the gravity of the offences, the offender's moral culpability, the harm done to the victims and that the effect of the sentence is not "crushing" and in keeping with the offender's record and future prospects (*D.C.* at para. 34, citing *Arbuthnot* at para. 18).

[214] The sentences imposed in this case should generally run consecutive to one another. J.J.P.'s offences are distinct, involving different victims, and although they reflect a pattern of behaviour, each should be recognized and specifically addressed. I agree with counsel that it would be appropriate for the s. 163.1(2) sentences for making child pornography to run concurrently to one another. There are other discrete sentences sought with respect to J.J.P.'s commercial child pornography collection.

[215] In terms of statutorily aggravating factors, 718.2(a)(ii.1), (iii) and (iii.1) are all relevant. J.J.P.'s victims were each under 18; as their friend's father or a friend or relative of their parents, he was in a position of trust; and the impacts on all the victims

were significant, as amply demonstrated by the victim impact statements. The invasiveness of the contact, the fact that his victims were sleeping, and the premeditated nature of his actions are also highly aggravating features. The offences perpetrated by J.J.P. are among the worst imaginable, taking place over a period of years, against a relatively large number of children by a predator who grossly abused his status in the community and used his unwitting family to access victims.

[216] The paramount sentencing objectives are denunciation and deterrence (s. 718.01).

[217] J.J.P., however, does come before the Court as a first offender, and, while less significant a factor than denunciation and deterrence, his rehabilitation is relevant in determining a just sentence. J.J.P. should also receive some credit for his early guilty plea and acceptance of responsibility to the extent that, although in the face of an overwhelming Crown case, his victims were nonetheless spared the further trauma of a preliminary inquiry or trial.

[218] J.J.P. has pled guilty to 25 offences. Eleven of these are for sexual interference, nine are for making child pornography, three are for voyeurism, and the remaining two are for possession of and accessing child pornography.

[219] I have been provided with a number of sentencing authorities. The Crown has filed *R. v. C.D.*, 2016 MBCA 49, *R. v. B.C.M.*, 2008 BCCA 365, *R. v. A.R.C.*, 2012 ABPC 252, *R. v. White*, 2008 YKSC 34, *R. v. B.S.W.* (1992), 127 A.R. 65 (C.A.), R*. v. N.K.P.*, 2011 ABCA 361, *R. v. Cafferata*, 2009 YKTC 95, *R. v. D.G.F.*, 2010 ONCA 27, *R. v. Janssen*, 2015 ABCA 92. Defence relies on *R. v. D.D.* (2002), 157 O.A.C. 323, *R. v. Thomas* (2004), 191 O.A.C. 144, *R. v. Desender*, 2011 MBQB 235, *R. v. Bakker*, 2005 BCPC 289, *R. v. Klassen*, 2012 BCCA 405, *R. v. Ramsay*, 2004 BCSC 756, *R. v.*

Stuckless (1998), 111 O.A.C. 357, *R. v. White*, supra, *R. v. M.H.*, 2002 BCCA 248, *R. v. Hunt,* 2002 ABCA 155 and *R. v. C.D.*, supra.

[220] All of these are of assistance, however sentencing is necessarily individualized and responsive to the specific offences and offender. As well, to the extent that some of the cases are older, they may provide less persuasive authority, particularly for discrete offences. As observed by Gower J. in *White,* there was an upward trend in sentences for sexual assaults in the Yukon in the decade before 2008, and I think the same can be said for sentences over the decade since *White*. Indeed, in the context of sexual offenders in a position of parental trust, such a trend has been noted by the Ontario Court of Appeal (see e.g. *R. v. W.Y.,* 2015 ONCA 682). Similarly, the British Columbia Court of Appeal in *R. v. B.C.M.,* 2008 BCCA 365, has noted that the enactment of a mandatory minimum sentence has an inflationary effect on the range previously applicable to the offence. Many of the offences that J.J.P. is charged with have had increased mandatory minimums over the past several years.

[221] On the sexual interference offences, the Crown seeks sentences ranging from three months to four years, depending on the nature of the sexual contact. The defence range is between one and sixteen months.

