

CANADA / JUDGMENT

R. v. Gaglardi

2022 BCSC 1681

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 1681 R. v. Gaglardi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Gaglardi,

2022 BCSC 1681

Date: 20220926

Docket: X083323

Registry: New Westminster

Rex

v.

Raymond Howard Gaglardi

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Before: The Honourable Mr. Justice Riley

Reasons for Judgment

Counsel for the Crown:

A.N. Bultz

J.L. Fogel

Counsel for the Accused:

P.A. Riddell, K.C.

Place and Dates of Trial:

New Westminster, B.C.

June 6-10, 13-15, 17, 20,

22-24, 27-30,

July 4-7, 2022

Place and Date of Judgment:

New Westminster, B.C.

September 26, 2022

(1) Introduction

- [1] The accused Raymond Gaglardi is charged on a multi-count Indictment in relation to allegations of sexual abuse made by a total of 14 complainants. All of the complainants were boys or young men at the time of the events in issue. Most of them came to know Mr. Gaglardi through his association with one of two churches. The first of these was Glad Tidings Temple in Vancouver, where Mr. Gaglardi admittedly worked as a counsellor from 1969 to 1983. The second was Hillside Community Church in Coquitlam, where Mr. Gaglardi had some involvement and responsibility on a volunteer basis starting some time after 1983, and where he continued to attend as a congregant until much more recently.
- [2] Mr. Gaglardi is facing two groups of charges.
- [3] First, there are counts 3, 5, 6, 8, and 10, all of which involve allegations arising from the time period when Mr. Gaglardi was associated with the Glad Tidings Temple in Vancouver. I will refer to these as the Vancouver counts, and I will refer to the complainants on these counts as the Vancouver complainants. There are five Vancouver complainants, who were between ten years old and 17 years old during the time frame covered by their allegations, which collectively span from 1971 until 1983. All of the Vancouver complainants knew and interacted with Mr. Gaglardi through his association with the Glad Tidings church, or its affiliated school called Temple Academy, or the church's summer youth camp. The Crown alleges that Mr. Gaglardi touched each of the five Vancouver complainants in a sexual manner, in circumstances where the complainant either did not consent, consented on false pretences, or consented based on Mr. Gaglardi's alleged exploitation of a relationship of trust.
- [4] Second, there are counts 12 to 20, 22, 23, and 25, which involve allegations arising from the time frame when Mr. Gaglardi was associated with the Hillside Community Church in Coquitlam. I will refer to these as the Coquitlam counts, and I will refer to the complainants on these counts as the Coquitlam complainants. There are nine Coquitlam complainants,

who were between 15 years old and 30 years old during the time frame of their allegations, which collectively span from 1993 until 2015. All but two of these individuals came to know Mr. Gaglardi through his association with the Hillside Community Church in Coquitlam, and at least eight of them were clients of Mr. Gaglardi's counselling, mentorship and holistic natural health practice. Once again, the Crown alleges that Mr. Gaglardi touched each complainant in a sexual manner, in circumstances where the complainant did not consent, consented on false pretences, or consented due to alleged exploitation of a relationship of trust.

- [5] For his part, Mr. Gaglardi gave testimony at trial in which he conceded that he knew and may well have had dealings with each of the complainants, but denied any intentional touching of a sexual nature.
- [6] With respect to the Vancouver counts, Mr. Gaglardi basically denied all of the incidents of alleged improper touching. His position is that there are significant problems with the credibility and reliability of the complainant testimony, such that the Crown has failed to meet its burden of proof in relation to the Vancouver counts.
- [7] With respect to the Coquitlam counts, Mr. Gaglardi admitted that he had a counselling relationship with each of the complainants, but denied any intentional sexual touching. He denied some of the allegations outright. With respect to others, he asserted that the various complainants consented to some forms of physical contact, but none of it was sexual in nature. To the extent that he made physical contact with the genitalia of any of the complainants, Mr. Gaglardi asserts that the contact in issue was unintentional, and incidental to consensual treatment. Mr. Gaglardi's position is that for all of these reasons, the Crown has failed to meet its burden of proof with respect to the Coquitlam counts.

(2) Mr. Gaglardi's Background and Personal Circumstances

- [8] The parties made certain admissions with respect to Mr. Gaglardi's background. Mr. Gaglardi also gave evidence in his own defence, in the course of which he testified at length about his education, work history, and other personal circumstances. Although the Crown challenged the truthfulness and accuracy of Mr. Gaglardi's testimony, many elements of his evidence were not controversial. These form a useful backdrop against which to review the more contentious aspects of the case.

(2.1) Mr. Gaglardi's Background and Educational Qualifications

- [9] Mr. Gaglardi was born in Vancouver, in 1944, making him 78 years old at the time of trial. He grew up in a small village outside of Mission.

- [10] In his teen years, even before finishing high school, Mr. Gaglardi took correspondence courses in a variety of fields, including electronics, radio and TV servicing, and Bible study. Mr. Gaglardi testified that at least some of his study was via correspondence through the Glad Tidings Bible College, although he did not explain where that institution was located, or whether it was affiliated with the Glad Tidings Temple in Vancouver, where he later worked.
- [11] After Mr. Gaglardi graduated from high school, he undertook post-secondary studies by correspondence through the Ohio Christian College in the United States. By submitting transcripts from courses he had previously taken, he received "credit" for "four or five years" of "Bible school study". After doing "some additional work", he received an undergraduate degree of some kind. Mr. Gaglardi then continued his studies by correspondence, ultimately obtaining a PhD certification from Ohio Christian College. Mr. Gaglardi testified that his PhD qualified him as a doctor of philosophy with a specialization in counselling.
- [12] It is on that basis that Mr. Gaglardi came to refer to himself as "Dr. Ray". To be fair, there is no evidence that Mr. Gaglardi has ever held himself out as a medical doctor. Rather, he has consistently presented himself as a doctor of philosophy, focussing on counselling and natural health and wellness.
- [13] In his evidence in chief, after recounting his academic qualifications in the manner described above, Mr. Gaglardi testified that he did not know there was any problem with Ohio Christian College or the validity of his degree(s) until some time in 2020, after his arrest in relation to the allegations now before the Court. At that point, Mr. Gaglardi did some research and located an official document issued by the United States Federal Trade Commission some time in the early-to-mid 1970s, which "cast doubt" on the validity of his degree. Mr. Gaglardi testified that thereafter - that is, some time in 2020 - he (i) stopped using his PhD designation, (ii) took down his "Dr. Ray" website, and (iii) gave notice to all of his clients that he was shutting down his counselling practice.
- [14] In cross-examination, Mr. Gaglardi was shown an order dated 19 February 1972, issued by the United States Federal Trade Commission. The order compelled Ohio Christian College to cease certain activities, including using the word "college" or any similar term, issuing degrees, or implying that the State of Ohio or any other governmental body recognized Ohio Christian's programs. When this order was shown to Mr. Gaglardi in cross-examination, he said it was "similar" to the document that caused him to "question" the validity of his degree.

(2.2) Mr. Gaglardi's Time at Glad Tidings Temple

- [15] With respect to his time at Glad Tidings Temple, Temple Academy, and the Glad Tidings summer camp, Mr. Gaglardi gave the following testimony, most of which is not particularly contentious:
- (i) Mr. Gaglardi's sister Maureen Gaglardi worked at Glad Tidings Temple. She was initially an associate pastor. Later, she became the co-pastor. Later still, she became the lead pastor.

- (ii) In 1969, Mr. Gaglardi obtained full-time employment at the Glad Tidings Temple. He continued to work there until 1982.
- (iii) When he started working at Glad Tidings, Mr. Gaglardi was single, and lived in a basement suite at the residence of the lead pastor, Mr. Layzell, in North Vancouver. In 1973, Mr. Gaglardi married his wife Sue, after which they moved into an apartment-style condominium in Burnaby.
- (iv) A principal aspect of Mr. Gaglardi's work at Glad Tidings was counselling. In his testimony, he described himself as an "ordained counsellor". He provided counselling services to male and female congregants. Some were single, others were married and sought marriage counselling. Mr. Gaglardi also did some counselling of youth, although the youth had their own church leaders and support structure.
- (v) Another aspect of Mr. Gaglardi's work at Glad Tidings was in the field of audio production. At some point he was given the title of "Technical Director for Sound and Productions", or something to that effect. Among other things, he was in charge of the church's audio booth or sound studio. This was an important position because, among other things, the church had a 120-person choir and their performances at weekly church services were broadcasted via a local radio station, CJOR. In a related capacity, Mr. Gaglardi also hosted a two-hour gospel music program every Saturday night on KARI radio in Bellingham, Washington.
- (vi) Mr. Gaglardi also worked at the Temple Academy. He testified that he taught a "guidance class" once every two weeks. The class was a component of the physical education "curriculum", although Mr. Gaglardi was not the gym teacher. The topics in Mr. Gaglardi's class included spiritual guidance, hygiene, health, and fitness. From time to time, Mr. Gaglardi was also asked to provide one-on-one counselling for students who were having problems or thought to be in need of special attention.
- (vii) Mr. Gaglardi maintained an office at the Glad Tidings Temple.
- (viii) Mr. Gaglardi also worked at the Glad Tidings summer camp. He started working in the summer camp program two or three years after he began his employment at the Glad Tidings church, and he went every year thereafter up to and including the summer of 1981. The camp was situated at Nine Mile Point, near Sechelt. Glad Tidings offered one program for children and another for families. Mr. Gaglardi was involved in the children's program. It ran through the month of July each year, with a new group of children attending every Monday of the month. Mr. Gaglardi was a supervisor at the camp. Initially, he was in charge of one "cabin" of children, and in later years his responsibilities expanded.
- (ix) Mr. Gaglardi was also the first aid attendant for the camp. He testified that the responsibilities of being first aid attendant fell upon him more or less by default, because he was the only one who was qualified, or the most qualified in first aid. He had received some "industrial training" in first aid, and also tried to keep up his knowledge through self-study.

- (x) Mr. Gaglardi resigned his employment at the Glad Tidings Temple in January of 1982. He did so about a week or so after his sister Maureen had been asked to leave, in circumstances of some controversy. Mr. Gaglardi testified that Maureen was unfairly forced out of the church, and he felt he had to leave to support her.

(2.3) Mr. Gaglardi's Involvement with Hillside Community Church

[16] In 1983, Mr. Gaglardi and his wife moved to a house in Coquitlam. At some point thereafter, they started attending Evergreen Evangelical Missionary Church in Coquitlam. That church later became or merged with the Austen Avenue Temple, which later still became the Hillside Community Church.

[17] Mr. Gaglardi testified that his involvement at Evergreen was minimal. He "helped set up chairs" for church services, and "sometimes helped with the PA system", but had "no other roles".

[18] Later, when Evergreen merged with or became Hillside, Mr. Gaglardi became more involved. He was never an employee and never held an official title, but he had a fair number of responsibilities and performed a fair number of functions, in a volunteer capacity. In particular:

(i) Mr. Gaglardi "helped with locks and security".

(ii) Mr. Gaglardi helped with church fundraising.

(iii) Mr. Gaglardi ran the church's audio-visual department. Among other things, he operated the sound system, performed equipment repairs and maintenance, and oversaw the purchase of new equipment. Mr. Gaglardi also showed others how to use the church's sound and video equipment.

(iv) Mr. Gaglardi organized, directed, or oversaw various church "productions", such as plays.

(v) Mr. Gaglardi had a role in setting up the church's computer system.

(vi) For at least part of his time at Hillside, Mr. Gaglardi was involved with the youth ministry and the young adult ministry.

(vii) With regard to the youth program, Mr. Gaglardi testified that the church's youth group was made up of boys and girls ranging in age from 13 to 16 or 17. During Sunday church services, the youth would gather in a designated space in the church, and Mr. Gaglardi and two or three other youth leaders would give lessons or lead discussions on Biblical and spiritual topics.

(viii) With regard to the young adults program, Mr. Gaglardi testified that it was a loosely associated group that generally got together one night per week. Sometimes the meetings were at the church, and sometimes they were at Mr. Gaglardi's home, or elsewhere. They would do Bible study and participate in group activities, such as dinner parties.

(ix) Mr. Gaglardi also assisted with the church's accounting and taxes, again in a volunteer capacity. He was a member of the church's finance committee.

(x) At some point, Mr. Gaglardi and his wife served as church elders at Hillside.

(2.4) Mr. Gaglardi's Counselling, Natural Health, and Alternative Therapy Practice

[19] As noted, through correspondence study Mr. Gaglardi secured a PhD with a focus on "counselling", although his degree has since been called into question. After working as a counsellor at Glad Tidings, he continued to practice and expand his study of counselling of various kinds. He also expanded his learning, largely through self-study, into related fields including "natural health" and "alternative therapy", such as acupuncture, acupressure, massage, and "energy work" or "the flow of energy" throughout the body. Mr. Gaglardi also did work and pursued self-study in other fields, including audio recording, electronics, and other forms of emerging technology.

[20] It is an admitted fact that in 1994, Mr. Gaglardi began offering "counselling, mentorship, and holistic natural health and wellness services" from his home in Coquitlam. His consent and release forms refer to Mr. Gaglardi, or "Dr. Ray", as the "counselling director" of the International Christian Counselling Association and Immanuel Ministries, doing business as "The ICCA/IRM Group".

[21] In the course of his trial testimony, Mr. Gaglardi gave the following evidence with respect to what I will refer to as his counselling practice:

(i) Mr. Gaglardi had a designated area for his practice in the basement of his house. It included a counselling room with several couches and chairs, next to a fireplace. Over time, he also added a massage table or treatment table to this space.

(ii) Mr. Gaglardi also conducted some aspects of the counselling work in his home gym, which is a separate room in the basement of his house with mirrored walls, exercise equipment, and mats.

(iii) Mr. Gaglardi also had an office in the basement of his house. This room had a desk, computer, and other common office accoutrements, including a number of filing cabinets. Mr. Gaglardi kept some of Hillside's financial records in the office. He also kept a large volume of files or records associated with his counselling practice. When asked in direct examination if his records were complete, Mr. Gaglardi replied that they were not, because "certain records were shredded in error because of our seven year cycle".

(iv) Mr. Gaglardi estimated that he saw about 400 to 500 clients per year. On that basis, taking into account the average annual turnover, Mr. Gaglardi calculated that he provided counselling, mentorship, and natural health services to as many as 11,500 in-person clients over the span of his practice, which according to the evidence ran from 1994 up until 2020. Mr. Gaglardi estimated that about 65% of his clients were female, 20 to 25% were male, and the remaining 10 to 15% were married couples.

(v) Mr. Gaglardi testified that he employed a number of different modalities, techniques, and forms of treatment in his practice.

(vi) The first, and most common modality employed by Mr. Gaglardi was "talk therapy", which included cognitive behavioural therapy, positive talk therapy, and counselling clients from a "natural health perspective". Mr. Gaglardi's personal definition of "natural health" includes "anything that does not employ drugs or traditional medical treatments". This involved techniques like visualization, deep breathing, and other relaxation practices. Depending on the client's background and preference, sometimes the counselling was non-secular or "faith based" Christian counselling, and other times it was secular. Mr. Gaglardi's evidence was that he used talk therapy with all of his clients, and somewhere between 85 and 90% never received any other kinds of therapy.

(vii) Mr. Gaglardi also employed various forms of "alternative therapy". Mr. Gaglardi testified that he suggested alternative therapies to about 15% of his clients, and a total of some 10% of Mr. Gaglardi's clients ultimately chose to proceed with alternative therapies. The two most notable forms of alternative therapy Mr. Gaglardi offered would appear to be what Mr. Gaglardi called "quantum health", and "energy work".

(viii) With regard to "quantum health", at various points in his testimony Mr. Gaglardi asserted that this was somehow linked to "quantum physics", though he admitted having no actual knowledge of quantum physics and there is no objective evidence to suggest that the link between physics and Mr. Gaglardi's "quantum" therapy was anything other than a label or marketing tool. Elsewhere in his testimony, Mr. Gaglardi explained that at a certain point in time he stopped using the phrase "quantum health", and changed the description of this part of his practice to "bioenergetics". In any event, the so-called "quantum" therapy techniques took two forms. One involved the client placing his or her hand on a "mouse-like" electronic device, connected to a computer, to purportedly obtain "biofeedback" about the "energy" in various parts of the client's body. The other involved Mr. Gaglardi using a handheld device that looked like a TV remote, which he would run over the client's body, either in direct contact with the body or a few inches above it. The device produced a "tingling" feeling, and also purportedly generated "biofeedback" about the flow of energy in various parts of the client's body. Both of these devices, the "mouse-like" device, and the "TV remote-like" device, were produced and distributed commercially by a company called NES. During his trial testimony, Mr. Gaglardi tendered copies of receipts and other documents showing that he paid many thousands of dollars to purchase the equipment, and thereafter received "training" and "certification" on its use.

(ix) With regard to "energy work", Mr. Gaglardi testified at length about the underlying theory, which according to him has something to do with the storage of "negative energy" and "emotion" in various parts of the body, and the use of techniques to move the energy or "release" the emotion. I will not go any further into the details of Mr. Gaglardi's theories. Mr. Gaglardi testified that he used various kinds of "touch therapy" during "energy work", to relax the client's body, move energy, and release emotion. The "touch therapy" included various forms of massage, in which Mr. Gaglardi would massage the client with his hands, or with a handheld massage device. There is also evidence that Mr. Gaglardi commonly used "lotion" or "oil" to reduce friction during massage, or alternatively he sometimes used soft fabric gloves for that purpose. (There is some

dispute as to whether it was Mr. Gaglardi's invariable practice to use oil or lotion during his massages).

(x) Mr. Gaglardi also used the term "body scanning" in his testimony, in two different contexts or to describe two different techniques. One was "scanning" of the body for energy using the NES equipment as described above. The other was a form of visual examination of the client's body, as the client stood either partially or entirely unclothed in front of a mirror. Mr. Gaglardi would examine the client's entire body, sometimes touching it, to check for "imperfections". Mr. Gaglardi testified that this "body scanning" technique was an aspect of working on the client's personal perception of body image.

(xi) Mr. Gaglardi acknowledged in his testimony that clients would be in various states of undress during "quantum health", "energy work", and "body scanning" therapies. Mr. Gaglardi testified that he followed a procedure where he would invite the client to "undress to [his or her] level of comfort", and then lie on a mat, or massage table, covered by a drape. Mr. Gaglardi would leave the room to allow this to occur, and then return again when the client was ready to begin the therapy.

(xii) It appears that Mr. Gaglardi required each client to complete one or more typewritten waivers or consent to treatment forms, either in advance of, or at the beginning of the client's first session. The typewritten forms changed over time, but had common elements.

(xiii) Mr. Gaglardi's materials almost invariably refer to him as "Dr. Ray". Mr. Gaglardi also testified that he had a website in which he called himself "Dr. Ray". In cross-examination, Mr. Gaglardi asserted that he never asked his clients to call him "Dr. Ray", and that the majority of his clients just called him "Ray", although there is a dispute about that issue based on the testimony of some of the complainants.

(3) Count by Count Summary of the Allegations

[22] In skeletal terms, the allegations against Mr. Gaglardi can be summarized as follows:

The Vancouver Counts

- (a) Count 3 alleges that Mr. Gaglardi committed indecent assault and acts of gross indecency against RF, between 1 October 1971 and 30 December 1974. RF was 14 to 15 years old during the time frame in issue. The Crown alleges that Mr. Gaglardi touched RF's genitals on two occasions ostensibly to check for venereal diseases in Mr. Gaglardi's office at Glad Tidings, and on a third occasion to check for injuries after RF suffered a cut knee during a baseball game at the Glad Tidings summer camp.
- (b) Count 5 alleges that Mr. Gaglardi committed indecent assault against GP, between the dates of 14 July 1975 and 14 July 1977. GP was 10 to 11 years old at the time. The Crown alleges that Mr. Gaglardi touched GP's penis at the swimming pool in Mr. Gaglardi's apartment building in Burnaby.

- (c) Count 6 alleges that Mr. Gaglardi committed indecent assault against RM, between 1 January 1977 and 31 December 1977. RM was 12 years old at the time. The Crown alleges that Mr. Gaglardi conducted a nude examination of RM's entire body, including his genital region, using a pen as a purported sensor or electrical feedback device, ostensibly as a means of assessing RM's muscular development, in Mr. Gaglardi's office at Glad Tidings.
- (d) Count 8 alleges that Mr. Gaglardi committed indecent assault against DP, between 1 January 1977 and 31 December 1978. DP was 17 years old at the time. The Crown alleges that Mr. Gaglardi masturbated DP, ostensibly as part of the human sexuality experiment or study, in a bedroom in Mr. Gaglardi's residence in Burnaby.
- (e) Count 10 alleges that Mr. Gaglardi committed indecent assault against KH, between 1 January 1979 and 1 July 1981. KH was between 13 and 15 years old during the time period in issue. The Crown alleges that Mr. Gaglardi (i) touched KH's penis during a bath at Mr. Gaglardi's residence, and (ii) used some kind of electrical device to touch or stimulate KH's penis, ostensibly to measure electrical flow, in a bedroom at Mr. Gaglardi's residence.

The Coquitlam Counts

- (f) Count 12 alleges that Mr. Gaglardi committed sexual assault against ML, between 3 January 1993 and 2 January 1996. ML was around 18 years of age at the time. The Crown alleges that Mr. Gaglardi (i) collected a semen sample from ML, and (ii) performed several "internal prostate release" procedures on ML, in the counselling area in the basement of Mr. Gaglardi's house in Coquitlam.
- (g) Counts 13 and 14 allege that Mr. Gaglardi committed sexual assault and acts of sexual interference against GA, between 1 September 1995 and 30 June 1998. GA was somewhere between 15 and 18 years old during the time period in issue. The Crown alleges that Mr. Gaglardi (i) touched GA's penis during a massage, (ii) swabbed GA's penis, ostensibly to take samples to test for sexually transmitted infection, and (iii) performed a coffee enema on GA, all in the counselling area in the basement of Mr. Gaglardi's house.
- (h) Counts 15 and 16 allege that Mr. Gaglardi committed sexual assault and acts of sexual interference against JU, between 31 December 2000 and 30 December 2003. JU was between 14 and 17 years old during the time frame in issue. The Crown alleges that Mr. Gaglardi touched JU's anus, scrotum, and erect penis with his hands, ostensibly as part of a body mapping exercise, in the gym in the basement of Mr. Gaglardi's house.
- (i) Counts 17 and 18 allege that Mr. Gaglardi committed sexual assault and acts of sexual interference against MD, between 6 January 2001 and 5 January 2003. MD was between 16 and 18 years of age at the time of the events in question. The Crown alleges that Mr. Gaglardi touched MD's anus with his hands or fingers, during a massage session in the counselling and treatment area in the basement of Mr. Gaglardi's house.

- (j) Count 19 alleges that Mr. Gaglardi committed sexual assault against SH, between 2 February 2002 and 31 December 2006. SH was between 27 and 30 years old during the time frame in issue. The Crown alleges that on multiple occasions Mr. Gaglardi touched SH's genitals, including on occasion his erect penis, during massage sessions that took place in the counselling or treatment area in the basement of Mr. Gaglardi's house.
 - (k) Count 20 alleges that Mr. Gaglardi committed sexual assault against AH, between 14 September 2004 and 31 December 2007. AH was between 27 and 29 years old during the time period in issue. The Crown alleges that on multiple occasions Mr. Gaglardi performed "external prostate massage" or "prostate release" procedures on AH, in the counselling and treatment area in the basement of Mr. Gaglardi's house.
 - (l) Count 22 alleges that Mr. Gaglardi committed sexual assault against SJ, between 26 June 2013 and 31 December 2015. SJ was between 24 and 30 years old during the time period in issue. The Crown alleges that Mr. Gaglardi used a plastic device to touch or explore SJ's rectum, ostensibly to check for sources of bleeding, in the counselling and treatment area in the basement of Mr. Gaglardi's house.
 - (m) Count 23 alleges that Mr. Gaglardi committed sexual assault against CP, between 1 January 2014 and 1 October 2014. CP was 26 years old at the time. The Crown alleges that Mr. Gaglardi (i) touched CP's semi-erect penis during a massage session, and (ii) conducted an anal swab of CP's rectum ostensibly in connection with some kind of nutrient or nutritional analysis.
 - (n) Count 25 alleges that Mr. Gaglardi committed sexual assault against JK, between 1 January 2017 and 31 December 2017. JK was a young adult at the time. The Crown alleges that Mr. Gaglardi touched JK's scrotum with his hand during a massage session in the counselling and treatment area in the basement of Mr. Gaglardi's house.
- [23] Appendix A contains a much more detailed review of the evidence of each complainant, along with the testimony of Mr. Gaglardi in response to each specific allegation.

(4) Legal Principles

(4.1) Changes in the Law Over Time

- [24] Some of the charges against Mr. Gaglardi go back more than 45 years. Over time, many of the sexual offence provisions in what is now Part VIII of the Criminal Code, R.S.C. 1985, c. C-46 [Criminal Code] have been significantly modified, repealed, or replaced. In this regard, I take guidance from the thorough analysis in *R. v. John*, 2022 BCSC 413 [John], addressing "the extent to which the developments in the law" over time should be applied in this case.
- [25] John was concerned with a criminal allegation dating back to 1974, in the context of a trial that was scheduled to take place in 2023. The offence in issue in that case was rape under what was formerly s. 143 of the Criminal Code. In a series of wholesale amendments to the Criminal Code in 1983, that offence was repealed and replaced by the offence of sexual

assault. The 1983 amendments also made significant changes to the statutory parameters of the concepts of consent, vitiation of consent, and honest but mistaken belief in communicated consent, as well as certain evidentiary rules formerly applicable to sexual offences, such as the requirement for corroboration of certain offences, and the doctrine of recent complaint.

- [26] On the one hand, the Court had to be concerned the presumption against retrospective interpretation of substantive criminal law, and the effect of transitional provisions in the legislation. In the same vein, the court had to consider the effect of s. 11(g) of the Charter, which prohibits the imposition of criminal liability for conduct that was not a crime at the time that it occurred. These rules against retroactive application of the criminal law serve the important interest of ensuring that the public has fair notice of what is and is not criminal, so that people can govern themselves accordingly: John at paras. 38-39.
- [27] On the other hand, many of the most significant legal developments in this field are attributable to the common law, or "judge-made law". Developments in the common law are said to be "discovered" or "revealed" such that judge-made law is generally considered to be retrospective in its application. Developments in the common law are not considered to create "new law", but rather to declare the state of the law as it has always been: John at para. 20-23.
- [28] As I understand the result in John, the Court basically gave effect to the distinction between common law developments on the one hand, and statutory amendments affecting the scope of criminal conduct or criminal liability on the other.
- [29] With regard to developments in the law of consent in relation to sexual offences, courts are to retrospectively apply cases addressing the nature of consent at common law (most significantly R. v. Ewanchuk, [1999] 1 S.C.R. 330 [Ewanchuk] and R. v. Sazant, 2004 SCC 7), and common law principles of honest but mistaken belief in communicated consent (most significantly Pappajohn v. The Queen, [1980] 2 S.C.R. 120 and Sansregret v. The Queen, [1985] 1 S.C.R. 570. By contrast, statutory changes to the scope of criminal liability, including the definition of consent, and amendments constricting the availability of the defence of honest but mistaken belief in communicated consent do not apply retrospectively: John at para. 72-76.
- [30] Finally, the Court in John gave effect to the general principle that statutory amendments to evidentiary rules apply retrospectively. However, this principle was subject to express legislative intention providing to the contrary, as set out in a transitional section to the 1983 amendments: John at para. 26, 50, 76. See also R. v. Threlfall, 2006 BCSC 1620 at para. 16-17.

(4.2) Essential Elements of the Offences

- [31] On the Vancouver counts, Mr. Gaglardi faces one charge of indecent assault contrary to what was then s. 156 of the Criminal Code in respect of each of the five complainants. On the Coquitlam counts, Mr. Gaglardi faces one count of sexual assault contrary to s. 273 of the

Criminal Code in relation to each of the nine complainants. He is also charged with sexual exploitation contrary to s. 153 of the Criminal Code in relation to certain complainants whose ages at the relevant times brought them within the definition of the term "young person" in s. 153.

(4.3.1) Essential Elements of Indecent Assault

- [32] To prove indecent assault under former s. 156 of the Criminal Code, the Crown must establish the following essential elements of the offence, namely: (i) that the accused touched the complainant, (ii) that the touching was intentional, (iii) that the touching was indecent in nature, (iv) that the complainant did not consent to the touching, and (v) that the accused knew the complainant did not consent to the nature of the touching in question.
- [33] With regard to element (iii) above, the question of whether the touching is indecent in nature must be determined objectively, by reference to all of the circumstances: *R. v. McKeachnie* (1975), 26 C.C.C. (2d) 317 (Ont. C.A.) at para. 318; see also *R. v. Chase*, [1987] 2 S.C.R. 293 [Chase] at paras. 10-11.
- [34] With regard to the concept of consent, it arises in both the actus reus and mens rea components of the offence. For the purposes of the actus reus (element (iv) above), consent is assessed subjectively, from the perspective of the complainant: *Ewanchuk* at para. 26. The complainant must give consent to the specific physical act or acts in issue, including their sexual nature: *R. v. Hutchinson*, 2014 SCC 19 [Hutchinson] at para. 55, 57-58. For the purposes of the mens rea (element (v) above), an absence of knowledge about consent only arises where the accused has an honest but mistaken belief in communicated consent: *Ewanchuk* at para. 43-45. Finally, former s. 140 of the Criminal Code provides that a person under 14 years of age does not have the capacity to consent to touching that is indecent in nature.

(4.3.2) Essential Elements of Sexual Assault

- [35] To prove sexual assault under s. 273 of the Criminal Code, the Crown must establish the following essential elements of the offence, namely that: (i) the accused touched the complainant, (ii) the touching was intentional, (iii) the touching was sexual in nature, (iv) the complainant did not consent to the touching, and (v) the accused knew the complainant did not consent to the touching in question.
- [36] With regard to element (iii) above, the question of whether the touching was sexual in nature is to be determined objectively by reference to all the circumstances: *Chase* at para. 11.
- [37] With regard to the concept of consent, again it arises in both the actus reus and mens rea components of the offence in more or less the same way that it does in relation to the offence of indecent assault. There are also statutory provisions that have some bearing on both concepts.

- [38] At the actus reus stage (element (iv) above), consent is determined subjectively by reference to the state of mind of the complainant: Ewanchuk at para. 26. The complainant's consent must relate to the specific physical act or acts in issue, including their sexual nature: Hutchinson at para. 55, 57; see also R. v. Kirkpatrick, 2022 SCC 33 [Kirkpatrick] at para. 99-102. Also, pursuant to s. 265(3), "no consent is given" where the complainant "submits or does not resist" by reason of, inter alia, fraud (per subsection (c)), or the exercise of authority (per subsection (d)). Further, s. 273.1(2) provides that no consent is obtained where, inter alia, the accused induces the complainant to consent by virtue of a position of trust, power, or authority (per subsection (c)).
- [39] At the mens rea stage (element (v) above), absence of knowledge about consent arises only where the accused has an honest but mistaken belief in communicated consent: Ewanchuk at para. 43-45. Further, s. 265(4) provides that where the accused alleges honest but mistaken belief in communicated consent, the trier of fact must consider the objective reasonableness of that claim.

(4.3.3) Essential Elements of Sexual Exploitation

- [40] To prove sexual exploitation under s. 153 of the Criminal Code, the Crown must establish the following essential elements of the offence, namely that (i) the accused was in a position of trust or authority toward the complainant, (ii) the complainant was a "young person" on the date of the incident, (iii) the accused touched the complainant, (iv) the touching was intentional, (v) the touching was sexual in nature, and (vi) the accused touched the complainant for a sexual purpose.

(4.4) Presumption of Innocence and Proof Beyond a Reasonable Doubt

- [41] Mr. Gaglardi is presumed innocent. He does not have to prove anything. The burden is entirely on the Crown to prove beyond a reasonable doubt that Mr. Gaglardi is guilty of each of the offences with which he is charged. The Crown's burden to prove its case beyond a reasonable doubt is the cornerstone or golden thread of our system of criminal justice.
- [42] Proof beyond a reasonable doubt is much closer to absolute certainty than to mere likelihood or even a balance of probabilities: R. v. Starr, 2000 SCC 40 at para. 243. A reasonable doubt is not an imaginary or frivolous doubt, but rather a doubt that is rational and arises from the evidence or the absence of evidence: R. v. Lifchus, [1997] 3 S.C.R. 320 at para. 36.
- [43] To meet its burden of proof, the Crown must prove all of the essential elements of each offence beyond a reasonable doubt: R. v. Boucher, 2022 ONCA 40 [Boucher] at para. 64. However, the proof beyond a reasonable doubt standard is not to be applied to individual pieces of evidence. Rather, the question is whether, on the whole of the evidence, the Crown has proven beyond a reasonable doubt that the accused is guilty: Boucher at paras. 63-64, citing R. v. Morin, [1988] 2 S.C.R. 345 at p. 361-362.

(4.5) Witness Credibility and Reliability

- [44] In addressing the central question of whether the Crown has proven the charges against Mr. Gaglardi beyond a reasonable doubt, it is necessary to carefully consider the credibility and reliability of the witness testimony. Credibility and reliability are often regarded as separate but related concepts. Credibility is concerned with the truthfulness or veracity of witness testimony. Reliability is concerned with the accuracy of the witness testimony. In the case at bar, both concepts - credibility and reliability - are important considerations when it comes to assessment of the witness testimony.
- [45] In considering the credibility and reliability of the witness testimony, it would be an error to approach the case as a "credibility contest" by pitting the testimony of the complainant in a particular count, or indeed all of the complainants, against the testimony of Mr. Gaglardi in an effort to determine which of the two opposing versions of events is more believable or more likely to be true: *R. v. Ryon*, 2019 ABCA 36 at para. 51. Rather, the court must address witness credibility and reliability through the prism of proof beyond a reasonable doubt. Thus the court must consider the principles discussed in the leading case of *R. v. W.(D.)*, [1991] 1 S.C.R. 742 [W.(D.)].
- [46] In *W.(D.)*, it was recommended that the trier of fact consider the evidence in three steps, which I would paraphrase as follows. First, if the trier of fact believes the accused's evidence on any factual point that is essential to the verdict on a particular count, there must be an acquittal on that count. Second, even if the trier of fact does not believe the accused's evidence, but it nevertheless raises a reasonable doubt in respect of a particular count or an essential element of the count, there must be an acquittal on that count. Third, even where the accused's evidence does not raise a reasonable doubt, the trier of fact must ask whether, on the whole of the evidence, the accused's guilt has been proven beyond a reasonable doubt.
- [47] In the years following *W.(D.)*, appellate courts have suggested a fourth step, namely, where the trier of fact is unable to determine whom to believe, the accused must be acquitted: *R. v. C.W.H.* (1991), 68 C.C.C. (3d) 146 (B.C.C.A.) [C.W.H.] at para. 24; *R. v. Tyers*, 2015 BCCA 507 [Tyers] at para. 14.
- [48] No "specific form or sequence of analysis" is required. In a judge alone trial, the order in which the judge analyzes the evidence in his or her reasons is "inconsequential", so long as the focus throughout remains on "the principle of reasonable doubt as the central consideration": *Tyers* at para. 15, citing *R. v. Vuradin*, 2013 SCC 38 ["Vuradin"] at para. 21. The "paramount question" is "whether, on the whole of the evidence, the trier of fact is left with a reasonable doubt about the guilt of the accused": *Vuradin* at para. 21, citing *W.(D.)* at p. 758. Finally, I note that a reasonable doubt can arise from the evidence, a conflict in the evidence, or a lack of evidence: *C.W.H.* at para. 18.

(4.6) The Age of the Complainant Witnesses

- [49] This case involves historical allegations of sexual misconduct. All of the witnesses were adults at the time of their testimony. However, at the time of the events in question, they were much younger. Some of them were in their early teens. In this regard, I have been referred to *R. v. W.(R.)*, [1992] 2 S.C.R. 122 [W.(R.)], in which Justice McLachlin, as she then was, explained at p. 134 that it is "neither desirable nor possible to state hard and fast rules as to when a witness's evidence should be assessed by reference to "adult" or "child" standards". Rather, the trier of fact should bear in mind that "[e]very person giving testimony in court, of whatever age, is an individual, whose credibility and evidence must be assessed by reference to criteria appropriate to her mental development, understanding and ability to communicate".
- [50] McLachlin J. went on to explain that, as a general rule, when an adult witness is testifying about events that happened when he or she was a child, that witness's credibility and reliability should be assessed according to criteria applicable to an adult witness. However, the witness's evidence about events that occurred when he or she was a child should be assessed "in the context of the age of the witness at the time of the events": *W.(R.)* at p. 134.

(4.7) Limited Use of Similar Fact Evidence Across Counts

- [51] When it comes to assessing whether any particular count or group of counts related to a single complainant has been proven beyond a reasonable doubt, as a general rule the trier of fact can only consider the evidence in relation to that specific count or group of counts. Thus, in seeking to satisfy the burden of proof on a particular count, the Crown is generally not entitled to rely on the evidence adduced from complainants in relation to other counts. The rationale for this general rule is a concern that the trier of fact will be invited to find an accused guilty on the basis of the accused's supposed bad character or propensity to engage in the kind of activity that is the subject of the charges: *R. v. Handy*, 2002 SCC 56 [Handy] at para. 55; *R. v. R.C.*, 2020 ONCA 159 at para. 54-55.
- [52] As an exception to the general rule against the Crown's reliance on similar fact evidence, the Crown may be permitted to rely on such evidence for a specific purpose, where its potential probative value exceeds its prejudicial effect. In this case, I granted a Crown application to rely on similar fact evidence across various counts, but only in relation to certain counts, and for certain limited purposes. My ruling on the similar fact evidence is indexed as *R. v. Gaglardi*, 2022 BCSC 1120.
- [53] With respect to the Vancouver counts, the Crown is permitted to rely on the evidence of the complainants RF, GP, RM, DP, and KH, but only for the purposes of: (a) supporting the credibility and reliability of the complainants on count 3 (RF), count 5 (GP), count 8 (DP), and count 10 (KH), and (b) supporting the Crown's position that the actus reus is made out in regard to count 6 (RM).

- [54] With respect to the Coquitlam counts, the Crown is permitted to rely on the evidence of the Coquitlam complainants (ML, GA, JU, MD, SH, AH, SJ, CP, and JK) in relation to all of the relevant counts (counts 13 to 20, 22, 23, and 25), for the limited purposes of supporting the Crown's position that: (i) the touching in issue was sexual in nature, (ii) the complainants did not consent, and (iii) the touching in each of these counts was intentional as opposed to accidental.
- [55] Of course, the ruling admitting evidence across certain counts for these limited purposes is only the starting point of the analysis, not the end. It remains an open question what weight is ascribed to the similar fact evidence. Assessing the weight of the similar fact evidence will involve a consideration of factors such as the distinctiveness of the acts alleged and the similarities and differences amongst the similar fact accounts, in determining whether the evidence supports the inferences urged by the Crown. It also requires a consideration of the extent to which the similar fact accounts are truly independent of each other and are free from any collusion or contamination amongst witnesses. I will consider all of this in more detail in my analysis of the evidence.
- [56] Finally, the Crown concedes that the accused is entitled to rely on all the evidence before the court, including all of the evidence from all the complainants, to support its position on each and every count on the Indictment. This is a necessary corollary of the presumption of innocence, and the notion that the accused is entitled to raise a reasonable doubt based on any evidence, or lack of evidence, that emerges from the record.

(5) Analysis

(5.1) General Observations About Mr. Gaglardi's Testimony

- [57] There are factual disputes about the underlying circumstances in relation to many of the counts on the Indictment. In relation to the Vancouver counts, Mr. Gaglardi denies touching the complainants in the manner alleged by them. In relation to the Coquitlam counts, Mr. Gaglardi denies some of the conduct alleged, and admits other conduct but asserts that the complainants consented to the touching in issue in the context of his counselling and naturopathic health practice. Credibility and reliability of the witness testimony are central questions in relation to many of the counts on the Indictment.
- [58] Mr. Gaglardi's evidence addresses all of the charges in one way or another, so I find it most useful to begin the analysis by discussing the credibility and reliability of his testimony. I will then move to a consideration of the evidence in relation to each count, in the course of which I will address the credibility and reliability of each complainant's testimony in turn. In structuring the reasons this way, I appreciate that the analysis is not to be reduced to a credibility contest in which Mr. Gaglardi's testimony is pitted against that of the complainants in an effort to decide who is more likely telling the truth on any particular count or set of counts. The witness testimony must always be viewed through the lens of the presumption of the accused's innocence and the Crown's burden to prove its case beyond a reasonable doubt.