[222] J.J.P.'s offences are horrifying and deplorable. It is difficult to find words adequate to describe the acts and their consequences. He has caused untold damage to the children that he abused, as well as to their families. As noted by Moldaver J.A., as he then was, in *R. v. D.(D.)* (2002), 157 O.A.C. 323, the consequence of sexual abuse of this nature is such that "[c]hildren are robbed of their youth and innocence, families are often torn apart or rendered dysfunctional, lives are irretrievably damaged and sometimes permanently destroyed" (para. 45). In terms of the penalties that such

offenders attract, "[a]dult sexual predators who would put the lives of innocent children at risk to satisfy their deviant sexual needs must know that they will pay a heavy price" (para. 34).

[223] Crown counsel argues that the most serious and invasive of the offences should attract a four-year sentence. This length is based on a 1992 decision from the Alberta Court of Appeal, *R. v. W.B.S.* (1992), 127 A.R. 65, in which the Court stated that the starting point for a single major sexual assault upon a child should be four years (at para. 42). Yukon courts have declined to follow the starting point approach used by courts in Alberta, however I take counsel's point that the sexual assaults committed upon Victims #1, #4, #5 and #8 readily meet the description of a 'major sexual assault' set out in paras. 4 and 40 of *W.B.S.* and that the severity of them merits a lengthy and denunciatory sentence. J.J.P. has shown a contemptuous disregard for the feelings and personal integrity of his victims and has caused them lasting emotional and psychological injury. He was in a position of trust and he abused it in the most egregious manner. In the cases of Victims #1, #4, #5 and #8, the abuse was particularly intrusive and involved sex toys as well as penile and digital anal penetration. The offences were carefully planned and orchestrated to allow J.J.P. to record visual images that he could view again later. I agree with Crown that four years is an appropriate sentence for each these four offences.

[224] With respect to Victim #2, the allegations are that J.J.P. masturbated on her and fondled her breasts. Similarly, with Victim #3, the allegation is that J.J.P. touched her breasts. Crown is seeking 9-12 months for the Victim #2 offences and 3 months for the Victim #3 offences. Defence argues 2-4 months and 2 months, respectively. I would impose 10 months and three months for these offences.

[225] Victim #6 was massaged by J.J.P. and he touched her labia as well as masturbated on her. Crown seeks two years, while defence says 3-5 months is appropriate. While similar to the allegations with respect to Victim #2, the circumstances here are aggravated because Victim #6 was in evident pain and sobbing during the encounter. I find the appropriate sentence is 16 months.

[226] Victim #7 was massaged by J.J.P. on three occasions on her back, thigh and pubic area, and in the course of the third incident he digitally penetrated her. Crown seeks 2.5 years for this offence; defence says 9-12 months. I find that two years is appropriate.

[227] Victim #11 was also digitally penetrated by the accused after having white lotion rubbed on her buttocks. Crown submits that two years is appropriate, while defence argues for 9-12 months. I would impose 22 months.

[228] Victims #9 and #10 were recorded changing in the bathroom, and J.J.P. faces voyeurism charges with respect to each of them. The Crown argues for six months on each to be served concurrently to one another, but consecutive to the sexual interference sentences for the other Yukon victims. Defence says two months is appropriate. I impose two months on each, to be served concurrently with each other and consecutive to the sentences imposed for the other offences.

[229] With respect to the s. 163.1(2) charges for making child pornography, Crown and defence agree I should impose a global sentence in the sense that each should attract the same penalty and all should be served concurrently, but consecutive to the sexual interference offences. This was the approach approved of in *R. v. C.D.* Crown is seeking three years and defence between one and two years.

[230] In *C.D.*, the offender had photographed and video-recorded the ongoing sexual abuse of his daughter, while she was between the ages of six and nine. He had posted some photographs online and had emailed others to an undercover officer. Although the sentence was adjusted to accommodate totality concerns, *C.D.* received 2.5 years for making and distributing child pornography. In this case, there is no evidence that the images recorded by J.J.P. were circulated. I take the point made in *Hunt*, which was relied on by defence counsel, that where pornography is made for a commercial purpose, it is generally more serious, as it is more exploitative to the victims. I find a sentence of two years is appropriate on counts 2, 4, 7, 9, 11, 13, 15 and 19, to be served concurrently to each other, but consecutive to the sentences imposed above. In my view, J.J.P.'s recording of his abuse exacerbated what was already a gross violation of the victims' privacy and bodily integrity.

[231] This leaves the Ontario and British Columbia counts. With respect to the Ontario charges, the Crown is seeking six months for the s. 271 sexual assault charge. Defence argues for 1-2 months. I impose a sentence of three months. While the offence is not as invasive as in many of the other counts, there was an element of physical restraint in this incident, as Victim #12 tried to pull away on a few occasions as J.J.P.'s touching of her became increasingly sexual. The s. 151 charge laid with respect to the same incident is stayed pursuant to the *Kienapple* principle, which prevents the punishment of the offender more than once for the same conduct.

[232] As for the allegations originating in British Columbia, as agreed to by Crown and defence, the sentence for the s. 163.1(2) offence of making child pornography will be served concurrently to the sentences imposed for that offence when it was committed in the Yukon. Again, I consider the appropriate sentence to be one of two years.

[233] In terms of the s. 271 charge with respect to the sexual touching of Victim #1 in B.C., the Agreed Statement of Facts sets out that J.J.P. touched her vagina and anal area and that his hand went inside her “a little bit” while she and her family were staying at the P. residence. Crown seeks an additional eighteen months, while defence says the appropriate sentence is six months, to be served concurrent to the sentence imposed with respect to the Yukon offences. I agree with the sentence of 18 months, but I would make it concurrent to the four-year sentence imposed above as proposed by defence counsel. The B.C. offence forms part of the overall persistent and abhorrent conduct of J.J.P. with respect to Victim #1.

[234] The voyeurism count in B.C. laid with respect to Victim #13 should attract a sentence of four months in my view. While the Yukon voyeurism charges resulted in a two-month sentence, as Crown points out, the B.C. circumstances are aggravated by the fact that J.J.P. repeatedly texted Victim #13 over a five-month period and, persisting even after it should have been clear that she did not want contact with him.

[235] The remaining two counts are for possessing and accessing commercial child pornography. Crown seeks one year on each count, while defence seems to propose that these charges be stayed.

[236] In *Cafferata,* Cozens J. of the Territorial Court of Yukon sentenced the offender to six months with respect to his possession of 17,000 pornographic images. In so doing, he cited the Supreme Court of Canada in *R. v. Sharpe,* [2001] 1 S.C.R. 45, for the proposition that the possession of child pornography contributes to the market for it, which in turn fosters the exploitation of children and may facilitate the seduction and grooming of victims (para. 22). He acknowledged that sentencing for child pornography offences must send the message that the degradation and dehumanization of little

children will not be tolerated. Cozens J. also referenced five categories of child pornography that reflect differing degrees of seriousness, as set out in *R. v. Missions*, 2005 NSCA 82. The images described in the B.C. Statement of Facts include images and video in categories 3, 4 and 5, and include non-penetrative sexual activity between adults and children, penetrative activity between adults and children, and one video depicting what could accurately be considered sadism that is described above. I would impose a sentence of one year on the s. 163.1(4) charge of possessing child pornography and stay the s. 163.1(4.1) charge pursuant to the *Kienapple* principle.

[237] The following table sets out a summary of my determinations about sentence:

VICTIM	OFFENCE	SENTENCE
#1	Sexual interference (s. 151)	4 years
	Making child pornography (s. 163.1(2))	2 years*
#2	Sexual interference (s. 151)	10 months
	Making child pornography (s. 163.1(2))	2 years*
#3	Sexual interference (s. 151)	3 months
#4	Sexual interference (s. 151)	4 years
	Making child pornography (s. 163.1(2))	2 years*
#5	Sexual interference (s. 151)	4 years
	Making child pornography (s. 163.1(2))	2 years*
#6	Sexual interference (s. 151)	16 months
	Making child pornography (s. 163.1(2))	2 years*
#7	Sexual interference (s. 151)	2 years
	Making child pornography (s. 163.1(2))	2 years*
#8	Sexual interference (s. 151)	4 years
	Making child pornography (s. 163.1(2))	2 years*
#9	Voyeurism (s. 162(1)(a))	2 months (concurrent with Victim #10)
#10	Voyeurism (s. 162(1)(a))	2 months (concurrent with Victim #9)
#11	Sexual interference (s. 151)	22 months
	Making child pornography (s. 163.1(2))	2 years*
#12 (Ontario)	Sexual assault (s. 271)	3 months
	Sexual interference (s. 151)	Stay (*Kienapple)*