- [59] When it comes to the assessment of Mr. Gaglardi's testimony, I will begin by noting that he is now 78 years old. Apart from some difficulty hearing without the aid of headphones, Mr. Gaglardi appeared to have no physical limitations, and there is no evidence that his mental faculties have diminished at all by age. He presented as a spry, alert, and responsive witness.
- [60] I will also say that Mr. Gaglardi was articulate and thoughtful in answering questions in both direct examination, and even in cross-examination, at least for the most part. Mr. Gaglardi has clearly given the case a great deal of thought, and has made a genuine effort to think back in time to organize his thoughts so he could give a coherent account of his interactions with the complainants, going back to the early 1970s.
- [61] With regard to Mr. Gaglardi's memory, I would not underestimate the challenge for any witness in answering questions about specific interactions with 14 different people, going back more than 45 years. Again, I would say that Mr. Gaglardi appeared to make a bona fide effort to recall the events in issue. He did not simply fall back on the passage of time to profess a lack of recollection. This certainly weighs in his favour. In the same vein, this was not a case where Mr. Gaglardi simply made a bare denial of the allegations against him, in a manner that would have made it impossible to meaningfully test his evidence through cross-examination. Rather, Mr. Gaglardi offered what details he could with respect to his dealings with each of the complainants. Again, this is something that goes to his favour in assessing his credibility. The fact is, he was prepared to open up and be cross-examined about his dealings with the complainants, to the extent that he could recollect them.
- [62] Having said all of this, there were some significant limitations on Mr. Gaglardi's recollection of the events in issue. Mr. Gaglardi acknowledged at various points in time that he was not good with dates or timelines, and that remark was borne out in his evidence on certain points.
- [63] More importantly, beyond any concern about Mr. Gaglardi's ability to recount a precise timeline, I am left with significant concerns about the reliability of Mr. Gaglardi's testimony in relation to at least some of the allegations against him, owing to the state of his recollection. In particular, there were a number of instances in which Mr. Gaglardi vacillated between describing his actions in case-specific definitive terms (as if he had an independent recollection) and describing the same event in conditional or theoretical terms (as if he had no independent recollection, and was trying to reconstruct what he did or might have done based on his general practice). A witness cannot be faulted for having no independent recollection of particular events that happened decades in the past. Often times a witness may not have a specific memory of an event and may be reduced to describing his or her general practice. The problem in this case is that Mr. Gaglardi frequently vacillated between giving evidence about a particular incident or allegation in terms that were definitive or certain (suggesting an independent recollection) and giving evidence about the same incident or allegation in conditional terms (suggesting reliance on general practice rather than a case-specific recollection). In some instances, considering the whole of Mr. Gaglardi's evidence about a particular event, I was simply unable to determine

whether or not Mr. Gaglardi had an independent recollection of the event in question. This impacted significantly on the reliability of Mr. Gaglardi's testimony, at least in relation to certain incidents or allegations.

- [64] I turn next to some general observations about Mr. Gaglardi's credibility. The first point I have to make in this regard is once again tied to the state of Mr. Gaglardi's memory. Again, it would be hard to fault a witness for being unable to recall details going back more than four decades. The fact that a witness genuinely cannot remember a particular event or detail is not evidence of dishonesty.[1] However, where a witness professes to have an independent recollection of a particular event, and then later claims or admits to have no memory of the same event, the testimonial inconsistency may tell against the witness's credibility. Similarly, where a witness professes to have no recollection of an event, but later gives evidence about specific details or aspects of the event in question, this too can tell against the witness's credibility. In other words, inconsistent statements regarding the state of a witness's memory can impact on the witness's credibility. I find that to be the case with certain aspects of Mr. Gaglardi's testimony, as I will discuss later in my count-by-count review of his evidence.[2]
- [65] Another aspect of Mr. Gaglardi's testimony that reflected poorly on his credibility has to do with his educational background and credentials.
- [66] Mr. Gaglardi testified that after his arrest in 2020, he did "some research", as a result of which he came upon a legal document that "cast doubt" on the validity of his degree from Ohio Christian College. The import of this testimony was to suggest that Mr. Gaglardi only became aware of the problem with his post-secondary education credentials at some point after the charges were laid against him.
- [67] To begin with, I find that in claiming to have found a legal document that "cast doubt" on the validity of his degree, Mr. Gaglardi did not truthfully describe the extent of the problem. A legal document that Mr. Gaglardi acknowledged was "similar" to the one he found during his research was put to him. The document corresponds with the description Mr. Gaglardi gave in chief, in that it was a formal order from the United States Federal Trade Commission, dated 19 February 1972, directing Ohio Christian College to cease and desist from using the word "college" or any similar term, issuing degrees, or implying that the State of Ohio or any other governmental body recognized Ohio Christian's educational programs. The pleadings of fact underling the order state that Ohio Christian College was in the business of advertising, selling, and distributing text books and correspondence courses for profit. The institution had "no faculty members who are trained and competent to teach accredited and recognized college undergraduate or graduate course of any kind", and did not offer any curriculum approved of by any "recognized accrediting agency". Accepting that the Federal Trade Commission document Mr. Gaglardi located during his "research" was "similar", if not the very same as the document put to him in cross-examination, I find that it was a gross understatement for Mr. Gaglardi to say in his testimony in chief that his research merely "cast doubt" on the validity of his degree.

- [68] Further, Mr. Gaglardi's testimony in chief left the impression that, until he conducted "research" upon his arrest in 2020, he had no reason to question the validity of his academic qualifications. Mr. Gaglardi would only have considered it necessary to do "research" about Ohio Christian College if he had some doubt in his own mind as to the "validity" of his degree(s), and there is no reason to believe that any such doubt arose upon Mr. Gaglardi being arrested for sexual offences in 2020. I infer from the very circumstances in which Mr. Gaglardi obtained his post-secondary credentials, via correspondence in the 1960s, that he has always known or suspected that Ohio Christian College was not a legitimate educational institution, and that he deliberately chose not to make any enquiries from the point when he obtained his degree(s) in the late 1960s, up until the point when he became aware of the criminal proceedings against him in 2020.
- [69] The legitimacy of Mr. Gaglardi's educational credentials is important because Mr. Gaglardi's status as a "doctor" was one aspect of the relationship of trust that he established with most if not all of the complainants. In this regard, Mr. Gaglardi testified that he did not ask people to call him "Dr. Ray", and that during the years that he ran his counselling practice, the majority of his clients simply called him "Ray". I do not find Mr. Gaglardi's testimony on this point to be credible. At least nine of the complainants, specifically PP, RF, GP, RM, KH, JU, SH, MD, AH, testified that they and others knew and referred to Mr. Gaglardi as "Dr. Ray". Despite Mr. Gaglardi's suggestions to the contrary, I find that he frequently referred to himself as "Dr. Ray", and encouraged others to refer to him that way. Mr. Gaglardi also held himself out as "Dr. Ray" in his written consent and waiver forms, and on his website, which was called "Dr. Ray.ca".
- [70] I also have a number of other concerns about the credibility of Mr. Gaglardi's testimony. His testimony on a number of points was internally inconsistent.[3] There were some aspects of Mr. Gaglardi's testimony, on important points, in which his position was quite simply irrational or illogical.[4] There were instances in which Mr. Gaglardi made gratuitous, self-serving statements about the credibility or reliability of other witnesses, which I would consider to impact negatively on Mr. Gaglardi's credibility, in the sense that Mr. Gaglardi chose to attack the witnesses in an effort to advance his case, rather than simply providing his own factual account of the events in issue.[5] Another concern is that there were also instances in which Mr. Gaglardi gave testimony that was superficially responsive to an allegation made against him, but which on closer scrutiny miscast or skirted over the specifics of the allegation.[6]
- [71] I note that there were instances where Mr. Gaglardi sought to support his position with details or explanations that were entirely dependant upon his own testimony.[7] This of itself is no reason to dismiss Mr. Gaglardi's testimony, but it is clearly not the same as independent evidence corroborating Mr. Gaglardi's position.

- [72] There is one other, more specific issue that to be addressed in this global overview of Mr. Gaglardi's testimony. It has to do with the volume of clients Mr. Gaglardi had in his counselling and natural health therapy practice, when it comes to assessing the evidence in relation to some of the allegations on the Coquitlam counts. In closing submissions, defence counsel pointed to the number of clients Mr. Gaglardi had in his 20 years of practice, to advance two separate points.
- [73] First, counsel cited Mr. Gaglardi's evidence that he had a total of some 20,000 clients over the course of some 20 years in support of the submission that Mr. Gaglardi's counselling and alternative health therapy practice must have been a legitimate enterprise. In view of the volume of clients that Mr. Gaglardi had, counsel submits that it could not reasonably be concluded that Mr. Gaglardi's entire practice was some kind of a sham, carried on so that he could commit sexual abuse against young male clients.
- [74] Second, counsel emphasized that of Mr. Gaglardi's estimated 20,000 clients, some 1,000 to 200 of them received touch therapy.[8] Of the male clients, some 200 to 36 were treated with touch therapy,[9] and some of these clients attended many touch therapy sessions over significant periods of time. Defence counsel submitted that with this volume of "touch therapy" practice, there may well have been some incidence or likelihood of accidental, unintentional, or merely incidental touching of genitals. Despite this, the Crown has only presented allegations of inappropriate touching by nine of Mr. Gaglardi's clients. Defence counsel submitted that all of this must at least raise a reasonable doubt as to whether some of the brief or momentary touches alleged by certain Coquitlam complainants were intentional.
- [75] My conclusions on these two points are as follows.
- [76] First, while the figure of 20,000 clients seems high, I accept Mr. Gaglardi's evidence that he had many thousands of clients over the course of his 20 years as a counsellor and natural health practitioner. Thus, I accept that this was not a situation where Mr. Gaglardi's entire counselling and alternative therapy practice was a sham or a ruse, intended to allow him to engage in inappropriate touching of young male clients. What that leaves open is the possibility that Mr. Gaglardi had a legitimate counselling and alternative therapy practice, in the course of which he may on occasion have committed criminal acts as alleged by the complainants. In the end, the evidence about each allegation must be assessed on a case-specific basis, considering all of the admissible evidence in relation to that count through the prism of the presumption of innocence, and the Crown's burden to prove each count beyond a reasonable doubt.
- [77] Second, I do not attach much weight to counsel's submission about the relevance of the volume of Mr. Gaglardi's "touch therapy" or "energy therapy" clients to the issue of whether the touching alleged by certain complainants was or was not intentional. While I cannot say the evidence about the sheer volume of Mr. Gaglardi's practice is irrelevant, I do not find it very helpful in evaluating Mr. Gaglardi's conduct and intentions in relation to specific

allegations of touching. I do not know the circumstances of the other clients or the manner in which Mr. Gaglardi treated them. Moreover, the fact that Mr. Gaglardi may have treated other clients without complaint does not preclude the possibility that he mistreated the particular complainants who testified in this trial. In the final analysis, the allegations must be assessed on the basis of the admissible evidence on each count (which, to be clear, includes all of Mr. Gaglardi's testimony), taking into account the overall burden on the Crown to prove its case beyond a reasonable doubt.

(5.2) Count-by-Count Analysis

(5.2.1) Count 3 [Complainant RF's Allegations]

- [78] On count 3, Mr. Gaglardi is alleged to have committed indecent assault against RF, between 1 October 1971 and 30 December 1974. The Crown alleges that Mr. Gaglardi touched RF inappropriately on three separate occasions. The first two incidents were alleged to have occurred when RF was 14 years old, in Mr. Gaglardi's office at Glad Tidings, where Mr. Gaglardi touched RF's genitals, ostensibly to check for venereal diseases. The third incident is alleged to have occurred either several months or slightly more than a year later, when RF was 14 or 15 years old, in the first aid area at the Glad Tidings summer camp, where Mr. Gaglardi touched RF's genitals, ostensibly to check for injuries after RF cut his knee during a baseball game. Mr. Gaglardi claims to have no recollection of any such interactions with RF, and further asserts that he would not have and therefore did not touch RF in the manner alleged. Basically, the defence position is that RF's allegations are untrue, and the events he described did not occur.
- [79] There is at least some common ground between the parties with regard to the circumstances surrounding RF's allegations. With respect to the location and context of the first two incidents, Mr. Gaglardi acknowledges that he worked at Glad Tidings and had an office at the church. With respect to the location and context of the third incident, Mr. Gaglardi acknowledges that he worked at the summer camp, that he often umpired baseball games, that he was responsible for first aid, and that there was a first aid "tent" or facility at the camp, although RF's particular description of the first aid structure is in dispute.
- [80] As to the incidents of touching as alleged by RF, there is a direct conflict in the evidence, which can only be resolved by way of an analysis of the credibility and reliability of the witness testimony. In this regard, I must be mindful of the burden of proof and the principles in *W.(D.)*.
- [81] Mr. Gaglardi's position was that he did not engage in any inappropriate touching of RF. Given the historical nature of the allegations, it would not be particularly surprising for Mr. Gaglardi to be unable to recall the details of what would have been uneventful interactions with RF, so many decades after the fact. Having said that, Mr. Gaglardi's account did not consist of a mere bare denial of the allegations. Mr. Gaglardi gave evidence both in chief and in cross-examination recounting what he could remember about his activities and actions over the time frame in issue in this count. On its face, Mr. Gaglardi's response to RF's

allegations is entirely plausible. Despite that, I have significant concerns about the credibility of Mr. Gaglardi's testimony in relation to the RF allegations, and I have broader concerns about the credibility and reliability of Mr. Gaglardi's evidence as a whole.

- [82] Dealing specifically with Mr. Gaglardi's testimony in response to RF's allegations, I do not find his testimony about his role as first aid attendant at the Glad Tidings summer camp to be credible. Under direct examination, Mr. Gaglardi said the first aid responsibilities at the camp fell to him by default, as he had training in first aid, and no one else was qualified. In cross-examination, when challenged on his first aid qualifications, Mr. Gaglardi maintained that he was qualified and that he kept up with his first aid training the best that he could. He added that if someone else was better qualified, he would gladly have "let them take over" the first aid duties. Later in cross-examination, under specific questioning about RF's allegations, Mr. Gaglardi rejected the suggestion that no one else was responsible for first aid treatment at the camp, responding that "sometimes there were nurses", and he would "defer to a nurse". I find this evidence to be internally inconsistent. It is an example of a situation where, when pressed on his knowledge and training in a particular subject, Mr. Gaglardi was defensive and wanted to present himself as fully qualified. By contrast, when it did not suit his interest to be presented as the person solely in charge of first aid at the summer camp, Mr. Gaglardi placed an entirely different slant on his evidence, in an effort to distance himself from RF's allegations.
- [83] While this single point of inconsistent testimony, on its own, might not cause me to reject Mr. Gaglardi's evidence in relation to the RF allegations, this is not the only concern I have with his testimony. Here, I refer to and adopt my general comments about Mr. Gaglardi's evidence as set out in paragraphs 62 to 71 above.
- [84] I must also consider the reliability and credibility of RF's testimony. RF was 65 years old when he testified. His testimony pertained to events which occurred some 49 to 50 years ago, when he was 14 to 15 years old. Despite the passage of time, RF had a relatively good recollection of his circumstances at the time of the events in question. RF also gave a fairly detailed account of Mr. Gaglardi's role at the Glad Tidings Temple and the summer camp, many aspects of which were borne out by the evidence of Mr. Gaglardi. Many features of RF's testimony were either confirmed by, or entirely consistent with the evidence of Mr. Gaglardi himself.
- [85] When it comes to the allegations of sexual touching, RF's account of all three incidents was coherent. He was able to describe the context in which the touching occurred, and gave clear and relatively precise evidence about what Mr. Gaglardi said to him, and the manner in which Mr. Gaglardi touched him.
- [86] RF claimed that the first two incidents occurred in Mr. Gaglardi's office at the Glad Tidings Temple. His description of the setting was entirely consistent with the testimony of Mr. Gaglardi himself, and with the testimony of other witnesses. As well, RF's description of the context in which the alleged touching occurred was consistent with Mr. Gaglardi's role at the

time, in that Mr. Gaglardi admittedly interacted with boys RF's age, both at the Glad Tidings Temple and as part of his functions at Temple Academy. RF's allegation that Mr. Gaglardi approached him to discuss some issue about a venereal disease is not completely out of sync with Mr. Gaglardi's role, in that Mr. Gaglardi was admittedly involved in counselling youth in need of special attention, and admittedly had an interest in health issues. Indeed, Mr. Gaglardi admits that he taught the subjects of hygiene and human sexuality at Glad Tidings Temple.

- [87] RF claimed that the third incident occurred in the first aid tent at the Glad Tidings summer camp. RF's description of the summer camp generally, and Mr. Gaglardi's role at it, was largely if not entirely consistent with Mr. Gaglardi's evidence, with one notable exception which I will address below. RF's description of Mr. Gaglardi's role as the person responsible for first aid at the camp was entirely consistent with the testimony of Mr. Gaglardi. With regard to the core allegation, RF gave a clear, cogent account of the events preceding the touching, the touching itself, and what Mr. Gaglardi said and did at the time.
- [88] RF was thoroughly and skillfully cross-examined about his allegations against Mr. Gaglardi.
- [89] With regard to the first two incidents, in which Mr. Gaglardi was said to have taken RF to his office and touched him to ostensibly check for venereal diseases, there were no significant inconsistencies elicited in cross-examination of RF.
- [90] The one point of implausibility that was raised by defence counsel in relation to these allegations has to do with the circumstances surrounding the second incident. RF testified that he told his parents about the first incident and that his mother believed him, but his father did not. RF further testified that on the occasion of the second incident, he was with his father at the church when Mr. Gaglardi approached him, told him he needed to speak with him, and then took him to his office where he repeated the touching, once again claiming that the purpose was to check for signs of venereal disease. Against this backdrop, defence counsel suggested that it was implausible that RF's father, having been alerted by RF to the prior allegation, would not have been more vigilant or aware of what was happening to RF on the second occasion, such that he would have intervened or discovered what was occurring. I have considered this point, but given the dearth of evidence as to exactly how Mr. Gaglardi approached RF at the church on this occasion, and in particular whether RF's father was actually present and overheard what was said, I do not find this to be a significant point of implausibility in RF's account. RF's testimony was that he went to church "with his father", and that Mr. Gaglardi "came up to him" and said, "I want to see you". RF was not asked and did not give any evidence about whether his father was in earshot for the interaction, or whether his father appeared to hear or react to what Mr. Gaglardi said. Considering RF's testimony that his father did not believe him when he reported the first allegation, it is not clear what degree of vigilance or lack thereof RF's father applied to RF's subsequent interactions with Mr. Gaglardi.

- [91] With regard to the third allegation, in which Mr. Gaglardi is alleged to have touched RF's genitals after treating a cut on his knee, once again there were no material inconsistencies in RF's evidence with respect to the manner of the touching or what Mr. Gaglardi said or did during the incident itself. RF did acknowledge having some difficulty in recalling the timing of this incident. In particular, he could not recall whether the incident happened a few months after the first two (when RF was 14), or the following summer (when he was 15). At the end of the day, based on RF's description of the timing of the third incident in relation to when he ultimately moved out of the family house, I am satisfied that the third incident in fact occurred when RF was 15, in the summer of 1973.
- [92] Defence counsel raised two main arguments with respect to the credibility of RF's third allegation.
- [93] First, counsel pointed to RF's description of the first aid structure where the alleged touching was said to have occurred. RF described the first aid structure as a small covered wagon with a canvass tent on top. In cross-examination, RF maintained that it was a small covered wagon or caravan with wheels. Elsewhere, he referred to it as a "first aid tent", or a "canvass structure". By contrast, Mr. Gaglardi testified that at the time of the allegation the first aid structure at the summer camp was a "platform with a tent on it". He said it had no wheels. Another complainant, KH, referred to the first aid structure as a "tent". In my view, this point goes more to the reliability of RF's testimony, rather than his credibility. I say that because there clearly was a first aid structure at the camp, in the nature of a tent of some kind, which indicates to me that RF did not simply make up the location of the alleged touching out of thin air. The point of contention is whether the structure where the alleged touching occurred was a tent on top of a small wagon as described by RF, or a platform with a tent on it as described by Mr. Gaglardi. On all the evidence, it is quite possible that RF had an inaccurate recollection of the exterior of the structure. The question then becomes whether and to what extent that inaccuracy reflects on the balance of RF's testimony. That is something that certainly must be taken into account in the final weighing of the evidence.
- [94] Second, counsel cites RF's testimony about what happened immediately after the touching. RF recounted that he left the first aid structure, but Mr. Gaglardi remained inside. RF described that the tent was rocking back and forth for 60 to 90 seconds, with Mr. Gaglardi apparently still inside. RF also accepted a portion of his prior video recorded statement stating that they finished the entire ball game before Mr. Gaglardi came out of the first aid structure. RF added that he did not specifically recall seeing Mr. Gaglardi actually come out of the wagon. Counsel says that on RF's account, Mr. Gaglardi would have been drawing an unnecessary amount of attention to himself, in front of everyone participating in or watching the ball game. Counsel suggests that a person engaged in improper sexual touching of a child is not likely to do so in a way that draws attention to him or herself. Counsel says that all of this makes RF's allegation quite implausible. I see some merit in this point, although one must always be wary of assessing the evidence on assumptions about what kind of behaviour might be regarded as normal as opposed to abnormal, or typical as

opposed to atypical. Sometimes people engage in conduct that is clandestine and highly thought out, other times people engage in conduct that is impetuous, or impulsive, or even brazen. Thus, while I accept that this point is entitled to some weight in considering the overall plausibility of RF's account, I would certainly not treat it as affirmative proof that RF's account is untrue.

- [95] Finally, RF was questioned at length with respect to his personal circumstances and his potential motive for making false allegations against Mr. Gaglardi. RF testified that when he disclosed the allegations to his parents, they disagreed and fought over whether to believe him. His father did not believe him, and basically "disowned" him. RF testified that the incidents involving Mr. Gaglardi "pretty much set [his] whole life on a different path". RF acknowledged all of this in his testimony, but flatly rejected counsel's suggestion that he blamed Mr. Gaglardi, or the Gaglardis, or the Glad Tidings church for the estrangement with his father, and that he was motivated to make false or over-stated allegations against Mr. Gaglardi. RF denied fabricating what Mr. Gaglardi did, explaining that he did not come to court to make things up, but only to tell the truth about what happened.
- [96] The Crown's case against Mr. Gaglardi on count 3 turns largely but not entirely on RF's testimony. The Crown also relies on similar fact evidence from the other Vancouver complainants, to support the credibility and reliability of RF's testimony.
- [97] The probative value of the similar fact evidence is a function of the extent to which there are common features in the evidence that tell against the possibility of innocent coincidence. In this case, while the specific allegations of touching made by the other Vancouver complainants, GP, RM, DP, and KH, are by no means exactly alike, there are a number of common features in the nature of the touching, and the context in which it occurred. In each case, the complainant was somewhere between 10 and 17 years old at the time of the touching. Three of the other four complainants (GP, DP, and KH) alleged that Mr. Gaglardi touched their genitals. The fourth (RM) alleges that Mr. Gaglardi examined the "erogenous zones" of his naked body, and in the course of doing so moved his "genitals" to one side. Finally, the context for all five complainants is similar in that Mr. Gaglardi was in a position of authority or trust vis-a-vis all of these complainants, owing to his status at the Glad Tidings Temple, or the Temple Academy, or both. In every instance, Mr. Gaglardi is alleged to have used his position in the church organization to engage in opportunistic sexual touching of the much younger male complainant.
- [98] Defence counsel contends that the similar fact evidence should not be given much weight, considering that Mr. Gaglardi worked at the Glad Tidings Temple, Temple Academy, and associated summer camp for over a decade, in the course of which he would have come into contact with many, many boys and teenagers. It is hard to know what to make of this submission. I suppose the fact that Mr. Gaglardi was a recognizable figure in the Glad Tidings community might make him a more likely target of false allegations or inaccurate recollections than someone who never had any contact with children. On the other hand, the fact that there are not more allegations of sexual impropriety against Mr. Gaglardi is not

really evidence that he did not engage in the acts of sexual touching alleged by the five Vancouver complainants who testified in these proceedings.

- [99] As to the possibility of collusion between the witnesses, there was evidence that shortly before the trial, RF had a conversation with another witness, PP.[10] RF testified that when he spoke with PP, they did not discuss RF's allegations. In my ruling admitting the similar fact evidence, I found that there was an "air of reality" to the issue of potential collusion between PP and RF, but I was satisfied on a balance of probabilities that RF's allegations were completely independent from any contamination through communication with PP. I reached that conclusion based on a finding that RF's conversation with PP went no further than a discussion of PP's role in putting the police in touch with other potential complainants. I was satisfied that RF did not communicate to PP about the substance of RF's allegations, and that RF did not receive any information from PP about the substance or content of his allegation against Mr. Gaglardi. Despite these findings, it is still necessary as part of my assessment of all of the relevant evidence to consider whether the evidence about possible collusion between RF and PP could, alone or in conjunction with other evidence, give rise to a reasonable doubt as to the truthfulness or reliability of RF's allegations.
- [100] Weighing up all these considerations with respect to the similar fact evidence, I consider the fact that four other complainants, all boys or teenagers, allege that Mr. Gaglardi touched them in a sexual manner, in a similar context, weighs heavily against the possibility of innocent coincidence. I therefore find that the evidence of the other four Vancouver complainants tends to reinforce the credibility and reliability of RF's testimony.
- [101] This brings me to the central question with regard to count 3, which is whether the Crown has proven beyond a reasonable doubt that Mr. Gaglardi committed the three acts of touching alleged by RF. Applying the W.(D.) analysis, I first consider the testimony Mr. Gaglardi, who denied that the touching occurred. I do not believe Mr. Gaglardi's evidence, based on the many concerns about the reliability and perhaps more importantly the credibility of his testimony as set out above. Nor does Mr. Gaglardi's testimony raise a reasonable doubt as to whether the touching occurred. Turning to the evidence of RF, I accept his evidence about the three acts of touching. I find RF's testimony to be both credible and reliable. Although I have some concern about the accuracy of RF's recollection as to the exact nature of the first aid structure at the Glad Tidings summer camp, this concern, considered on its own and together with all of the other points made by defence counsel, does not raise a reasonable doubt as to the credibility and reliability of the complainant's allegations. The similar fact evidence from the other Vancouver complainants reinforces that conclusion. I reject the notion that the evidence of any of these complainants, including RF, is tainted by collusion or contamination, and I have no reasonable doubt on this point, either alone or in conjunction with any other issue. On a consideration of the whole of the evidence I have just reviewed, I am satisfied beyond a reasonable doubt that Mr. Gaglardi committed the three acts of touching alleged by RF.

[102] Having determined that Mr. Gaglardi committed the three acts of touching alleged by RF, I have no difficulty concluding that the essential elements of indecent assault under former s. 156 of the Criminal Code have been proven. In particular, I reach the following conclusions:

- (i) Mr. Gaglardi touched the complainant.
- (ii) The touching described by RF was clearly intentional on Mr. Gaglardi's part.
- (iii) The touching was manifestly sexual and indecent in nature.
- (iv) There are at least three bases on which the court can be and is satisfied that there was no valid consent to the touching. First, RF testified that he did not want to engage in the activity with Mr. Gaglardi. This evidence alone is enough to satisfy me that he did not consent. Second, even if some form of consent had been given, the complainant clearly did not consent to the sexual nature of the touching, because in all three instances the stated reason for touching RF's genitalia was for some purported medical or health purpose, when it is clear from all of the circumstances that this was manifestly not the case. Third, even if RF had consented to the touching, the consent was vitiated by fraud as contemplated in former s. 244(a) of the Criminal Code, specifically fraud as to the true purpose for the touching.
- (v) The concept of honest but mistaken belief in communicated consent does not arise on the facts of this case.[11]

[103] I find Mr. Gaglardi guilty on count 3.

(5.2.2) Count 5 [Complainant GP's Allegation]

[104] On count 5, Mr. Gaglardi is alleged to have committed indecent assault against GP, between 14 July 1975 and 14 July 1977. The Crown alleges that Mr. Gaglardi indecently assaulted GP by reaching into his swimming trunks and touching his penis, at the swimming pool in the common area of Mr. Gaglardi's condominium complex. The complainant GP was 10 or 11 years old at the time of the alleged touching. Mr. Gaglardi claims to have no independent recollection of GP during the time frame in issue, although he does admit that GP may have had overnight stays at his condominium from time to time. Mr. Gaglardi denies ever reaching into GP's swimming trunks to touch his penis. Mr. Gaglardi professes to recall an interaction in a pool in which he tried to dunk a person under the water, and the person got upset and hit Mr. Gaglardi in the face, although Mr. Gaglardi says he cannot remember whether GP was the other person involved in that incident. In the result, the defence position is that the incident alleged by GP either never happened, or if it did happen, it did not occur the way GP alleges. Thus, the defence says, the Crown has failed to prove beyond a reasonable doubt that any touching occurred, or that if touching did occur, that it was intentional, or that it was indecent in nature.

- [105] There is a certain amount of common ground between the parties with regard to the circumstances surrounding GP's allegations. Mr. Gaglardi does not deny being asked by GP's mother to spend time with GP in the relevant time frame, and he does not deny that GP may have stayed over at his apartment on some weekends, although Mr. Gaglardi professed to have no independent recollection of any such stays, or even of what GP looked like as a child. Mr. Gaglardi further conceded that his condominium complex had a pool.
- [106] When it comes to GP's allegation that Mr. Gaglardi touched him inappropriately, there is a direct conflict in the evidence. The conflict must be resolved by a careful consideration of the credibility and reliability of the witness testimony, having regard to the Crown's burden of proof, and the principles in W.(D.).
- [107] Mr. Gaglardi's position was that he did not touch GP inappropriately. Given the historical nature of the allegation, it would not be surprising for Mr. Gaglardi to have no recollection of uneventful interactions with GP, decades after the time frame in issue. Again, I would say that Mr. Gaglardi's account was more than a bare denial of the allegation. Mr. Gaglardi gave evidence both in chief and in cross-examination recounting what he could remember about his activities and actions as the time of the allegations. Mr. Gaglardi freely acknowledged or admitted many details of his life that corresponded with GP's testimony, even though it might not have suited Mr. Gaglardi's interests to do so. On its face, Mr. Gaglardi's response to GP's allegation is entirely plausible. However, once again I have significant concerns about the credibility of Mr. Gaglardi's testimony in response to GP's allegation, and I also have more general concerns about the credibility and reliability of Mr. Gaglardi's evidence as a whole.
- [108] I have three major concerns about the credibility of Mr. Gaglardi's testimony in response to GP's allegations.
- [109] The first credibility issue relates to Mr. Gaglardi's claim that he was somewhat reluctant to mentor GP because he was not comfortable interacting with children and was more at ease dealing with people older than 16 or 17 years of age. That statement does not accord with other aspects of Mr. Gaglardi's testimony. For example, when asked about the incident when RM went to see him for advice about body building, when RM was 12 years old, Mr. Gaglardi responded that he recalled "that kind of thing" happening, which I took to be an acknowledgment that boys this age would come to him to discuss things like fitness and body image. When asked about the allegation that he laid next to and comforted RM on a bed, Mr. Gaglardi replied that he did not recall that particular incident, but that was the "kind of thing" he might have done and it would not be "uncommon" for him to do so. Later in cross-examination, Mr. Gaglardi backtracked slightly, asserting that it would be "uncommon" for him to console a child on a bed, but went on to say that it was in his nature to console a child "wherever they happened to be", whether it was on a couch, or a bunkbed, or at the ballfield. When testifying in response to KH's allegations, Mr. Gaglardi stated that it was "common" for him to counsel boys in their teens or older (in the context of an allegation that he counselled KH when he was 14 years old). Mr. Gaglardi then quickly

backtracked to say that it might not have been "common", but it certainly happened. Thus, at certain points in his testimony, Mr. Gaglardi attempted to paint himself as someone who was comfortable providing emotional support to 12-year-old boys, and asserted that it was "common" or possible for him to counsel boys as young as 14 years old. By contrast, at another point in his testimony, when it suited his purpose to present a contrary position, Mr. Gaglardi claimed to be ill-at-ease with boys younger than 16 or 17 years old.

- [110] The second credibility issue has to do with the state or extent of Mr. Gaglardi's recollection about GP. While Mr. Gaglardi acknowledged in his testimony in chief that he may have mentored GP, he claimed to have no independent recollection of GP, or his interactions with him, or even what GP looked like at the relevant time. However, when pressed on the details of GP's claim to have handled Mr. Gaglardi's snub-nosed .38 handgun, Mr. Gaglardi responded that he had no memory of GP expressing any interest in firearms when he was young.[12] These two aspects of Mr. Gaglardi's testimony are internally inconsistent. If Mr. Gaglardi had no independent memory of his dealings with GP, he would have no recollection of anything GP said about firearms, one way or the other. This indicates that Mr. Gaglardi was either being dishonest about having no recollection whatsoever of his dealings with GP, or he was being dishonest about GP never expressing any interest in guns.
- [111] The third concern about Mr. Gaglardi's credibility in response to GP's allegation has to do with Mr. Gaglardi's professed recollection of a pool-dunking incident. In direct examination, Mr. Gaglardi testified that he could not recall the identity or even the appearance of the other person involved, except to say it was someone "smaller in stature" than himself. Mr. Gaglardi also said he could only guess at the date, and that the incident might have happened in the 1970s, or even the 1960s. Despite these limits in his recollection, when it was suggested in cross-examination that the dunking incident he described did not involve GP, Mr. Gaglardi flatly disagreed. When it was suggested that the dunking incident he recalled might have involved a female, again Mr. Gaglardi flatly disagreed, even though in his testimony in chief he claimed to recall only that "the person" was smaller in stature than himself. Finally, when it was suggested in cross-examination that the dunking incident might have occurred in the 1960s, Mr. Gaglardi was not prepared to acknowledge that, questioning whether that is what he said in chief. With regard to this entire subject matter, if Mr. Gaglardi was being completely honest in cross-examination, he would have conceded based on what he could recollect that the pool dunking incident he recalled might or might not have involved GP. He was not prepared to make such an acknowledgement, because it suited his case better to suggest that the pool dunking incident he described in his testimony involved GP. I conclude that Mr. Gaglardi was less than honest about a professed recollection of a dunking incident at a pool.
- [112] In the net result, there are serious problems with the credibility of Mr. Gaglardi's testimony in response to GP's allegation. I also have a number of other concerns about the credibility and reliability of Mr. Gaglardi's testimony as a whole, as set out in paragraphs 62 to 71 above.

- [113] I will next address the reliability and credibility of GP's testimony. GP was 56 years old when he testified. GP testified about events that occurred some 45 years ago, when he was 11 years old. Nonetheless, GP was able to recall and describe his own personal circumstances, the context in which he came to spend time with Mr. Gaglardi, and many specific details of his interactions with Mr. Gaglardi. Many of these details were confirmed by Mr. Gaglardi's evidence. For example, GP recalled that Mr. Gaglardi was a doctor of psychology, and that he ran the audio production facilities at Glad Tidings. GP also recalled that Mr. Gaglardi had a car phone, and that he had a snub-nosed .38 special handgun which he sometimes carried in a holster.[13] All of these aspects of GP's testimony were borne out by or corroborated by Mr. Gaglardi's evidence. I consider this significant for several reasons. For one thing, the details recounted by GP provide some indication that he had a relatively good recollection of his dealings with Mr. Gaglardi. Moreover, some of the things GP was able to recall about Mr. Gaglardi were unique details indicating that GP had more than a passing familiarity with Mr. Gaglardi and his interests during the period in issue.
- [114] With regard to GP's allegation of sexual touching, his account was detailed and lucid. GP described the nature of his relationship with Mr. Gaglardi, including his weekend stays at Mr. Gaglardi's residence. He also described the location and surrounding circumstances in which the alleged touching occurred, namely, an instance in which he and Mr. Gaglardi went swimming in the pool in Mr. Gaglardi's apartment building. Finally, GP recounted the touching itself in considerable detail. He described how Mr. Gaglardi approached him in the pool, how Mr. Gaglardi took hold of him, how Mr. Gaglardi stroked the hair on his head, and finally how he felt Mr. Gaglardi's hand go into his swimming trunks and touch his penis. GP also described how he himself reacted when Mr. Gaglardi touched him, and how Mr. Gaglardi in turn responded to his reaction. Finally, GP was able to recount what happened in the aftermath of the alleged touching incident. No material discrepancies in GP's account of the touching incident were elicited in cross-examination. I should note that defence counsel challenged GP on his description of how Mr. Gaglardi was able to reach into the front of his swim trunks with their bodies facing each other, but in my view this questioning did not undermine the cogency of GP's account for reasons discussed in more detail below.
- [115] Defence counsel raised a number of points about the credibility and reliability of GP's testimony.
- [116] First, counsel pointed to the discrepancy between GP's description of Mr. Gaglardi's apartment, and the photographs of the apartment that were tendered in the course of Mr. Gaglardi's testimony. GP described Mr. Gaglardi's apartment in some detail. GP said it was tastefully decorated, that it had an Asian or Oriental motif with lots of glossy finishing, and that it was adorned with artwork, statues and carvings. When presented with photographs later identified by Mr. Gaglardi, GP did not accept that they accurately depicted the apartment as he recalled it. He said the photographs did not match the style of decoration that he remembered in Mr. Gaglardi's apartment. By contrast, Mr. Gaglardi testified that the

photographs he tendered in evidence depicted the decorum throughout the time that he lived in the apartment. There might have been room to question whether the photographs were actually of Mr. Gaglardi's apartment, since one of the photographs shows Mr. Gaglardi, his wife, and his brother's dog, leaving open the possibility that the photographs related to his brother's residence. However, the weight of the evidence weighs in favour of Mr. Gaglardi's account. I say that because Mr. Gaglardi testified that a number of years later, he gave the couch depicted in the photographs to ML, and ML confirmed in his testimony that Mr. Gaglardi gave him a couch set matching the description of the couch set in the photographs, when ML moved into his own apartment in or around 1993 or 1994. All of this evidence leads me to conclude that Mr. Gaglardi's apartment was in fact decorated in the manner depicted in the photographs, for at least some of the time that Mr. Gaglardi lived in it.

- [117] Within this factual matrix, a number of possibilities arise. One is that GP was accurately describing Mr. Gaglardi's apartment at the time that he visited it, some time between 1975 and 1977, and Mr. Gaglardi later redecorated the apartment at some point prior to moving out in 1983. Mr. Gaglardi testified that the decorum was the same throughout the time period that he lived in the apartment, but there is no independent evidence of this. Another possibility is that GP's recollection of the décor relates to the common area of Mr. Gaglardi's apartment building, rather than Mr. Gaglardi's apartment itself. In this regard, I note the complainant KH's testimony that in addition to a pool, Mr. Gaglardi's apartment building had a common area or recreation room. Yet another possibility, which is quite viable and certainly cannot be ruled out on all the evidence, is that GP's description of the interior of Mr. Gaglardi's apartment is quite simply wrong. If that were the case, the inaccuracy could be attributable either to deliberate dishonesty, or to a mistaken or flawed recollection on GP's part.
- [118] I do not attach any real credence to the idea that GP's testimony about the appearance of Mr. Gaglardi's apartment was a deliberate fabrication. On the whole of the evidence, I have no difficulty concluding that GP actually stayed over for weekends at Mr. Gaglardi's apartment, for many reasons that I do not consider it necessary to recount. Indeed, Mr. Gaglardi did not dispute GP's claim to have stayed over for weekends at the apartment. In that context, I see no reason why GP would find it necessary or helpful to his position to deliberately fabricate details about the interior of Mr. Gaglardi's apartment.
- [119] For all of these reasons, I consider the discrepancy in the testimony of GP and Mr. Gaglardi regarding the décor in the apartment to bear principally on the reliability of GP's evidence, as opposed to GP's credibility. The apparent inaccuracy of GP's recollection about the décor in Mr. Gaglardi's apartment bears significantly on the weight given to the whole of GP's evidence. Nevertheless, this aspect of GP's evidence is not necessary integral to his sexual touching allegation, since he did not allege that the touching incident occurred in Mr. Gaglardi's apartment, but rather in the pool.

- [120] Second, defence counsel pointed to GP's acknowledgment in cross-examination that he never learned to swim, and he was fearful of his head going under the water. GP agreed with defence counsel's suggestion that when Mr. Gaglardi touched him in the pool, he had a feeling of panic and that he reached out and hit Mr. Gaglardi in the face. Defence counsel relies on this evidence, together with Mr. Gaglardi's testimony recalling a "pool dunking" incident, to suggest that GP either misinterpreted Mr. Gaglardi's actions at the time, or has since misremembered the incident over time, and in fact what happened was that Mr. Gaglardi did not place his hands in GP's swim trunks, but rather he merely tried to dunk GP in the water.
- [121] Third, defence counsel submits that GP was unable to describe the "mechanics" of the touching incident. On GP's account, he and Mr. Gaglardi were "face to face" and "belly to belly", Mr. Gaglardi was stroking his head and his hair, and then GP felt Mr. Gaglardi's hand go into his swim trunks and touch his penis. When defence counsel questioned GP about how Mr. Gaglardi could physically place his hand into the front of GP's swim trunks from this position, GP responded that he could remember Mr. Gaglardi's hand in his swim trunks, but could not say or could not remember Mr. Gaglardi's hand getting into that position. I have taken this point into account, but in the end I would not attach much significance to it. The exact "mechanics" of the touching would depend on many variables as to the relative body positions of Mr. Gaglardi and GP. Among other things, there is no evidence as to how tight GP's swim trunks were, or how they were fastened or secured about his waist. On my assessment of the evidence, it would not have been physically impossible by any means for Mr. Gaglardi to have placed his hand into GP's swim trunks.
- [122] Although the Crown's case on count 5 turns largely on GP's testimony, that evidence does not stand alone. The Crown also relies on similar fact evidence from the other Vancouver complainants to support GP's credibility and reliability. I adopt the analysis set out in paragraphs 96 to 100, dealing with the probative value of the similar fact evidence. I consider the fact that four other complainants, all boys or teenagers, allege that Mr. Gaglardi touched them in a sexual manner, in the context of similar relational dynamics, weighs heavily against the possibility of innocent coincidence. I therefore find that the evidence of the other four Vancouver complainants tends to reinforce the credibility and reliability of GP's testimony.
- [123] The central question with regard to count 5 is whether the Crown has proven beyond a reasonable doubt that Mr. Gaglardi committed the act of touching alleged by GP. Applying the W.(D.) analysis, I first consider the testimony of Mr. Gaglardi, who denied that the touching occurred. I do not believe Mr. Gaglardi's evidence, based on the many concerns outlined above with respect to the reliability and perhaps more importantly the credibility of his testimony. Nor does Mr. Gaglardi's testimony raise a reasonable doubt as to whether the touching occurred. Turning to the evidence of GP, I accept his evidence about the incident in which Mr. Gaglardi reached into his swim trunks and touched his penis. I find GP's testimony to be credible and reliable.