#13 (BC)	Voyeurism (s. 162(1)(a))	4 months
#1 (BC)	Sexual assault (s. 271)	18 months (concurrent with 4 year sentence imposed above)
	Sexual interference (s. 151)	Stay (*Kienapple*)
	Making child pornography (s. 163.1(2))	2 years*
N/A (BC)	Possession of child pornography (s. 163.1(4))	1 year
	Accessing child pornography (s. 163(4.1)	Stay (*Kienapple*)
	TOTAL:	**26 years**
		* served concurrently to each other

[238] Embarking on the second step of the *D.C./Arbuthnot* approach, I have to consider whether a sentence of this duration is unduly long or harsh. Both Crown and defence agree that it is. Crown says the application of the totality principle would take the sentence down to 14-16 years, while defence says 7-9 years is appropriate.

[239] Defence points particularly to the Ontario Court of Appeal cases of *R. v. Stuckless* and *R. v. D.D.* In *Stuckless,* which was decided in 1998, the offender had pled guilty to 24 counts of indecent and sexual assault committed against 24 different boys over a twenty-year period. It was agreed that the number of incidents was in the hundreds. Stuckless was a hockey and lacrosse coach and an assistant equipment management at Maple Leaf Gardens, which allowed him to befriend his victims by securing them access to high level hockey games and practices. The offences included fondling, oral sex, masturbation, forced sexual acts between children and group sex, and were described by the Court as “part of a systematic twenty year pattern of unrelenting predatory and exploitative sexual conduct involving children”. The Court substituted a six-year sentence for the one of two-years-less-a-day that had been imposed by the sentencing judge, finding that he had overemphasized rehabilitation and failed to consider general deterrence.

[240] In *D.D.*, which was decided in 2002, the offender had regularly and persistently engaged four boys, between the ages of 5 to 8, in sexual activity that included masturbation and oral sex, group sex and anal intercourse. As was the case in *Stuckless*, there was significant grooming behaviour. D.D. had been sentenced to 9 years and one month. On appeal, D.D. argued that *Stuckless* set a high water mark for this type of offence. The Court disagreed and upheld the sentencing judge's sentence. In so doing, Moldaver J.A. concluded:

> [45] The appellant was prepared to risk the lives of innocent children to satisfy his sexual cravings. His conduct was reprehensible and it must be condemned in the strongest of terms. The harm occasioned by the appellant and others like him is cause for grave concern. Children are robbed of their youth and innocence, families are often torn apart or rendered dysfunctional, lives are irretrievably damaged and sometimes permanently destroyed. Because of this, the message to such offenders must be clear – prey upon innocent children and you will pay a heavy price!
>
> [46] The price in this case was a global sentence of 9 years and 1 month, reduced to 8 years and 1 month by reason of time served in pre-sentence custody. The sentence selected by the trial judge was within the appropriate range. Far from being too high, in my view, it fell at the lower end of the range of sentences for crimes as grave as those committed by the appellant.

[241] Defence also pointed to the *Bakker* case, in which the offender was sentenced to ten years for three violent sexual assaults committed against Vancouver sex trade workers, and seven counts related to his engaging child sex trade workers in Cambodia, and to the *Klassen* case, in which the offender received 11 years for, again, engaging child sex trade workers in Cambodia and Colombia.

[242] Crown relies predominantly on *D.C.*, which was decided in 2016, and in which the Manitoba Court of Appeal dismissed the sentence appeal of the offender with

respect to the 16-year sentence imposed for nine criminal charges relating to the sexual abuse of his five children. Like J.J.P., D.C. had recorded video and photo images of his acts. Unlike J.J.P., D.C. had distributed some of them. D.C. had committed atrocious and ongoing acts on his daughter when she was between the ages of 6 ad 9, including fellatio, cunnilingus, mutual masturbation, digital vaginal and anal penetration and penile touching of her vagina. His sons, who ranged from one to five years younger than his daughter were forced to perform fellatio on him as well as sexually touch one another. The consecutive sentences imposed by the trial judge would have resulted in a 22.5 year prison term, which was deemed “crushing” and reduced to 16 years. In upholding the sentence, the Court of Appeal wrote:

> [49] The sentencing judge considered all of the matters raised by the accused on appeal including his past victimization, the absence of a criminal record, his guilty pleas, the absence of threats or violence to gain compliance by his children, the relatively short time period and the absence of intercourse. The accused’s conduct was planned and premeditated, he made conscious decisions to victimize his children, and his moral culpability was extremely high. I am therefore satisfied that the sentences imposed clearly fall within the appropriate range of sentence for this offender and the offences which he committed.
>
> [50] The Crown conceded that 16 years is a high sentence, but says that it is not high for this offender given his extreme degree of moral blameworthiness and the serious nature of the offences. I agree. …

[243] The Crown also cites *Janssen* in support of its range. In *Janssen,* the offender was a church counsellor, who had victimized ten boys, including committing two “major sexual assaults” on two of them. He also filmed the boys and distributed the pornography on the internet. The sentencing judge had reduced an 18-20 year sentence to 14 years to address totality. This was upheld on appeal.

[244] Here, I have arrived at a global sentence of 26 years.

[245] While I find that each of *Stuckless, D.D., D.C.* and *Janssen* bear similarities to this case, on the basis of *White, W.Y.* and *B.C.M* , I find that the sentences imposed in the more recent cases of *D.C.* and *Janssen* are more persuasive. As well, I note that in *D.D.,* the Court of Appeal expressed the view that the 9-year sentence imposed was low. One significant difference between the case at bar and *D.C.* and *Janssen*, however, is the fact that J.J.P. is not charged with distributing the sickening images he so elaborately staged and recorded, and to my mind this reduces the appropriate sentence down somewhat from *D.C.* In considering the gravity of these offences, namely the number of victims, the breach of trust and the nature of the sexual abuse, the extreme moral culpability of J.J.P., the profound harm done to his victims, and keeping in mind the expert opinion evidence about his prospects for rehabilitation, in my view a fitting sentence is 16 years. He will receive credit for pre-sentence custody from February 12, 2015, for 866 days x 1.5 or 1,299 days.

SUMMARY

[246] In conclusion, I have dismissed the Crown application to declare J.J.P. a dangerous offender. I have found J.J.P. to be a long-term offender. I have sentenced him to 16 years in prison to be followed by a long-term supervision order of 10 years. To assist in preparing the warrant of committal and to give effect to my ruling on totality, I direct that the warrant of committal indicate that the 4-year sentences be served consecutively and the remaining sentences be served concurrently.

[247] I also order that, pursuant to s. 161(1) of the *Criminal Code*, he be prohibited for life from:

(a) attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, schoolground, playground or community centre;

(b) seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years;

(c) having any contact — including communicating by any means — with a person who is under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate; and

(d) using the Internet or other digital network, unless J.J.P. does so in accordance with conditions set by the Parole Board.

[248] I also order the taking of samples of bodily substances from J.J.P. reasonably required for the purpose of forensic DNA, pursuant to s. 487.051 of the *Criminal Code.*

[249] I order a Firearms Prohibition for 10 years, pursuant to s. 109 for the *Criminal Code*.

[250] I order that J.J.P. comply with the requirements of the *Sex Offender Information Registry Act* for life, pursuant to ss. 490.013 and 490.013(2) of the *Criminal Code*.

[251] I order that J.J.P. pay victim surcharges in the amount of $200 for each offence, pursuant to s. 737 of the *Criminal Code* payable forthwith.

[252] I also order that all reports and testimony given by psychiatrists, psychologists, criminologists and other experts and any observations of the Court with respect to the long-term offender finding, together with a transcript of the trial of the offender, including the sentencing proceedings and exhibits filed be forwarded to the Correctional Services

of Canada for information and case management purposes pursuant to s. 760 of the *Criminal Code*.

[253] I further order, pursuant to s. 743.21(1) of the *Criminal Code,* that J.J.P. shall be prohibited from communicating, directly or indirectly with the victims during the 16-year custodial period of his sentence.

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VEALE J.