- [124] I have considered the defence theory that GP either misinterpreted Mr. Gaglardi's actions at the time, or subsequently misremembered the incident over time, but I reject this theory and find that it does not raise a reasonable doubt. GP gave a detailed account of the manner in which Mr. Gaglardi approached him in the pool and then put his hand into GP's swim trunks. GP's account does not fit with the theory that Mr. Gaglardi simply tried to dunk GP in the pool. GP said, among other things, that Mr. Gaglardi approached him and began caressing the hair on his head, and GP then felt Mr. Gaglardi's hand go into his swimming trunks and touch his penis. I accept that testimony, and I reject the defence theory that GP "misinterpreted" Mr. Gaglardi's actions at the time. I have also considered Mr. Gaglardi's testimony about his alleged recollection of a "pool dunking incident", but I find that it does not raise a reasonable doubt in light of the many credibility concerns with Mr. Gaglardi's testimony. Finally, considering the significance of the event, the aftermath, and its subsequent impact on GP's relationship with Mr. Gaglardi, I also reject the defence suggestion that GP developed a false or inaccurate memory of what actually occurred.
- [125] I have also taken into account the apparent inaccuracy in GP's recollection as to the décor in Mr. Gaglardi's apartment, which suggests a need for caution in assessing the reliability of other aspects of GP's testimony. However, even taking this into account, I am not left with a reasonable doubt about the veracity and reliability of GP's allegation of sexual touching, for three reasons. First, the inaccuracy in GP's recollection about the apartment décor does not go to the core of his sexual touching allegation. The alleged sexual touching did not occur in the apartment but rather in the pool. Second, even if GP is confused or seriously mistaken in his recollection of the apartment décor, I find that this does not impact upon the accuracy of his recollection about the core allegation, which GP was able to describe in considerable detail, and was no doubt very memorable to him. Third, the similar fact evidence of the other four Vancouver complainants gives me added confidence as to the credibility and reliability of GP's allegation. I reject the notion that the evidence of any of the Vancouver complainants, including GP, is tainted by collusion or contamination, and I have no reasonable doubt on this point, either alone or in conjunction with any other issue.
- [126] Even considering all of the points I have just reviewed cumulatively, I am not left with a reasonable doubt as to the credibility and reliability of GP's allegation. On a consideration of the whole of the evidence I have just reviewed, I am satisfied beyond a reasonable doubt that Mr. Gaglardi committed the act of touching alleged by GP.
- [127] Having determined that Mr. Gaglardi committed the single act of touching alleged by GP, I have no difficulty concluding that the essential elements of indecent assault under former s. 156 of the Criminal Code have been proven beyond a reasonable doubt. In particular, I reach the following conclusions:
- (i) Mr. Gaglardi touched GP's penis.

(ii) On GP's description of Mr. Gaglardi's behaviour, I have no difficulty inferring that Mr. Gaglardi's touching of GP's penis was intentional. Mr. Gaglardi effectively embraced GP, started stroking the hair on GP's head, and then intentionally placed his hand in GP's swim trunks and touched GP's penis.

(iii) The touching I have just described was manifestly indecent in nature.

(iv) Since GP was only 10 or 11 years old at the time of the incident, his consent would not have been valid by virtue of former s. 140 of the Criminal Code. In any event, it is clear from GP's testimony, which I accept, that he did not consent to the touching at the time it occurred.

(v) On the facts as I have found them, there is no scope for the defence of honest but mistaken belief in communicated consent.

[128] I find Mr. Gaglardi guilty on count 5.

(5.2.3) Count 6 [Complainant RM's Allegations]

[129] On count 6, Mr. Gaglardi is alleged to have committed indecent assault against RM, between 1 January 1977 and 31 December 1977. The complainant RM was 12 years old at the time. The Crown alleges that, in the course of a nude examination of RM's body ostensibly as a means of assessing his muscular development, Mr. Gaglardi inappropriately touched RM with a pen. It is further alleged that Mr. Gaglardi presented the pen to RM as some kind of electrical feedback device, as a ploy to engage in sexual touching. For his part, Mr. Gaglardi claimed to have no independent recollection of such an interaction with RM. Mr. Gaglardi never expressly denied the conduct alleged by RM, except for saying that he would have had "no reason" to remove RM's clothes. Mr. Gaglardi also conceded that it would not have been uncommon or unusual for him to provide a boy of RM's age at the time with input and information regarding fitness and muscular development. The defence position on this count is that even if the Crown has proven that the conduct alleged by RM occurred, it would not qualify as either an indecent or common assault.

[130] The evidence and the scope of what is in issue on count 6 is somewhat different than what is in issue in relation to the other Vancouver counts. Mr. Gaglardi's response to RM's allegation was curiously vague. Mr. Gaglardi claimed to have no recollection of an interaction of the sort alleged by RM, but he did not expressly deny the allegation. The closest Mr. Gaglardi got to denying the allegation was to say in cross-examination that there would have been no reason for RM to get undressed. This testimony struck me as somewhat equivocal in that Mr. Gaglardi said there would have been "no reason" for RM to get undressed, which is not the same thing as an assertion that RM did not get undressed or it never happened. Mr. Gaglardi was much more certain and unequivocal in his denials of many of the other allegations made against him by the other Vancouver complainants.

- [131] Despite the vagueness of Mr. Gaglardi's testimony in relation to count 6, one could not fairly regard it as conceding the truth of RM's account. I will therefore treat Mr. Gaglardi's testimony as a denial of RM's allegation. To that end, it is once again necessary to assess the evidence with due consideration of the Crown's burden to prove the allegation beyond a reasonable doubt, taking into account the principles discussed in W.(D.).
- [132] Proceeding on the basis that Mr. Gaglardi's testimony amounted to a denial of RM's allegation, I do not accept the denial as credible, for the following reasons.
- [133] To begin with, although Mr. Gaglardi's testimony in relation to the RM allegation was superficially credible, it was inconsistent with other aspects of Mr. Gaglardi's testimony. To explain, when asked about the incident when RM went to see him for advice about body building, Mr. Gaglardi responded that he recalled "that kind of thing" happening, which I took to be an acknowledgment that "young people", i.e. boys as young as 12 years old, would come to him for guidance about things like fitness and body image. When asked about the allegation that he laid next to RM on a bed while comforting him, Mr. Gaglardi replied that he did not recall the incident specifically, but that was the "kind of thing" he might have done and it would not be "uncommon" for him to do so. Later in cross-examination, Mr. Gaglardi backtracked slightly, asserting that it would be "uncommon" for him to console a child on a bed, but went on to say that it was in his nature to console a child "wherever they happened to be", whether it was on a couch, or a bunkbed, or at the ballfield. Thus the gist of Mr. Gaglardi's testimony in relation to RM was that while he had no recollection of the specific incidents or allegations made by RM, he was prepared to concede that it would not have been uncommon for young people to come to him for advice, or for him to provide comfort to a young person. At first blush, this concession suggests honesty in acknowledging that Mr. Gaglardi would at least have had the opportunity to engage in the acts alleged by RM. However, Mr. Gaglardi's concession that it would have been unsurprising for him to counsel or comfort "young people" creates its own credibility concerns, because it is inconsistent with Mr. Gaglardi's testimony in response to GP allegations, in which Mr. Gaglardi claimed to be uncomfortable with boys younger than 16 or 17 years of age.
- [134] Above and beyond this concern, there are many other problems with the credibility and reliability of Mr. Gaglardi's testimony, outlined in some detail at paragraphs 62 to 71 of these reasons.
- [135] In weighing the evidence on count 6, I must also assess the credibility and reliability of RM's testimony. RM was 57 years old at the time of the trial. His evidence related to events that occurred in 1977, when he was 14 years old. He had a fairly good recollection of Mr. Gaglardi and his role at Glad Tidings Temple, Temple Academy, and the Glad Tidings summer camp. RM's evidence about Mr. Gaglardi's various functions within the Glad Tidings organization was borne out or corroborated by the testimony of Mr. Gaglardi himself. It is also fair to say that RM's testimony about the context in which he went to see Mr. Gaglardi, namely to seek guidance about body development, was consistent with Mr.

Gaglardi's role as a guidance counsellor who was involved in teaching subjects like health and body image.

- [136] Turning to RM's central allegation, he gave a coherent explanation of the context in which he went to see Mr. Gaglardi, the office where the alleged touching took place, what Mr. Gaglardi said to him about using a pen as a sort of scanning device, and the manner in which Mr. Gaglardi went about examining his body with the pen. RM's account included considerable detail about how Mr. Gaglardi, who was wearing gloves, used the pen to touch his "erogenous zones" and "move [RM's] genitals" to one side, and how Mr. Gaglardi re-positioned or adjusted RM's arms and legs at various points during the examination. RM even described how close Mr. Gaglardi got to his body, explaining that Mr. Gaglardi was close enough to RM's genitals that he could smell him. Cross-examination did reveal a minor inconsistency in RM's account, in that in his testimony in chief, RM said he undressed himself, whereas in his video recorded statement, RM could not recall whether or not Mr. Gaglardi helped him get undressed.
- [137] In cross-examination, RM fairly conceded a number of points about the incident itself, and about the manner in which Mr. Gaglardi treated him in general. RM appeared to make a genuine effort to be fair in his testimony, not over-stating the extent or duration of Mr. Gaglardi's touching of his "erogenous zones" in the context of an examination of RM's entire body that lasted somewhere between 20 and 45 minutes in total. RM agreed that the information Mr. Gaglardi gave him about fitness and weightlifting was useful, tangible information, more or less exactly what he was seeking when he went to see Mr. Gaglardi.
- [138] In closing submissions, defence counsel did not suggest that RM was not a credible or reliable witness. In light of that position, and based on my review of the evidence as described above, I have no difficulty in accepting RM's evidence as a truthful account of the incident which is the subject of count 6 in the Indictment. And, to the extent that Mr. Gaglardi's evidence could be construed as a denial of RM's allegation, I do not accept his testimony, and I find that it does not raise a reasonable doubt as to what happened.
- [139] Defence counsel's closing submission on count 6 focused on whether the Crown had proven that the conduct alleged by RM constituted either indecent assault or assault simpliciter. That brings me to a consideration of the central question on count 6, which is whether the Crown has proven the essential elements of the offence of indecent assault under former s. 156 of the Criminal Code. I will address the five essential elements of the offence in turn.
- [140] With respect to the first element, namely that Mr. Gaglardi touched RM, I have no difficulty concluding that it is satisfied. As to the precise nature of the touching, defence counsel suggested in argument that Mr. Gaglardi did not actually touch RM's genitals. I agree that Mr. Gaglardi, who was wearing gloves, did not touch RM's genitals with his hands. However, RM testified, and I accept that Mr. Gaglardi touched or ran the pen along RM's "erogenous zone", and that at one point he used the pen to move RM's "genitals" to one side. RM was not more specific than that. From the context, I would interpret RM's reference to the term

"genitals" to mean his penis, or his scrotum, or both. I further find, on the basis of RM's testimony, that although Mr. Gaglardi touched RM's penis, or scrotum, or both, with a pen, it was not a prolonged touching of RM's genitals.

[141] I turn to the second element, namely that the conduct in issue must be intentional. I find that Mr. Gaglardi used the pen to intentionally touch RM's penis, or scrotum, or both. RM's description of the manner in which Mr. Gaglardi went about the entire examination convinces me that the touching was not rushed. Mr. Gaglardi was clearly engaged in a methodical examination of RM's body. Moreover, in assessing Mr. Gaglardi's intent, it is necessary to examine all of the surrounding circumstances. I note that RM had no clothes on throughout the examination, though he was covered with a sheet. What is more, there is an obvious, overwhelming inference that Mr. Gaglardi's presentation and use of the pen as a supposed scanning device was a ploy. Defence counsel suggests that it might have been an innocent ploy to convince RM that the examination was more meaningful or useful than it truly was. That submission is both speculative and naïve. It is speculative because there is no evidence to support it. Indeed, Mr. Gaglardi testified that there would have been "no purpose" for RM to remove his clothes. As to the question of naiveté, even in the eyes of RM as a 12-year-old boy, Mr. Gaglardi's subterfuge seemed like "BS", and he only went along with it because of Mr. Gaglardi's status as some kind of a "doctor" and his stature in the church organization. Looking at all the circumstances, I draw an inference that the entire examination was an escapade undertaken by Mr. Gaglardi to put himself in a situation where he could see and touch RM's genitals. This conclusion is reinforced by the similar fact evidence of the other four Vancouver complainants. I find KH's evidence particularly compelling, because it also involves an allegation that Mr. Gaglardi conducted an examination of private parts of the complainant's body, using a device that was said to have some scientific or technological utility. In RM's case, it was a pen that Mr. Gaglardi presented as a kind of scanning device for the purposes of assessing RM's capacity for bodybuilding. In KH's case, it was an "Ohm meter" device that Mr. Gaglardi presented as a means of measuring energy flow or blood flow in the penis for the purposes of assessing KH's counselling needs. The similarity in the use of props as part of a ploy to examine the complainant's genital areas weighs heavily in favour of an inference that Mr. Gaglardi's conduct in touching RM's penis, scrotum, or both, was intentional.

[142] That brings me to the third essential element of the offence, namely that the touching must have been indecent, or committed in circumstances of indecency. Looking at the circumstances objectively, and in view of the analysis of the evidence as set out in the preceding paragraph, I am satisfied beyond a reasonable doubt that Mr. Gaglardi's touching of RM was indecent. Defence counsel argued in closing submissions that RM's evidence as to the nature of the touching was not precise or clear enough to support a finding of indecency. Among other things, counsel suggested that the evidence was unclear as to whether Mr. Gaglardi actually touched RM's genitals. I reject that submission, for three reasons. First, as explained in paragraph 140 above, I am satisfied beyond a reasonable doubt that Mr. Gaglardi actually used the pen to physically touch RM's penis, or scrotum, or

both. As RM put it, at one point Mr. Gaglardi used the pen to move his "genitals" to one side. Second, the case law is clear that the analysis is not focused on the specific body part that is touched, but the overall character of the touching, assessed objectively. RM testified that all of his clothes had been removed, and Mr. Gaglardi used the pen to go over RM's entire body, including his "erogenous zone". At one point, Mr. Gaglardi's face was so close to RM's genitals that he could smell RM's body. Third, once again the similar fact evidence about the manner in which Mr. Gaglardi touched the genitalia of four other boys, in the context of similar relationships, supports an inference that Mr. Gaglardi's touching of RM was sexual and indecent in nature.

[143] I turn to the fourth element, that the touching was non-consensual. I have no difficulty concluding that this element has been made out, because RM was under the age of consent as provided for in former s. 140 of the Criminal Code at the time of the incident in question. Above and beyond this, the evidence as to the ruse or ploy Mr. Gaglardi engaged in as a means of getting RM to submit to the examination constitutes a form of fraud that would vitiate consent under former s. 244(a) of the Criminal Code.

[144] Finally, as to the fifth element of the offence, once again the concept of honest but mistaken belief in communicated consent does not arise on the evidence in this case. There is no evidence to support such a defence, and it would stand no chance of success given the complainant's age at the time, something Mr. Gaglardi would clearly have known given his role in both Glad Tidings Temple and Temple Academy.

[145] I find Mr. Gaglardi guilty on count 6.

(5.2.3) Count 8 [Complainant DP's Allegation]

[146] On count 8, Mr. Gaglardi is alleged to have committed indecent assault against DP, between 1 January 1977 and 31 December 1978. The complainant DP was 17 years old at the time. The Crown alleges that Mr. Gaglardi arranged for DP to participate in a study on human sexuality, that DP went to Mr. Gaglardi's apartment in Burnaby for that purpose, and that Mr. Gaglardi then brought DP into a bedroom, had him undress, showed him pornography, and then masturbated DP, ostensibly as part of the human sexuality experiment or study. It is further alleged that DP's family later confronted Mr. Gaglardi, and Mr. Gaglardi made an apology that can be construed as an admission. For his part, Mr. Gaglardi denies ever involving DP in any kind of study on human sexuality, and says that no incident involving masturbation ever occurred. Mr. Gaglardi also denies ever giving any kind of apology to DP's family. Thus, the defence position on this count is that DP's allegation is simply untrue, such that the Crown has failed to prove beyond a reasonable doubt that any touching occurred.

[147] There is little common ground between the parties with regard to the circumstances surrounding DP's allegation. Mr. Gaglardi testified that he knew DP's family through the church but did not specifically recall what DP looked like during the time frame covered by his allegation. Mr. Gaglardi conceded that DP may have accompanied him to a radio

broadcast in Washington state, although Mr. Gaglardi claimed to have no recollection of ever taking DP with him. Beyond that, Mr. Gaglardi disputed DP's claim. He denied ever involving DP in a human sexuality study. He testified that he did not and would not have pornography in his apartment, nor did he own or have access to any equipment capable of playing pornographic films or videos on a television set, in the late 1970s.

- [148] Thus, there is a direct conflict in the evidence in relation to count 8. It is once again necessary evaluate the evidence keeping in mind the Crown's burden to prove the allegation of indecent assault beyond a reasonable doubt, and the principles discussed in W. (D.).
- [149] Mr. Gaglardi's testimony in response to DP's allegation was plausible on its face. If nothing eventful ever happened between Mr. Gaglardi and DP, then it would be understandable that Mr. Gaglardi would have no recollection of him. Once again, Mr. Gaglardi's testimony was more than a bare denial of guilt, because he endeavoured to identify features of DP's claim that he says could not possibly have been true in light of his circumstances at the time.
- [150] One facet of Mr. Gaglardi's testimony that did not reflect favourably on his credibility was his unsolicited observation that DP's allegation "sounded like a dream". I consider this to be a gratuitous comment offered to discredit DP's testimony, reflective of a posture of advocacy.
- [151] A central component of Mr. Gaglardi's testimony in relation to count 8 was his contention that he did not have access to either pornographic magazines, or to video equipment required to play a pornographic film on a television. In a similar vein, Mr. Gaglardi testified that he did not have the kind of telephone technology described in DP's testimony. I will address each of these points in turn.
- [152] With regard to access to pornographic magazines, I accept that both Mr. Gaglardi's wife and the Glad Tidings church leadership would have considered it unacceptable for Mr. Gaglardi to possess such materials. However, this would not have made it impossible for Mr. Gaglardi to do so. Indeed, Mr. Gaglardi himself has admitted a willingness to systematically deceive others in the church about his involvement in activities that they would consider to be contrary to their shared faith.
- [153] With regard to video equipment, there is no independent evidence or empirical data about the extent to which video equipment capable of playing files on a television set was available to the general public in the late 1970s. For his part, Mr. Gaglardi testified that the first generation of VCRs were produced in 1973 or 1974, although even in the late 1970s the cost was prohibitive for the average consumer. The gist of Mr. Gaglardi's testimony was effectively that as of the late 1970s, video equipment of the sort required to play pornography on a television was not as readily available and not nearly as affordable as it later became.

- [154] Even accepting Mr. Gaglardi's timeline concerning the development of video player technology, I would not consider it impossible, or even entirely implausible for Mr. Gaglardi to have obtained access to such equipment in 1977 or 1978, which is the time frame of the alleged human sexuality study incident described by DP. The evidence as a whole indicates that Mr. Gaglardi was an early adopter of consumer gadgetry. As early as the mid 1970s, he had both a car phone and a pager. He had home audio recording equipment and a home video game console in photos that appear to have been taken some time in the mid to late 1970s. Mr. Gaglardi was also the "Technical Director of Sound and Productions" at Glad Tidings, a church with a 150 person choir whose performances were broadcast on local radio. I consider Mr. Gaglardi's testimony that the technology at the Glad Tidings recording studio was 15 years behind the times to be suspect. Many of the complainant witnesses had memories of being extremely impressed with the church's audio recording equipment. One of the witnesses described the equipment as "state of the art". Although these witnesses were very young at the time, I would not discount entirely their observations about the state of the audio technology at the church. As adolescent boys, many of them were intrigued by audio equipment and it clearly impressed them and formed a lasting impression on them.
- [155] In these circumstances, while the potentially limited access to equipment that could be used to play pornographic videos on a television screen at the time of DP's allegation is a relevant consideration in my assessment of the evidence, I would not consider this point to be dispositive.
- [156] With regard to the "telephone technology", it is not clear to me what kind of technology DP was actually describing in his testimony. He might have been describing a first generation telephone modem. However, it really does not matter, since it was not necessary for the "equipment" presented to DP during the alleged human sexuality experiment to be functional. On DP's account, the equipment may well have simply been presented to him as part of a staged experiment, when in fact Mr. Gaglardi had no ability to connect to the "General Dynamics" computer system. The other equipment or materials DP described in his testimony, such as sensors connected to leads or wires, are things that Mr. Gaglardi could easily and quite foreseeably have had access to during the time period of the allegations, in the late 1970s.
- [157] Finally, I did not find Mr. Gaglardi's testimony with respect to the alleged apology to DP's father to be particularly telling, either in favour of or against Mr. Gaglardi's credibility. On the one hand, if there was no such conversation to remember, then it is not surprising that Mr. Gaglardi would have no recollection of it. That is certainly plausible. On the other hand, Mr. Gaglardi's evidence that he would not offer an apology for something he did not do, because of the significance of an apology in his faith, is an example of circular or self-reinforcing testimony. In other words, aside from Mr. Gaglardi's testimony itself, there is no other evidence in the record to support Mr. Gaglardi's position on this point. Although this is no basis for rejecting or discounting Mr. Gaglardi's testimony on the point, it is equally not a basis for finding Mr. Gaglardi's testimony any more credible or believable. The most

that can be said is that Mr. Gaglardi denied making any kind of a confession, admission, or apology to DP's father in the presence of DP and his brother.

- [158] I turn next to the credibility and reliability of DP's testimony. DP was 61 years old at the time of the trial. His testimony related to events that occurred some 45 years ago, when he was 17 years old. He was able to accurately recount certain details about Mr. Gaglardi's status and role at Glad Tidings. For example, DP recalled that Mr. Gaglardi worked as a counsellor at the church, taught "guidance classes" at the school, and served as a first aid attendant at the Glad Tidings summer camp, all details that correspond with Mr. Gaglardi's own testimony. DP also recalled that Mr. Gaglardi had a PhD in psychology and had a particular interest in human sexuality. He recalled seeing books of that sort in Mr. Gaglardi's office in the church building.
- [159] With regard to DP's allegation of sexual touching, he described how Mr. Gaglardi approached him to participate in a study on human sexuality. DP fairly conceded in cross-examination that Mr. Gaglardi gave him a fair amount of time to mull over or consider the offer. DP also acknowledged that he was interested in participating in the study and ultimately agreed to do so because he believed he would get to see pornography. As a 17-year-old, he found the offer enticing. DP fairly acknowledged knowing in advance and agreeing that Mr. Gaglardi's plan was to study his physical reactions to pornographic material. However, he did not know about, expect, or consent to any touching.
- [160] DP testified that the incident was memorable, and he had a relatively good recollection of the setting, the way in which the room was prepared, the materials and equipment that Mr. Gaglardi had in the room, and the things Mr. Gaglardi got him to do. DP agreed in cross-examination that he was not 100% sure about the order in which things unfolded during the so-called experiment. Beyond this, cross-examination did not elicit any significant inconsistencies or internal flaws in DP's account.
- [161] The main challenges to DP's testimony had to do with the availability of the equipment that would be required for Mr. Gaglardi to play pornographic films or videos on a television screen back in 1977, and the availability of the computer and phone equipment that Mr. Gaglardi used in the alleged "study". I have already addressed those points above, in my review of Mr. Gaglardi's testimony.
- [162] With regard to video equipment, I consider the potentially limited access to equipment that could be used to play pornographic videos on a television at the time of DP's allegation to be a relevant consideration in assessing the weight to be attached to DP's account, although once again I did not consider it dispositive for the reasons explained above.
- [163] With regard to the computer and telephone equipment that was presented to DP, as I explained above it was certainly not necessary for Mr. Gaglardi to have an operational modem capable of connecting to the "General Dynamics" computer system. All that was necessary was for Mr. Gaglardi to present some plausible props that would have appeared superficially convincing to a 17-year-old boy, in an era where things like telephone operated

modems were not so commonplace that a lay person would necessary be able to spot a fake. It was not central to DP's account that Mr. Gaglardi was actually participating in a human sexuality study organized by "General Dynamics". All that was necessary was for Mr. Gaglardi to present a story plausible enough to get DP to participate. In this sense, DP's account bears contextual similarity to the accounts given by both RM and KH, who also described elaborate or bizarre scenarios orchestrated by Mr. Gaglardi, involving the use of technological props.

[164] This leads me to a discussion of the similar fact evidence and its role in assessing the credibility and reliability of DP's testimony. I find that the evidence of all four other Vancouver complainants to be corroborative of DP's testimony, given the commonality in the age differential between the complainants and the accused, their sex, the accused's apparent interest in touching each complainant's genitals, and the relational dynamics at play. I consider the testimony of RM and KH to be particularly probative in the assessment of DP's evidence, because of the similarity of Mr. Gaglardi's approach in the use of technological props as part of a guise or ruse to engage in private touching of each of these complainants. This contextual similarity between the accounts of these three witnesses - DP, RM, and KH - is compelling. It weighs heavily against the likelihood of merely coincidental allegations that are untrue.

[165] Finally, I have considered DP's testimony about Mr. Gaglardi's alleged apology, but I do not find it of assistance in resolving the conflict in the evidence on this count. I have three concerns about the significance of this evidence. The first is that the evidence is quite unclear about the full extent of the conversation between the parties during the encounter at Mr. Gaglardi's office. The second is that I have some degree of uncertainty as to whether DP had a genuine independent recollection of what Mr. Gaglardi said, given that DP lapsed into what I will call conditional language when describing the meeting, as in, his father "would have" said this or "would not have" said that. The third is that even the statement attributed to Mr. Gaglardi, namely, "I am sorry. I am not a pedophile or a homosexual.", leaves room for some uncertainty about whether Mr. Gaglardi was admitting to any impropriety. It is true that Mr. Gaglardi himself testified that he would not have offered an apology for something he did not do, given the significance of seeking forgiveness in the Christian faith, but this assertion depends entirely on Mr. Gaglardi's own testimony for its veracity, and I do not put much stock in his testimony about adherence to the Christian faith. Mr. Gaglardi acknowledged trying to conceal the nature of his counselling practice from others in the church, because he knew they would not regard his conduct as consistent with their faith. It is certainly possible that Mr. Gaglardi made the statement attributed to him by DP, and that he did so as part of a genuine attempt to admit responsibility and seek forgiveness, but in the end I find the evidence ambiguous and I do not attach any weight to it.

[166] Weighing up all the evidence in relation to count 8, I find DP's evidence about the so-called human sexuality study and the manner in which Mr. Gaglardi touched him to be credible and reliable. DP's account was compelling, and he was largely if not entirely unshaken in cross-examination. DP's evidence, supported by the similar fact evidence of the other Vancouver complainants, convinces me beyond a reasonable doubt that Mr. Gaglardi in fact set up and carried out the purported human sexuality experiment as alleged by DP. I have considered the testimony of Mr. Gaglardi, but I do not accept his denial of the incident, and it does not leave me with a reasonable doubt. Although there were no manifest inconsistencies in Mr. Gaglardi's testimony in relation to this count, his testimony as a whole was punctuated with hallmarks of dishonesty.

[167] I have considered the evidence and the defence argument about the limited availability of video technology that could be used to play pornographic films or videos on a television screen as alleged by DP. The evidence suggests that access to such equipment was quite limited back in 1977 or 1978. This causes me to approach DP's allegation with some caution, but in the end, even taking this into account, I find DP's account to be credible and I am satisfied beyond a reasonable doubt as to its truth and accuracy. I cannot determine exactly what kind of equipment was used to play the pornographic video described by DP in his testimony, but I am satisfied that DP was telling the truth in his recounting of the incident. I take particular comfort in the similar fact evidence of the complainants RM and KH, whose testimony involved a remarkably similar contextual feature, namely Mr. Gaglardi's use of technological props as a ploy or means of engaging in inappropriate sexual touching of boys. The entire ploy of a "human sexuality study" organized by the General Dynamics Corporation to engage in sexual touching of a 17 year old boy is just as bizarre and manipulative as the ploy of using a pen as an electrical feedback device to examine the genitals of a 12 year old boy, or the ploy of using an "Ohm meter" to test electrical flow in the penis as a means of determining the counselling needs of an adolescent boy. The thematic similarity of these accounts is compelling evidence of DP's veracity.

[168] Having determined that Mr. Gaglardi engaged in the conduct alleged by DP, I have no difficulty concluding that the essential elements of indecent assault under former s. 156 of the Criminal Code have been proven beyond a reasonable doubt. In particular:

- (i) Mr. Gaglardi touched DP, by masturbating him during the purported human sexuality study.
- (ii) I have no difficulty finding that that Mr. Gaglardi's touching of DP was intentional. I find it was part of a deliberate scheme.
- (iii) The touching was manifestly indecent in nature.
- (iv) On the issue of consent, DP testified that he agreed to participate in the human sexuality study, believing that Mr. Gaglardi intended to study the reaction of his body when exposed to pornographic materials. However, DP testified that he had no knowledge of, did not expect, and would not have agreed and did not agree to Mr. Gaglardi masturbating him. On the basis of this evidence, which I accept, I find that DP did not give voluntary consent to the touching engaged in

by Mr. Gaglardi. Furthermore, and in any event, I find that any consent DP gave to the entire incident, including the touching, was vitiated by fraud as contemplated in former s. 244(a) of the Criminal Code. The fraud in question was Mr. Gaglardi's use of a purported human sexuality study. I am satisfied beyond a reasonable doubt that the purported study was a sham, intended to give Mr. Gaglardi the opportunity to engage in sexual touching of the complainant.

- (v) On the facts as I have found them, there is no scope for the defence of honest but mistaken belief in communicated consent.

[169] I find Mr. Gaglardi guilty on count 8.

(5.2.4) Count 10 [KH's Allegations]

[170] On count 10, Mr. Gaglardi is alleged to have committed indecent assault against KH, between 1 January 1979 and 1 July 1981. The complainant KH was between 13 and 15 years old during the time period in issue. The Crown alleges Mr. Gaglardi touched KH inappropriately on two separate occasions. In the first incident, it is alleged that Mr. Gaglardi touched KH's penis, ostensibly to show him how to properly wash it, during a bath at Mr. Gaglardi's apartment. In the second incident, it is alleged that Mr. Gaglardi touched KH's penis with a device, represented to KH at the time as an "Ohm meter", ostensibly as part of a test to measure electrical flow as a means of assessing KH's counselling needs. This incident is alleged to have occurred on a bed, in a bedroom at Mr. Gaglardi's apartment. Mr. Gaglardi professed to have no recollection of KH during the time period in issue, although he did not deny a mentoring relationship in the context of which KH may have stayed at his apartment. Mr. Gaglardi says he would not have and therefore "absolutely" did not touch KH in the manner alleged. Thus, the defence position is the allegations are untrue, and that the Crown has failed to prove beyond a reasonable doubt that any touching occurred.

[171] Mr. Gaglardi accepted that he may well have served as a mentor for KH, and that KH may have stayed over at his apartment on some weekends. This was the extent of the common ground in the evidence on count 10. With regard to KH's sexual touching allegations, there is a head-on conflict in the evidence. On the one hand, KH alleged that Mr. Gaglardi touched his penis inappropriately on two separate occasions. On the other hand, Mr. Gaglardi testified that KH's allegations were "absolutely untrue". The conflict in the evidence on count 10 can only be resolved by way of an analysis of the credibility and reliability of the witness testimony, in light of the Crown's burden to prove its case beyond a reasonable doubt, and the legal principles discussed in W.(D.).

- [172] Mr. Gaglardi testified that he did not recall counselling or mentoring DP, but it was "common" for him to counsel or mentor boys in their "teens". Mr. Gaglardi then backtracked to say it might not be common, but he did do so. Mr. Gaglardi's initial assertion that it was "common" for him to counsel or mentor boys as young as 14 is inconsistent with his testimony, in response to GP's evidence, that he was not comfortable dealing with boys younger than 16 or 17.
- [173] In his testimony in chief, Mr. Gaglardi said the suggestion that he told KH how to wash his genitals or that he touched KH's genitals was quite simply untrue. Mr. Gaglardi went on to say, "I certainly well, I will stop there". I infer that Mr. Gaglardi was about to say something else in his testimony but then thought better of it. It is, of course, impossible to know what Mr. Gaglardi was about to say, and it would be unfair to him to infer that he was going to say something false or otherwise damaging to his case. Nevertheless, Mr. Gaglardi's assertion that he would "stop there" causes some concern about whether Mr. Gaglardi was telling the whole truth about what he could remember as to his involvement with this complainant.
- [174] In response to KH's allegations, Mr. Gaglardi gave a lengthy explanation of his commitment to a weekly broadcast at KARI radio. The thrust of his testimony was that because he was obligated to do the broadcast every Saturday evening, and because he was only able to miss or pre-record very few programs every year, there were only a few Saturdays per year when he did not have to go to Bellingham. This, in turn, meant that there were few instances when he was free to spend an entire weekend at his apartment. Considering his obligation to attend summer camp through July, and allowing some weekends for vacations, there may have been no such weekends when KH would be able to stay over for an entire weekend without accompanying Mr. Gaglardi to the radio station. If true, this evidence conflicts with KH's testimony, the upshot of which was that there might have been as many as six or seven weekends when he stayed over at Mr. Gaglardi's apartment and they did not go to the radio station.[14] Of course, all of the evidence about Mr. Gaglardi's commitment to the radio broadcast emanates from Mr. Gaglardi himself, so I would not regard it as objective or independent verification of his position. However, to be fair to Mr. Gaglardi, the reality is that so many years after the fact, this might be all the evidence available to Mr. Gaglardi about his arrangement with the radio station.
- [175] With regard to the allegation that he touched KH's penis during some kind of Ohm meter test, Mr. Gaglardi flatly denied that any such thing occurred. At one point in chief he said, "It is even more ", but did not complete his sentence. When asked about this in cross-examination, Mr. Gaglardi said he was going to say the allegation was "even more ridiculous" than the penis washing allegation, but then thought better of it.
- [176] To sum all this up, Mr. Gaglardi's testimony in relation to count 10 included only one identifiable inconsistency, namely his initial assertion that it was "common" for him to counsel or mentor boys as young as 14, which was inconsistent with Mr. Gaglardi's testimony in relation to count 5 (GP's allegations) that he was uncomfortable around boys younger than 16 or 17. To be fair, after initially asserting that it was "common" for him to

mentor boys as young as 14, Mr. Gaglardi more or less immediately corrected himself to say that it might not be "common" but it happened. I was left with the impression that Mr. Gaglardi caught himself and tried to backtrack in his answer, to avoid being caught in a contradiction. This point is subtle, and viewed in isolation I would not place much weight on it. However, Mr. Gaglardi's testimony as a whole was littered with multiple hallmarks of untruthfulness, as described at paragraphs 62 to 71. For this reason, I view Mr. Gaglardi's denial of KH's allegations with skepticism.

- [177] Turning to KH's trial testimony, I am satisfied that he had a clear recollection of Mr. Gaglardi, his qualifications (i.e., a PhD), and his role at Glad Tidings Temple, Temple Academy, and the Glad Tidings summer camp. KH's evidence on these points corresponds with the testimony of Mr. Gaglardi himself.
- [178] KH was also able to articulate a coherent account of the context in which he came to spend time with Mr. Gaglardi. His testimony in this regard fit with Mr. Gaglardi's own description of his role in the Glad Tidings organization and more specifically his role in counselling or mentoring teenaged boys. Mr. Gaglardi was somewhat inconsistent in his testimony in describing how frequently he did so, but he certainly acknowledged that he did so from time to time.
- [179] KH's account of the circumstances leading up to the penis-washing incident was lucid. KH described how he would have baths at Mr. Gaglardi's house, except on evenings when he accompanied Mr. Gaglardi to his radio broadcast and they got home too late. KH recounted a pattern in which Mr. Gaglardi became increasingly intrusive about the manner in which KH washed his genitals, culminating in the incident where Mr. Gaglardi touched his penis, ostensibly to show him how to wash it. KH described how Mr. Gaglardi touched his penis in considerable detail. Although Mr. Gaglardi denies the incident itself, KH's description of how Mr. Gaglardi used a concern over his hygiene and health to put himself in a position to touch KH's penis certainly fit, contextually, with Mr. Gaglardi's role as a guidance counsellor who taught health and human sexuality at Glad Tidings Temple. There were no material inconsistencies in KH's core allegation that Mr. Gaglardi touched his penis while KH was in the bath. Having said this, there are a number of problems with KH's testimony surrounding the penis-washing allegation.
- [180] First, KH testified that he stayed at Mr. Gaglardi's apartment on multiple occasions and asserted a belief that the apartment was in Surrey. KH was clearly mistaken about that. Mr. Gaglardi's apartment at the time was in Burnaby. This goes to the accuracy of KH's memory, which in turn impacts on the reliability of his testimony.
- [181] Second, there is good reason to question the accuracy of KH's recollection of the interior of Mr. Gaglardi's apartment. KH testified that the apartment had white carpets and white furniture. This does not accord with Mr. Gaglardi's evidence regarding the décor in his apartment. Mr. Gaglardi's testimony was supported by photographs, and by the testimony of ML, who said that Mr. Gaglardi gave him some couches matching the description of those

shown in the photographs. All of this means KH's testimony about the interior of Mr. Gaglardi's apartment is quite likely inaccurate. There are a number of possible explanations. One possibility is that the inaccuracy is a product of mistaken recollection. I note that KH recalled spending time in the common area or recreation room of Mr. Gaglardi's apartment complex, and it is possible that KH confused this with the interior of Mr. Gaglardi's apartment itself. Another possibility is that KH fabricated or made up his description of the décor in Mr. Gaglardi's apartment. I do not consider this to be a very likely explanation, because the evidence as a whole convinces me that KH spent at least some weekends in Mr. Gaglardi's apartment. KH described the context in which this occurred, and while Mr. Gaglardi had no recollection of KH staying over, he conceded it was possible, and did not really dispute this aspect of KH's testimony. If it is true that KH stayed over at Mr. Gaglardi's apartment, there would be no good reason for him to make up a description of the apartment's interior. For all of these reasons, I consider the inaccuracy of KH's description to be a function of faulty or confused memory, rather than evidence of intentional deception or dishonesty. Still, this impacts on the reliability of KH's testimony as a whole.

[182] Third, there are problems with KH's evidence concerning the frequency of his weekend visits to Mr. Gaglardi's apartment. For one thing, KH's assertion that he did not accompany Mr. Gaglardi to the radio station on every weekend when he stayed over at the apartment does not fit with Mr. Gaglardi's testimony that there were few Saturdays (possibly none) when he would have been able to avoid going to Bellingham to do his radio broadcast. Second, on KH's account there may have been as many as six or seven weekends when stayed over at Mr. Gaglardi's apartment without accompanying Mr. Gaglardi to the radio station,[15] which again conflicts with Mr. Gaglardi's testimony that there were few if any Saturdays where he did not have to do a live radio broadcast in Bellingham. Of course, the evidence about Mr. Gaglardi's radio program schedule emanates entirely from the testimony of Mr. Gaglardi himself. There is no independent evidence to support Mr. Gaglardi's position on this point, although it is understandable that he might not be able to obtain independent evidence about his broadcast schedule more than 40 years after the fact. While I have concerns about Mr. Gaglardi's credibility on other points, on this particular point, I find myself unable to reject his testimony entirely. Thus, I am unable to resolve this apparent conflict in the evidence, which leaves me with a genuine concern about the accuracy of KH's evidence concerning the frequency of his weekend stays at Mr. Gaglardi's apartment.

[183] Turning to KH's "Ohm meter" allegation, KH gave a coherent description of the context in which arrangements were made for him to see Mr. Gaglardi for counselling. The context seemed memorable to KH because it involved an incident that resulted in his expulsion from school. KH went on to describe what happened when he went to Mr. Gaglardi's apartment for counselling. He could not recall how it unfolded that he went to take a shower, but was able to recount what happened thereafter in considerable detail. KH testified that Mr. Gaglardi had him lay on the bed, with no clothes, at which point Mr.

Gaglardi took out a device consisting of a box and an attached hand-held apparatus, which KH described as an "Ohm meter". Mr. Gaglardi touched KH's penis and scrotum with the apparatus 10 to 15 times, for five seconds on each occasion, causing KH to get an erection. Mr. Gaglardi told KH not to be embarrassed about the erection as it was just a physical reaction to the device. KH testified that the entire incident lasted about five minutes.

- [184] In his trial testimony, KH said the "Ohm meter" incident occurred when he was 15 years old, in the spring of 1981, shortly before his family moved. However, in cross-examination KH acknowledged a prior statement to the police in which he said the incident took place in 1980, when he was 14. Based on the entirety of KH's evidence, I am confident that his "Ohm meter" allegation relates to the spring of 1981, when he was 15 years old. I say that because in his trial testimony KH was able to anchor the allegation to his family's relocation to Ontario, which occurred in the spring or early summer of 1981. Nevertheless, the point remains that insofar as the accuracy of his memory is concerned, KH has at different times given inconsistent accounts of his age and the year when the "Ohm meter" incident occurred, which is a consideration in assessing his testimony.
- [185] Finally, KH admitted in cross-examination that some time in the late 1990s, he started making inquiries into whether Mr. Gaglardi had mistreated other people. KH came to believe Mr. Gaglardi had "done things" to other people, but KH did not know who they were. KH admitted that when he spoke with the police about Mr. Gaglardi, he gave them RM's name. KH explained that he knew RM during the time period of the events in question (in the late 1970s or early 1980s) but denied ever speaking with him since then. I have considered this evidence but I do not find it to be supportive of either a motive to fabricate, or collusion or tainting. The most that can be said is that KH wanted to find out if other people had complaints about Mr. Gaglardi, and at some point KH came to believe there were others. There is no reason to believe that any of this had any influence, either intentional or unintentional, on the substance of KH's testimony.
- [186] Looking at KH's evidence as a whole, I find that while he gave cogent and detailed evidence about the two core allegations of improper touching, there are a number of inaccuracies in his testimony with respect to surrounding circumstances or peripheral details. If KH's testimony stood on its own, I would have reservations about accepting his testimony. However, there is also the similar fact evidence to consider. For reasons explained at paragraphs 96 to 100 above, I find that the similar fact evidence of the other four Vancouver complainants corroborates KH's testimony about the two core allegations of improper touching. The fact that four other complainants have alleged that Mr. Gaglardi touched them in a sexual manner, while they were boys or teenagers, in the context of similar relational dynamics, weighs heavily against the possibility of innocent coincidence.
- [187] With regard to KH's penis-washing allegation, I find RF's venereal disease allegation to be particularly cogent similar fact evidence. Recall that RF testified about two instances in which Mr. Gaglardi touched his penis and scrotum purportedly to check for signs of venereal disease. The experience of these two complainants, KH and RF, is contextually

similar in that in each instance Mr. Gaglardi, a professional guidance counsellor and teacher of health and human sexuality classes, used concerns about the teenaged male complainant's hygiene or health as a guise to justify his touching of the complainant's genitals.

- [188] With regard to KH's "Ohm meter" allegation, I find DP's testimony about the incident in which Mr. Gaglardi masturbated him in the context of a supposed "human sexuality study" to be highly probative. KH's allegation and DP's allegation are contextually similar in that both were instances where Mr. Gaglardi used technological props as a ploy to engage in touching a much younger male person's genitalia.
- [189] In the result, while I have concerns about the accuracy of KH's testimony in relation to certain peripheral details or surrounding circumstances, I conclude that those concerns are attributable to inaccurate memory, rather than the complainant's credibility. Further, my concern about the reliability of KH's testimony on these peripheral details does not leave me with any doubt as to the accuracy or reliability of KH's evidence about his core allegations of improper touching. In the result, I am satisfied beyond a reasonable doubt that Mr. Gaglardi engaged in the conduct ascribed to him in relation to both the penis-washing incident and the "Ohm meter" incident.
- [190] I have considered Mr. Gaglardi's evidence, including his express denial of the two incidents, and his testimony about the surrounding circumstances. In particular, I have considered Mr. Gaglardi's testimony about his extremely limited opportunity to host a child at his apartment for an entire weekend without having to go to Bellingham for his Saturday night radio program. This testimony causes me to be concerned about the accuracy of KH's evidence with respect to the number of times he accompanied Mr. Gaglardi to Washington for the radio program, and the frequency of his weekend stays at Mr. Gaglardi's apartment. However, Mr. Gaglardi's testimony does not cause me to doubt KH's core allegations of improper touching, corroborated by the similar fact evidence. In light of the many concerns I have with Mr. Gaglardi's credibility, I do not accept Mr. Gaglardi's denial of guilt, and I find that it does not raise a reasonable doubt. Finally, as noted above, I reject the notion that the evidence of the Vancouver complainants is tainted by collusion or contamination, and I have no reasonable doubt on this point, either alone or in conjunction with any other issue.
- [191] Having determined that Mr. Gaglardi engaged in the two incidents of improper touching alleged by KH, I must go on to consider whether the Crown has proven the essential elements of indecent assault under former s. 156 of the Criminal Code beyond a reasonable doubt. I will address each of the five essential elements of the offence in turn.
- [192] With regard to the first element, proof that the accused touched the complainant, I am satisfied that Mr. Gaglardi touched KH on the two occasions in issue, the first being when Mr. Gaglardi manipulated and washed KH's penis in the bathtub, and the second being when Mr. Gaglardi used an "Ohm meter" to repeatedly touch KH's penis and scrotum.

- [193] Turning to the second element, proof that the touching was intentional, I have no difficulty finding that, in relation to both of the incidents, Mr. Gaglardi's touching of KH's genitals was intentional.
- [194] With regard to the third element, proof that the touching was indecent in nature, I find that in both instances this element has been satisfied. I note here that the nature of the touching is to be determined objectively by reference to all of the circumstances. It is not necessary for the Crown to prove that the accused subjectively intended the touching to be sexual or indecent, but the subjective intention of the accused is a relevant aspect of the circumstances. I find that in relation to both instances in which the accused touched the complainant, the touching was indecent in nature. More specifically:
- (a) With respect to the penis-washing incident, I am satisfied in light of the part of the complainant's body that the accused touched, the nature of the touching itself, the context in which the touching occurred, the evidence of the accused's true aim or intention, and the similar fact evidence, that the touching was obscene. The complainant was 13 years old at the time, and the accused was not a parent. It was completely gratuitous for the accused to supervise KH's washing of his genitals, much less to engage in touching the complainant's penis. KH testified that during the touching he started to get an erection. And while it is true that on KH's account, Mr. Gaglardi purported to touch KH's penis to show him how to wash it, I find based on all of the circumstances that this was just a ploy on the accused's part and that his true intent was to touch KH's penis for an indecent sexual purpose. Finally, the similar fact evidence as to the manner in which the accused touched the genitalia of other teenage boys supports a conclusion that the touching of KH's penis during the bathing incident was obscene in nature.
 - (b) With respect to the "Ohm meter" incident, I am satisfied beyond a reasonable doubt that the touching of the complainant's penis and scrotum was indecent in nature. The evidence leading me to this conclusion includes the age difference and relational dynamic between the accused and the complainant, the fact that the accused used a bizarre device to touch and apparently stimulate the complainant's genitals, the fact that the touching caused the 15-year-old complainant to get an erection, and the accused's use of a technological prop as a ploy to put himself in a position where he could touch the complainant's genitals. Once again, the similar fact evidence is also relevant in that the accused touched the genitals of four other teenage boys, in the context of similar relational dynamics. This reinforces the conclusion that Mr. Gaglardi's touching of the complainant KH was sexual and obscene in nature.
- [195] I turn to the fourth essential element, proof that the complainant did not consent. My conclusions on this issue are as follows:
- (a) With regard to the penis washing incident, KH was only 13 years old at the time and was therefore below the age of consent under former s. 140 of the Criminal Code. Even if KH was legally old enough to consent, I am satisfied beyond a reasonable doubt that any consent he

gave to Mr. Gaglardi was for Mr. Gaglardi to touch him for a health purpose, when the true purpose of the touching was not health related but rather sexual in nature. Thus, I am satisfied that the complainant did not consent to the sexual nature of the touching. By the same reasoning, any consent that KH gave at the time of the incident was vitiated by fraud within the meaning of former s. 244(a) of the Criminal Code, with the fraud in question being Mr. Gaglardi's expression of interest in the manner in which KH washed his penis, as a guise to justify Mr. Gaglardi's gratuitous and inappropriate touching of KH's penis.

- (b) With regard to the "Ohm meter" incident, the evidence reflects that KH was 15 years old and thus over the age of consent. However, I accept KH's testimony that he did not want Mr. Gaglardi to touch his penis and scrotum with the "Ohm meter" apparatus, and on that basis alone I am satisfied beyond a reasonable doubt that KH did not consent to the touching. Above and beyond this, once again any consent the complainant might have given was for conduct relating to a determination of his counselling needs, not sexual conduct. Thus, there was no valid consent as to the true nature and quality of the conduct in question. Finally, by the same reasoning any consent that KH gave to the touching of his genitals with the "Ohm meter" was vitiated by fraud under former s. 244(a) of the Criminal Code, with the fraud in question being Mr. Gaglardi's use of a technological prop as a ploy to justify Mr. Gaglardi's gratuitous inappropriate touching of KH's genitals.

[196] With regard to the fifth and final element of the offence, the facts of this case leave no scope for the defence of honest but mistaken belief in communicated consent.

[197] I find Mr. Gaglardi guilty on count 10.

(5.2.6) Count 12 [ML's Allegations]

- [198] On count 12, Mr. Gaglardi is alleged to have committed sexual assault against ML between 3 January 1993 and 2 January 1996. The complainant ML was around 18 years of age at the time. The Crown alleges that Mr. Gaglardi touched ML inappropriately on three separate occasions. All three incidents are alleged to have occurred while ML was lying on the floor in the counselling area in the basement of Mr. Gaglardi's house in Coquitlam. One of the allegations is that Mr. Gaglardi used a massage device on or near ML's genitals, to cause him to ejaculate, ostensibly for the purposes of collecting a semen sample for some sort of health testing. The other two allegations relate to two separate occasions when Mr. Gaglardi is said to have conducted internal examinations of ML's prostate, ostensibly for some health-related reason. Mr. Gaglardi acknowledges a counselling relationship with ML, in the context of which ML stayed at Mr. Gaglardi's house in Coquitlam for a 30-day drug detoxification program. Mr. Gaglardi denies collecting a semen sample. Mr. Gaglardi admits to conducting two separate internal "massages" of ML's prostate, but claims that ML consented to the conduct in question, as a form of emotional or stress release therapy. Against this backdrop, the defence position is that the Crown has failed to prove the semen collection allegation, and has failed to prove that the prostate incidents were sexual in nature, and further failed to prove that Mr. Gaglardi's touching of ML's body in connection

with the prostate incidents was non-consensual.

- [199] There is a fair amount of common ground in the evidence on count 12. Mr. Gaglardi admits a counselling relationship, and admits that ML stayed at his house for a 30-day residential drug detoxification program. However, Mr. Gaglardi denies ever collecting a semen sample from ML, such that there is a head-on conflict in the evidence in relation to this allegation. There is also a material conflict in the evidence with respect to the prostate allegations, in that ML claims that Mr. Gaglardi presented the prostate procedure as a means of checking his prostate health, whereas Mr. Gaglardi claims that ML agreed to the procedures as an "experimental" means of releasing pent up stress or emotion in ML's prostate. Given the conflict in the evidence on these points, it is necessary to analyse the evidence on count 12 in light of the Crown's burden to prove the allegations beyond a reasonable doubt, and the principles discussed in W.(D.).
- [200] Dealing first with Mr. Gaglardi's evidence, he admitted to having a counselling relationship with ML, but was not entirely clear on the timeline. This is not surprising given that he was asked in both chief and cross-examination about his dealings with 14 separate complainants with whom he interacted over a period of some 45 years.
- [201] Mr. Gaglardi had an affirmative recollection of working with ML in a 30-day residential drug detoxification program, which Mr. Gaglardi developed himself. The program included both talk therapy and touch therapy. Mr. Gaglardi testified that the touch therapy included two separate prostate treatments or procedures. Mr. Gaglardi's testimony about the stated purpose of those procedures diverged from and directly conflicted with ML's testimony. While ML claimed that the stated purpose of the prostate procedures was to examine his prostate for some medical reason, Mr. Gaglardi testified that the stated purpose was to assist ML in relaxing and in obtaining some form of emotional release.
- [202] Mr. Gaglardi testified that in describing the prostate procedures to ML, he used a set of notes as a sort of "cheat sheet", along with some form of written disclaimer for ML to sign. It is clear from the evidence as a whole that Mr. Gaglardi kept extensive records in relation to his counselling and alternative health practice. Despite this, no written "cheat sheet" or written disclaimer signed by ML was tendered in evidence. At one point, Mr. Gaglardi testified that his files were incomplete, explaining that certain records were destroyed in error because of "our seven year cycle". Mr. Gaglardi did not offer any further detail about which records were destroyed, or the surrounding circumstances.
- [203] In cross-examination, Mr. Gaglardi expressly denied the allegation that the prostate procedures were presented to ML as medically necessary testing of any sort, adding that he would never do a procedure like that for a medical purpose. Mr. Gaglardi claimed that if ML was under the impression that the prostate procedures were undertaken for some kind of examination or medical purpose, then ML was either "not listening" at the time, or misremembering what Mr. Gaglardi said to him.

- [204] With regard to the allegation that he took a semen sample from ML, Mr. Gaglardi testified in chief that this "absolutely did not occur". Mr. Gaglardi did not say anything in his testimony in chief about the other bodily samples ML says were taken from him. In cross-examination, Mr. Gaglardi said he did not remember taking a urine sample from ML but it was possible that he took one, he did not remember taking a stool sample, he did not remember taking a hair sample but it was possible that he took one, he did not remember taking a fingernail sample and doubted that he would have taken one, and did not remember taking a semen sample, adding that he could not see the need for taking one. However, when questioned about the allegation that he never gave ML any lab results for any bodily samples, Mr. Gaglardi professed to have a much firmer recollection. Mr. Gaglardi claimed that he gave ML "verbal accounts of whatever was tested" and ML was "satisfied with that". Mr. Gaglardi maintained that as far as he knew, ML was content with a verbal account, and "never asked" to see any lab reports. This is one of many parts of Mr. Gaglardi's testimony where he gave internally inconsistent testimony regarding the state of his recollection.
- [205] I find Mr. Gaglardi's testimony about the bodily samples taken from ML to be internally inconsistent in several respects. To begin with, in his testimony in chief Mr. Gaglardi asserted that he "absolutely" did not take a semen sample from ML. By contrast, in cross-examination, Mr. Gaglardi testified that he did not remember taking a semen sample, and he could not see a need for taking one. Thus, in chief Mr. Gaglardi categorically denied the allegation, whereas in cross-examination he professed to have no memory either way and simply questioned the need for a semen sample.
- [206] I also find Mr. Gaglardi's testimony concerning the state of his recollection about other bodily samples to be internally inconsistent. When asked in cross-examination about whether he took bodily samples from ML, Mr. Gaglardi claimed to have no real recollection of doing so, and he was not even clear whether any such sampling occurred. Yet when asked about the allegation that he never produced any tests or lab results, Mr. Gaglardi professed to have an affirmative recollection that he told ML about the results, that ML was "satisfied", and that ML never asked to see any lab reports. On one account, Mr. Gaglardi could not recall whether or not he took any samples. On the other account, he claimed to recall informing ML about the results, which means he must have had some recollection that he actually took samples. Both accounts cannot be true. I am unable to determine which to believe.
- [207] Turning to ML's testimony, he was in his mid 40s at the time of the trial. His testimony related primarily to events between 1992 and 1994, when he was 17 to 18 years old. When ML was 17, his family attended Hillside Community Church, which is where he first met Mr. Gaglardi.

- [208] ML was able to recount his understanding of Mr. Gaglardi's background and educational qualifications without difficulty. ML went on to provide a rational account of the context in which Mr. Gaglardi came to be his counsellor.
- [209] ML acknowledged in his testimony in chief that he was a heavy marihuana user during the period in issue, and that this had some impact on his ability to provide an accurate chronology. He frankly acknowledged that his timeline was a little "messed up", and that he would have to use a pencil and paper to work out the dates or order of events for certain periods of his life.
- [210] Despite the acknowledged limitations in ML's memory, he had a coherent recollection of the circumstances surrounding his counselling relationship with Mr. Gaglardi. He was able to describe in some detail the circumstances leading up to his decision to go and stay at Mr. Gaglardi's house for a voluntary, 30-day residential drug detoxification program, designed by Mr. Gaglardi.
- [211] ML also gave relatively precise evidence about the occasion when Mr. Gaglardi took a number of bodily samples from him. In particular, ML testified about how Mr. Gaglardi said he wanted to take bodily samples to test for the concentration of drugs in ML's system, and to identify any dietary or nutritional deficiencies. ML described how, on a single occasion, while he was at Mr. Gaglardi's house during the 30-day detoxification program, Mr. Gaglardi collected hair clippings, nail clippings, a urine sample, a stool sample, and a semen sample.
- [212] With regard to the semen sample, ML testified that Mr. Gaglardi took part in physically collecting it. Mr. Gaglardi used a hand-held massage device to stimulate the base of ML's penis, next to the scrotum. ML ejaculated and Mr. Gaglardi collected the sample. This incident happened on the floor in the counselling room, in the basement of Mr. Gaglardi's house. ML's description of the device that Mr. Gaglardi used corresponded with Mr. Gaglardi's testimony about the hand-held massage device and attachment that he used to conduct exterior prostate massage of another complainant, AH. (In his testimony in relation to AH's allegations, Mr. Gaglardi said the device in question was 18 inches long and had various detachable massage heads of different sizes. Mr. Gaglardi explained how, in AH's case, he placed the device between AH's scrotum and the penis to stimulate the prostate acupressure point.)
- [213] ML denied the suggestion put to him in cross-examination that Mr. Gaglardi simply asked him to provide a semen sample and then ML went to the bathroom to collect it himself. (There was no evidence to this effect from Mr. Gaglardi, who would not admit to taking a semen sample at all.)
- [214] With regard to the two prostate incidents, ML testified that both took place while he was staying at Mr. Gaglardi's residence during the 30-day residential drug detoxification program. On the first occasion, Mr. Gaglardi, wearing a glove, inserted his finger into ML's rectum and "checked" his prostate. This occurred while ML was lying on the floor in the counselling room in the basement of Mr. Gaglardi's house. On the second occasion, Mr.

Gaglardi inserted some kind of a device into ML's rectum, which he then used to "measure" or "check" ML's prostate. ML was unable to describe the device itself in any detail. In cross-examination, ML added that on the second occasion, Mr. Gaglardi inserted the device into his anus and instructed him to "squeeze" or "grip" it. ML testified that the device was supposed to take measurements of some kind, either grip strength or size, but he was unable to recall which.

- [215] In cross-examination, ML rejected the suggestion that the prostate procedures were presented to him as a means of moving "negative emotion" with the objective of reducing anxiety. ML maintained that the prostate procedures were presented to him as "health" or "medical" procedures, not "therapy" or "release" exercises as suggested by counsel. ML admitted that Mr. Gaglardi never presented himself as a medical doctor, but ML believed - based on what he was told about Mr. Gaglardi's background - that Mr. Gaglardi had some medical expertise. ML maintained that the prostate procedures were presented to him as medical or health procedures.
- [216] ML acknowledged in both his testimony in chief and in cross-examination that he was not as committed to the counselling process as Mr. Gaglardi wanted him to be. ML agreed that he was not completely honest with Mr. Gaglardi about his views toward the counselling. For example, ML never really bought in to Mr. Gaglardi's theories on negative energy in the body, but he never conveyed his scepticism to Mr. Gaglardi. ML testified that he was never completely forthright with Mr. Gaglardi about these concerns, he was not truly committed to the process, and was not diligent in completing the "homework" Mr. Gaglardi gave him. ML further agreed that there were times when he was not completely honest about his feelings of anxiety.
- [217] ML was also cross-examined about the circumstances in which he came to speak to the police about Mr. Gaglardi, and whether he had spoken to others about Mr. Gaglardi's conduct. ML acknowledged speaking with a former youth pastor who told him "in broad terms" about what some others had alleged. The worst thing he heard was that another man's "butt hole had been grazed". Based on what he learned, ML came to believe that his experience with Mr. Gaglardi was probably worse than anyone else's.
- [218] Considering ML's evidence as a whole, along with all of the other relevant evidence on count 12, including Mr. Gaglardi's testimony, I have no difficulty concluding that ML was an honest witness. Although he was cross-examined at length, his credibility was not seriously challenged or shaken.
- [219] As to ML's reliability, I do have some concerns about his ability to accurately and completely recount the details of his dealings with Mr. Gaglardi during the period in issue, and in particular whether he was able to recall some potentially important details of what Mr. Gaglardi said to him prior to or during the two prostate procedures. I say that based on: (i) ML's acknowledgement of limitations in his own memory during the period in issue, (ii) ML's acknowledgement in cross-examination that Mr. Gaglardi was as a general rule very

careful to explain in advance the nature and purpose of any treatment techniques or procedures he proposed to use, and (iii) the testimony of Mr. Gaglardi himself, which I find to be worthy of some weight on this particular issue. I will explain the significance of this concern about ML's reliability in further detail below.

- [220] Finally, I find the issue of alleged collusion or witness contamination to have no bearing whatsoever on ML's testimony. There is evidence that ML's former youth pastor BW communicated to ML about the fact that other complaints had been made against Mr. Gaglardi. There is also evidence, from another complainant, JU, that he spoke with ML at some point in 2019, in the course of which JU discussed his "situation" and "what happened to him". However, JU could not recall sharing any details with ML. Taking all of this evidence together, I am convinced that ML never received disclosure of any details of what happened to other complainants, apart from learning about another man's "butt hole being grazed". Because the allegations advanced by ML are so particular, and recounted by ML with such precision, I have no difficulty concluding that they are not the product of any influence, intentional or unintentional, from other complainants. Furthermore, Mr. Gaglardi admits to performing the two internal prostate procedures on ML, so there could be no realistic suggestion that ML fabricated or dreamed up these events. With regard to the semen collection allegation, no other complainant alleges that Mr. Gaglardi took a semen sample from him, so I see no prospect that this particular allegation is the product of any form of collusion or witness contamination.
- [221] Weighing up all of the evidence in relation to count 12, my factual conclusions regarding the two core allegations are as follows.
- [222] With respect to the semen collection allegation, I am satisfied beyond a reasonable doubt that the event occurred as alleged by ML. I find ML's evidence about the taking of the bodily samples, including the semen sample, to be credible and reliable. I find Mr. Gaglardi's evidence about this allegation to be internally inconsistent and illogical. He initially claimed it did not happen, then later in his testimony he said he could not recall it. And while he denied any recollection of collecting bodily samples from ML, he went on to claim a more specific recollection about the manner in which he reported the results to ML. Based on these points, and the many other inconsistencies and the other implausibilities in Mr. Gaglardi's testimony, I reject his evidence in relation to the semen collection allegation, and I find that it does not leave me with any reasonable doubt.
- [223] Turning to the prostate allegations, Mr. Gaglardi admitted performing what he referred to as an internal prostate "massage" on ML on two separate occasions. The key point in dispute insofar as these allegations are concerned is the rationale that Mr. Gaglardi presented to ML for the prostate procedures. Mr. Gaglardi testified that he recommended the procedures as experimental techniques for releasing pent-up emotion or stress in ML's body, whereas ML's evidence was that Mr. Gaglardi presented the procedures as some kind of tests or examinations to assess his prostate health. While I accept that at the time of his testimony, some 25 years after the fact, ML genuinely believed the prostate procedures

were presented to him as a form of medical or health treatment, I have a doubt about the reliability of ML's recollection on this particular point. I say this for several reasons, including: (i) ML's admitted memory problems, (ii) ML's acknowledgement that Mr. Gaglardi was always careful to explain both the rationale for each technique or procedure, and the manner in which he would go about performing them, and (iii) Mr. Gaglardi's testimony on this issue, which I am unable to reject entirely. As bizarre as Mr. Gaglardi's evidence about "prostate massage" seems, I am unable to reject his testimony about the stated rationale for the prostate procedure. There is no real dispute that Mr. Gaglardi was engaged in a practice that included not only counselling services, but also natural health and alternative therapeutic techniques. The important point here is not whether the prostate technique was scientifically proven, or valid, or effective, but rather the precise basis on which he recommended the procedure to ML. I cannot categorically reject Mr. Gaglardi's testimony that he presented the prostate procedures to ML as therapeutic techniques with the stated objective of releasing stress or emotion.

- [224] Having reached these findings with respect to the factual allegations underlying count 12, I must go on to consider whether the Crown has proven the essential elements of sexual assault under s. 273 of the Criminal Code. I will address each of the five essential elements of the offence in turn.
- [225] With respect to element (i), the evidence proves beyond a reasonable doubt that Mr. Gaglardi committed the three specific acts alleged by ML. In the semen collection incident, Mr. Gaglardi applied a handheld massage device to the base of ML's penis, near his testicles. In the first prostate incident, Mr. Gaglardi, wearing a glove, inserted his finger into ML's anus and massaged or palpated ML's prostate gland. In the second prostate incident, Mr. Gaglardi inserted a plastic massage device into ML's anus and touched or palpated ML's prostate.
- [226] With respect to element (ii), I have no difficulty concluding beyond a reasonable doubt that, in relation to all three specific acts, Mr. Gaglardi's physical touching of ML was intentional.
- [227] This brings me to element (iii), which requires proof that the touching in question was sexual in nature. The case law reviewed above instructs that the nature of the touching in issue is to be assessed objectively, having regard to all the surrounding circumstances. This analysis includes a consideration of the parts of the complainant's body that are touched, although the fact that the touching involved or did not involve a sexual organ or sexual part of the complainant's anatomy. Further, although it is not necessary for the Crown to prove that the accused committed the acts in issue for a sexual purpose or for the purpose of sexual gratification, the accused's "intent or purpose" in "committing the act" is a relevant aspect of all of the circumstances: Chase at p. 302.

[228] Taking into account all of the above-noted legal principles, I am satisfied beyond a reasonable doubt that, in all three instances recounted by ML, Mr. Gaglardi's touching of the complainant was indeed sexual in nature. In reaching that conclusion, I have considered the following evidence:

- (a) In all three instances, Mr. Gaglardi touched parts of ML's body that could fairly be regarded as sexual organs or parts of his sexual anatomy. The semen collection incident involved the touching of ML's penis and testicles, and the area between his penis and testicles, with a handheld device. The prostate incidents involved Mr. Gaglardi inserting either his finger or a device into ML's anus, and efforts to touch or palpate his prostate gland.
- (b) The semen collection incident involved sexual stimulation of the complainant to the point of ejaculation. The prostate incidents involved attempted stimulation of the complainant's prostate gland.
- (c) There is no independent or objectively reliable evidence that any of the touching was actually necessary or beneficial for any medical or health purpose. With regard to the semen sample incident, the touching leading to ML's ejaculation was completely unnecessary for Mr. Gaglardi's stated purpose of obtaining a semen sample, which itself was highly dubious. With regard to the prostate procedures, to the extent that Mr. Gaglardi professed or believed that "prostate massage" had some potential but unproven health benefit for the subject, I infer from the evidence as a whole that Mr. Gaglardi was just using that as a ploy or guise for engaging in touching of ML's anus and attempting to stimulate his prostate.
- (d) The similar fact evidence of the other Coquitlam complainants supports an inference that Mr. Gaglardi using his counselling and naturopathic health practice to provide opportunities to intrude on the sexual integrity of the much younger male complainants. The similar fact evidence of the complainants GA, CP, and AH in particular supports an inference that Mr. Gaglardi used certain specific naturopathic techniques as guises, ploys, or ruses. In GA's case, Mr. Gaglardi used in a purported body scent study to provide him with the opportunity to see and touch GA's genitalia. In CP's case, Mr. Gaglardi used a purported microbiome analysis as a ploy to conduct anal swabbing. In AH's case, Mr. Gaglardi used a purported external prostate release therapy as a guise to stimulate AH's prostate. In all of these situations, Mr. Gaglardi used ploys to put himself in situations where he could examine, touch, or stimulate the sexual organs of young male complainants.

[229] I turn to element (iv), whether the Crown has proven beyond a reasonable doubt that the complainant did not consent to the touching. ML testified that at the time of the incidents in question, he consented to the touching, but he would not have done so if the touching was not for his health. Against this backdrop, the Crown argues that ML's consent was not valid or legally effective, on any one of the three bases. First, the Crown says ML did not give informed consent as to the nature and quality of the acts in issue as discussed in Hutchinson at para. 55, 57. More specifically, the Crown says that all three instances of touching were sexual in nature, such that ML did not consent to the sexual nature of the

conduct in issue. Second, the Crown says any consent that ML gave was vitiated by fraud as to the true nature of the touching, such that the consent was legally invalid under s. 265(3)(c). Third, Crown says Mr. Gaglardi induced ML to consent by misuse of a position of trust, such that the consent was legally invalid per s. 273.1(2)(c).

[230] I am satisfied beyond a reasonable doubt that there was no valid medical or health purpose for Mr. Gaglardi's conduct in connection with each of the three allegations recounted by ML. With regard to the semen sample, I find that there was never any genuine medical or health purpose for Mr. Gaglardi's request that ML provide a semen sample. The only purpose for the request was to give Mr. Gaglardi the opportunity to engage in sexual conduct with ML, that is, stimulating ML to the point of ejaculation. With regard to the prostate procedures, even accepting Mr. Gaglardi's testimony that he presented the procedures to ML as a means of releasing emotion from the prostate in order to reduce or relieve ML's anxiety, I find that the entire procedure was still a mere ploy or guise for Mr. Gaglardi to engage in conduct that was sexual in nature. I reach these conclusions on the basis of the following evidence:

- (a) At the time of the events in question, Mr. Gaglardi was 50 years old, and ML was 18. ML was a client in Mr. Gaglardi's counselling and natural health practice.
- (b) With regard to the semen sample:
 - (i) ML's testimony, which I accept, was that collected the semen sample for the purposes of health testing, such as testing for concentrations of marihuana, or identifying nutritional deficiencies. There is no evidence before the court that a semen sample would be useful for either of those purposes, and I consider it highly implausible that a semen sample would offer any such information that could not be obtained by testing more common, easier to collect bodily substances, such as a saliva sample or a hair sample.
 - (ii) Even if one were to accept that Mr. Gaglardi needed a semen sample for some genuine medical or health purpose (and, to be clear, I do not), the manner in which Mr. Gaglardi collected the sample was bizarre, invasive, and completely unnecessary. Mr. Gaglardi could easily have given ML a receptacle and left him in private to obtain a semen sample. Instead, Mr. Gaglardi physically participated in the collection of the sample, by using a massage device to stimulate ML to the point of ejaculation. I find that Mr. Gaglardi's touching of ML in the course of taking the semen sample was sexual in nature.
 - (iii) ML's testimony, which I accept, is that Mr. Gaglardi never actually provided any results for any of the bodily samples he collected, ostensibly for testing. This is compelling evidence that the entire process was simply a ruse designed to give Mr. Gaglardi the opportunity to engage in overtly sexual conduct with ML.
- (c) With respect to the two prostate procedures:

- (i) Even accepting Mr. Gaglardi's testimony that he presented the procedures to ML as a means of releasing pent-up emotion from his prostate gland, this does not mean that Mr. Gaglardi was being honest with ML at the time. It is important to bear in mind that ML agreed to participate in a 30-day drug detoxification program that started out with counselling or talk therapy. At Mr. Gaglardi's urging, the "counselling" progressed to "touch therapy", which in the end came to include what Mr. Gaglardi described in his testimony as internal prostate massage. On the whole of the evidence, I am satisfied that that Mr. Gaglardi used his unproven theories on the benefits of internal prostate massage as a ploy or guise to engage in conduct that intruded on ML's sexual integrity.
- (ii) The conduct in issue was bizarre and invasive. On the first occasion Mr. Gaglardi placed his finger into ML's anus and repeatedly touched or palpated ML's prostate. On the second occasion, Mr. Gaglardi used some kind of device, one arm of which was inserted into ML's anus and used to touch or palpate his prostate, while the other arm stimulated what Mr. Gaglardi described as the external "acupressure point" for the prostate gland. For the reasons explained in paragraph 228 above, I find that Mr. Gaglardi's touching of ML in the course of the two prostate procedures was sexual in nature.
- (d) Mr. Gaglardi occupied a position of trust vis-a-vis ML. Mr. Gaglardi was a mature man, with a background in the church and a stated affiliation with the Christian faith. He claimed to have valid academic qualifications as a counsellor, and he held himself out as knowledgeable and experienced in the field of natural health and naturopathic techniques. ML was a much younger man who at the time of the events in question was struggling with substance abuse and anxiety issues. ML testified, and I accept, that he trusted Mr. Gaglardi and acted on his advice.
- (e) As explained in paragraph 228(d) above, the similar fact evidence of the other Coquitlam complainants supports an inference that Mr. Gaglardi using his counselling and naturopathic health practice to provide opportunities to intrude on the sexual integrity of the much younger male complainants. The similar fact evidence of the complainants GA, CP, and AH supports a more specific inference that Mr. Gaglardi used certain specific naturopathic techniques as guises, ploys, or ruses to engage much younger male clients in sexual activity or conduct that violated their sexual integrity.
- (f) The same body of similar fact evidence supports an inference that Mr. Gaglardi used his stature as a church affiliate, his purported academic qualifications, and his stated knowledge and experience in the field of natural health and naturopathic techniques to establish a position of trust with each of the much younger male complainants. Mr. Gaglardi then used that position of trust to obtain the consent of the complainants to engage in conduct that violated the sexual integrity of the complainants.
- [231] I should note that in the ruling admitting the similar fact evidence, I found an air of reality to the issue of potential collusion or witness tainting in relation to a cluster of three complainants, ML, JU, and MD, all of whom had some indirect communication about Mr.

Gaglardi through their former youth pastor BW. Although I found an air of reality to the issue, I was satisfied on a balance of probabilities that the accounts of the three complainants, ML, JU, and MD, were independent of each other and not the product of either intentional collusion or unintentional contamination. Even with this finding, there is still a need to consider whether the possibility of collusion or tainting, either on its own or together with other weaknesses in the case, creates some reasonable doubt in relation to the charges. I am not left with any doubt in this case. There is little or no evidence that these complainants were made privy to the content of each other's allegations. The most that could be said in this regard is that ML was made aware that another complainant alleged his "butt hole was grazed", and JU was made aware of allegations that Mr. Gaglardi had been "touchy" with other men or boys whom he had counselled. Perhaps more importantly, while there is considerable contextual similarity in the accounts of these three complainants, ML, JU, and MD, in terms of the age and the nature of the relationship between the complainants and the accused, the specific acts of touching alleged by each of them are quite distinct. I therefore find no risk whatsoever that any of their accounts are tainted by any exposure to the others.

- [232] On the findings set out in paragraph 228(a) through (f) above, I agree with all three positions advanced by the Crown on the issue of consent. First, I am satisfied beyond a reasonable doubt that ML did not give consent to the nature and quality of the touching engaged in by Mr. Gaglardi. More specifically, I find that the touching was sexual in nature, and that ML did not consent to its sexual nature. Second, I am satisfied beyond a reasonable doubt that Mr. Gaglardi obtained consent by fraud, in that he misrepresented the true purpose of his touching. He presented the touching as necessary or potentially beneficial to ML's health, when in fact Mr. Gaglardi's true interest and objective was to engage in sexual activity or perpetrate sexually intrusive acts upon ML. Third, I am satisfied beyond a reasonable doubt that Mr. Gaglardi used a position of trust to improperly induce ML to consent to the conduct in question. Mr. Gaglardi held himself out as a person with academic qualifications and professional expertise in the field of naturopathic techniques, and he exploited the relationship, to secure ML's apparent consent to engage in conduct that violated ML's sexual integrity. For all of these reasons, I find that the Crown has proven beyond a reasonable doubt that ML did not consent to the conduct in issue in count 12 of the Indictment.
- [233] Finally, with regard to element (v) above, the issue of honest but mistaken belief in communicated consent has no application in the facts of this case. Mr. Gaglardi denied the semen collection incident, so there is no basis in the evidence for a defence of honest but mistaken belief in communicated consent. With regard to the prostate incidents, Mr. Gaglardi asserted that ML in fact consented to the touching, however, I have found that the consent was not valid for a number of reasons, including the fact that the consent was obtained by fraud and by an abuse of a position of trust. In those circumstances, there could be no viable argument that Mr. Gaglardi held an honest but mistaken belief in communicated consent.

[234] I therefore find Mr. Gaglardi guilty on count 12.

(5.2.8) Counts 13 and 14 [GA's Allegations]

[235] On counts 13 and 14, Mr. Gaglardi is alleged to have committed acts of sexual exploitation and sexual assault against GA between 1 September 1995 and 30 June 1998. The complainant GA was between 15 and 18 years old during the time period in issue. The Crown alleges that Mr. Gaglardi touched GA inappropriately or performed inappropriate acts upon him on three separate occasions. All of the acts are alleged to have occurred in the counselling or treatment area in the basement of Mr. Gaglardi's house in Coquitlam. One of the allegations is that Mr. Gaglardi touched GA's penis during a massage, as part of the experiment or study on body scents. A second allegation is that Mr. Gaglardi swabbed GA's penis, ostensibly to take samples to test for sexually transmitted diseases. A third allegation is that Mr. Gaglardi gave GA a cold brew coffee enema, ostensibly as part of a cleansing treatment for GA's health. For his part, Mr. Gaglardi admitted that he had a counselling relationship with GA for a number of years. He does not deny giving GA massages for the stated purpose of flushing toxins from GA's body, and says that if he ever touched GA's penis, it would have been purely by accident. Mr. Gaglardi also admits to taking a swab from GA's penis to check for sexually transmitted diseases, but emphasizes that he did this specifically at GA's request, and after urging him to see a doctor. Mr. Gaglardi denies that he ever performed a coffee enema on GA, although he admits to discussing it with him. Overall, the defence position on these counts is that none of the physical contact that Mr. Gaglardi had with GA involved intentional touching of a sexual nature, and that any touching that did occur was part of Mr. Gaglardi's naturopathic treatment and counselling services, to which GA consented.

[236] There is some common ground in the evidence in relation to these counts. Mr. Gaglardi admits knowing and spending time alone with GA, although he claims that their interactions took place in the course of counselling sessions. Mr. Gaglardi expressly denied ever engaging GA in a study on body scents. He conceded that he may have engaged in some kind of body smell exercise with GA, but only on a single occasion near the beginning of his counselling. Mr. Gaglardi admits to taking a swab from GA's penis, albeit in circumstances which Mr. Gaglardi maintains were consensual. Finally, Mr. Gaglardi denies ever performing a coffee enema on GA. In the result, there is a direct conflict on a number of points of fact that could be crucial to the verdict on these counts. This means that I must weigh the witness testimony, taking into account the Crown's overall burden to prove the charges beyond a reasonable doubt, and the principles relating to witness credibility and reasonable doubt as discussed in W.(D.).

[237] I will begin with an assessment of GA's testimony.

[238] GA gave a coherent and detailed description of the context in which he came to spend time with Mr. Gaglardi. It began with a job doing yard work and other chores for Mr. Gaglardi, all of which Mr. Gaglardi himself admitted during his trial testimony. GA testified that at a

certain point Mr. Gaglardi invited him to participate in a study to assess whether toxins in the body affected body scents. GA thoroughly recounted the procedure Mr. Gaglardi used in conducting the body scent analysis. In GA's estimation, he attended somewhere between 30 and 50 sessions in the basement of Mr. Gaglardi's house, over a period of about two years, starting just before his 16th birthday. GA was cross-examined at length but no significant inconsistencies were revealed in his account of the body scent study or his role in it.

[239] I turn to GA's testimony about the three incidents of touching forming the subject of counts 13 and 14.

[240] The sexually transmitted infection (STI) incident is not disputed so I do not need to spend a great deal of time discussing the circumstances. GA testified that he was 16 or 17 years old when the incident occurred. Mr. Gaglardi does not really dispute that. GA testified in chief and admitted in cross-examination that he approached Mr. Gaglardi and asked for advice or help with respect to possible exposure to an STI. He could not recall whether Mr. Gaglardi recommended that he see a doctor, but fairly conceded that he did not want to see a doctor because he was embarrassed. GA admitted knowing that Mr. Gaglardi was not a doctor, but he felt comfortable with Mr. Gaglardi, and wanted to get tested to put his mind at ease. GA further agreed that Mr. Gaglardi fully described the procedure before performing it, and GA agreed to proceed. GA recounted how Mr. Gaglardi inserted a "medical grade Q-tip" into his urethra. It was painful.

[241] With respect to the coffee enema procedure, GA testified that Mr. Gaglardi raised the topic of using a "detoxification product" to flush toxins from his body. Mr. Gaglardi suggested a coffee enema. GA agreed, accepting Mr. Gaglardi's advice that the procedure could have health benefits. GA described a procedure in which Mr. Gaglardi inserted a tube with a pressurized liquid into his rectum, and got him to hold it awhile before going to the bathroom to release it. The procedure took place in the counselling room in the basement of Mr. Gaglardi's house, and GA walked down the hall to the bathroom to relieve himself. In cross-examination, GA denied the suggestion that Mr. Gaglardi merely provided him with documents and information about coffee enemas.

[242] With respect to the incident in which Mr. Gaglardi allegedly touched GA's penis during a massage, GA testified that it occurred on the last occasion when he went to Mr. Gaglardi's house for a research session. While Mr. Gaglardi was massaging around GA's groin area, he placed his hand on GA's penis and moved it to one side. GA testified that Mr. Gaglardi's normal practice was to use a sheet to move his penis to one side, but on this occasion, he moved GA's penis with his hand. In cross-examination, while counsel was in the process of questioning GA about how he could not actually see Mr. Gaglardi's hand, GA interjected to reject the notion - never put to him - that someone else might have entered the room to touch his penis. When counsel directed GA to his actual question, which was that GA could not actually see Mr. Gaglardi's hand while GA was lying on the floor, partially covered with a drape, GA acknowledged that he could not see Mr. Gaglardi's hand but could tell the difference between being touched through a sheet and being touched with a bare hand. GA

acknowledged that the physical contact was brief, lasting between 1.0 and 1.5 seconds, but it was still significant and offensive to GA at the time. GA testified that he was very uncomfortable, and "shocked", and said so immediately. He could not recall Mr. Gaglardi's response, but took it for nonchalance.

- [243] I find that GA's account of all three incidents was detailed and cogent, reflecting a reasonably good memory of the events in question despite the passage of time. GA fairly acknowledged a number of points in cross-examination, which speaks to both his credibility, and his reliability in being able to recall and articulate certain further details of the three incidents.
- [244] GA also testified that there were occasions when Mr. Gaglardi asked him for a massage, and GA obliged by massaging Mr. Gaglardi's back and shoulders. In cross-examination, GA agreed that he did not say anything about this in either his statement to the police or his interview with Crown counsel. I do not attach any significance to this point, based on GA's testimony in re-examination that no one had ever specifically asked him about that issue in prior interviews. I do not see any obvious inconsistency between GA's recounting of allegations about how he himself was improperly touched, and his failure to volunteer that he gave Mr. Gaglardi massages, particularly in the absence of any evidence that GA was ever asked about that issue. It is also relevant that when asked about this in cross-examination, Mr. Gaglardi was unable to deny that GA may have given him massages.
- [245] Defence counsel took the position that GA's occasional combativeness in cross-examination reflected poorly on his credibility. While GA gave responsive, straightforward answers throughout much of the cross-examination, I agree with counsel that there were several points in cross-examination where GA lept past the questions put to him, in an apparent effort to anticipate and respond to counsel's line of questioning. Nevertheless, I was not left with the impression that GA was trying to anticipate the cross-examination in an effort to testify strategically rather than truthfully. Rather, it appeared to me that there were points in the cross-examination at which GA became annoyed and somewhat indignant at what he anticipated (wrongly) to be simplistic or demeaning lines of questioning. GA's impatience probably made the cross-examination somewhat more laborious, but did not appear to detract from the truthfulness of his testimony.
- [246] Defence counsel also suggested that there were significant problems with GA's timeline, casting doubt on the reliability of his testimony. The backdrop to this point is GA's testimony that years after his involvement in the body scent study ended, he went to see Mr. Gaglardi for several stints of counselling as an adult. One stint was in 2005, when GA and his wife went to see Mr. Gaglardi for marriage counselling. Another stint was in 2014 or 2015, when GA went to see Mr. Gaglardi for assistance with a fitness program. Against that backdrop, defence counsel pointed to GA's testimony about an incident in which Mr. Gaglardi had him place his hand on a mouse-like device for the apparent purpose of gathering data or feedback about energy in his body. GA had some recollection of the incident and expressed the belief that it occurred "early on" in his interactions with Mr.

Gaglardi, during the scent-based research project. GA rejected the notion that the incident involving the "mouse-like" device took place in the late 2000s or later, reasoning that by that point in time he had completed a course in aviation electronics, implying that after his electronics training he never would have accepted the utility of such a dubious biofeedback device. Defence counsel submitted in closing argument that GA's testimony did not fit well with independent evidence indicating that Mr. Gaglardi did not acquire the NES mouse-like device that GA appeared to be talking about until the end of 2009.

[247] I find some merit in defence counsel's position on this point. GA's testimony that the incident involving the "mouse-like" instrument took place "early on" in his interactions with Mr. Gaglardi (some time in 1996 or 1997) cannot be correct, since Mr. Gaglardi did not acquire the device in question until years later (at the end of 2009). This raises questions as to both the credibility and reliability of GA's testimony. If GA either misremembered or lied about when Mr. Gaglardi used the "mouse-like" device on him, it raises questions about whether he also misremembered or lied about other aspects of his testimony.

[248] In my view, GA's allegation that Mr. Gaglardi recruited him to participate in a research project on the relationship between body scent and toxins in the body is central to GA's entire account. Despite the error in GA's testimony on the use of the "mouse-like" device, I accept that GA was truthful in his testimony about being recruited by Mr. Gaglardi to participate in a body scent research project. I say that for several reasons. First, as noted above, GA gave an extensive explanation of Mr. Gaglardi's purported research project into the relationship between body scent and toxins in the body, and the procedure Mr. Gaglardi used in conducting the body scent analysis during each session. GA's account was not shaken in cross-examination. Second, Mr. Gaglardi admitted in cross-examination that he interacted with GA when he was as young as 16 years old. Mr. Gaglardi claimed it was for counselling, but he never gave any explanation of the purpose of that counselling. Certainly, it could not have been marriage counselling, or fitness advice for an aging male. By contrast, GA's testimony included a detailed and internally consistent explanation for the context of his interactions with Mr. Gaglardi during his teen years. Third, in cross-examination, Mr. Gaglardi himself admitted after some prevarication that there was an incident in which he performed some kind of body scent analysis on GA. Although the rationale Mr. Gaglardi offered in his trial testimony was non-sensical, I accept his admission that he engaged in the scent analysis with GA. Having concluded that there was at least one incident in which Mr. Gaglardi engaged GA in a body-scent analysis, I find that it was not a one-off incident. I accept GA's testimony that the body-scent analysis took place in the context of Mr. Gaglardi's purported research project into the relationship between body scent and toxins in the human body.

[249] I turn next to an assessment of Mr. Gaglardi's testimony in response to GA's allegations.

[250] Mr. Gaglardi admitted that he paid GA to do chores, such as gardening and trimming hedges around Mr. Gaglardi's house. He further admitted to spending time with GA when GA was as young as 16 years old, but claimed that it was in the context of a counselling

relationship, rather than a research study as GA recounted in his trial testimony. I do not find Mr. Gaglardi's testimony denying the research study to be credible, because as discussed in more detail in paragraphs 256 to 257 below, his explanation for admittedly conducting some kind of body scent analysis of GA was contradictory and non-sensical.

- [251] Mr. Gaglardi admitted to inserting a Q-tip into GA's penis for the ostensible purpose of obtaining a sample for an STI test. Mr. Gaglardi also grudgingly conceded that GA might have been 16 or 17 years old when this incident took place. Mr. Gaglardi emphasized that it was GA who raised the concern about a possible STI, and says he only agreed to perform the procedure after repeatedly suggesting to GA that he should see a doctor. Mr. Gaglardi maintained that he fully described the procedure to GA before performing it, and that he performed the procedure with GA's fully informed consent. Mr. Gaglardi testified that he inserted the Q-tip into GA's penis to try and get a sample to study under a microscope. Mr. Gaglardi agreed that there was no visible discharge on GA's penis at the time. Mr. Gaglardi suggested that the discharge might have been "slightly below the surface", but grudgingly agreed that no such discharge was visible.
- [252] There are also serious problems with respect to both the credibility and reliability of Mr. Gaglardi's testimony in response to the allegation that he touched GA's penis during a massage in the course of the so-called body scent study.
- [253] On the reliability front, Mr. Gaglardi denied ever touching GA's penis, however it was impossible to tell whether he had any independent recollection of the event that was the subject of GA's allegation, so it is difficult to ascertain the basis for Mr. Gaglardi's position. It would be one thing for Mr. Gaglardi to testify that he had no independent recollection of such an event, but that he would never have touched GA's penis in the manner alleged by GA for one reason or another. It would be another thing for Mr. Gaglardi to testify that he in fact specifically recalled the incident and that there was no touch, or that the touch was unintentional or did not occur in the manner alleged by GA. However, in this particular instance I find it very difficult to determine which of these two perspectives Mr. Gaglardi was advancing in his testimony.
- [254] At some points in his testimony about this allegation, Mr. Gaglardi's evidence was framed in conditional terms, as in, he "would always" ensure that GA was covered with a drape during massage, and "if" he did touch GA's penis, it "would have been" purely accidental. At other points in his testimony, Mr. Gaglardi's evidence was framed in more affirmative terms, as in, when he went to move the drape, GA's penis "was right there" and he "quickly tried to cover it up".
- [255] Mr. Gaglardi's answers in cross-examination were similarly contradictory and confusing. At one point, Mr. Gaglardi testified that there "may have been an accidental touch", and then at another point, he said GA's penis was "exposed", so he "tried to fix it", that is "what I recall". Immediately after saying this, Mr. Gaglardi went on to say that "he might not even have known" that he touched GA's penis. When challenged on that statement, Mr. Gaglardi

reverted to saying that he "would have known" that he touched GA's penis, and that it became exposed so he "covered it". When asked about what he said to GA at the time, Mr. Gaglardi testified that "if" he touched GA's penis, he "might have said" "sorry", or "what did I do?", but he definitely did not say, "what's the big deal?". He then conceded he could not specifically recall what was said, but was insistent that he did not say "what's the big deal?".

- [256] From a credibility perspective, Mr. Gaglardi's testimony regarding the context in which he did "body work" or "massage" on GA was vague and nonsensical. Mr. Gaglardi expressly denied that the "body work" occurred in the context of any study into body scents. However, when pressed in cross-examination on whether he ever conducted body scent procedures with GA, Mr. Gaglardi launched into a rather abstract discussion of his theories on "neuro adaptive" programming and the use of smells to precipitate addiction. When questioned further, Mr. Gaglardi admitted that there was an instance where he undertook a process of smelling GA's body, performing "body work", and then smelling GA's body again, but claimed that he could only remember doing this "one time", as a "preliminary to the whole idea of whether smell could affect his use of substances".
- [257] To the extent that Mr. Gaglardi's remarks about "neuro-adaptive" programming made any sense at all, his theory seemed to be predicated on the subject's smell and its "neuro-adaptive" effects on the subject's substance use. However, the procedure Mr. Gaglardi admitted to performing on GA was not intended to assess the subject's smell; rather, it involved the examiner smelling the subject's body. In the end, I do not find Mr. Gaglardi's explanation of the context in which he performed smell procedures on GA to be credible in the least. I find Mr. Gaglardi's testimony is not an honest account of the context in which the smell procedure took place, and on that basis I further reject his testimony that he only performed the procedure on one occasion, when GA was "19 or 20" years old.
- [258] With regard to the coffee enema procedure, in his testimony in chief Mr. Gaglardi fully explained his beliefs about the history and potential natural health benefits of cold brew coffee enemas, but he denied ever administering a coffee enema to GA. Mr. Gaglardi claimed to have discussed coffee enemas with GA, but said GA was not interested, and if he had been, Mr. Gaglardi could easily have told him where to obtain the materials and how to perform the procedure on his own. Finally, Mr. Gaglardi asserted that it would have been "impossible" to administer a coffee enema procedure in the counselling area in the basement of Mr. Gaglardi's house, because the carpets were light pink and could be ruined by the mess. I would not really consider this to make it impossible to perform the procedure in Mr. Gaglardi's basement. Rather, it is really a contention that it would have been imprudent or unlikely for Mr. Gaglardi to perform a coffee enema procedure in the basement of his house, because it could ruin his carpet. This is one of many instances in which Mr. Gaglardi relied on his own testimony to assert that something alleged by one of the complainants was impossible or improbable. Although this does not necessarily undermine Mr. Gaglardi's credibility, the fact is that there is nothing outside of his own testimony itself to corroborate the point. In any event, I do not find the point particularly

compelling, because it would have been easy enough for Mr. Gaglardi to lay down a mat or "drape" to prevent any mess on the carpet.

- [259] Finally, in cross-examination, when pressed on other details of GA's allegations, Mr. Gaglardi conceded or did not deny a number of points. He claimed to have "no recollection" of getting GA to give him massages, but he "could not say" that it did not happen. Mr. Gaglardi said it was possible that, "in a certain context", he told GA about an African tribe where the men had some kind of ejaculation contest, although Mr. Gaglardi did not say what the context would have been. Mr. Gaglardi further acknowledged having a conversation with GA about "making amends", during which he asked if GA had told anyone about what happened that caused GA to want to make amends. Mr. Gaglardi maintained in cross-examination that this comment did not involve or reflect any admission on his part.
- [260] Weighing up all of the evidence on counts 13 and 14, my conclusions are as follows. I find GA to be a credible witness and I accept his testimony with respect to the three specific incidents which are the subject of his complaint. I note that Mr. Gaglardi does not really deny GA's account of the STI incident. Mr. Gaglardi expressly denied the coffee enema incident, but I do not accept his testimony and it does not leave me with a reasonable doubt, considering the many credibility problems with Mr. Gaglardi's testimony on these particular counts, and with his evidence as a whole. Mr. Gaglardi's testimony with respect to the allegation that he touched GA's penis during a massage, which I will refer to hereafter as the massage incident, was equivocal and confusing. I do not accept it, and it does not raise a reasonable doubt as to what occurred. GA's inaccurate recollection of the circumstance in which Mr. Gaglardi used the NES device does not cause me to question the truthfulness or reliability of GA's testimony with respect to the three specific incidents in issue. In the result, I am satisfied beyond a reasonable doubt that Mr. Gaglardi engaged in the conduct described by GA in relation to each of the three incidents forming the subject of counts 13 and 14.
- [261] Having reached these findings with respect to the factual allegations underlying counts 13 and 14, I must go on to consider whether the Crown has proven the essential elements of the offences.
- [262] I will deal first with count 13, which alleges the offence of sexual exploitation contrary to s. 153 of the Criminal Code. My conclusions with respect to each of the five essential elements that must be proven to make out this offence as set out at paragraph 40 above are as follows.
- [263] Position of Trust. Just before GA turned 16 years old, Mr. Gaglardi recruited him to participate in the "research project" into the relationship between body scents and toxins in the body. Mr. Gaglardi paid GA for his involvement in the "research project". Given (a) the age difference between the accused and the complainant, (b) Mr. Gaglardi's background and stature in the church, (c) the ostensible involvement of GA in a "research project", and (d) the nature of the activities that took place during the so-called "research

project" (including, in each "research session", some 30 minutes of preliminary discussion on the couch that normally began with Mr. Gaglardi asking GA about his level of trust or comfort), I am satisfied beyond a reasonable doubt that Mr. Gaglardi was in a position of trust vis-a-vis GA.

- [264] "Young Person". GA's testimony, which I accept, was that he agreed to participate in the "research project" shortly before his 16th birthday, when he was in grade 10. Thereafter, GA attended some 30 to 50 research "sessions" over a period of some two years, ending near the end of his grade 11 year, or the beginning of his grade 12 year. GA turned 18 in the fall of his grade 12 year. On the basis of all of this evidence, I am satisfied beyond a reasonable doubt that Mr. Gaglardi was a "young person" within the meaning of s. 153 of the Criminal Code throughout the time frame in issue.
- [265] Touching. On the basis of the findings set out above, I have no difficulty concluding that Mr. Gaglardi touched the complainant in respect of each of the three incidents that form the subject matter of this count.
- [266] Touching was Intentional. I have no difficulty concluding that Mr. Gaglardi's touching of GA's penis with a Q-tip during the STI incident was intentional. I also have no difficulty concluding that Mr. Gaglardi's touching of GA's body during the administration of the coffee enema was intentional. With regard to the incident in which Mr. Gaglardi touched GA's penis during a massage, I am also satisfied that this touching was intentional. I do not accept Mr. Gaglardi's testimony about this incident, and it does not leave me with a reasonable doubt. On the basis of the evidence that I do accept, namely the testimony of GA taken together with the similar fact evidence, I am satisfied beyond a reasonable doubt that Mr. Gaglardi's touching of GA's penis in the massage incident was intentional. I accept that it was only a brief touch, lasting somewhere between 1.0 and 1.5 seconds, but that is certainly enough time for Mr. Gaglardi to engage in a deliberate movement. The evidence in support of this conclusion includes the overall context of the so-called "research project", which I find to have been a guise or ruse intended to give Mr. Gaglardi the opportunity to intrude on the sexual integrity of the much younger male complainant. The relevant evidence also includes the similar fact evidence of the other Coquitlam complainants. The similar fact evidence of the complainants ML, CP, and AH in particular supports an inference that Mr. Gaglardi used certain specific naturopathic techniques as guises, ploys, or ruses to engage much younger male clients in sexual activity or conduct that violated their sexual integrity.
- [267] Sexual Nature of the Touching. I am satisfied that both the coffee enema incident and the massage incident involved touching that was sexual in nature. Quite apart from whether Mr. Gaglardi believed that cold coffee enemas could serve any useful health or naturopathic purpose, I see no reason for Mr. Gaglardi to have recommended and then performed such a bizarre and invasive procedure on GA, who was 16 to 17 years old at the time. The intentional touching of GA's penis during the massage incident was also sexual in nature. Although the touch was brief, it involved a sexual organ, and once again I consider the age

difference between the complainant and the accused to be relevant. It is also relevant and highly probative that both the coffee enema incident and the massage incident took place in the context of a purported body scent research project that was itself a ruse to place Mr. Gaglardi in a situation where he could see, observe, and touch intimate parts of GA's body. Finally, there is the similar fact evidence of the other Coquitlam complainants (and in particular the evidence of ML, CP, and AH) which is further evidence of Mr. Gaglardi's use of purported naturopathic techniques as guises to put himself in situations where he could examine, touch, and stimulate the sexual organs of young male complainants. With respect to the STI incident, although there are certainly strong grounds for suspicion that the conduct in question was sexual in nature, in the end I am left with a reasonable doubt, principally because GA asked Mr. Gaglardi for assistance in helping him rule out an STI. GA was admittedly reluctant to go to a doctor and he wanted Mr. Gaglardi to assist him by doing what he could to see if there were signs of an STI. I accept that Mr. Gaglardi was not a qualified medical professional, but GA knew this, and the lack of medical qualification is not enough to classify the conduct in issue in the so-called STI test as sexual in nature.

- [268] Touching was for a Sexual Purpose. I am satisfied beyond a reasonable doubt that, in relation to both the coffee enema incident and the massage incident, Mr. Gaglardi engaged in touching of the complainant for a sexual purpose. Mr. Gaglardi initiated the discussion about the coffee enema, and I find that he did so as a ruse or guise for observing and touching intimate parts of GA's body. This, of course, was within the context of the purported body scent research project, which itself was a ruse intended to put Mr. Gaglardi in a position where he could observe and touch the much younger male complainant. I also have no difficulty concluding that Mr. Gaglardi's intentional touching of GA's penis during the massage incident, again in the context of the research project ruse, was for a sexual purpose. My conclusion on both of these points is reinforced by the similar fact evidence of other instances where Mr. Gaglardi used naturopathic techniques as a ploy for observing and touching the genitals and sexual organs of much younger male complainants. With regard to the STI incident, I am left with a reasonable doubt regarding Mr. Gaglardi's purpose. Although I am once again suspicious, I have some doubt on the issue based on the fact that GA sought Mr. Gaglardi's assistance in checking his body for signs of an STI. This leaves open the possibility that Mr. Gaglardi was simply accommodating or responding to GA's request for assistance or advice in taking some kind of swab from GA's penis.
- [269] In the result, I find that in relation to two of the incidents of touching recounted by GA - specifically the coffee enema incident and the massage incident - all six of the essential elements of the offence of sexual exploitation have been proven beyond a reasonable doubt. I find Mr. Gaglardi guilty on count 13.
- [270] I turn next to count 14, a charge of sexual assault contrary to s. 273. My conclusions with respect to each of the five essential elements which must be satisfied to prove this offence are as follows.

- [271] Touching. Once again, I have no difficulty concluding that Mr. Gaglardi touched the complainant in respect of each of the three incidents that form the subject matter of this count, specifically the STI incident, the coffee enema incident, and the massage incident.
- [272] Intentional Touching. For the reasons given at paragraph 266 above, I am satisfied that in relation to all three of the incidents, Mr. Gaglardi's touching of GA was intentional.
- [273] Sexual Nature of the Touching. For the reasons given at paragraph 267 above, I am satisfied that the touching in relation to the coffee enema incident and the massage incident was sexual in nature. I am left with a reasonable doubt as to whether the touching in relation to the STI incident was sexual in nature.
- [274] Absence of Consent. In light of GA's testimony that he raised the topic of the STI, that he wanted Mr. Gaglardi to check for signs of an STI, that Mr. Gaglardi fully described the manner in which he intended to take a "swab" from GA's penis, and that GA consented to the swabbing, I find that the Crown has failed to prove beyond a reasonable doubt that GA did not consent to the touching of his penis in connection with the STI incident. With regard to the massage incident, I find that GA did not consent to the manner in which Mr. Gaglardi intentionally touched his penis. Further, I have found at para. 252 that Mr. Gaglardi was in a position of trust vis-a-vis GA, and I find that that Mr. Gaglardi abused that position of trust in relation to both the massage incident and the coffee enema incident. I also find that the entire body scent research project was a ploy used by Mr. Gaglardi to put himself in a position where he could intrude upon GA's sexual integrity. The evidence in support of that conclusion includes the age difference between Mr. Gaglardi and GA, Mr. Gaglardi's status or affiliation with Hillside Community Church, the sexual nature of the touching in relation to both the coffee enema incident and the massage incident as found above, the circumstances surrounding the so-called body scent research project (which I find to be a ploy), and the similar fact evidence which includes multiple other instances where Mr. Gaglardi used naturopathic techniques as a ploy for observing and touching the genitals and sexual organs of much younger male complainants (specifically, the complainants ML, CP, and AH). On the basis of these findings, am satisfied beyond a reasonable doubt that, with respect to both the massage incident and the coffee enema incident, any consent GA gave at the time of the touching in issue was: invalid from the outset based on an absence of consent as to the sexual nature of the conduct as contemplated in *Hutchinson* at para. 55, 57-58; rendered legally ineffective by virtue of Mr. Gaglardi's misuse of a position of trust per s. 273.1(2)(c); and vitiated by fraud as to the true nature and purpose of the touching per s. 265(3)(c). To be clear, consent may be legally invalid or vitiated on any one of these three bases, and in this case I find that all three have been proven beyond a reasonable doubt. With regard to the fraud finding, I am satisfied that the entire body scent research project was a ploy, and the true nature and purpose of both the coffee enema incident and the massage incident was not for a legitimate health purpose, but rather both were guises used by Mr. Gaglardi to engage in sexual touching of GA.

- [275] Knowledge that the Complainant Did not Consent. In the circumstances of this case, I find that the defence of honest but mistaken belief in consent is not engaged, at least in relation to the coffee enema incident and the massage incident. I need not address the STI incident, based on my finding that other essential elements of the offence have not been made out in relation to that incident.
- [276] In conclusion, I find that in relation to two of the incidents of touching recounted by GA - the coffee enema incident and the massage incident - all five essential elements of the offence of sexual assault have been proven beyond a reasonable doubt. I find Mr. Gaglardi guilty on count 14.

(5.2.9) Counts 15 and 16 [JU's Allegations]

- [277] On counts 15 and 16, Mr. Gaglardi is alleged to have committed acts of sexual exploitation and sexual assault against JU between 31 December 2000 and 30 December 2003. JU was between 14 and 17 years old during the time frame in issue. The Crown alleges that Mr. Gaglardi inappropriately touched JU's anus, scrotum, and erect penis, with his hands, ostensibly as part of a "body mapping" exercise, in the gym in the basement of Mr. Gaglardi's house. Mr. Gaglardi acknowledges that he had a counselling relationship with JU, but denies touching JU inappropriately. Mr. Gaglardi maintains that any contact he had with JU was non-sexual and was part of Mr. Gaglardi's naturopathic treatment and counselling services, to which JU consented. Mr. Gaglardi says he never did "massages" in the gym, and the particular touching incident alleged by JU never occurred. Thus, the defence position on counts 15 and 16 is that JU's specific allegation is untrue, and that the Crown has failed to prove the essential elements of the two offences.
- [278] Although there is some common ground as to the nature of the relationship between Mr. Gaglardi and JU, there is a direct conflict in their testimony with respect to the core allegations made by JU. In order to resolve the conflict, it is necessary to assess and weigh the witness testimony, keeping in mind the Crown's ultimate burden of proof, and the principles discussed in W.(D.).
- [279] I start with an assessment of the complainant JU's testimony.
- [280] JU recounted that he first came to know Mr. Gaglardi at the Hillside Community Church. JU was 12 or 13 years old at the time. Later, when he was in his mid-teens, he came to spend a fair bit of time with Mr. Gaglardi, as a friend or mentor, and also in formal counselling sessions. Over the course of their relationship, JU felt close to Mr. Gaglardi and valued his companionship.
- [281] With regard to the state of his recollection, JU was able to recall and describe a number of specific events, some of which were memorable to him because of their impropriety, and others because they were significant events in his life. For example, JU recounted one incident when he felt suicidal, called Mr. Gaglardi for help, and then ended up staying at Mr. Gaglardi's house for the night. JU went on to give fairly detailed descriptions of three or

four other specific incidents. All of this suggests that JU had a fairly good recollection of both his relationship with Mr. Gaglardi, and the particulars of their various interactions.

[282] Having said that, there were several aspects of JU's testimony showing that his memory of the events in question was not entirely accurate.

[283] For example, JU testified in chief that he was 15 years old when he began seeing Mr. Gaglardi for counselling. However, in cross-examination, JU conceded that the counselling might have started when he was 16. Based on the timeline recounted by JU in his testimony in both chief and cross-examination, I conclude that he was in fact 16 years old when the counselling began. I say that based upon JU's concession in cross-examination that he might have been 16 when the counselling started, his testimony that the suicidal ideation incident happened in 2001 when he was 16, his testimony that he had a total of between 14 and 20 counselling sessions with Mr. Gaglardi, and his evidence that by the end of 2001 he was in Mexico, where he stayed for six months, past his 17th birthday. In the result, I find that JU's testimony in chief, asserting a belief that he was 15 years old when he started to see Mr. Gaglardi for counselling, was not accurate. This reflects at least to some extent on the reliability of his evidence.

[284] Another aspect of JU's testimony bearing on the state of his recollection related to an incident in which he claimed to have seen Mr. Gaglardi standing in a bathroom, naked from the waist down, staring at JU. In chief, JU testified that he specifically recalled Mr. Gaglardi staring at him through the mirror in the bathroom. When presented with photographs indicating the configuration of the bathroom in question (on the main level of Mr. Gaglardi's house), JU conceded that he could not have seen Mr. Gaglardi through the mirror, and that his recollection about that particular detail must be wrong. Again, this impacts on the reliability of JU's testimony as a whole.

[285] JU testified about an incident in which Mr. Gaglardi gave him a massage, on a bed in the basement of Mr. Gaglardi's house. JU described how he was laying on the bed, completely unclothed, although he conceded in cross-examination that he might have been covered with a towel. There were candles throughout the room. He recounted how Mr. Gaglardi massaged his entire body, using massage oil. JU conceded that Mr. Gaglardi did not touch his genitals during the massage, but added that he (JU) may have become "aroused". Afterward, Mr. Gaglardi asked JU not to tell anyone about the massage. JU felt this was odd and testified that this was at least one of the reasons why the incident was memorable to him.

[286] JU recounted a single incident of alleged sexual touching in the course of the counselling. He believed he was 15 years old at the time, although as noted, he later conceded that he might have been 16, and I find that to be the case. JU described the incident in considerable detail, recounting how Mr. Gaglardi wanted him to participate in some kind of "research" involving "body mapping". Mr. Gaglardi asked him to sign a consent form of some sort, and JU did so. They were in the fitness or workout room in the basement of Mr. Gaglardi's

house. Mr. Gaglardi asked JU to "get naked". When it was suggested in cross-examination that Mr. Gaglardi might have simply asked him to remove as much clothing as he was comfortable with, JU responded that he did not remember it that way. In view of the limitations on JU's memory I am left with some uncertainty about whether his recollection of the words Mr. Gaglardi uttered was completely accurate, but not much turns on that detail. To continue with JU's account, he testified that Mr. Gaglardi got him to lay down on the floor in the gym, and then started "scanning [JU's] whole body with his hands". He was touching and poking everywhere, including JU's genitals. At one point Mr. Gaglardi had his fingers around JU's anus. He also poked around JU's scrotum. JU started to get physically aroused. Mr. Gaglardi told JU not to worry, it was just a "physical response" to the technique. The dialogue came around to sexuality and masturbation. Mr. Gaglardi grabbed JU's penis and stroked it, saying, "this is how some boys masturbate". In cross-examination, JU maintained that this incident took place in the gym, not in the counselling room. He had a specific recollection of seeing himself naked in a full-length mirror on the wall. JU testified that Mr. Gaglardi was not wearing gloves of any kind, did not use any kind of oil or lotion, and did not use any kind of massage device during this incident. JU testified that after this incident he felt "heartbroken". Before this incident JU felt he had a close bond of friendship with Mr. Gaglardi, and he thought Mr. Gaglardi really cared about him. He cannot remember if he stopped going to counselling right away, but there was no more physical interaction. JU started making an effort to keep his distance, although he tried to maintain an "air of normality" when he saw Mr. Gaglardi at church.

- [287] In cross-examination, JU admitted that when he spoke with the police about his allegation, he said his memory was "just coming back" and there was "some ambiguity around the assault". However, JU went on to explain that after he became aware of others making allegations against Mr. Gaglardi, it caused him to mull over his own experience and put himself back in the timeframe of the events in question. JU maintained that he had "no lack of recollection" of the events.
- [288] When asked in cross-examination about the extent to which he discussed the allegations with others, JU acknowledged having spoken with his former youth pastor BW, who in turn had spoken with "three or four others" who had come forward. BW told JU that Mr. Gaglardi had been "a bit touchy" with some other boys, but did not disclose anything more specific than that. JU denied hearing anything about Mr. Gaglardi touching the anuses or penises of any other boys. JU acknowledged telling the police that MD had "the same, almost identical story", but went on to explain that he was referring to the similarity in the context and nature of the relationship, not any specific acts or allegations. Finally, JU admitted that some time in 2019, he spoke with another complainant, ML, and told him about his "situation" and "what happened to him", but JU could not recall sharing any details with ML.
- [289] Defence counsel argued that JU had a poor, admittedly reconstructed, faulty memory of his interactions with Mr. Gaglardi. I do not agree. I accept that JU's memory was inaccurate in some respects. Neither JU's inaccurate recollection of his age when the counselling began,

nor his inaccurate recollection of the bathroom incident give me any concern about his ability to recall the core allegations, which were clearly memorable experiences to JU. In particular, based on JU's vivid recounting of both the massage incident and the "body scanning" incident, I accept that his recollection of these two incidents is genuine and reliable. With regard to JU's statement to the police about the events coming back to him at the time of his statement, I accept JU's explanation that in saying this, he was describing an evolving process of evaluating the propriety of Mr. Gaglardi's conduct.

- [290] I turn to what JU knew or might have been told about Mr. Gaglardi's conduct toward other complainants. I accept that JU was told about others who had made allegations against Mr. Gaglardi (including MD and ML), but I am satisfied that JU had no knowledge of the particulars of those allegations. I accept that when JU told the police the exact same thing had happened to MD, JU was referring to the overall context of the alleged abuse, in terms of the age difference, and the nature of the relationship between the complainants and Mr. Gaglardi. In the result, I see no tangible risk that JU's account has been deliberately manipulated, or even subconsciously influenced by exposure to allegations of other complainants.
- [291] Defence counsel says the court should question JU's account of the massage incident because it conflicts with Mr. Gaglardi's testimony that it was very difficult to set up the hide-a-bed in the spare bedroom, that Mr. Gaglardi did not use candles, and that Mr. Gaglardi did not conduct massages with "oil". However, none of these points are independent of Mr. Gaglardi's own testimony, which I do not find credible for reasons explained below. None of these points cause me to doubt the veracity or accuracy of JU's testimony about the massage incident.
- [292] Defence counsel also says the court should not accept JU's account of the "body scanning" allegation because, among other things, Mr. Gaglardi denied ever conducting "massage" in the gym. Again, this argument rests almost entirely on the testimony of Mr. Gaglardi himself, which I once again do not find to be credible as explained below. Nor do I consider the testimony of other complainants about how Mr. Gaglardi conducted massage in the counselling room using oil or lotion to detract from JU's testimony about the body scanning allegation. JU did not allege that Mr. Gaglardi touched his genitals or stroked his erect penis during a massage in the counselling room. Rather, he alleged that Mr. Gaglardi touched him in this manner during a "body scanning" exercise in the gym, while JU was in front of a wall mirror. JU's testimony on this point is in fact consistent with Mr. Gaglardi's evidence about conducting "body scanning" and "mirror work", which he admittedly did in the gym where there was at least one wall mirror.
- [293] I turn next to an assessment of Mr. Gaglardi's testimony.
- [294] Mr. Gaglardi admitted knowing and counselling JU. He initially testified that his counselling of JU involved "mostly non-touch therapy". When asked more specifically by his counsel whether there was any "touch component" to his therapy with JU, Mr. Gaglardi

responded that he could not recall any. Mr. Gaglardi denied sitting cross legged with JU on the couch. In cross-examination, he appeared to acknowledge that there was an occasion in which he and JU discussed photographs of young men. However, Mr. Gaglardi claimed that it was JU who pulled the photos out of the filing cabinet and asked about them.

- [295] Mr. Gaglardi specifically recalled an incident when JU was somewhere between 14 and 16 years old, when JU was feeling suicidal and called him for help. Mr. Gaglardi brought JU to his house where they had a long chat. Mr. Gaglardi further recalls that they went into the hot tub together, but denied that any touching occurred either in the hot tub or afterward.
- [296] When asked about the allegation that he gave JU a massage with oil and candles in the spare bedroom, Mr. Gaglardi said this never happened. He testified that it could not have happened for three reasons. First, Mr. Gaglardi explained that he would not and did not use candles in his house, because a number of people in the house were "allergic to scents". Second, Mr. Gaglardi said there was no bed in the spare bedroom at the time, but only a sofa bed or hide-a-bed that was never set up because it was too much of a pain to do so. Third, Mr. Gaglardi said it was not his practice to do massage with oils and candles.
- [297] All of this evidence is entirely dependant on Mr. Gaglardi's own testimony. This of itself is no reason to dismiss Mr. Gaglardi's testimony, but it is clearly not the same as independent evidence either refuting the complainant's allegations, or corroborating Mr. Gaglardi's position.
- [298] I would not attach much significance to Mr. Gaglardi's testimony about the sofa bed. I accept, based on Mr. Gaglardi's testimony, and the photographs, that there was a sofa bed or hide-a-bed in his spare bedroom at the relevant time. However, the fact that it was a sofa bed or a hide-a-bed as opposed to a permanent bed is not compelling in the least. Mr. Gaglardi's claim that it was "a pain" to set up the bed is not evidence that it was impossible or prohibitive to do so. Indeed, while Mr. Gaglardi claims that on at least one occasion JU stayed the night in his basement and that Mr. Gaglardi made up a place for him to sleep in the counselling room, I consider it just as likely that Mr. Gaglardi would have had a guest sleep on the sofa bed in the spare bedroom. Mr. Gaglardi's claim that it was too much of a "pain" to set up the sofa bed is not independent corroboration of his position.
- [299] Mr. Gaglardi's testimony about oil and candles did not stand up to scrutiny on cross-examination. In response to the suggestion that "unscented candles" would not pose a problem for someone with allergies, Mr. Gaglardi initially questioned whether there was any such thing as "unscented candles". Later, he relented, saying "of course there are unscented candles", but even "unscented candles" give off smoke, which could cause significant problems for anyone with a breathing issue or an allergy to smoke. This was a significant departure from Mr. Gaglardi's original rationale, which was that he did not use candles in his house because unspecified people in his house were allergic to "scents". Mr. Gaglardi also asserted that he used "lotion" and not "oil" for massage, and then when it was pointed out to him that he in fact used the term "oil" on multiple occasions during his

testimony, Mr. Gaglardi attempted to draw a distinction between scented and unscented oil. He went on to say that if he did use oil for massage, "it would be non-scented oil, which I don't use". I was left with the impression that Mr. Gaglardi was getting tripped up on his own reasoning, which did not make much sense to begin with.

[300] In response to a question from his counsel, Mr. Gaglardi testified in chief that he asked JU not to discuss their counselling sessions with anyone, for one of two possible reasons. The first was that some people "did not understand the concept of natural health or alternative health", and presumably would be unimpressed with Mr. Gaglardi's methods. The second was that Mr. Gaglardi did not want his clients to "noise abroad" about his techniques because they might not be considered acceptable by some of the church organizations with whom he did business. Mr. Gaglardi testified that he would have given JU one of these two reasons for not discussing his counselling with others, although he could not say which of the two reasons he gave. I do not find any of this to be helpful because it is not really responsive to JU's allegation. JU did not allege that Mr. Gaglardi asked him not to discuss his counselling techniques. Rather, JU's allegation was that Mr. Gaglardi asked him not to tell anyone about the candle-lit massage. Of course, Mr. Gaglardi's position is that there never was any candle-lit massage, and if that was true then Mr. Gaglardi would never have asked JU not to tell anyone about it.

[301] Mr. Gaglardi also denied the allegation that he examined and touched JU's naked body or stroked JU's erect penis. Mr. Gaglardi testified in chief that he did not do massage in the gym because there was no space, explaining that he did massage treatments in the counselling room. I do not find this testimony helpful or credible, because Mr. Gaglardi's principal rationale - namely that he did not do massage in the gym, but rather in the counselling room - was quite simply unresponsive to JU's allegation. JU did not allege that Mr. Gaglardi touched his penis during a massage session. Rather, JU alleged that the touching occurred during what JU described to him as a "body mapping" exercise. When asked about that term in cross-examination, Mr. Gaglardi admitted that "body mapping" was one of his techniques, explaining that it was an "older term" used to describe a body "assessment" or "body development". Mr. Gaglardi also admitted that he kept mats in the gym, presumably for people to lie down on in that room. Mr. Gaglardi further admitted to doing "mirror work" with clients in the gym, which is consistent with JU's testimony about the room where the alleged touching occurred.

[302] When I consider all of the evidence on counts 15 and 16 in light of the ultimate burden of proof on the Crown and the principles discussed in W.(D.), my conclusions are as follows. First, I do not accept Mr. Gaglardi's testimony denying the candle-lit massage incident and the body mapping incident described by JU. Second, I do not find that Mr. Gaglardi's testimony raises a reasonable doubt concerning the occurrence of these events, given the inconsistencies in his testimony in response to JU's allegations, and the other credibility concerns I have about Mr. Gaglardi's evidence as set out at paragraphs 62 to 71 above. Third, I find the testimony of the complainant JU about these two core incidents to be both

credible and reliable.

- [303] I have taken into account that JU's recollection about certain matters, including the so-called bathroom incident, was admittedly inaccurate. I have also considered JU's statements to the police suggesting that he was still working through his memory about what occurred to him. None of that evidence leaves me with a doubt about the reliability of JU's testimony with respect to the core allegations. JU's testimony on these allegations was quite vivid, and he was not shaken on any of the details in cross-examination.
- [304] I have also considered the evidence that JU received some information from his former youth pastor, BW, about allegations made by other complainants. However, I am satisfied nothing JU learned from his discussions with BW influenced the accuracy of JU's account of his own dealings with Mr. Gaglardi. I note that the particular manner and form of touching alleged by JU does not mimic the evidence of any of the other Coquitlam complainants.
- [305] On the basis of the evidence which I do accept, I am satisfied beyond a reasonable doubt that Mr. Gaglardi gave JU a candle lit massage in the manner described by JU. I am also satisfied beyond a reasonable doubt that Mr. Gaglardi touched JU's genitals and stroked his erect penis during the "body mapping" incident as recounted by JU.
- [306] Having reached these findings with respect to the facts underlying counts 15 and 16, I must go on to consider whether the Crown has proven the essential elements of the offences. I should note here that the Crown did not argue that Mr. Gaglardi's interaction with JU during what I have referred to as the candle-lit massage incident satisfied the elements of either of the offences charged. Rather, the Crown's argument focused on what I have termed the body mapping incident. Accordingly, I will limit my analysis to that incident.
- [307] Dealing first with count 15, which alleges the offence of sexual exploitation contrary to s. 153 of the Criminal Code, my conclusions with respect to each of the six essential elements of this offence are as follows.
- [308] Position of Trust. JU was 12 to 13 years old when he first met Mr. Gaglardi, at the Hillside Community Church. Thereafter, JU was part of a youth group with whom Mr. Gaglardi met regularly during Sunday services, though not necessarily in the official capacity of a youth pastor. Mr. Gaglardi admittedly developed a personal relationship with JU, and admittedly provided him with counselling services in the context of his counselling and alternative health therapy practice. At the time, JU was 16 years old, and Mr. Gaglardi was in his late 50s. JU testified, and I accept, that he greatly valued his relationship with Mr. Gaglardi, and that he trusted Mr. Gaglardi. I am satisfied beyond a reasonable doubt that Mr. Gaglardi was in a position of trust vis-a-vis JU.

- [309] "Young Person". At the relevant time, the term "young person" was defined in s. 153 to be a person between 14 and 18 years of age. On the basis of the evidence reviewed above, I find that JU was 16 years old at the time of the events in question. This element of the offence has been proven.
- [310] Touching. On the basis of the findings set out above, I have no difficulty concluding that in the course of the body mapping incident Mr. Gaglardi touched JU's anus, scrotum, and erect penis.
- [311] Touching was Intentional. I have no difficulty concluding that Mr. Gaglardi's touching of JU's anus, scrotum, and erect penis during the body mapping incident was intentional.
- [312] Sexual Nature of the Touching. I am satisfied beyond a reasonable doubt that the touching I have just described was sexual in nature. The touching of JU's erect penis while commenting on "how some boys masturbate" was overtly sexual. I also draw the inference that the touching of JU's anus and scrotum, during the same incident, was also sexual. Although the sexual nature of the conduct is defined objectively, the intent and motives of the accused are still a relevant part of the entire context informing that objective determination. In relation to this particular incident I find that Mr. Gaglardi's intent was to engage JU in a sexual encounter. I would reject the notion that any aspect of the "body mapping" exercise was undertaken for some genuine counselling or therapeutic purpose. The "body mapping" was, I find, nothing more than a ruse or guise for Mr. Gaglardi to engage in sexual touching of the complainant.
- [313] Touching was for a Sexual Purpose. Having found that the entire body mapping exercise was undertaken by Mr. Gaglardi to engage JU in a sexual encounter, I have no difficulty concluding beyond a reasonable doubt that Mr. Gaglardi's touching of JU during the encounter was for a sexual purpose.
- [314] In the result, I find that in relation to the so-called body mapping incident, all six of the essential elements of the offence of sexual exploitation have been proven beyond a reasonable doubt. I find Mr. Gaglardi guilty on count 15.
- [315] I turn next to count 16, a charge of sexual assault contrary to s. 273. My conclusions with respect to each of the five essential elements which must be satisfied to prove this offence are as follows.
- [316] Touching. Once again, I have no difficulty concluding that Mr. Gaglardi touched JU's body in the course of the body mapping incident.
- [317] Intentional Touching. I am satisfied beyond a reasonable doubt that Mr. Gaglardi intentionally touched JU's body during the incident in question.
- [318] Sexual Nature of the Touching. For the reasons given at paragraph 312, I am satisfied that the touching of JU's erect penis, scrotum, and anus during the body mapping incident was sexual in nature.

[319] Absence of Consent. I find that JU did not consent to Mr. Gaglardi's touching of his anus, scrotum, or erect penis in the course of the body mapping incident. Further and in any event, I find that Mr. Gaglardi was in a position of trust vis-a-vis JU for the reasons explained at paragraph 308 above, and that Mr. Gaglardi abused that position of trust to obtain JU's consent. I also find that the entire body mapping incident was a ploy used by Mr. Gaglardi to put himself in a position where he could intrude upon JU's sexual integrity. The evidence in support of that conclusion includes the age difference between Mr. Gaglardi and JU, Mr. Gaglardi's status or affiliation with Hillside Community Church, the sexual nature of the touching, and the similar fact evidence which includes multiple other instances where Mr. Gaglardi used naturopathic techniques as a ploy for observing and touching the genitals and sexual organs of much younger male complainants, including GA (the purported body scent study), ML (purported prostate release therapy, and semen collection purportedly to test for residual levels of recreational drugs), CP (anal swabbing in connection with a purported microbiome study), and JK (external prostate release procedure purportedly to release emotion from the prostate). On the basis of these findings, I am satisfied beyond a reasonable doubt that any consent JU gave at the time of the touching in issue was: invalid from the outset based on an absence of consent as to the sexual nature of the conduct as contemplated in Hutchinson at para. 55, 57-58; vitiated or rendered legally ineffective by virtue of Mr. Gaglardi's misuse of a position of trust per s. 273.1(2)(c); and vitiated by fraud as to the true nature and purpose of the touching per s. 265(3)(c). To be clear, consent may be legally invalid or vitiated on any one of these three bases, and in this case I find that all three have been proven beyond a reasonable doubt.

[320] Knowledge that the Complainant Did not Consent. In the circumstances of this case, I find that the defence of honest but mistaken belief in consent is not engaged.

[321] In conclusion, I find that all five essential elements of the offence of sexual assault have been proven beyond a reasonable doubt. I find Mr. Gaglardi guilty on count 16.

(5.2.10) Counts 17 and 18 [MD's Allegation]

[322] On counts 17 and 18, Mr. Gaglardi is alleged to have committed acts of sexual exploitation and sexual assault against MD, between 6 January 2001 and 5 January 2003. The complainant MD was between 16 and 18 years of age at the time of the events in question. These counts are focused on one specific incident, in which Mr. Gaglardi is alleged to have touched MD's anus with his bare hands, while MD was naked, during a massage session in the counselling area in the basement of Mr. Gaglardi's house in Coquitlam. Mr. Gaglardi acknowledges that he had a counselling relationship with MD, and that the counselling may have included touch therapy or "energy work". Mr. Gaglardi says that if he touched MD's anus, it would have been an unintentional act, incidental to the energy work. Thus, the defence position on these counts is that Mr. Gaglardi's physical contact with MD occurred during naturopathic counselling and treatment services to which MD consented, and the Crown has failed to prove that there was any intentional touching of a sexual nature.

- [323] There is not a great deal of conflict in the evidence on these counts. Mr. Gaglardi admitted that his interactions with MD may have included various forms of touch therapy. Mr. Gaglardi's testimony about whether he had an actual independent recollection of the incident described by MD was internally contradictory and confusing. The focus of Mr. Gaglardi's defence on these particular counts appeared to be on the issues of intent, proof of the sexual nature of the touching, and proof of an absence of consent.
- [324] Because the defence did not seriously attack or directly dispute MD's evidence about the incident that is the subject of the charges, a thorough review of MD's credibility and reliability is unnecessary. The focus of my analysis will be on MD's evidence about the specific incident of alleged improper touching.
- [325] By way of context, MD's recollection was that he had approximately 12 counselling sessions with Mr. Gaglardi over a period of some two to three years, when he was between 16 and 18 years of age. MD recalled that Mr. Gaglardi used a number of touch therapy techniques in the course of the the counselling.
- [326] There were only two instances in which MD was unclothed during the counselling sessions. The first was a so-called "body mapping" exercise, in front of a mirror in the gym or fitness room in the basement of Mr. Gaglardi's house. MD did not allege that Mr. Gaglardi touched him on that occasion.
- [327] The second incident in which MD was unclothed was during one of MD's last sessions, possibly the very last session. Mr. Gaglardi suggested that MD would benefit from a massage, and MD said he was prepared to give it a try. Mr. Gaglardi described how different parts of the body could be stimulated by massage. He told MD that sometimes massage of the anus can feel good. Mr. Gaglardi went on to say that it would not be uncommon to get an erection during massage, and if this happened MD should not be embarrassed.
- [328] I must note here that Mr. Gaglardi expressly denied making these statements, at least in the precise words alleged by MD. For reasons explained below, I have serious questions about whether Mr. Gaglardi actually had any independent recollection of this particular interaction with MD, so it is not clear to me how Mr. Gaglardi was in a position to remember what he said or what he did not say. The most that can be taken from Mr. Gaglardi's testimony is that he would not have used the specific terms or phrases MD attributed to him. For reasons explained below, I do not need to resolve the dispute about what exact words Mr. Gaglardi used in describing the massage process to MD. I accept that Mr. Gaglardi told MD something about the possibility of getting an erection, and that he said something about massage of his buttocks or posterior region, although I am unable to conclude with any confidence that Mr. Gaglardi used the exact word "anus" in this context.
- [329] Moving to MD's account of the incident itself, MD testified that he got undressed and got onto a massage table in Mr. Gaglardi's counselling room. MD was unable to recall whether he was covered with a sheet or a towel thereafter. Mr. Gaglardi proceeded to massage "all over" MD's body, including his buttocks and anus. When Mr. Gaglardi touched MD's anus,

MD got "extremely uncomfortable" and felt "paralyzed". MD could not tell what part or parts of his fingers or hands Mr. Gaglardi used to massage this area of his body, but he did recall Mr. Gaglardi's fingers directly touching his anus. MD reacted by clenching his buttocks muscles. He testified that the touching of his anus did not last long. When it was suggested to MD in cross-examination that it was a "momentary" touch, MD replied that "it felt like an eternity" at the time.

- [330] MD recounted that this incident occurred at the end or near the time that his counseling with Mr. Gaglardi came to an end. The manner in which Mr. Gaglardi touched MD made him "extremely uncomfortable" and he did not want to continue seeing Mr. Gaglardi for counselling after this incident. MD acknowledged that he may have had one or more subsequent counselling sessions during the period of time covered by the Indictment, but none of them involved any touching. Years later, MD went back to see Mr. Gaglardi for counselling in relation to various issues, at later stages of his life.
- [331] Against that largely uncontested backdrop, I will go on to assess the credibility and reliability of Mr. Gaglardi's testimony in relation to counts 17 and 18. I consider this necessary because, while Mr. Gaglardi's evidence was confusing and internally contradictory on the point, he did at points deny actually touching MD's anus. Also, Mr. Gaglardi expressly denied that any such act was intentional on his part. In this context, it is necessary to carefully consider Mr. Gaglardi's testimony by reference to the legal principles discussed in W.(D.).
- [332] Mr. Gaglardi acknowledged that he counselled MD as a teenager (in 2001), and then again as an adult (in 2006 and again in 2010). Mr. Gaglardi had a general recall of MD, and the nature of the counselling services he provided to MD as a teenager. When referred to copies of the signed consent forms, Mr. Gaglardi conceded that his counselling of MD as a teenager likely included some "touch therapy" and "energy work".
- [333] Mr. Gaglardi did not dispute MD's allegation about doing "body work" in front of a mirror.
- [334] Mr. Gaglardi initially professed to have no recollection of actually performing any "energy work" or "massage" on MD, but when prompted by his counsel, claimed to have at least some recall of the events in issue. Mr. Gaglardi went on to deny ever touching MD's anus in the course of any such massage work. I have trouble accepting Mr. Gaglardi's denial, given the serious problems with both the credibility and reliability of his testimony.
- [335] With regard to reliability, on the whole of Mr. Gaglardi's evidence on this issue, I cannot accept that he had any present recollection of the incident in which he was alleged to have touched MD's anus. When initially asked whether he ever touched MD's anus, Mr. Gaglardi replied that he did not recall doing so, and went on to say, in conditional terms, that if there was any touching of this sort it would have been because a drape slipped, and "if we are talking about an organ, then I would have tried to cover it". When his counsel reminded him that the allegation was that he touched MD's anus (not really an organ), Mr. Gaglardi again responded in conditional terms, stating that there "would have been" a fair amount of

kneeding and force involved. When counsel asked more pointedly whether he actually remembered what happened, Mr. Gaglardi replied, "I believe I do at the moment", explaining that the incidents "meld together" but when directed to particular details, "it makes it come to mind". Mr. Gaglardi then returned to giving evidence in conditional terms, asserting that if he did touch MD's sphincter at all, "it would have been totally accidental", "not on purpose". All of this evidence leads me to conclude that Mr. Gaglardi in fact had no independent recollection of such an incident.

- [336] From a credibility perspective, there are several aspects of Mr. Gaglardi's testimony about the MD allegations that I find to be untruthful or incredible.
- [337] First, I cannot accept as truthful Mr. Gaglardi's claim that, in the midst of his testimony, he had a present recollection of the incident alleged by MD. Apart from the single assertion that discussing the details of MD's allegation caused the event to "come to mind", everything else Mr. Gaglardi said about the incident was framed in conditional terms. Thus, not only is Mr. Gaglardi's testimony in this point lacking in reliability, I conclude that his claim to have a present recollection of the incident was false. This reflects negatively on Mr. Gaglardi's credibility.
- [338] Second, the explanation offered by Mr. Gaglardi for what he claimed "would have" or "could have" happened makes little sense. When asked in cross-examination how his initial explanation about trying to cover "an organ" after the drape slipped would apply to touching MD's anus, Mr. Gaglardi acknowledged that this explanation would probably not apply to touching MD's anus. He said, "Because if we were moving a drape, I might have touched his anus and tried to move it, but not likely". In the result, Mr. Gaglardi's effort to explain what "would have" or "could have" happened based on his general practice simply did not stand up to scrutiny in cross-examination.
- [339] Third, Mr. Gaglardi also testified in chief that he might not have touched MD's anus at all, and that MD's allegation could be the product of MD having some kind of out of body experience. I cannot give any weight to this suggestion, which was nothing more than a speculative attack on the credibility of another witness. Indeed, I find Mr. Gaglardi's effort to cast doubt on the testimony of another witness through speculation to reflect poorly on Mr. Gaglardi's credibility.
- [340] Fourth, I note Mr. Gaglardi's testimony that he "would have" used "oil" or cotton gloves when massaging MD's glutes, which is inconsistent with Mr. Gaglardi's earlier testimony (in relation to the complainant JU), claiming that he either did not use "oil" during massages, or that he generally called it "lotion", not "oil". Certainly, neither of these things were true in relation to his testimony about using "oil" while massaging MD's glutes.
- [341] Considering all of the evidence in relation to counts 17 and 18, my conclusions on the W. (D.) analysis are as follows. First, I do not accept Mr. Gaglardi's testimony denying the touching incident alleged by MD, nor do I accept his testimony denying any intent to touch the complainant's anus. I cannot accept his testimony on any of these issues as either

reliable or truthful. Second, Mr. Gaglardi's testimony does not leave me with a reasonable doubt as to what actually occurred, or as to his intent. Mr. Gaglardi's evidence on counts 15 and 16 was quite simply too confusing and internally contradictory to be given any weight whatsoever. Third, on the final stage of the W.(D.) analysis, I am satisfied beyond a reasonable doubt as to the truthfulness and reliability of MD's account of the massage incident in which Mr. Gaglardi touched his anus.

[342] When it comes to the essential elements of the offences in counts 17 and 18, I do not need to undertake a detailed assessment of each element in light of the conclusion that I have reached. I find, in relation to both counts, that the Crown has failed to prove the essential element of intention, that is, that the touching of MD's anus was an intentional act on Mr. Gaglardi's part. Even after rejecting Mr. Gaglardi's trial testimony and concluding that it does not lead to a reasonable doubt, on the whole of the evidence I have a reasonable doubt on the issue of intent.

[343] MD described how, in the course of the massage incident, Mr. Gaglardi's fingers touched his anus, but not for a "long time". MD said he could feel Mr. Gaglardi's fingers touching his anus but was not any more specific than that. There is no other evidence in the record as to the precise nature or duration of the touch. On the issue of duration, MD did say in cross-examination that it "felt like an eternity" at the time. I accept this as a genuine reflection of MD's experience, but it does not materially add to the evidence. It was a brief touch.

[344] I certainly have a strong suspicion that Mr. Gaglardi intentionally touched MD's anus, but I am not satisfied of this essential element beyond a reasonable doubt. Mr. Gaglardi's statement to MD about the possibility of getting aroused during massage adds to my suspicion, as does the similar fact evidence about the instances where Mr. Gaglardi used naturopathic techniques as a ploy for observing and touching the genitals and sexual organs of much younger male complainants. However, even taking all of this evidence together, I am still left with a reasonable doubt on these particular counts, given the evidence in the record as to the nature and duration of the touch.

[345] I find Mr. Gaglardi not guilty on counts 17 and 18 on the Indictment.

(5.2.11) Count 19 [SH's Allegation]

[346] On count 19, it is alleged that Mr. Gaglardi committed sexual assault against SH, between 2 February 2002 and 31 December 2006. The complainant SH was between 27 and 30 years old during the time frame in issue. The Crown alleges that Mr. Gaglardi engaged in inappropriate touching of SH on multiple occasions. The alleged misconduct can be grouped into three categories. First, it is alleged that during massage sessions in the counselling area in the basement of Mr. Gaglardi's house in Coquitlam, Mr. Gaglardi touched SH's genital area, including on occasion his erect penis. SH described it as "occasional contact" that happened "quite often". Second, it is alleged that Mr. Gaglardi touched SH's scrotum, under the guise of a testicular exam. Third, it is alleged Mr. Gaglardi touched SH's groin and anus, in the process of taking swabs, ostensibly to test for various

ailments. Mr. Gaglardi acknowledges having a mentoring, counselling, and personal relationship with SH for a number of years. He admits that the counselling included touch therapy or "energy work", and to the extent that this involved any touching of SH's genitals, it was unintentional and incidental. Mr. Gaglardi says the examination of SH's scrotum, and the taking of swabs from his genital area was all done at SH's request, and after Mr. Gaglardi had urged him to see a doctor. Thus, the defence position on these counts is that Mr. Gaglardi's physical contact with SH occurred during naturopathic counselling and treatment services to which MD consented, and there was no intentional touching of a sexual nature.

- [347] There is little conflict in the evidence in relation to this count. Mr. Gaglardi did not dispute SH's account of their relationship, or the nature of the counselling and alternative therapies that SH claimed to have received.
- [348] There was some discrepancy between the testimony of SH and Mr. Gaglardi about the circumstances in which SH came to be undressed during "energy work". SH testified that while initially Mr. Gaglardi invited him to undress to his level of comfort, as the sessions progressed Mr. Gaglardi simply instructed SH or asked him if it was "okay to get naked", in Mr. Gaglardi's presence. For his part, Mr. Gaglardi testified that while over time SH became very familiar with Mr. Gaglardi's standard descriptions of the treatment techniques themselves - to the point where SH knew them by heart and did not want Mr. Gaglardi to repeat them, when it came to the procedure for undressing, Mr. Gaglardi always adhered to his standard practice of inviting SH to undress to his level of comfort. Mr. Gaglardi denied ever approaching the issue as casually as simply asking or telling SH that it was "ok to get naked". In light of the many concerns I have with Mr. Gaglardi's credibility, there is good reason to question whether he was being honest on this point. I have some concern that Mr. Gaglardi overstated the extent to which he adhered to any formal undressing procedure in dealing with the same client over years of "touch therapy" sessions. However, I do not need to resolve the factual dispute on this issue, because nothing in my legal analysis below turns on this point.
- [349] With regard to the key issue of Mr. Gaglardi's touching of SH's genitals in the course of "energy work", the testimony of SH and Mr. Gaglardi was largely consistent. SH testified that Mr. Gaglardi frequently did massage in the area of SH's groin, at SH's request or direction. In this context, SH sometimes got an erection, but when that happened, Mr. Gaglardi would ask him if he was alright and SH would respond that he was, because he trusted Mr. Gaglardi. SH further testified that Mr. Gaglardi's hands made "occasional contact" with his genitals. SH believed the touching of his genitals was "not part of the procedure", but agreed that it appeared at the time to be incidental. Mr. Gaglardi's testimony was not at all inconsistent with any of what I have just reviewed.
- [350] The only real point of departure between the testimony of SH and the testimony of Mr. Gaglardi regarding the touching of SH's genitals had to do with the extent to which SH was ever fully exposed during the "energy work" sessions. SH testified that there were occasions

when he was "completely exposed" with nothing covering his genitals. For his part, Mr. Gaglardi denied this, claiming that he followed a procedure in which only the part of the client's body that he was working on would be uncovered, and the rest of the body would be covered by one or more drapes. However, when pressed on this point during cross-examination about his dealings with another complainant, Mr. Gaglardi testified that if there were occasions when SH was completely exposed with no drape covering his genitals, it would have been a function of SH's choice, in the context of a 14-year counselling or mentoring relationship. I consider that the two positions advanced by Mr. Gaglardi, the first that SH was always covered with a drape, and the second that if SH was not covered it was based on SH's choice, to be internally contradictory.

- [351] Taking into account the Crown's burden of proof, and the principles discussed in W.(D.), the evidence as a whole clearly establishes that all of the the touching underlying SH's allegations occurred. I can summarize my conclusions regarding the incidents in issue in three points, corresponding to the allegations as I have summarized them above.
- [352] First, I am satisfied beyond a reasonable doubt that in the course of massage sessions, or "energy work" as Mr. Gaglardi put it, he touched SH's testicles and penis on multiple occasions. On some occasions when Mr. Gaglardi touched SH's penis, it was erect or at least partially erect. As for the nature and frequency of the touching, I accept SH's testimony that the contact with his genitals did not appear to be "part of the procedure", it happened from time to time and appeared to be "incidental". SH said it was "occasional contact" that happened "quite often", although there was no "regular pattern". SH testified that he consented to the "energy work" procedures, but he would not have consented to touching of his genitals if it was not necessary for his health. Finally, I should note that SH was unequivocal in stating that at the time he did believe Mr. Gaglardi's treatment techniques were helpful to him, and that they helped him advance in dealing with the issues that he went to see Mr. Gaglardi for counselling about in the first place.
- [353] Second, I am satisfied that Mr. Gaglardi touched SH's scrotum, ostensibly to help SH determine whether he had a lump on his testicles that could require medical attention. SH frankly acknowledged that he was the one who raised the issue of a possible lump on his testicles with Mr. Gaglardi. SH could not recall whether Mr. Gaglardi recommended that he see a doctor about the issue, but went on to acknowledge that at the time he more or less considered Mr. Gaglardi to be his doctor. On this particular point, I accept the testimony of Mr. Gaglardi, which is not inconsistent with SH's account, that Mr. Gaglardi urged SH to see a doctor, that SH responded that he considered Mr. Gaglardi his doctor, and that Mr. Gaglardi pointed out to SH that he was not a medical doctor. I find that SH knew, understood, and accepted this at the time of the incident in question.
- [354] Third, I am satisfied that Mr. Gaglardi touched SH's anus and the area around his scrotum, in the course of taking swabs. Some of the swabs were to test for a rash, and others were to test for "internal parasites". Mr. Gaglardi's testimony included more detail about what he said to SH, about his urging or recommending SH to see a doctor, and about what he told

SH about the limits of his knowledge, expertise, or qualifications in relation to these issues. However, SH's testimony was not materially inconsistent with the evidence of Mr. Gaglardi on any of these points, and in broad strokes their evidence about what happened and what Mr. Gaglardi did fit together into a single coherent account of the events in issue. Basically, SH raised a concern about a rash, which led to a dialogue in which Mr. Gaglardi suggested taking swabs to see if it was Candida. Mr. Gaglardi made it clear that he was not a doctor and SH acknowledged that. SH gave his consent for Mr. Gaglardi to take the swabs. Mr. Gaglardi then used a Q-tip to take swabs or samples from SH's groin and anus. He later looked at the samples under a microscope, compared them against photographs of Candida, and concluded that SH likely had Candida. He conveyed his conclusion to SH the next day. Mr. Gaglardi later provided or arranged for SH to get an over-the-counter medication to treat the rash. The evidence of both SH and Mr. Gaglardi about swabs taken to test for "internal parasites" was far less detailed, but fit more or less the same pattern.

- [355] Having reached these factual conclusions about the nature of the touching underlying count 19, I will go on to consider whether the Crown has proven the five essential elements of the offence of sexual assault.
- [356] With regard to the touching of SH's genitals during "energy work", I can abbreviate the analysis somewhat in view of the conclusion I have reached. As noted, I am satisfied beyond a reasonable doubt that Mr. Gaglardi in fact touched SH's genitals, both his scrotum and his penis, on multiple occasions in the course of the massage or "energy work". However, in my view the Crown has failed to prove both the second and third elements of the offence, that is, proof that the touching was intentional, and proof that the touching was sexual in nature.
- [357] On the issue of intention, I accept SH's testimony that Mr. Gaglardi made occasional contact with his genitals in the course of the "energy work". As to the frequency of the touching, SH said it occurred, "occasionally", or even "quite often", but not on any "regular pattern". With regard to the nature of the touching itself, SH was no more specific than to say that Mr. Gaglardi made contact with his genitals, and that on occasion his penis was erect or partially erect when Mr. Gaglardi touched it. SH also testified that, at the time, it seemed to him that the contact was incidental. Of course, SH could never say what was in Mr. Gaglardi's mind at the time, but SH's description of the touching as incidental gives at least some insight into its nature and extent.
- [358] Mr. Gaglardi also testified that the touching was "incidental". I have good reason to question the credibility of Mr. Gaglardi's testimony based on the many inconsistencies and implausibilities in his evidence as a whole, but in the end I am left with a reasonable doubt on the issue of intent.

- [359] I should note that there is no expert evidence before the court about how common it is for a masseuse to make contact with the genitals of a male client while massaging the groin area, and what steps or procedures a masseuse would normally take to avoid or minimize such contact. The absence of expert evidence does not weaken the case, but the lack of such evidence makes it difficult to scrutinize the extent to which Mr. Gaglardi was or was not prudent in the manner in which he massaged SH's groin area.
- [360] The similar fact evidence demonstrating many instances where Mr. Gaglardi used naturopathic techniques as a ploy for observing and touching the genitals and sexual organs of much younger male complainants certainly gives me reason to be suspicious about Mr. Gaglardi's conduct in relation to SH. However, even with that evidence, I am not convinced beyond a reasonable doubt that the touching of SH's genitalia, which both he and Mr. Gaglardi described as incidental, was in fact intentional. Given the lack of specificity about the precise nature of the touching, I have a reasonable doubt on this point.
- [361] On the issue of proof of the sexual nature of the touching of SH's genitals during the "energy work", I am once again left with a reasonable doubt. The touching in issue certainly involved sexual organs, but it was described by both the complainant and the accused as "incidental" to massage in the area of the complainant's groin. In that context, there was certainly nothing overtly sexual about the touching. SH's description of the manner of the touching is not detailed enough to glean anything further about its true nature. The surrounding circumstances give me reason to be suspicious, as does the similar fact evidence reflecting many instances where Mr. Gaglardi clearly used naturopathic techniques as a ploy for violating the sexual integrity of much younger male complainants. However, even taking all of this evidence into account, I am still left with a reasonable doubt as to whether this particular form of touching was sexual in nature.
- [362] I will go on to consider the other two forms of touching described by SH, namely the touching of his scrotum during the testicular examination, and the touching of his anus for the purposes of taking swabs. In relation to this conduct, my conclusions with respect to the five elements of the offence of sexual assault are as follows.
- [363] Touching. I have no difficulty concluding that Mr. Gaglardi touched SH's scrotum during the testicular examination, and touched his anus with a Q-tip while taking swabs.
- [364] Intentional Touching. I am satisfied beyond a reasonable doubt that Mr. Gaglardi intentionally touched SH's body in respect of each of the two separate forms of conduct just discussed.
- [365] Sexual Nature of the Touching. I am left with a reasonable doubt as to whether either the touching of SH's scrotum, or the touching of his anus while taking swabs was sexual in nature. In particular:

- (a) The touching of SH's scrotum clearly involved a sexual part of his anatomy, but SH's evidence was that he raised a concern with Mr. Gaglardi about a possible lump on his testicles, and that is the context in which the touching occurred. In effect, SH had a health-related concern, and Mr. Gaglardi touched SH's scrotum in the context of examining his testicles for a lump.
 - (b) The touching of SH's anus to take a swab to be examined for Candida also involved a potentially sexual part of SH's anatomy, but again the touching occurred in what I would characterize as a health context as opposed to a sexual context. SH raised a concern about a rash, and Mr. Gaglardi proposed to take samples using a Q-tip, for the purposes of determining the nature of the rash. Once again, SH had a health-related concern, and Mr. Gaglardi touched SH's anus in the context of taking samples to address that concern.
 - (c) The evidence about Mr. Gaglardi's touching of SH's anus to take a swab to test for "internal parasites" was so vague and non-specific that I find it difficult to reach any conclusion about it. Given the similarity in context when compared with the Candida swab, I am unable to conclude that the swabbing for an "internal parasite" stood on any different footing.
- [366] The Crown relies on the reasoning in *R. v. Mastronardi*, 2014 BCCA 302, in which the accused held himself out to be a doctor to conduct sham gynecological exams of the complainants. In that context, the Court of Appeal reasoned at paras. 20 to 21 that touching found to be qualitatively or objectively sexual in nature is not rendered non-sexual simply because it occurs in the context of a fraudulent medical procedure. However, *Mastronardi* involved an accused who was masquerading as a certified gynecologist, when in fact he was nothing of the sort. By contrast, in the case at bar the evidence indicates that Mr. Gaglardi expressly informed SH that he was not a medical doctor, and SH knew and accepted this. I stress that Mr. Gaglardi is not charged with unauthorized practice of medicine. He is charged with sexual assault, and in relation to this particular conduct, I am left with a reasonable doubt as to whether his touching of the complainant was sexual in nature.
- [367] Absence of Consent. I am also left with a reasonable doubt on the issue of whether SH did not consent to the touching in issue. SH testified that if the conduct in question had not been for his health, he would not have consented to it. For the reasons expressed under the preceding sub-heading, I find that there is at least some evidentiary basis for the notion that Mr. Gaglardi's touching of SH's scrotum during the testicular exam, and his taking of swabs from SH's anus when assessing the nature of SH's rash, were both health-related.
- [368] Of course, if SH consented to the touching based on fraudulent representations by Mr. Gaglardi as to his training or qualifications, then the consent would be legally ineffective pursuant to s. 265(3)(c). However, Mr. Gaglardi's evidence on this point, which was not really denied by SH, was that he made it clear that he was not a medical doctor and he could only perform the procedures in question as someone with knowledge of natural health. SH accepted that. Against this backdrop, the evidence does not satisfy me beyond a reasonable doubt that Mr. Gaglardi fraudulently represented the state of his qualifications

to SH. The issue here is not whether Mr. Gaglardi was legally qualified to practice medicine, or any other form of health profession, but whether he somehow misrepresented the state of his qualifications to SH. The burden is on the Crown to prove fraud vitiating consent beyond a reasonable doubt, and I am not satisfied that the burden has been met in relation to this particular count.

[369] Knowledge that the Complainant Did not Consent. In the circumstances of this case, I do not need to address this element of the offence.

[370] In the result, I find Mr. Gaglardi not guilty on count 19.

(5.2.12) Count 20 [AH's Allegations]

[371] On count 20, Mr. Gaglardi is alleged to have committed sexual assault against AH, between 14 September 2004 and 31 December 2007. The complainant AH was between 27 and 29 years old during the time period in issue. The Crown alleges that on three occasions, Mr. Gaglardi used a hand-held massage device to stimulate AH's scrotum and anus, on the floor in the counselling and treatment area in the basement of Mr. Gaglardi's house in Coquitlam. Mr. Gaglardi acknowledges that he provided counselling services to AH, which included some forms of touch therapy. Mr. Gaglardi further admits to using a hand-held massage device to perform what he referred to as external prostate release on AH, but he says it only occurred on two occasions, with AH's express consent, as a form of "energy work". Thus, the defence position on count 20 is that Mr. Gaglardi's physical contact with AH occurred during naturopathic counselling and treatment services to which AH consented.

[372] There is not a great deal of disagreement in the testimony in relation to count 20. Mr. Gaglardi admitted or did not dispute AH's evidence as to the circumstances in which they met, and the nature and duration of his counselling relationship with AH. Finally, Mr. Gaglardi admitted performing some kind of "external prostate release" on AH, using a handheld massage device.

[373] There are two somewhat subtle differences in the testimony on this count, and one much more significant point of departure.

[374] One of the subtler differences in the evidence had to do with exactly what Mr. Gaglardi said to AH about the prostate procedure before performing it. AH conceded that before undertaking the procedure, Mr. Gaglardi explained the rationale behind prostate massage, and also the nature of the procedure itself. However, AH testified that Mr. Gaglardi's description of the procedure was not particularly detailed or clear. By contrast, Mr. Gaglardi testified that he described the procedure to AH in considerable detail, and he made it clear to AH that the procedure was "untested", or "experimental", although Mr. Gaglardi felt it could work in AH's case. On this particular issue, I think it is most likely that Mr. Gaglardi did endeavor to give AH a thorough explanation of the prostate massage procedure before performing it, and AH may not have understood, or may no longer be able to recall the details.

- [375] Another subtle difference in the testimony had to do with what Mr. Gaglardi said about AH's state of dress during the procedures. AH testified that he was fully clothed for the first procedure, but that on the two subsequent instances he followed Mr. Gaglardi's advice and removed all of his clothes, possibly with the exception of his underwear. According to AH, Mr. Gaglardi told him the procedure was likely to be more effective with less clothing, so he agreed to take off his pants. By contrast, Mr. Gaglardi's account was that on the second of the two (not three) procedures, he told AH that the procedure would probably be more effective with less clothing, but that it was up to AH, and he could undress "to his level of comfort".
- [376] The more significant point of departure between the testimony of AH and that of Mr. Gaglardi related to how many times Mr. Gaglardi performed the prostate massage procedure on AH. AH testified that Mr. Gaglardi used the massage device on him three separate times. In cross-examination, AH testified that he was "pretty sure" that Mr. Gaglardi performed the procedure on him three times. By contrast, Mr. Gaglardi was adamant that he only performed the procedure on AH twice. As explained below, Mr. Gaglardi's assertion that he only did external prostate massage on AH twice was a central plank of his position in relation to this particular count.
- [377] Mr. Gaglardi appeared to have a relatively clear, case-specific, independent recollection of the events in issue. This makes some sense, because according to Mr. Gaglardi he only performed the prostate massage procedure on two or three clients over the course of his career. (Two of these being ML and AH). Thus, it appears that the procedure itself was memorable to Mr. Gaglardi, and for this reason it is understandable that he would have a case-specific recollection of the details. Having said this, there were some limits on Mr. Gaglardi's recall. For example, Mr. Gaglardi described two body positions for the prostate release procedure, but was unable to recall which of them he used when performing the procedure on AH on at least one of the two occasions.
- [378] Mr. Gaglardi testified that before performing the prostate release procedure on AH, he fully described the process to him and got AH to sign a written release or consent form. I got the impression from Mr. Gaglardi's testimony that this was a release form intended specifically for the prostate release procedure, as distinct from the more general consent and release forms that he had clients sign at the beginning of the counselling relationship. However, no signed release form from AH was ever presented in evidence. Mr. Gaglardi testified that while he kept records in relation to his counselling practice, some of the records were destroyed in error because of "our seven-year cycle". Mr. Gaglardi's testimony on this point was vague. He did not explain what he meant by "seven-year cycle", although this might have been an allusion to the requirement to keep business records for seven years. In any event, Mr. Gaglardi never explained which records or classes of records were destroyed, and he gave no further details as to the timing or the circumstances under which the records were destroyed. Mr. Gaglardi had at least one signed waiver form going back as far as 2006,[16] within the time frame of Mr. Gaglardi's dealings with AH.

- [379] Mr. Gaglardi claimed that "prostate release" or "prostate massage" was an "experimental" and potentially controversial technique. He said he would only use it if it were shown to produce results for a particular client. If he tried the procedure with a particular client twice without any clearly identifiable positive results, he would not be satisfied that the procedure was effective for that client, and he and the client "would move" on to other approaches. Mr. Gaglardi basically acknowledged that "prostate release" procedure was so unconventional that he could only justify its use as an "experimental" technique, and it would be difficult for him to explain why he would perform it on a client more than once or twice without a positive response or reaction from the client.
- [380] In light of Mr. Gaglardi's rationale for using the prostate procedure, his assertion that he only performed the procedure twice on AH was central to Mr. Gaglardi's position. To explain, if Mr. Gaglardi in fact performed the procedure more than twice, as alleged by AH, then it would be much more difficult for Mr. Gaglardi to maintain that it was done for some legitimate therapeutic purpose. There is no objective or independent evidence to support Mr. Gaglardi's assertion that he only performed the prostate procedure on AH twice. Of itself, this is no basis to find that Mr. Gaglardi was not being honest, but there are many other reasons to question the truthfulness of Mr. Gaglardi's trial testimony.
- [381] When questioned in cross-examination on his use of the "prostate release" or "prostate massage" technique, Mr. Gaglardi claimed that the device he used was a "professional prostate massager", but he was unable to identify the "profession" for which the device was intended or used. He said that is the way the device was described by the manufacturer, but neither the device itself nor any evidence about the manufacturer was tendered in evidence. Mr. Gaglardi was able to present in evidence records of other therapeutic devices that he acquired and used in his practice, specifically the NES equipment, but he had no such records for the so-called prostate massage device. Again, the absence of independent evidence as to the nature of the device or its intended uses is not of itself a basis for rejecting Mr. Gaglardi's testimony about the "prostate release" technique, but it certainly does not assist in resolving the questions around how many times Mr. Gaglardi performed the "prostate release" technique on AH, and whether the technique was conducted for a genuine health or therapeutic purpose.
- [382] Having canvassed the evidence on this count, my factual conclusions regarding the conduct in issue are as follows.
- [383] First, as to how Mr. Gaglardi explained the procedure to AH, I accept Mr. Gaglardi's testimony that he provided AH with a thorough explanation of the rationale for the prostate massage procedure, and the manner in which it would proceed. Although AH testified that Mr. Gaglardi did not clearly describe the procedure itself, AH's impression and recollection could easily be attributable to his failure to fully understand Mr. Gaglardi's stated rationale for the procedure (which might fairly be characterized as bizarre), or the precise manner in which it would be conducted (which again might be fairly regarded as bizarre) before the procedure got underway. I accept Mr. Gaglardi's evidence that he explained the procedure

to AH before conducting it, and that he made it clear to AH that he could withdraw his consent at any point during the process.

- [384] Second, as to what Mr. Gaglardi said to AH about his state of dress, in the end I find that nothing turns on the difference between the two accounts. On either version, Mr. Gaglardi conveyed to AH that the procedure would likely be more effective with less clothing. There is certainly no evidence that Mr. Gaglardi directed or compelled AH to remove his pants. For reasons that should become more apparent below, the fundamental issue is whether Mr. Gaglardi's remark about AH's state of dress was part of a procedure carried out for a genuine health or therapeutic purpose, or alternatively whether it was part of a guise or ploy giving Mr. Gaglardi the opportunity to engage in sexual touching of the complainant.
- [385] Third, on the question of how many prostate massage sessions Mr. Gaglardi had with AH, I must give the benefit of the doubt to Mr. Gaglardi. Mr. Gaglardi testified that he only performed the procedure on AH twice. Given the many issues with Mr. Gaglardi's credibility, I am inclined to view his testimony with a great deal of skepticism. Even still, I have some doubt, given AH's testimony that he was "pretty sure" there were three incidents. I took this to mean that AH was not entirely certain about this point. I fully appreciate that the Crown's burden of proof applies to the case as a whole, and not individual components of it, but considering the potential importance of this point to Mr. Gaglardi's position on count 20, I do not have full confidence in the accuracy of AH's recollection about how many times the procedure was conducted, given the lack of certainty in his testimony.
- [386] Based on those findings, my conclusions with respect to the five elements of the offence of sexual assault are as follows.
- [387] Touching. I have no difficulty concluding that Mr. Gaglardi used some kind of handheld device to touch what he referred to as the "acupressure point" between AH's scrotum and anus, on at least two occasions. On the first occasion, AH was fully clothed. On the subsequent occasion (at least one, but possibly two), AH was not wearing pants but was probably still wearing his underwear.
- [388] Intentional Touching. I am satisfied beyond a reasonable doubt that Mr. Gaglardi intentionally touched AH's body in the circumstances that I have just described.
- [389] Sexual Nature of the Touching. This is the most contentious element in relation to count 20. On the whole of the evidence, I am satisfied beyond a reasonable doubt that the touching was sexual in nature. I reach that conclusion considering the overall context of Mr. Gaglardi's counselling relationship with AH, the intimate nature of the touching and the particular area of the body that was touched, and the similar fact evidence. With regard to the overall context, AH was an immature man in early adulthood who sought counselling assistance from Mr. Gaglardi, a much older and more mature man, to improve his self-confidence. Over time, Mr. Gaglardi's counselling expanded to include "touch therapy", and in particular what Mr. Gaglardi referred to as "prostate release", a technique that could be fairly characterized as bizarre and physically intrusive. With regard to the particular area of

the body that was touched, it is a sensitive area between the scrotum and the anus, intended by Mr. Gaglardi to target the prostate. Mr. Gaglardi described it as the "prostate acupressure point". The prostate itself can be regarded as a sexual organ inasmuch as it has reproductive and sexual functions. I would consider it an intimate part of the male anatomy. Mr. Gaglardi's explanation for the potential health benefit of external prostate stimulation was, frankly, bizarre. I find that he used the theory of prostate release as a ruse or guise for intruding upon the sexual integrity of the complainant. In reaching that conclusion, I draw support from the similar fact evidence of the Coquitlam complainants, which included other instances where Mr. Gaglardi clearly used naturopathic techniques as a ploy for violating the sexual integrity of much younger male complainants. I find the similar fact testimony of the complainant ML to be particularly cogent in this regard. Mr. Gaglardi employed a form of the "prostate release" or "prostate massage" technique on ML, in circumstances that I found were clearly sexual. The nature of the technique that Mr. Gaglardi employed in AH's case was similar, though somewhat less intrusive. I find that in both cases, Mr. Gaglardi used the "prostate release" theory as a ploy to intrude on the complainant's sexual integrity.

- [390] Absence of Consent. I accept that prior to conducting the external prostate massage on AH, Mr. Gaglardi fully described the purported purpose of the technique, and the manner in which it would be performed. At the time, AH consented to the procedure. However, I am satisfied beyond a reasonable doubt that AH's consent was not valid, for three separate reasons, any one of which would be sufficient to render any consent legally ineffective. First, AH gave consent to what he was told was a health-related procedure, when in fact I have found that the procedure was sexual in nature. Thus, AH did not give informed consent as to the sexual nature of the conduct, as contemplated in *Hutchinson* at para. 55, 57-58. Second, I am satisfied beyond a reasonable doubt that AH's consent was vitiated by fraud per s. 265(3)(c), specifically fraud as to the true nature and purpose of the so-called prostate release procedure. I find that Mr. Gaglardi used his theory about "prostate release" as a guise to engage in sexual touching of the complainant. Third, I am satisfied beyond a reasonable doubt that AH was induced to consent by abuse of a position of trust per s. 273.1(2)(c). AH was a young adult, lacking self confidence. He sought assistance from Mr. Gaglardi, a much older and more mature man, to help him with this. AH met Mr. Gaglardi through his association with the Hillside Community Church, and AH retained and paid Mr. Gaglardi for "Christian counselling". AH signed a "commitment form" indicating that he would be committed to the counselling process. AH knew that Mr. Gaglardi used the name "Dr. Ray", and believed that he was a trained psychologist. Against that backdrop, AH trusted Mr. Gaglardi and believed he knew what he was doing. AH followed Mr. Gaglardi's advice to submit to the "prostate release" technique, believing it was proposed to improve his health. I find that Mr. Gaglardi abused his position of trust to obtain AH's consent for a procedure that was intrusive of AH's sexual integrity.

[391] Knowledge that the Complainant Did Not Consent. Having found that any consent AH gave was not fully informed as to the sexual nature of the conduct, vitiated by Mr. Gaglardi's fraud, and vitiated by Mr. Gaglardi's abuse of a position of trust, there is quite simply no scope for the defence of honest but mistaken belief in communicated consent.

[392] I find Mr. Gaglardi guilty on count 20.

(5.2.13) Count 22 [SJ's Allegations]

[393] On count 22, Mr. Gaglardi is alleged to have committed sexual assault against SJ, between 26 June 2013 and 31 December 2015. The complainant SJ was between 24 and 30 years old during the time period in issue. The Crown alleges that Mr. Gaglardi used a plastic device to touch or explore his rectum, ostensibly to check for sources of bleeding. This conduct is said to have occurred on a massage table, in the counselling and treatment area in the basement of Mr. Gaglardi's house in Coquitlam. Mr. Gaglardi acknowledges a counselling relationship with SJ, and admits to performing a rectal examination of SJ, to check for sources of rectal bleeding, but emphasizes that this was at SJ's request, and only after Mr. Gaglardi urged SJ to see a doctor. Thus, the defence position is that the conduct which is the subject of count 22 was non-sexual in nature and entirely consensual.

[394] There is no real conflict in the evidence in relation to this particular count. It is common ground that SJ saw Mr. Gaglardi for counselling and various forms of natural health therapy over the time period covered by count 22. The services Mr. Gaglardi provided included various forms of "touch therapy".

[395] The sole allegation of impropriety underlying count 22 pertains to an incident where Mr. Gaglardi examined SJ's rectum with some kind of device. SJ raised a concern with Mr. Gaglardi about blood coming from his rectum. Mr. Gaglardi presented him with "the option to go to the doctor, or the option of Mr. Gaglardi looking at it". SJ felt comfortable with Mr. Gaglardi, so he asked him to do it. SJ took his clothes off and laid on the massage table in Mr. Gaglardi's counselling area, with his knees on his elbows, and his buttocks tilted up. Mr. Gaglardi inserted some kind of a device into SJ's anus. SJ described it as a "claw" type of device. He could not remember whether the device touched his anus or not, but "there was some touching of the anus". The process lasted "at least a few minutes". Mr. Gaglardi's testimony about this incident was largely to the same effect, with two qualifications noted below.

[396] There was a minor point of departure as to who raised the topic of Mr. Gaglardi doing a rectal examination. Mr. Gaglardi testified that SJ asked him to do it, whereas SJ had no specific recollection of making such a request. However, SJ did give evidence that Mr. Gaglardi offered two options, one being for Mr. Gaglardi to do an examination and the other being for SJ to see a doctor. SJ's evidence was that he trusted Mr. Gaglardi and felt "more comfortable" getting him to do the examination. Mr. Gaglardi testified that he made it clear to SJ that he was not a doctor and that SJ should see a doctor, and SJ did not really dispute any of this in his trial testimony. SJ also accepted in his evidence that Mr. Gaglardi

fully explained the procedure before performing it, and that Mr. Gaglardi told him he could stop at any point where he felt uncomfortable.

- [397] The more substantive point of departure in the witness testimony related to the nature of the device Mr. Gaglardi used to perform the procedure. Mr. Gaglardi testified that he used an "anoscope", and described that device in quite some detail in his testimony. For his part, SJ did not recall Mr. Gaglardi using the term "anoscope", and SJ described the instrument as a "claw type device", which does not fit with Mr. Gaglardi's description of an "anoscope". I note that while Mr. Gaglardi claimed to have an "anoscope" device which he said was an excess piece left over from a cache of medical equipment to be shipped to Africa as part of a church missions project, there is no independent evidence that Mr. Gaglardi in fact possessed and used such a device. Considering the many other concerns about the credibility of Mr. Gaglardi's testimony, I am skeptical of his uncorroborated claim to have conducted the examination using an "anoscope".
- [398] Even on SJ's description of the implement that was inserted into his anus, I am not satisfied beyond a reasonable doubt that the Crown has proven all of the essential elements of sexual assault in relation to this count. In particular, I am left with a reasonable doubt on essential element (ii), proof that the touching was sexual in nature, and element (iii), proof that the complainant did not consent to the touching.
- [399] With regard to element (ii), proof that the touching was sexual in nature, I can accept that the touching in issue involved intrusive contact with a very private part of SJ's body. However, it is common ground between the witnesses that the impetus for the incident was a concern raised by SJ himself about possible rectal bleeding. It is quite clear that Mr. Gaglardi invited or urged SJ to see a doctor, but that SJ himself felt more comfortable with Mr. Gaglardi examining his anus. Although I do not accept Mr. Gaglardi's evidence that he used an "anoscope" to conduct the examination, this finding alone is not enough to alter my conclusion as to the nature and character of the touching, which could plausibly have been related to a health concern, initiated by SJ. Considering the burden of proof, I do not need to be satisfied that the touching was health-related. I only need to be left without a doubt that it could have been. I have such a doubt on the evidence in relation to this count. I have considered the similar fact evidence demonstrating that there were multiple instances in which Mr. Gaglardi presented various health procedures as ploys or guises for intruding upon the sexual integrity of a much younger male complainant. However, in this particular instance the health concern was actually raised by the complainant, and at the very least I am left with a reasonable doubt on the question of whether the touching was health-related, as opposed to being sexual in nature.
- [400] With regard to element (iii), proof that the complainant did not consent, I am also left with a reasonable doubt. SJ testified that if the conduct in question had not been for his health, he would not have consented to it. For the reasons expressed in the preceding paragraph, I find that there is at least some evidentiary basis for the notion that Mr. Gaglardi's examination of SJ's rectum was health-related. Again, I do not accept Mr. Gaglardi's

testimony about the nature of the device he used, and I am not left with a reasonable doubt on that question. Nonetheless, even on SJ's description of the implement Mr. Gaglardi inserted, the Crown has failed to prove that SJ did not consent to its use. I accept that if SJ consented to the touching based on fraudulent representations by Mr. Gaglardi as to the extent of his qualifications, then the consent would be legally ineffective pursuant to s. 265(3)(c). However, the evidence establishes that Mr. Gaglardi made it clear to SJ he was not a medical doctor, and SJ accepted that. Against this backdrop, the evidence does not satisfy me beyond a reasonable doubt that Mr. Gaglardi fraudulently represented the state of his qualifications. As in other counts involving allegations of this sort, the issue is not whether Mr. Gaglardi was legally qualified to practice medicine, or any other form of health profession, but whether he misrepresented the state of his qualifications to obtain consent. The burden is on the Crown to prove fraud vitiating consent beyond a reasonable doubt, and I am not satisfied that the burden has been met in relation to this particular count.

[401] I find Mr. Gaglardi not guilty on count 22.

(5.2.14) Count 23 [CP's Allegations]

[402] On Count 23, Mr. Gaglardi is alleged to have committed sexual assault against CP, between 1 January 2014 and 1 October 2014. The complainant CP was 26 years old at the time. The Crown alleges that Mr. Gaglardi touched CP inappropriately on two occasions, in the counselling or treatment area in the basement of Mr. Gaglardi's house in Coquitlam. In the first incident, Mr. Gaglardi is alleged to have touched CP's semi-erect penis, with a towel, ostensibly to adjust or move CP's penis out of the way during a massage using a hand-held energy device of some sort. In the second incident, Mr. Gaglardi is alleged to have touched CP's rectum with a Q-tip, ostensibly to take a sample from his rectum in connection with some kind of nutrient or nutritional analysis. Mr. Gaglardi acknowledges a long-time counselling relationship with CP. He does not dispute that his in-person counselling sessions with CP included touch therapy or "energy work", but maintains that any touching of CP's penis would have been unintentional, and incidental to the energy work. Mr. Gaglardi further admits to taking a swab from CP's rectum for the purposes of an experimental gut health analysis, although the sample was later determined to be unsuitable for laboratory testing. The defence position on this count is therefore that the conduct in issue was non- sexual in nature and entirely consensual.

[403] CP's testimony, which I accept, was that he was looking for a counsellor and was referred to Mr. Gaglardi through a friend. I find that Mr. Gaglardi was clearly mistaken about having met CP at Hillside Community Church. There was no suggestion in CP's evidence that he ever attended the church. I find CP's evidence on this point to be reliable and accurate. It only makes sense that CP would have a clear recollection of the circumstances in which he came to know Mr. Gaglardi. Also CP was able to give very specific dates with respect to the timeline of his dealings with Mr. Gaglardi. I expect that he was able to do so because he had the benefit of emails or other computer records, considering that most of his counselling sessions with Mr. Gaglardi were on line. By contrast, Mr. Gaglardi was clearly going by

memory in recounting his dealings with CP, and in this instance I have no difficulty concluding that his memory was faulty as to how he first came to know CP.

- [404] Apart from this discrepancy, which is not particularly material, there was a fair amount of common ground in the witness testimony as to the nature of Mr. Gaglardi's relationship with CP. Both Mr. Gaglardi and CP gave testimony to the same effect regarding the overall nature and course of Mr. Gaglardi's counselling services. It was common ground in the testimony of both witnesses that Mr. Gaglardi counselled CP for three or four years, that the vast majority of the sessions consisted of "talk therapy" over the internet, and that there were four or five in-person sessions. CP's recollection was that he had a total of four in-person sessions with Mr. Gaglardi, in a room with a couch and several chairs in the basement of Mr. Gaglardi's house in Coquitlam. Mr. Gaglardi did not really dispute this, testifying that he believed they had four or five such sessions. Nothing turns on this, but again I find CP's account to be more reliable, considering the specificity of his evidence about the specific dates of the in-person meetings, none of which was challenged on cross-examination.
- [405] I will briefly summarize the two incidents of alleged inappropriate touching as alleged by CP, which I would describe in shorthand as the massage incident and the anal swab incident. I should note that Mr. Gaglardi did not expressly deny either incident. However, there are material differences between the accounts of both incidents given by CP on the one hand, and Mr. Gaglardi on the other hand. In view of the conflict in the evidence, it is necessary to assess the credibility and reliability of the witness testimony, keeping in mind the Crown's overall burden to prove its case beyond a reasonable doubt, and the principles set out in W.(D.).
- [406] I will begin by reviewing CP's testimony with respect to the two incidents that are the subject of count 23.
- [407] CP testified that the massage incident occurred during the first in-person session, on 2 May 2014. In the course of about 60 minutes of talk therapy, Mr. Gaglardi suggested that CP might benefit from something called "energy meridian electromagnetic treatment". CP agreed to try it. In cross-examination, CP acknowledged that Mr. Gaglardi told him that if at any point he became uncomfortable, he could say so, and Mr. Gaglardi would stop the treatment. Mr. Gaglardi got CP to remove his clothes and lay on a massage table. In cross-examination, CP accepted that Mr. Gaglardi told him to "undress to his level of comfort", and left the room while CP did so. Mr. Gaglardi proceeded to use a hand-held device of some kind, which he ran over CP's body. In cross-examination, CP agreed that Mr. Gaglardi used two separate NES "biofeedback" devices, one being a hand-held device like a TV remote, and the other being a mouse-like device that CP placed his hand on and then received biofeedback. CP testified that after the NES treatments, Mr. Gaglardi went on to give CP a full body massage, using oil, his bare hands, and a handheld massage device. At one point Mr. Gaglardi asked CP to roll over from his stomach onto his back. CP had an erection. Mr. Gaglardi used a towel to push on CP's penis, saying, "You are not worried

about this erection, are you?". CP testified that he was shocked and did not know what to do. Mr. Gaglardi continued with the massage. In cross-examination, CP denied that Mr. Gaglardi picked up the drape and placed it at eye level while CP rolled over. CP rejected the suggestion that Mr. Gaglardi touched his penis while adjusting the drape.

- [408] CP testified that the second in-person counselling session took place on 16 July 2014. It once again began with "talk therapy", in the course of which he and Mr. Gaglardi discussed fitness and nutrition, and Mr. Gaglardi offered several times to take some samples and run some tests. In cross-examination, CP agreed that Mr. Gaglardi might have said something about "microbiome analysis". CP was not really keen on it, but agreed because Mr. Gaglardi told him he had "three doctorates" and coached professional athletes. Mr. Gaglardi said he had a friend who could test the sample in a lab. CP once again got undressed and got onto the massage table. Mr. Gaglardi then returned to the room and instructed CP to lay on his side with his knees pulled up to his chest. Mr. Gaglardi then rubbed a Q-tip around CP's rectum "for a few seconds". In cross-examination, CP acknowledged that Mr. Gaglardi performed the swabbing procedure as he had earlier described it to CP. A few weeks later, during a counselling session over the internet, Mr. Gaglardi told CP that the sample did not come out right and he was unable to use it. Mr. Gaglardi also referenced a urine sample, but CP had never provided one. Mr. Gaglardi sent CP an email with some "preliminary results", which consisted of generic health information. He did not send CP any kind of "lab report". CP testified that the entire incident was "odd", but at the time he had respect for Mr. Gaglardi's education and qualifications. He said that if the anal swabbing had not been done for his health, he would not have consented to it.
- [409] My impression is that CP gave a reliable, credible account of both incidents. He appeared to have a clear recollection of both events. In closing submissions, defence counsel argued that CP did not give a lot of detail about how Mr. Gaglardi touched him. I disagree. I find that CP's evidence on how the incidents unfolded, his body position, and the manner in which Mr. Gaglardi touched his body was granular and quite precise. CP freely and fairly conceded a number of additional details in cross-examination, including the details about the two NES devices that Mr. Gaglardi had described in his evidence. At the same time, CP clearly did not accept every suggestion that was put to him in cross-examination. He stood his ground on assertions with which he did not agree. There were no internal inconsistencies in CP's account, either in direct examination or cross-examination.
- [410] Defence counsel also argued that CP's testimony was inconsistent with the testimony of both Mr. Gaglardi and other complainants as to the manner in which Mr. Gaglardi conducted his "energy work" or "massage therapy" techniques. I agree with counsel that CP's testimony was inconsistent with the evidence of Mr. Gaglardi. As to the alleged inconsistency with the testimony of other complainants, no clear examples come to mind. In any event, no other complainants were present for either of the two specific incidents experienced by CP. In my view, the probative value of the similar fact evidence in relation to the Coquitlam counts has to do with the contextual similarities, in terms of the age

difference between the various complainants and the accused, the nature of the relationships, and the use of various schemes or ploys to engage in intimate touching of the complainant's genitalia. I admitted the similar fact evidence for certain limited purposes, as discussed earlier in my reasons.[17] I accept that the defence is free to point to any evidence in the record in this trial, including the testimony of other complainants whose description of Mr. Gaglardi's conduct in relation to them is somehow dissimilar to or inconsistent with the testimony of this particular complainant, CP. However, I do not consider this argument persuasive in assessing the credibility of CP's allegations, because I find CP's detailed account of the manner in which he was touched to be compelling. CP stood up well to cross-examination. Even assuming Mr. Gaglardi had some kind of standard procedure for massage or "energy work", the fact is that he would have been free to depart from his own self-professed standard procedure on any occasion where he chose to do so.

- [411] I turn next to a review of Mr. Gaglardi's testimony in relation to the two incidents which form the subject matter of count 23.
- [412] With regard to CP's allegation that Mr. Gaglardi touched his erect penis during massage or "energy work", Mr. Gaglardi testified that all of the sessions tended to "meld together", so he had no specific recollection of which occasion it was when this incident occurred. This evidence suggests that Mr. Gaglardi did not have a specific recollection of the incident, which tends to detract from the reliability of his evidence on this point.
- [413] Mr. Gaglardi testified at length about the steps he took to ensure that all parts of the client's body except the area he was "working on" would be covered with a drape. Mr. Gaglardi claimed that this is how he was "taught", but he never explained in his testimony who taught him this practice. He certainly did not have any form of professional certification as a massage therapist.
- [414] Mr. Gaglardi explained how he would lift the drape up to eye level when the client had to roll over or change positions, presumably to ensure a maximum level of privacy for the client. Mr. Gaglardi said that in CP's case he did not see that CP's penis was erect or partially erect, and Mr. Gaglardi's hand "would have touched" it, unintentionally, while adjusting the drape. Mr. Gaglardi's account conflicts with the testimony of CP, who claimed that Mr. Gaglardi used a towel to push on his penis, while stating "You are not worried about this erection are you?" I do not find Mr. Gaglardi's account to be credible. In addition to the broader concerns about Mr. Gaglardi's credibility as set out in other parts of these reasons, I find that his account of this particular incident does not ring true for several reasons.
- [415] First, I find based on the manner in which Mr. Gaglardi described what happened that he based his testimony on general practices, rather than a specific recollection of the event. While in his testimony in chief Mr. Gaglardi said that there was only one instance where he touched CP's penis, and he went on to describe the circumstances in which it occurred, when he was cross-examined on the details, Mr. Gaglardi reverted to saying that "if" he did touch CP's penis, it was not intentional. This was a subtle shift in Mr. Gaglardi's position,

from admitting to touching CP's penis, to saying in cross examination that "if" he touched CP's penis, it was unintentional. Although the shift in position was subtle, it revealed Mr. Gaglardi's true state of recollection, or rather lack thereof. I find that Mr. Gaglardi did not have a specific recollection of an occasion when he touched CP's penis. In other words, to the extent that Mr. Gaglardi suggested in his testimony that he had a specific recollection of exactly what occurred on this particular occasion, I do not accept it.

- [416] Second, I find that Mr. Gaglardi's effort to explain what occurred as an accidental touching while he was adjusting the drape to be an attempt to explain away any contact with CP's sexual organs, without actually addressing the particulars of CP's allegation, namely that Mr. Gaglardi pushed or moved CP's penis with a towel, while commenting on CP having an erection. Mr. Gaglardi's explanation of the touching quite simply does not fit with what CP says happened. I find that Mr. Gaglardi gave this evidence in an attempt to make a tactical admission about making physical contact with CP's penis, in a manner that would allow him to deny that the touching was intentional.
- [417] Turning to the incident in which Mr. Gaglardi administered an anal swab to collect a sample for a "microbiome" analysis, there is a fair amount of common ground between the witness accounts of what occurred. CP testified that he was not particularly keen on or interested in the test, but he agreed to do it on Mr. Gaglardi's recommendation, taking into account that Mr. Gaglardi claimed to have "three doctorates" and also had experience with advising professional athletes. For his part, Mr. Gaglardi testified that CP was interested in the microbiome analysis, but was not "enthralled" with the idea of Mr. Gaglardi swabbing his anus to obtain a fecal sample. Mr. Gaglardi testified that when he raised the topic a second time at the end of the session, CP was "not thrilled about it, but was willing to give it a go". In this context, CP gave Mr. Gaglardi permission to take a sample or swab from around CP's anus.
- [418] There is also common ground between the witnesses that Mr. Gaglardi fully described the steps he would take in swabbing CP's anus, and that Mr. Gaglardi followed the procedure that he actually described to CP. Mr. Gaglardi testified that he swabbed "around the anus and sphincter". He added that "as a natural health person", he "would not go further into the rectum". I find that assertion to be contrary to Mr. Gaglardi's admitted conduct in inserting his finger into ML's rectum, and in inserting what he said was an "anoscope" into SJ's rectum. In cross-examination, Mr. Gaglardi tried to explain this discrepancy in his evidence by asserting that the other two instances did not involve inserting a "stick" into the anus, but I did not understand Mr. Gaglardi to offer that rationale as part of his original assertion that as a "natural health person", he would not "go further into the rectum". At the very least, this assertion was misleading, and I find that it was intentionally so.
- [419] With regard to the results from the swab, Mr. Gaglardi admitted that he never submitted the sample for analysis, and never provided CP with any lab results or reports in relation to the sample. He merely sent CP some general information about gut health.

- [420] That brings me to Mr. Gaglardi's rationale for taking an anal swab as a means of conducting a "microbiome analysis". Mr. Gaglardi testified at length about his dealings with a company that was in the process of developing a protocol for microbiome analysis using samples of fecal matter or stool. Mr. Gaglardi testified that the company was interested in developing a database of samples and test results, and the company sent Mr. Gaglardi some free test kits for that purpose. Mr. Gaglardi did not say the name of the company involved, and did not present any independent evidence of either the company or its microbiome analysis program.
- [421] Even leaving aside concerns as to the legitimacy of the company or its burgeoning "microbiome analysis" technology, the bigger problem with Mr. Gaglardi's testimony on this topic is his claim that it was necessary to personally collect a sample of fecal material from CP's anus for use in the testing procedure. Mr. Gaglardi testified that after inserting the swab into CP's anus to collect a sample, he realized there was "not enough fecal material to collect", so it did not appear to him that the sample would be useable. The idea that there was "not enough fecal material to collect" implies that the purpose of the procedure was to obtain a sample of fecal material, i.e. a stool sample. Mr. Gaglardi never explained why he could not have simply gotten CP to provide his own sample of feces or stool for use in the proposed "microbiome analysis", without Mr. Gaglardi having to use a Q-tip to swab in and around CP's anus. This gap in the evidence leads me to conclude that Mr. Gaglardi's testimony on this topic was nothing more than an extravagant justification for a sampling procedure that was entirely unnecessary for its stated purpose, that is, to obtain a sample of CP's fecal material.
- [422] Weighing up all of the evidence in relation to count 23, my factual conclusions regarding the two core allegations are as follows.
- [423] First, I do not accept Mr. Gaglardi's testimony about his actions during the massage incident. More specifically, I do not accept Mr. Gaglardi's claim that, if he touched CP's penis, the touching occurred unintentionally in the course of moving a drape. Nor do I accept Mr. Gaglardi's testimony with respect to the stated rationale or purpose for the anal swabbing incident. Mr. Gaglardi testified that he took a swab from CP's anus to obtain a sample for a microbiome analysis. I do not accept Mr. Gaglardi's evidence that this was the true reason for taking the anal swab.
- [424] Second, in light of the many inconsistencies and flaws in Mr. Gaglardi's testimony, I do not find that his evidence raises a reasonable doubt as to what occurred in relation to either the massage incident or the anal swabbing incident. With regard to the massage incident, I have considered Mr. Gaglardi's testimony about his conduct in relation to this particular allegation in conjunction with his more general testimony about his volume of clients and the possibility of inadvertent or unintentional touching of a client's genitals during "massage" or "energy work", but I do not find that evidence convincing, and it does not raise a reasonable doubt, either on its own or in conjunction with all the other evidence.

- [425] Third, I accept CP's account of both the massage incident and the anal swabbing incident. I find CP's account of both incidents to be reliable, and credible. I am satisfied beyond a reasonable doubt that both incidents occurred as CP described them.
- [426] Based on those findings, my conclusions with respect to the five elements of the offence of sexual assault are as follows.
- [427] Touching. I have no difficulty concluding that Mr. Gaglardi touched CP's erect penis with a towel in the massage incident, and touched CP's anus by inserting a Q-tip into it in the swabbing incident.
- [428] Intentional Touching. In relation to both incidents, I am satisfied beyond a reasonable doubt that Mr. Gaglardi's touching of CP's body was intentional. In particular:
- (a) With regard to the massage incident, on CP's account, Mr. Gaglardi noted that CP had an erection, commented on it, and touched it with a towel. The very description of the act itself and the accompanying statement by Mr. Gaglardi is a compelling basis on which to infer that Mr. Gaglardi's conduct was intentional. That conclusion is also supported by the similar fact evidence, indicating that on multiple instances Mr. Gaglardi engaged in the intentional touching of genitalia or sexual organs of much younger male complainants, in the context of performing so-called natural health therapeutic techniques.
 - (b) With regard to the anal swabbing incident. Mr. Gaglardi effectively admitted that he intentionally inserted a Q-tip into CP's anus for the ostensible purpose of collecting a fecal sample. While I did not accept Mr. Gaglardi's evidence as to the stated purpose of the swabbing, I do accept his admission that the swabbing was intentional. Even without Mr. Gaglardi's evidence, there is an overwhelming inference that Mr. Gaglardi's conduct in inserting a Q-tip into CP's anus was intentional.
- [429] Sexual Nature of the Touching. I am satisfied beyond a reasonable doubt that, in relation to both incidents, Mr. Gaglardi's touching of CP's body was sexual in nature. In particular:
- (a) In relation to the massage incident, I am satisfied that when all the circumstances of the touching are assessed objectively, the touching of CP's erect penis with a towel, while remarking on CP's erection, was overtly sexual. Although it is not necessary to show that the accused subjectively intended the touching to be sexual, positive evidence of a sexual intent or sexual purpose can be a relevant aspect of all the circumstances informing the objective characterization of the touching. In this case, I infer that the touching was intended to be sexual. That inference is based upon the nature of the touching on this occasion, Mr. Gaglardi's utterance at the time, and the surrounding circumstances, including the age difference between the accused and the complainant, the nature of their relationship, and the similar fact evidence. The similar fact evidence is significant because it shows that on multiple instances Mr. Gaglardi engaged in the intentional touching of genitalia or sexual organs of much younger male complainants, in the context of performing natural health or alternative health therapeutic techniques.

(b) In relation to the anal swabbing incident, I am also satisfied beyond a reasonable doubt that Mr. Gaglardi's touching of CP by inserting a Q-tip into his anus was sexual in nature. I consider it relevant that the touching involved an intimate part of the complainant's anatomy. I reject Mr. Gaglardi's testimony that the touching was undertaken for the purposes of obtaining a sample for a "microbiome analysis", and I find that this testimony does not raise a reasonable doubt. I find that in fact, Mr. Gaglardi's proposed microbiome analysis test was a ruse to allow him to intrude upon the sexual integrity of the complainant. The fact is that CP was never shown any result from a fecal sample analysis. Perhaps just as importantly, the taking of an anal swab would appear to have been completely unnecessary, and unduly intrusive, if the objective was to obtain a sample of CP's feces or stool. CP could easily have provided his own sample without subjecting himself to Mr. Gaglardi's swabbing procedure. I draw further support for my conclusion on this issue from the similar fact evidence of the Coquitlam complainants, which included multiple other instances where Mr. Gaglardi used naturopathic techniques as ploys for violating the sexual integrity of younger, impressionable male complainants. In particular, I have considered the evidence of GA (conducting a so-called body scent analysis study), ML (internal prostate stimulation ostensibly to release emotion, and collection of a semen sample ostensibly to conduct some kind of drug or nutritional testing), and AH (conducting external prostate stimulation, ostensibly to release emotion).

[430] Absence of Consent. I am satisfied beyond a reasonable doubt that CP did not consent to either form of touching. In particular:

- (a) With respect to the massage incident, there is no evidence that CP consented to Mr. Gaglardi touching his erect penis, and I am satisfied beyond a reasonable doubt that CP did not give any such consent. He consented to some kind of body scanning exercise, and to a massage, but not to Mr. Gaglardi intentionally touching his erect penis. Even if there was consent for some of the conduct leading up to the touching of the penis, it did not extend to the sexual nature of the act in question. The fact that CP signed a consent form that referred to the possibility of arousal did not mean that he consented to Mr. Gaglardi to intentionally touch his erect penis, as a sexual act.
- (b) With respect to the anal swabbing incident, CP testified that he would not have consented to it if it were not for his health. CP also testified that Mr. Gaglardi told him he had "three doctorates", and coached professional athletes, and he had respect for Mr. Gaglardi's education and qualifications. On these facts, I conclude that any consent CP gave for the anal swabbing procedure was invalid for three reasons, any one of which would be enough to satisfy this element of the offence. First, CP submitted to the swabbing procedure to provide a sample for what he was told was a health and nutrition analysis, when in fact I have found that the procedure was sexual in nature. Thus, CP did not give informed consent as to the sexual nature of the conduct. Second, CP's consent was vitiated by fraud per s. 265(3)(c), specifically fraud as to the true nature and purpose of the anal swabbing procedure. I find that Mr. Gaglardi used the so-called microbiome analysis as a ploy or guise

to engage in sexual touching of the complainant. Third, CP was induced to consent by abuse of a position of trust per s. 273.1(2)(c). CP was engaged in a counselling relationship with Mr. Gaglardi, and had "respect for his education and qualifications". CP trusted Mr. Gaglardi and believed he knew what he was doing. CP followed Mr. Gaglardi's advice to submit to the anal swabbing procedure, believing it was being employed to improve his health. I find that Mr. Gaglardi abused his position of trust to obtain CP's consent for a procedure that was intrusive of CP's sexual integrity.

[431] Knowledge that the Complainant Did not Consent. Having found that any consent CP gave was not fully informed as to the sexual nature of the conduct, vitiated by Mr. Gaglardi's fraud, and vitiated by Mr. Gaglardi's abuse of a position of trust, there is quite simply no scope for the defence of honest but mistaken belief in communicated consent.

[432] I find Mr. Gaglardi guilty on count 23.

(5.2.15) Count 25 [JK's Allegation]

[433] On count 25, it is alleged that Mr. Gaglardi committed sexual assault against JK, between 1 December 2007 and 31 December 2007. The complainant JK was an adult at the time, although there is no specific evidence in the record as to his age. The Crown alleges that Mr. Gaglardi touched JK inappropriately on a single occasion, specifically by touching JK's scrotum with his bare hands, while JK was fully nude, during a massage on a massage table in the counselling area in the basement of Mr. Gaglardi's house in Coquitlam. Mr. Gaglardi acknowledges providing counselling services to JK, and that the services included touch therapy or "energy work". He says that to the extent that there was any touching of JK's scrotum, it would have been brief, accidental, and unintentional. Thus, the defence position on count 25 is that Mr. Gaglardi's physical contact with JK occurred during counselling and naturopathic treatment services to which JK consented, and the Crown has failed to prove that there was any intentional touching of a sexual nature.

[434] JK recounted how he met Mr. Gaglardi at Hillside Community Church, not as a parishioner, but rather as a result of some computer technician work that JK had done for the church. JK understood Mr. Gaglardi to be a senior member of the church, a church elder. Mr. Gaglardi presented himself as a person with qualifications and experience in counselling, and JK decided to attend counselling sessions with Mr. Gaglardi.

[435] Mr. Gaglardi's evidence was more or less consistent with JK's summary of the origins and nature of their relationship. Mr. Gaglardi had a specific recollection of interacting with JK in the context of JK's work installing a new computer system at the Hillside Community Church. Mr. Gaglardi admitted that he later established a counselling relationship with JK, which started with talk therapy and later expanded to include "touch therapy" or "body work".

- [436] With regard to payment for the counselling, JK recounted how Mr. Gaglardi told him he was doing a study, and that the counselling sessions would be free. JK recalled that Mr. Gaglardi got him to sign some kind of a release form relating to the study. In cross-examination, JK acknowledged that Mr. Gaglardi may have said something about a non-profit organization, but JK denied that Mr. Gaglardi told him the fee for the counselling would be by donation, maintaining that Mr. Gaglardi claimed to be working on a study and JK's counselling would be free if he participated. In his testimony, Mr. Gaglardi did not say anything one way or the other about whether he charged JK any fees for his counselling services.
- [437] JK testified that the counselling began with talk therapy, but progressed quickly to "touch therapy". In cross-examination, JK agreed that at his first session, Mr. Gaglardi told him about various forms of touch therapy and gave JK some literature to read. For his part, Mr. Gaglardi claimed that the "first few sessions" consisted entirely of talk, in which JK told Mr. Gaglardi about his past trauma and experiences, and Mr. Gaglardi explained his "counselling philosophy and methods". I infer from the evidence as a whole that Mr. Gaglardi's reference to his "philosophy and methods" included his theories on touch therapy, along with a discussion about some of the techniques that he used during "touch therapy". Taking the testimony of JK and Mr. Gaglardi together, the bottom line is that either in the first session, or in the first few sessions, Mr. Gaglardi introduced the idea of touch therapy to JK. JK testified that he was "willing to try" touch therapy because he thought it might help him work through his trauma.
- [438] There is a conflict in the evidence as to how the touch therapy itself was conducted. JK testified that the first touch therapy session began with Mr. Gaglardi instructing him to remove all of his clothes and lie on the floor, on top of a sheet. Mr. Gaglardi also said not to worry if he got an erection as that was a "normal" part of the treatment. In cross-examination, JK agreed that Mr. Gaglardi left the room while he got undressed. JK denied that there was a sheet covering his body, maintaining that Mr. Gaglardi had him lay on top of a sheet, completely naked. For his part, Mr. Gaglardi denied telling JK that it was normal to get an erection, and denied asking JK to lie on a sheet, naked, with nothing covering his body.
- [439] JK described the kind of contact Mr. Gaglardi had with him during the touch therapy sessions. He said Mr. Gaglardi would rub his bare hands all over JK's body, including his back, legs, and his inner thigh up to his scrotum. Mr. Gaglardi did not use any gloves, oil, or lotion. JK testified that the sessions got more and more "sensual" and "intimate". JK's impression was that over progressive sessions Mr. Gaglardi was getting closer and closer to touching his genitals. In the final touch therapy session, while massaging JK's inner thigh, Mr. Gaglardi touched JK's scrotum. JK described it as a brushing motion, in which the back of Mr. Gaglardi's hand touched JK's scrotum. JK did not consider the contact to be momentary, estimating that Mr. Gaglardi's hand was touching his scrotum for "about 30 seconds". JK told Mr. Gaglardi he was uncomfortable, and Mr. Gaglardi appeared to get

upset.

- [440] Mr. Gaglardi denied that the touch therapy sessions were conducted in the manner alleged by JK. He testified that in introducing touch therapy, he told JK about the possibility of arousal, but denied telling JK that it would be "normal" for JK to get an erection during "energy work". He claimed that he conducted the massage on a massage table, and that JK's body was covered by a drape throughout. Mr. Gaglardi's testimony about the touching of JK's scrotum was confusing owing to contradictory evidence concerning the state of his recollection. He denied intentionally touching JK's scrotum.
- [441] JK testified that after the touching incident, he concluded that he and Mr. Gaglardi did not see eye to eye regarding his treatment needs. He may have gone back for a few more counselling sessions but the relationship appeared to JK to be strained because he did not want to do "naked massage". Eventually, JK just stopped attending counselling. He corresponded with Mr. Gaglardi via email or phone a few more times, but the counselling had come to an end. Mr. Gaglardi's evidence regarding the termination of the counselling relationship was more or less the same. He testified that when JK did not contact him to schedule more sessions, the counselling stopped.
- [442] JK testified that in the course of their sessions, Mr. Gaglardi frequently talked about topics that were sexual in nature. JK recounted one occasion when he mentioned that he had a strong gag reflex, and Mr. Gaglardi responded by suggesting that it could be attributed to someone putting a penis down his throat at a young age. JK's response was that nothing like that ever happened to him. Mr. Gaglardi's evidence about this particular issue was somewhat confusing, but his principal point appeared to be that if anything about a gag reflex was discussed, JK was the one who raised it.
- [443] Given the conflict in the testimony, particularly the evidence about what occurred during the "touch therapy" or "energy work" sessions, it is necessary to assess the evidence taking into account the Crown's ultimate burden to prove its case, and the principles discussed in W.(D.).
- [444] I will start the analysis with an assessment of JK's testimony. I find JK to be a reliable and credible witness. JK's account of the context in which he came to know Mr. Gaglardi is similar to that furnished by Mr. Gaglardi himself. JK's description of the touch therapy sessions in general and the particular incident in which Mr. Gaglardi touched his scrotum was coherent and reasonably specific. He was able to articulate the nature of the inappropriate touching, the part of Mr. Gaglardi's hand that was used in the touching, and the estimated duration of the touch. JK freely acknowledged certain additional details in cross-examination, but stood his ground on points that he did not accept or did not accord with his recollection. JK acknowledged that he could not remember certain things. There were no material inconsistencies in his testimony, either in chief, or in cross-examination.

- [445] In closing submissions, defence counsel pointed to JK's testimony asserting a belief that Mr. Gaglardi was a "certified counsellor". Defence counsel submitted that counselling is not regulated under the Health Professions Act, R.S.B.C. 1996, c. 183, and Mr. Gaglardi's written materials do not suggest that he is licensed or certified in any way. To the extent that counsel relies on any of this to suggest an inconsistency in JK's testimony, in my view it has negligible weight. JK may not have had a complete understanding of the applicable regulatory framework or the precise details of Mr. Gaglardi's qualifications. One of Mr. Gaglardi's consent documents describes him as a member of the "International Counselling and Life Coaching Association", which in a footnote to the form is said to be registered in the City of Coquitlam, incorporated under the Societies Act, and a member of, inter alia, the "International Society for the Study of Trauma and Dissociation". It is not entirely clear to me that JK saw this particular form, but JK did testify that he saw a number of certificates on the wall in Mr. Gaglardi's office. In this context, little or nothing turns on JK's asserted belief that Mr. Gaglardi was a "certified counsellor". It does not shed any light on either the credibility or reliability of JK's account of his interactions with Mr. Gaglardi in the course of the "touch therapy", which is the focus of count 25.
- [446] Defence counsel also submitted that JK's description of the manner in which Mr. Gaglardi conducted his "touch therapy", or "energy work", or massage, was different from and conflicted with the testimony of both Mr. Gaglardi and certain other complainants. Counsel pointed to the testimony of other complainants who said that Mr. Gaglardi used lotion or oil during massage. I accept that JK's testimony conflicts with the testimony of Mr. Gaglardi, who claimed that he invariably used "lotion" or "oil" during massage or "energy work". With regard to independent evidence on this point, there was testimony from at least two other complainants (CP and SH), that Mr. Gaglardi used oil or lotion on them during "energy work" massage. There is also testimony from another complainant (JU) that Mr. Gaglardi used oil during a candle-lit massage, but not during "body work" in front of a mirror. I am inclined to give defence counsel's submission on this point some weight, however I am not convinced that the evidence of the other complainants supports an inference that Mr. Gaglardi invariably used oil or lotion during massage. The most that can be said is that this evidence bears to some extent on the credibility and reliability of JK's assertion that Mr. Gaglardi massaged him with bare hands and no oil or lotion, when in fact Mr. Gaglardi used oil or lotion with at least two other complainants when using similar touch therapy techniques.
- [447] Defence counsel further submitted in closing argument that JK's testimony about Mr. Gaglardi's touching becoming increasingly sensual or intimate was not borne out by the evidence. The only detail JK gave about inappropriate touching was the incident in which Mr. Gaglardi allegedly touched his scrotum. Against this backdrop, counsel submitted that JK's assertion about the touching becoming increasingly sensual or intimate reflected poorly on JK's credibility. I accept the notion that JK's assertion about the increasing intimacy of Mr. Gaglardi's touching was devoid of any detail or facts to compare the degree of intrusiveness over time. In my view, this goes to the reliability of that particular

assertion, since there were no details to support it. However, I do not agree that this assertion reflects unfavourably on the overall credibility of JK's account. The fact that JK made a statement but failed to give further details, without actually being asked to furnish further details, does not suggest to me that JK was being dishonest. It merely indicates to me that this particular assertion, about the touching getting progressively more "intimate", is not a particularly compelling piece of evidence.

[448] Next, I turn to a consideration of the credibility and reliability of Mr. Gaglardi's testimony in relation to count 25.

[449] In cross-examination, Mr. Gaglardi initially denied any recollection of a discussion about JK's gag reflex in the course of the talk therapy. Mr. Gaglardi then added that he did recall JK had "an issue" with his gag reflex, but did not recall suggesting to JK that it might have been a consequence of someone putting a penis in JK's mouth when he was young. Mr. Gaglardi did not expressly deny making the comment, explaining that "if it was discussed", it would not have come up "out of thin air". Rather, it would have come up while he and JK were discussing sexual issues during talk therapy. In the result, Mr. Gaglardi did not expressly deny making the comment, and I find that he did in fact make it. Mr. Gaglardi admitted being aware that JK had a "gag reflex" issue. A suggestion by Mr. Gaglardi that JK's gag reflex could be a product of some childhood sexual experience is entirely consistent with the views expressed by Mr. Gaglardi in his written waiver and consent forms, which make extensive reference to theories on physical effects of repressed childhood experiences and "past trauma". For example, one passage in Mr. Gaglardi's written waiver and consent form asserts that "[t]he truth about our childhood is stored up in our body, and although we can repress it, we can never alter it", such that the body "will not stop tormenting us until we stop evading the truth".

[450] With regard to the introduction of "touch therapy" to JK, Mr. Gaglardi testified about the process he followed in describing the nature and purpose of touch therapy in conditional language, suggesting to me that he had no independent recollection of exactly what he said to JK. This is not particularly surprising considering the passage of time and the number of clients that Mr. Gaglardi had over many years. Nonetheless, I accept that Mr. Gaglardi did relate to JK the purported rationale or theory behind his use of "touch therapy", and the techniques that would be involved, including "energy work", in other words massage. I accept that Mr. Gaglardi expressly advised JK of the possibility of sexual arousal in the course of this treatment. Mr. Gaglardi testified that he "would have" described it as a mere possibility, while JK claimed that Mr. Gaglardi told him it would be a "normal" part of the treatment. I do not find the discrepancy between the two accounts to be material to JK's specific allegation, which did not involve his penis or an erection.

[451] With regard to JK's allegation that Mr. Gaglardi touched his scrotum in the course of an "energy work" session, Mr. Gaglardi testified that he could recall that after explaining the disrobing process to JK, he exited the room to allow JK to disrobe, and upon his return JK was "on the massage table", covered by a drape. In his testimony in chief, Mr. Gaglardi

asserted that this was his "full recollection" and that he had "no other recollection" of anything that occurred during "energy work" with JK. When asked specifically by his counsel whether he recalled touching JK's scrotum, Mr. Gaglardi responded that he had "no recollection" of that occurring. He claimed that JK had "a fair amount of tension" in his groin area, and he "would have worked in that area". He said that if any contact occurred, it would have been incidental and unintentional. Mr. Gaglardi added that the massage lotion "made his movements a bit imprecise". When pressed on the details in cross-examination, Mr. Gaglardi asserted that his "memory" was that he was using lotion, that he was "working in an area" when the "drape slipped", and that when he tried to fix it, his hand "could have connected with [JK's] genitalia, accidentally". When questioned further on what he could actually remember, Mr. Gaglardi said he could recall the drape slipping, and accidentally touching JK's genitalia.

- [452] Mr. Gaglardi's testimony about this issue conflicted in a number of important respects with the testimony of JK. While Mr. Gaglardi claimed that JK was on a massage table covered by a sheet, JK's testimony was that Mr. Gaglardi got him to lie on a sheet, on the floor, with no covering. Further, Mr. Gaglardi testified that he used lotion to massage JK, whereas JK testified that Mr. Gaglardi used his bare hands with no lotion or oil.
- [453] On the issue of whether JK was on the floor or on a massage table, JK clearly professed a specific recollection of what occurred, whereas Mr. Gaglardi's testimony was ambiguous about how much, if anything, he could actually recall regarding his treatment of JK. In another more general part of his testimony, Mr. Gaglardi explained that he performed massage or "energy work" on his clients on a massage table, or "on the floor" when he did not have a massage table. Several other complainants, specifically GA and AH, testified that they were asked to lay on a mat or towel on the floor for various forms of touch therapy. Others complainants, specifically SJ, CP, and SH testified that Mr. Gaglardi got them to lie on a massage table. One complainant, MD, testified that some forms of body work were done on the floor, while others were performed on a massage table. In the result, I am not able to identify any discernible pattern or standard practice that Mr. Gaglardi followed at any particular point in time.
- [454] Leaving aside that one detail, based on other aspects of Mr. Gaglardi's testimony, I do not find his account of the "energy work" with JK to be either reliable or credible.
- [455] With regard to reliability, it is entirely unclear from the whole of Mr. Gaglardi's testimony about this allegation whether he actually had an independent memory of the events. In chief, he claimed that all he could remember was JK lying on the massage table, covered by a sheet. He described that as his "full recollection". When asked about further details in direct examination, Mr. Gaglardi said he had "no recollection" of touching JK's scrotum. By contrast, in cross-examination, Mr. Gaglardi initially professed to have a specific recollection of the drape slipping, and that "if" he touched JK's scrotum, it was accidental, in the course of adjusting the drape. Under further questioning, Mr. Gaglardi claimed to have a specific recollection of both the drape slipping, and accidentally touching JK's

"genitals". In the end, I am unable to determine from Mr. Gaglardi's testimony precisely what he could or could not remember about this incident.

- [456] I also find that the changes in Mr. Gaglardi's evidence as to his state of recollection reflect negatively on his credibility. Mr. Gaglardi's initial approach when asked about JK's allegation was to simply say he did not recall touching JK's scrotum. When challenged on this, Mr. Gaglardi professed to have a more specific, exculpatory recollection. I conclude that Mr. Gaglardi's initial strategy was to hide behind a lack of recall, but when pressed on details he could not stick to that position, and he then claimed to have a memory of further, exculpatory aspects of the event in question.
- [457] Finally, when confronted with the allegation that at the time of the incident JK raised an objection about Mr. Gaglardi touching his scrotum, Mr. Gaglardi's response was to suggest that JK was "extremely spacey" and had "huge gaps with his memory". This is another example of Mr. Gaglardi advancing gratuitous and self-serving attacks on the credibility of other witnesses, rather than simply providing his own factual account of what happened. This gives the impression that at least in certain parts of his testimony, Mr. Gaglardi was more concerned with arguing his case than he was with simply giving truthful answers to the questions put to him.
- [458] Weighing up all of the evidence in relation to count 25, my conclusions as to the credibility and reliability of the witness testimony are as follows. First, I do not accept Mr. Gaglardi's account of the manner in which he conducted "energy work" or massage therapy on JK. Second, in view of the many problems with Mr. Gaglardi's testimony in relation to this count specifically, and his evidence as a whole, his testimony does not leave me with a reasonable doubt as to what occurred. I have considered Mr. Gaglardi's testimony about his conduct in relation to this particular allegation in conjunction with his more general testimony about the volume of his clients and the possibility of inadvertent or unintentional touching of a client's genitals, but I do not find that evidence convincing, and it does not raise a reasonable doubt, either on its own or in conjunction with all the other evidence. Third, on the basis of all the evidence, I am satisfied beyond a reasonable doubt that JK's account of the incident in which Mr. Gaglardi touched his scrotum for a period of approximately 30 seconds is truthful and reliable.
- [459] I must go on to consider whether the Crown has proven the essential elements of the offence of sexual assault as alleged in count 25. My conclusions on each of the five essential elements are as follows.
- [460] Touching. I have no difficulty concluding that in the course of a massage, on the floor of Mr. Gaglardi's counselling room, Mr. Gaglardi touched JK's scrotum with the back of his hand.
- [461] Intentional Touching. I am satisfied beyond a reasonable doubt that Mr. Gaglardi's touching of JK's scrotum was intentional. I reach that conclusion based on JK's description of the manner and duration of the touch, the surrounding circumstances, and the similar fact

evidence. As for the duration of the touch, JK testified that the back of Mr. Gaglardi's hand brushed up against JK's scrotum for a period of "approximately 30 seconds". That, of course, is an approximation, not a timed interval. Even allowing that the touch may only have been for half that long, it is still an appreciable period of time, much longer than would be the case with an inadvertent or "incidental" touch. The surrounding circumstances include the difference in age and relative maturity of JK (who I infer was a relatively young adult male) and Mr. Gaglardi (who was in his mid 50s at the time of this incident), the nature of the relationship between them, and what I find to be Mr. Gaglardi's shifting of that relationship from "counselling" to "touch therapy" within a matter of one or two sessions. That context, coupled with the similar fact evidence which includes many other instances where Mr. Gaglardi used naturopathic technique to provide himself with opportunities to touch the genitals and sexual organs of much younger male complainants, supports an inference that Mr. Gaglardi's touching of JK was an intentional gesture, not a mere slip of the hand.

- [462] Sexual Nature of the Touching. I am satisfied beyond a reasonable doubt that Mr. Gaglardi's touching of JK's scrotum was a sexual act. In reaching that conclusion, I have taken into account that Mr. Gaglardi's touching related to a sexual organ, along with the context and the similar fact evidence cited in the preceding paragraph. That evidence reflects Mr. Gaglardi's opportunistic use of naturopathic techniques to intrude on the sexual integrity of younger male complainants in the context of a counselling relationship. As explained in relation to earlier counts, the assessment of the sexual nature of the touching is based on an objective characterization of the conduct, not the subjective intent or motive of the accused. However, evidence of an intent to engage in sexual activity can be part of the circumstances taken into account in determining the objective character of the acts in issue. I find that to be the case in relation to count 25.
- [463] Absence of Consent. I find that the Crown has proven beyond a reasonable doubt that JK did not consent to the touching of his scrotum. JK consented to a massage or "energy work", not the touching of his sexual organs. To the extent that JK could be said to have consented, his consent was legally ineffective for three reasons, any one of which would be sufficient in itself to make out this element of the offence. First, any consent was legally invalid from the outset based on an absence of consent as to the sexual nature of the conduct as contemplated in *Hutchinson* at para. 55, 57-58. This finding is based on my conclusion as to the sexual nature of the touching as set out in the preceding paragraph. Second, any consent was vitiated by Mr. Gaglardi's misuse of a position of trust per s. 273.1(2)(c). This finding is based on JK's stated desire to seek counselling to deal with past trauma in his life, his stated trust in Mr. Gaglardi based on a belief that he was qualified to provide counselling services, and my conclusion that Mr. Gaglardi used his counselling techniques as a ploy to engage in sexual touching. Third, any consent was vitiated by fraud as to the true nature and purpose of the touching per s. 265(3)(c). This finding is once again based on Mr. Gaglardi's opportunistic use of "energy work" techniques as a means of engaging in sexual touching of the complainant.

[464] Knowledge that the Complainant Did not Consent. The defence of honest but mistaken belief in communicated consent is not engaged.

[465] I find Mr. Gaglardi guilty on count 25.

(6) Conclusion

[466] I find Mr. Gaglardi guilty as charged on counts 3, 5, 6, 8, 10, 12, 13, 14, 15, 16, 20, 23 and 25 on the Indictment. I find Mr. Gaglardi not guilty on counts 17, 18, 19, and 22 on the Indictment.

"Riley J."

Appendix A: Count-by-Count Summary of Evidence

(1) RF's Allegations (Count 3 on the Indictment)

(1.1) RF's Testimony

- [1] RF testified that his entire family, including his mother, father, two younger brothers, and younger sister, attended Glad Tidings Temple in Vancouver. He was three or four years old when the family started attending. At a certain point, RF's mother had a falling out with the church leadership and stopped attending, while his father remained committed to the church.
- [2] RF testified that in his early teens he went to Glad Tidings quite regularly. He would go on Friday nights and Saturdays for social or recreational activities, and on Sundays for church service.
- [3] RF knew Mr. Gaglardi's sister, Maureen Gaglardi, as the lead pastor at Glad Tidings. RF knew Mr. Gaglardi as "Dr. Ray". In cross-examination, RF added that everyone called Mr. Gaglardi Dr. Ray, and he himself assumed at the time that Mr. Gaglardi was a medical doctor. RF did not know anything about Mr. Gaglardi being a church counsellor of any kind.
- [4] RF understood that, in addition to being the lead pastor's brother, Mr. Gaglardi ran the church's audio system, from a control booth adjacent to where the church choir performed during services. Mr. Gaglardi also had an office in another part of the church. RF's recollection is that this room was sound proofed in some way.
- [5] RF alleges that Mr. Gaglardi touched him inappropriately on three separate occasions.
- [6] The first incident occurred at the Glad Tidings Temple in Vancouver, some time after RF's 14th birthday, which would mean the incident occurred some time in 1971 or 1972. RF was at the church on a Friday or Saturday, when Mr. Gaglardi approached him and said he needed to speak with him in private. Mr Gaglardi took RF to his office, where he said there had been a report that RF had infected a girl with a venereal disease. RF did not understand this because he had never been involved with any girls up to this point in his life. He explained that to Mr. Gaglardi, but Mr. Gaglardi still told RF he needed to examine him for venereal

diseases. He directed RF to remove his pants and take down his underwear. Thereafter, Mr. Gaglardi felt RF's testicles with one hand and his penis with the other, for somewhere between 30 to 60 seconds. Mr. Gaglardi told RF he saw no signs of venereal disease but that did not mean he did not have one. After that, RF put his pants back on and left Mr. Gaglardi's office. The entire encounter in Mr. Gaglardi's office lasted some 15 to 20 minutes.

- [7] Afterward, RF reported the incident to his parents. His mother appeared to believe him, but his father did not. RF's recollection is that the issue caused some strife between them.
- [8] The second incident occurred about one week after the first. It was a Sunday, and RF had gone to church with his father. Mr. Gaglardi approached RF and said he needed to speak with him. Mr. Gaglardi took RF to his office, and said he needed to check again for venereal diseases because the symptoms might not have shown up during the earlier exam. RF acquiesced. Once again, Mr. Gaglardi felt or manipulated his testicles with one hand and his penis with the other, for 30 to 60 seconds. RF did not spend as much time in Mr. Gaglardi's office this time, because there was less conversation.
- [9] RF once again reported the incident to his family. His mother took him seriously, and RF believes she may have phoned around to some other parents. RF's father did not believe him, responding that he made up the allegation to get out of having to attend church.
- [10] In cross-examination, RF testified that after these two incidents, he saw Mr. Gaglardi at the church from time to time, but did not interact with him or meet with him.
- [11] The third incident took place at least a few months later, when RF was either 14, or perhaps the following year, when he was 15 years old, at the Glad Tidings summer camp near Sechelt. RF recalled that Mr. Gaglardi was one of the adults involved in running the camp. Among other things, he was responsible for first aid treatment.
- [12] The improper touching occurred on an occasion when RF got a cut on, or right above his knee during a baseball game. Mr. Gaglardi was umpiring the game. When RF cut his knee, Mr. Gaglardi took him to the first aid facility, which RF described as a covered wagon with wheels. Inside the first aid area, Mr. Gaglardi told him to remove his shorts and underwear, bandaged the cut, and then told RF he needed to check his body for other injuries. Mr. Gaglardi then put his hands on RF's genitals in the same way that he had on the two prior occasions, with one hand holding his testicles and the other holding his penis.
- [13] After the incident, RF returned to the ball game. Mr. Gaglardi's sister took over the umpire duties. Mr. Gaglardi remained in the first aid wagon. RF recalled that the wagon was rocking back and forth, which caused him to muse with a friend about what Mr. Gaglardi was doing. In cross-examination, RF testified that he saw the wagon rocking for what seemed like a long time, perhaps 60 or 90 seconds. RF had two more "at bats" after returning to the game. He estimated that it might have taken 30 or 45 minutes to finish the game. RF did not recall seeing Mr. Gaglardi come out of the wagon before the game was over. RF agreed that in his video recorded statement, he said they finished the whole game before Mr. Gaglardi came

out of the first aid structure. RF added that he could not specifically recall seeing Mr. Gaglardi come out of the wagon.

- [14] In cross-examination, when asked about the first aid "wagon", RF again described it as a wagon with a canvass top, about 20 paces from the ballfield. When it was suggested to RF that it might have been a tent on a platform, RF responded that he thought it had wheels, like a small chuck wagon, but he could be mistaken. He said it had some first aid materials, but was not well equipped. He did not recall there being any kind of examination table or a cabinet. Mr. Gaglardi treated his cut with some liquid, probably rubbing alcohol, and put a normal sized band aid on it.
- [15] In cross-examination, RF acknowledged some uncertainty about the timing of the third incident. He could not recall whether the summer camp incident happened a few months after the church incidents, when he was still 14 years old (in the summer of 1972), or the following year, when he was 15 years old (in the summer of 1973).
- [16] RF testified that he stopped going to church after the summer camp incident. His father "disowned" him, and RF moved out of the family home. In cross-examination, RF added that the events "pretty much set [his] whole life on a different track". Shortly after he turned 16, he left the lower mainland, and went to work in Quesnel. RF also agreed that these incidents created problems for his entire family. His mother tried to stand up for him, but his father would not tolerate any dissention from his view on the issue. When it was suggested to RF that "what happened at Glad Tidings" was the cause of his leaving the family home at such a young age, RF agreed.
- [17] RF agreed that his mother had other problems with various people in the church organization, and that she "did not trust" the church. RF agreed that in his statement to the police he made some reference to Maureen Gaglardi or possibly others at Glad Tidings treating his younger sister unfairly. RF cited the incident with his sister to be an example of the church having too much power or influence over its parishioners. RF himself harboured a belief that the leaders at Glad Tidings were classist, and that some families were given more respect than others.
- [18] With regard to the timing of his report to the police, RF testified in cross-examination that in the summer of 2020 he saw news report about Mr. Gaglardi. He then contacted the police, and gave a recorded statement on 23 July 2020.
- [19] RF testified that he did not speak with anyone else about his allegations until a few weeks before the trial, in the spring of 2022. He learned through a friend that another man, PP, was involved in the court case. He got PP's contact information and reached out to him. He and PP had a 15-minute conversation. They did not discuss RF's allegations. They had some discussion of PP's role in the case. On all the evidence, I find that this was a reference to PP's role in putting the police in touch with others who might have interacted with Mr. Gaglardi. The balance of RF's conversation with PP was about what the two of them had done with their lives.

[20] RF flatly rejected the suggestion that his allegations against Mr. Gaglardi were the product of resentment toward the Gaglardis or the Glad Tidings Temple organization. RF denied fabricating or even mis-remembering the events in question, explaining that he was not in court to make things up, but only to tell the truth.

(1.2) Mr. Gaglardi's Testimony in Relation to the RF Allegations

[21] In his testimony in chief, Mr. Gaglardi said he knew the name RF, but had no independent recollection of his interactions with him. He testified that RF's allegations were "absolutely untrue" and the events described in RF's testimony "did not happen". In cross-examination, Mr. Gaglardi denied ever touching RF's genitals, and agreed that there would have been no legitimate purpose for his doing so.

[22] With regard to the allegations about touching RF's testicles and penis at the church, Mr. Gaglardi said he could not conceive of any circumstance resembling the two incidents described by RF.

[23] With regard to the allegation that he touched RF's testicles and penis at the summer camp, Mr. Gaglardi denied that any such incident occurred. He acknowledged that he umpired baseball games at the camp. Mr. Gaglardi also acknowledged that he was the first aid attendant at the camp, in the course of which he probably tended to "hundreds if not thousands" of minor injuries and wounds. He said if he were tending an injury to a child's knee, he might ask about other injuries, but would never touch a child's genitals in the manner described by RF.

[24] Mr. Gaglardi said the first aid structure at the camp was not a wagon. He testified that originally the first aid structure consisted of a "platform with a tent on it", stocked with rudimentary first aid materials. About two or three years after Mr. Gaglardi first attended the summer camp, a cabin structure was erected.

[25] At one point in his testimony in chief, Mr. Gaglardi said that the first aid responsibilities at the camp fell to him by default, as he had some "industrial" training in first aid, and no one else was qualified. In cross-examination, when it was suggested that his first aid training had lapsed by the end of the ten years or so that he worked at the camp, Mr. Gaglardi replied that he did self study and kept up with his first aid training the best that he could, including by speaking with paramedics from time to time. He added that if someone else was better qualified, he would gladly have "let them take over" the first aid duties. Later in cross-examination, when being asked about RF's allegations, it was suggested to Mr. Gaglardi that no one else was responsible for first aid treatment. Mr. Gaglardi disagreed, claiming that "sometimes there were nurses", and he would "defer to a nurse".

(2) GP's Allegation [Count 5 on the Indictment]

(2.1) GP's Testimony

- [26] GP testified that he started attending the Glad Tidings Temple in Vancouver when he was 10 or 11 years old. By that time GP's parents had divorced, and he lived with his mother and his older brother.
- [27] GP recalled that Maureen Gaglardi was the lead pastor at Glad Tidings, and Mr. Gaglardi was in charge of the church's audio booth or radio room. GP described it as a "state of the art" facility that included audio mixing equipment, like a small recording studio. GP's older brother worked in the radio room under Mr. Gaglardi's supervision.
- [28] GP recounted that he had a difficult family situation with a history of violence leading up to the divorce of his parents. After the divorce, GP had no contact with his father. After GP's family started attending Glad Tidings, Mr. Gaglardi took on a role as a sort of "father figure" to GP. GP believed that Mr. Gaglardi was a psychologist or doctor of psychology.
- [29] When he was around 10 or 11 years old, GP started staying over week-ends at Mr. Gaglardi's apartment. It was a way for him to be away from his troubled home. GP recalled that on Friday afternoons he would take the bus to Glad Tidings, where he met Mr. Gaglardi, who would then take GP with him to his apartment in Burnaby. GP would stay over from Friday night until Sunday morning, when Mr. Gaglardi would drive him back to Glad Tidings for the morning church service. In cross-examination, GP said he stayed at Mr. Gaglardi's apartment somewhere between three and nine times over a period of three to five months.
- [30] GP recalled that Mr. Gaglardi had a phone in his car. He also had a handgun. GP recalled Mr. Gaglardi carrying the handgun in a holster clipped to his belt, which he sometimes removed and placed in the centre console of the car while driving. GP recalled at least one instance during a weekend visit to Mr. Gaglardi's apartment when Mr. Gaglardi let him handle the gun. In cross-examination, when asked about the holster, GP said there was no way he would have mistaken it for a pager.
- [31] GP recalled that when they got to the apartment, Mr. Gaglardi would change into a bathrobe, which he then wore for more or less the entire weekend. GP only recalls seeing Mr. Gaglardi's wife one time during his stays at the apartment, when she walked out of the kitchen, down the hall into a bedroom.
- [32] GP recalled Mr. Gaglardi's apartment being quite large, tastefully decorated, and equipped with modern technology and amenities like a microwave oven. In cross-examination, GP described the decoration of the apartment as "ornate". He recalled that it had an Asian or Oriental motif, with lots of glossy finishing, as well as statues, carvings, and art work. GP was shown photographs of an apartment which he did not recognize and did not appear to him to match the style of decoration that he remembered in Mr. Gaglardi's apartment. He said that Mr. Gaglardi had "much better style" than the photos would suggest.
- [33] According to GP, Mr. Gaglardi was "very kind" to him when he stayed over for weekends at the apartment. Mr. Gaglardi made GP feel at home. GP said Mr. Gaglardi was never involved in any inappropriate conduct or behavior toward him in the apartment.

- [34] GP alleges that Mr. Gaglardi touched him inappropriately on a single occasion. It was when they were in the pool in Mr. Gaglardi's apartment complex. The two of them were splashing around in the pool. No one else was around. Mr. Gaglardi approached GP from the front, put his arms around GP, and started playing with his hair. Mr. Gaglardi then put his hand down GP's swim trunks and grabbed his penis. In cross-examination, GP said he could feel Mr. Gaglardi's hand on his penis. GP described Mr. Gaglardi's movements up to that point as gentle. He did not restrain GP, or hurt him. GP reacted to the touching by hitting Mr. Gaglardi in the face. Mr. Gaglardi immediately withdrew his hand. Mr. Gaglardi did not get violent or appear angry. He appeared to GP to be disappointed. They left the pool shortly after the touching incident.
- [35] In cross-examination, GP admitted that he and Mr. Gaglardi were splashing and playing with a ball before the touching incident. He could not recall how long they were in the pool. GP admitted that he could not swim, he still cannot swim to this day, and he was fearful of ducking his head under water. He agreed that when Mr. Gaglardi put his hands in his swim trunks, he experienced a feeling of panic, felt that something was not right, and reacted by hitting or punching Mr. Gaglardi in the face. GP denied defence counsel's suggestion he misinterpreted what happened, that Mr. Gaglardi tried to dunk him under the water, and that he then struck out at Mr. Gaglardi because he was fearful of his head going under water.
- [36] GP testified that when they got back to the apartment, Mr. Gaglardi told him to go to his room. GP stayed in the room for the rest of the evening. It was not clear from GP's testimony whether the incident occurred on a Friday or Saturday night. In any event, GP's recollection is that he spent the balance of the weekend in the room, until Sunday morning when Mr. Gaglardi drove him to church.
- [37] GP recounted that after the weekend of the pool incident, Mr. Gaglardi "avoided [him] like the plague", and he never spoke to Mr. Gaglardi again. GP's brother was no longer allowed to work in the radio room.
- [38] GP recalled that when he was in his first week in Grade eight, his family moved to Delta. At that point, they stopped attending Glad Tidings Temple and GP never saw Mr. Gaglardi again.
- [39] In cross-examination, GP agreed that years later, when his mother passed away, he learned that Mr. Gaglardi had been named as a co-executor of her will. GP was shocked by that, because Mr. Gaglardi's name re-appeared out of the blue after many years, but he chalked it up to the fact that his mother's will was written in the 1980s and never updated. It was simply an historical document. GP's understanding was that Mr. Gaglardi relinquished or declined to accept any role as an executor of his mother's estate.

[40] When asked how he came to tell the police about his allegation, GP said he came forward after learning of allegations against Mr. Gaglardi in a media report. GP said he has spoken with his wife about his allegation, and he also discussed the incident with a counsellor, without mentioning any names. GP denied discussing his allegations with anyone else.

(2.2) Mr. Gaglardi's Testimony in Relation to the GP Allegation

[41] In his testimony in chief, Mr. Gaglardi said he could recall GP's mother HP. He also recalled that HP asked him to play a mentor role for GP. Mr. Gaglardi agreed to do so, reluctantly he says, because he never had kids and did not do well with young children. In that context, Mr. Gaglardi did not deny that GP stayed at his apartment on some weekends. Mr. Gaglardi added that he "did not see him much".

[42] Mr. Gaglardi claimed to have no independent recollection of actually interacting with GP or even what he looked like during the time period in issue. Mr. Gaglardi did testify however, that he "recalled" that GP was 12 years old at the time that his mother asked Mr. Gaglardi to mentor him. In cross-examination, Mr. Gaglardi said he had no memory of GP telling him that he had an interest in guns when he was young. He said, "I do not recall him saying that to me".

[43] With regard to GP's allegation that Mr. Gaglardi touched him while they were in the pool together, Mr. Gaglardi claimed to have no independent recollection of such an interaction with GP specifically. In direct examination, Mr. Gaglardi claimed to recall an incident in a pool where he tried to dunk someone who was smaller in stature than him, and the person "went bezerk", and slapped or punched him in the face and pushed him away. Mr. Gaglardi said this was the only such incident that he could recall. It might have been in the 1970s, or even in the 1960s; he was just guessing at the date. Mr. Gaglardi could not say whether this was in fact the incident involving GP, but if it was, there was no sexual touching involved.

[44] With regard to his testimony that he did not feel comfortable dealing with young children, Mr. Gaglardi explained in chief that he felt more at ease with people older than 16 or 17. In cross-examination, Mr. Gaglardi added that he was more comfortable around adolescents, older teens, and adults.

[45] In cross-examination, Mr. Gaglardi disagreed with the suggestion that the pool incident Mr. Gaglardi had described did not involve GP. When asked if it was possibly a female, Mr. Gaglardi said it was not. Mr. Gaglardi said it was a young person. When counsel pointed out that the incident he described may have taken place in the 1960s, Mr. Gaglardi responded that he did not remember saying that, and went on to explain that he was "not good with dates".

[46] Mr. Gaglardi acknowledged during his testimony in chief that he had a radio operated telephone in his car in the late 1970s. Mr. Gaglardi explained that the phone was provided for at the expense of the church, to operate a 24-hour crisis hotline. He also carried a pager, which back in the late 1970s took the form of a very large, brick-like device that he wore on his belt.

[47] Mr. Gaglardi also acknowledged in his testimony in chief that he had an interest in guns. In the 1970s, he had a firearms license and a gun collection that included four handguns. Two were snub-nosed .38 revolvers. Of these, one was an operable firearm, and the other had been disabled and made safe. Mr. Gaglardi testified that he sometimes carried the disabled gun around in a holster, but added that the holster was looped through his belt, so he could use it for "quick draw" practice. Thus, the holster could not be unclipped from his belt. Mr. Gaglardi wore the gun around his house, and sometimes took it to his office, but "not often". Mr. Gaglardi claimed to be "careful with gun safety". He would never let anyone handle his firearms, even the disabled one. He might show someone his firearms, but only when they were unloaded. He would not let anyone "dry fire" his guns.

(3) RM's Allegation [Count 6 on the Indictment]

(3.1) RM's Testimony

[48] RM attended Glad Tidings with his family, from a relatively young age, and he continued to go there until he was in his mid to late teens. RM also attended the church's affiliated school, Temple Academy, from grade three through grade nine.

[49] RM knew Mr. Gaglardi through his association with Glad Tidings and Temple Academy. Mr. Gaglardi's sister Maureen was the lead pastor at the church. RM knew Mr. Gaglardi as "Dr. Ray" or "Dr. Gaglardi". He ran the sound system at the church. RM believed Mr. Gaglardi also had some role to play as a doctor of psychology, and recalled that Mr. Gaglardi taught sex education classes at Temple Academy.

[50] RM testified that he had "behavioural problems" as a child and he was always getting in trouble. From time to time when he acted up in school, he was sent to see Mr. Gaglardi, apparently for some kind of guidance counselling or discipline. RM recalled that Mr. Gaglardi was always pleasant with him and never used violence or physical discipline, unlike some of the others involved in running the school.

[51] RM alleges that Mr. Gaglardi touched him inappropriately on a single occasion, when he was 12 years old. He felt like he was too skinny and he wanted to get bigger. Believing Mr. Gaglardi to be knowledgeable about the human body and physical fitness, RM went to see Mr. Gaglardi for advice about body building. Mr. Gaglardi invited him into the office. RM recalls that Mr. Gaglardi's wife was there and she seemed upset.

- [52] Mr. Gaglardi and RM went into Mr. Gaglardi's office. RM recalled that Mr. Gaglardi had an office and a separate or adjacent space with an examination table. Mr. Gaglardi told RM to get undressed. In his testimony in chief, RM said he undressed himself. In cross, he was referred to an earlier statement in which he said he could not recall whether or not Mr. Gaglardi helped him undress.
- [53] After RM got undressed, Mr. Gaglardi directed him onto an examination table. At this point RM was completely naked and felt uncomfortable, although he conceded that there was a sheet partially covering his body. RM testified that Mr. Gaglardi told him not to worry because he was a doctor and had seen all sorts of people naked.
- [54] Mr. Gaglardi then started going over RM's entire body, wearing gloves and using a pen as a pretend sensor or feedback device. Mr. Gaglardi said the pen had a secret thing that could give him information about RM's muscles and tendons. RM felt that it was not quite right and did not make sense, but allowed Mr. Gaglardi to proceed.
- [55] Mr. Gaglardi examined RM's entire body with the pen, including his genitals and "erogenous zones". At one point Mr. Gaglardi was at the end of the table, with his face close enough to RM's genitals that he could smell him. He spread RM's legs and moved other parts of RM's body. RM felt "really uncomfortable". Mr. Gaglardi was "very gentle" and appeared to be "really cautious" around RM's groin area. At one point Mr. Gaglardi moved RM's genitals to one side. RM went on to describe how Mr. Gaglardi used the pen to examine his entire body, including his biceps, legs, and underarms. Mr. Gaglardi also weighed RM, took some measurements, and gave him some kind of growth chart to record body development.
- [56] In cross-examination, RM agreed that Mr. Gaglardi's examination of his genital area was "very brief" and that the pen did not "probe" his genitals. He agreed that the focus of the "probing" was on his muscles and tendons. RM said the entire body exam lasted 20 to 45 minutes.
- [57] After the examination, Mr. Gaglardi told RM that he would have to wait for information from the pen device. He told RM it would be their "secret" and that if RM told anyone, he would not be able to help him any more. Mr. Gaglardi then gave RM two weightlifting books, one authored by Arnold Schwarzenegger, and the other authored by Mike Mentzer, and suggested that RM speak with DF, a boy who was a few years older than RM and was into bodybuilding.
- [58] RM testified that he did not want to engage in "that kind of activity" with Mr. Gaglardi. He found the whole thing embarrassing and shameful. He was a shy, skinny kid who did not even like swimming without a t-shirt. Even as a 12-year-old, RM thought what Mr. Gaglardi said about the pen was "bs" but he went along with it. He trusted Mr. Gaglardi, because he was associated with the church, and because he had an education as some kind of a doctor. Reflecting on it as an adult, RM said he was not out to cause Mr. Gaglardi any harm, but Mr. Gaglardi's conduct was inappropriate and "he needs to face up to it".

- [59] In cross-examination, RM agreed that the books and growth charts Mr. Gaglardi gave him contained useful or tangible information, not "malarkey". Mr. Gaglardi appeared to know what he was talking about as far as fitness and body development were concerned. RM agreed that he got "exactly the information he was looking for" when he went to see Mr. Gaglardi for advice.
- [60] RM also testified about a separate incident, at summer camp, when he was 14 years old. He had misbehaved and one of the other adults sent him to Mr. Gaglardi for discipline. Mr. Gaglardi was in his bedroom at the camp. RM believed that Mr. Gaglardi was supposed to administer a spanking or some other form of physical discipline, but Mr. Gaglardi did not. The two of them simply laid on the bed for a few minutes. RM was grateful that Mr. Gaglardi did not discipline him. RM was clear that in his mind "nothing inappropriate" occurred on this occasion.
- [61] RM testified that he was "kicked out" of his home by his step mother when he was 14 years old. RM turned 14 in April of 1979, which means that the incident at the summer camp happened in the summer of 1979, and he left home some time in the late summer or fall of the same year. After that, he "cut ties" with the Glad Tidings church, although he went back on occasion, to see his father.
- [62] In cross-examination, RM said he came forward to report what happened in 2020, after hearing some "news stories" about Mr. Gaglardi. He admitted discussing the incident with some "close family members", but said he would not talk about such things with strangers.

(3.2) Mr. Gaglardi's Testimony in Relation to the RM Allegation

- [63] Mr. Gaglardi testified that he had no recollection of dealing with RM in the manner alleged. Mr. Gaglardi said he was never involved in body building, but acknowledged a more general interest in working out, lifting weights, fitness, and nutrition. He conceded that there may have been "young people" who came by his office to discuss their fitness and physique. Mr. Gaglardi said he recalled that kind of thing happening.
- [64] Mr. Gaglardi also agreed that he had access to books, materials, and charts on things like fitness, body measurements, and weight gain. He knew of and had read Arnold Schwarzenegger's bodybuilding book. He said he was "less familiar" or "unfamiliar" with Mike Mentzer's book. Mr. Gaglardi further acknowledged that he knew a boy named DF, an older boy who would have been 16 or 17 and was into weightlifting. Mr. Gaglardi conceded that it was possible he might have referred other boys to DF for advice.
- [65] Mr. Gaglardi said he had no specific recollection of RM coming to his office for such advice. If RM did do so, there would have been no reason for Mr. Gaglardi to have him remove his clothes.
- [66] With regard to the incident in which RM thought Mr. Gaglardi was supposed to discipline him but instead he laid down with him on a bed, Mr. Gaglardi testified that he did not specifically recall the incident. In his testimony in chief, despite not recalling the event, he

said it "might have been something [he] would have done". If a child was upset, Mr. Gaglardi might have tried to console him. He said it would "not be uncommon". In cross-examination, Mr. Gaglardi said it would in fact be "uncommon" for him to console a child on a bed. He did not agree that this would make it memorable, but maintained that it would be uncommon for him to do that. He added that there were not two chairs in his bedroom at the summer camp, so the only place to sit would be on the bed. He went on to explain that if someone was upset, he would sit down and talk with them where they happened to be, on a couch, on a bunk bed in a room, or on the ballfield. When asked if he would console a girl on a bed, Mr. Gaglardi responded that he would only console a girl somewhere in the open. Then he said he would generally not console young ladies, as there would be women at the camp who were available to do that.

(4) DP's Allegation [Count 8 on the Indictment]

(4.1) DP's Testimony

[67] The complainant DP testified that he attended Glad Tidings Temple with his family from a young age, and continued to attend the church into his late teens. He also attended school at Temple Academy for a number of years.

[68] DP knew Mr. Gaglardi as a person who had multiple roles at both Glad Tidings Temple and Temple Academy. More specifically, DP believed Mr. Gaglardi to be involved in marriage counselling, youth counselling, and working at the church summer camp as a supervisor and first aid attendant. Mr. Gaglardi also taught guidance classes at Temple Academy.

[69] DP believed that Mr. Gaglardi had a PhD in psychology, and that he had particular knowledge or interest in human sexuality. DP recalled seeing books in that field in Mr. Gaglardi's office. In cross-examination, DP agreed that Mr. Gaglardi never held himself out to be an MD. DP believed Mr. Gaglardi used the title "doctor" because he had a PhD, that is, a doctorate in philosophy.

[70] DP testified that he first met Mr. Gaglardi personally at the Glad Tidings summer camp, in the early 1970s. DP had more frequent interactions with Mr. Gaglardi when he got into high school. DP recalls visiting Mr. Gaglardi's office. DP described his relationship with Mr. Gaglardi as casual. Mr. Gaglardi took DP out to dinner, and he took him to a radio station in Bellingham on one occasion. DP testified that nothing inappropriate ever happened during any of these interactions.

[71] DP alleges that Mr. Gaglardi touched him inappropriately on a single occasion. It was shortly after DP turned 17 years old. Mr. Gaglardi told DP he was doing a study or research project set up by the General Dynamics company for "disadvantaged kids". It had something to do with human sexuality. Mr. Gaglardi asked DP if he wanted to participate in the study. DP did not know what General Dynamics had to do with human sexuality, but he took Mr. Gaglardi at his word that it was something appropriate, so he agreed to participate. In cross-examination, DP agreed or clarified that Mr. Gaglardi presented the study as something to do

with helping "teenage boys" to deal with "sexuality issues".

- [72] At Mr. Gaglardi's request, DP went to Mr. Gaglardi's residence somewhere in Coquitlam to participate in the study. Mr. Gaglardi brought DP into a bedroom. There were "clean sheets" on the bed, and the room appeared "very clinical". DP recalls that there were pornographic magazines scattered on the bed, and a pornographic movie was playing on a screen. Mr. Gaglardi asked DP to take his clothes off and put a towel around his waist. He then got DP to look at the magazines. Mr. Gaglardi attached a number of sensors to DP's chest, with wires running to a device that appeared to be connected to the phone. Mr. Gaglardi said the sensors would collect data and send it over the phone line to the General Dynamics computer.
- [73] Mr. Gaglardi got DP to lay on the bed with the towel over his waist and look at the pornographic materials. DP testified that for a 17-year-old boy who had been raised in a church setting, the pornography was "titilizing" [sic], and he was aroused. While DP was looking at the porn, Mr. Gaglardi started to massage him. DP described it as "pretty much a full body massage". Mr. Gaglardi asked DP to roll over and "the towel came off". Mr. Gaglardi put his hands on DP's penis and masturbated him until he ejaculated. DP felt extremely awkward and did not know what to do.
- [74] In cross-examination, when questioned about the order in which the events took place, DP acknowledged that he may not be "100% correct" about the sequencing, adding that the incident happened more than 40 years ago.
- [75] DP testified that after the event there was "not a lot of comment" between he and Mr. Gaglardi. DP was embarrassed and just wanted to extricate himself. He put his clothes on and left. He could not recall exactly what Mr. Gaglardi said when he left, but it was something like "thank you for your participation".
- [76] DP testified that prior to this incident he trusted Mr. Gaglardi. He believed that he had a PhD and that he was a professional. When he agreed to participate in what Mr. Gaglardi suggested was a research project, he never expected anyone to masturbate him. DP said he would never have consented if it had not been for a "legitimate research purpose". Mr. Gaglardi never told him there would be any touching involved. In cross-examination, DP agreed that when Mr. Gaglardi first broached the study with him, DP asked for more detail. He knew that the objective would be to "measure [DP's] response when exposed to porn". He acknowledged that at the time he was interested in participating at least in part because he knew he would get to see "forbidden fruit". It was "titillating". DP also agreed that Mr. Gaglardi did not spring the proposal on him "overnight". Mr. Gaglardi gave him some time to think about it. With regard to the "experiment" itself, DP accepted that the massage appeared to be "part of the procedure", and agreed that he consented to what was occurring up until the masturbation. He got more and more uncomfortable as the massage progressed, but did not say anything at the time. DP agreed that Mr. Gaglardi's hands were touching his penis for "less than five minutes".

- [77] After the incident, DP "kept his distance" from Mr. Gaglardi. Some months later, DP told his father, who became "enraged". DP's older brother also said something happened to him. (None of this evidence is admissible for its truth; it is referenced here for narrative purposes, to explain what happened next.)
- [78] DP recounted that his father took DP and his brother to the church to speak with Mr. Gaglardi. The four of them met in Mr. Gaglardi's office. DP explained that his father had the capacity to be a very intimidating person. DP's father confronted Mr. Gaglardi, whose response was "very apologetic". Mr. Gaglardi said it is "not what you think" and he was "not a pedophile" and "not a homosexual". He asked for forgiveness. He appeared remorseful. DP's father accepted the apology. In cross-examination, DP agreed that his father was "enraged" and that he used the word "intimidating" in describing his father's demeanor during the encounter, but clarified that his father "would not have" physically bullied Mr. Gaglardi into an apology. I note in this part of his testimony, DP was using conditional language, describing what his father "would have" done or said, and not specifically what he recalled his father saying. When it was suggested to DP that he could not recall "word for word" what Mr. Gaglardi said during the meeting, DP responded, "I will tell you exactly what he said, he said '[name redacted] I am sorry. I am not a pedophile and not a homosexual'". In further cross-examination, DP denied the suggestion that his testimony about Mr. Gaglardi's apology was untrue.
- [79] In cross-examination, DP said the porn film was playing on a television set, but he was unable to describe the medium or source of the images. DP did not see any kind of video cassette, and agreed with the suggestion that VHS technology did not exist back in 1978. It appeared to DP that Mr. Gaglardi already had the film lined up and ready to go when he got into the room. DP denied defence counsel's suggestion that the events surrounding the "experiment" never occurred and that it was a fabrication on his part.

(4.2) Mr. Gaglardi's Testimony in Response to DP's Allegation

- [80] Mr. Gaglardi testified that he knew DP's father, and uncle, and all of the children in the family. Mr. Gaglardi said the name DP was familiar, but he was unable to picture DP's face during the time frame in issue in DP's allegation.
- [81] Mr. Gaglardi said he did not specifically recall taking DP to one of his radio broadcasts in Bellingham, but conceded that he might have done so.
- [82] When asked about the alleged "human sexuality study", Mr. Gaglardi absolutely denied ever asking DP to participate in such a thing. He added, gratuitously, that "it sounds like a dream to me".
- [83] Mr. Gaglardi said he had an interest in the General Dynamics company, because of their role in the moon missions, but he had no personal dealings with or relationship with the company.

- [84] Mr. Gaglardi testified that during the time frame in issue, he had a basic television with "rabbit ears", with no adult TV channels. He also said he did not have a VCR at the time. Mr. Gaglardi said VCRs first came out in 1973 or 1974, and cost something like \$2,000, which would have been two months salary for Mr. Gaglardi at the time. Mr. Gaglardi said he had "no access" to a VCR, and he did not believe they were available for rent at the time. He did not know anyone who could have lent him such a device. Mr. Gaglardi also said there was no way he would have pornographic magazines in his house, because his wife would not allow it, and because it was against the teachings of his faith. Mr. Gaglardi further testified that he did not have access to electrical leads or the kind of telephone equipment described by DP.
- [85] In cross-examination, when asked about access to film and video equipment at the church, Mr. Gaglardi said the church had no money and their equipment was "15 years behind" in technology and equipment for the sound room. When referred to the fact that he had a car phone and pager that were apparently funded by the church, Mr. Gaglardi at first responded that he could not remember whether the church paid for these things. Then he backtracked, acknowledging that the pager was "expensed to the church", and the church also paid for the "old phone", the "cheapest thing you could buy".
- [86] Mr. Gaglardi maintained that he did not have a VCR, and neither did the church. He agreed that both he and his sister worked on and recorded film "productions", but went on to say that the church's film projector was a monstrous, four-foot-wide machine that only played 16 mm film.
- [87] Later in cross-examination, after being referred to a photograph of his living room showing a reel to reel audio recording device and a home video game, Mr. Gaglardi admitted that he had "a fair amount of electronics in his home". He said he had a "friend" who was a manager in a store that sold electronics, and he was able to buy some things "at cost".
- [88] In chief, Mr. Gaglardi said he could not recall any conversation or confrontation with DP's family in which he made an apology. Mr. Gaglardi said that forgiveness has a particular significance in his faith, and he would not offer an apology unless he had truly done wrong and required forgiveness. For the same reason, he would remember making an apology, and he had no recollection of apologizing to anyone in DP's family.

(5) KH's Allegations [Count 10 on the Indictment]

(5.1) KH's Testimony

- [89] KH attended Glad Tidings Temple with his family, as a child and into his late teen years. He also went to school at Temple Academy from grade four to grade ten.
- [90] KH came to know Mr. Gaglardi through his affiliation with Glad Tidings Temple, Temple Academy, and the church summer camp. He believed Mr. Gaglardi had a doctorate degree. KH referred to Mr. Gaglardi as "Dr. Ray", although in cross-examination he agreed that he knew Mr. Gaglardi was not a medical doctor. His belief was that Mr. Gaglardi had a PhD in psychology. At church, Mr. Gaglardi was in charge of the sound system. In school, he taught

classes in biology, health, and sex education. KH also believed that Mr. Gaglardi was the director of the summer camp. He oversaw many of the activities at the camp, and he was the first aid attendant.

- [91] KH testified that when he was 11 or 12 years old, his parents got divorced. He recalled that the divorce was finalized in 1977. His mother remarried, and KH did not get along with his step-father.
- [92] When he was 13 years old, KH started getting into trouble at school. After a particular incident, his parents decided that he should spend some time with Mr. Gaglardi, who had a role as a counsellor. At the time, KH considered Mr. Gaglardi to be "the coolest guy he knew". KH looked up to Mr. Gaglardi and enjoyed spending time with him. Mr. Gaglardi also counselled KH about his relationship with his mother and step-father.
- [93] KH testified that he stayed overnight at Mr. Gaglardi's apartment on weekends. Sometimes, KH would meet Mr. Gaglardi at the church on Friday afternoons, and stay with him for the entire weekend, until church on Sundays. Other times, KH would go to Mr. Gaglardi's house on Saturday and stay with him until church on Sunday.
- [94] With regard to the frequency of the visits, KH testified in chief that it was usually once per month, but on occasion it was twice per month. In cross-examination, KH was unsure whether the visits were over a period of six months, or more or less than that. KH agreed that there were probably instances where he did not go to Mr. Gaglardi's apartment for an entire month. He could not say exactly how many weekend visits he had, but agreed that it might have been ten or more in total.
- [95] On some of his weekend stays, KH accompanied Mr. Gaglardi to a radio station where Mr. Gaglardi had a program. KH could not remember where the radio station was. In chief, he could not recall whether it was on Friday nights or Saturday nights. In cross-examination, he agreed with the suggestion that the program was on Saturday nights. He accompanied Mr. Gaglardi to the radio station three or four times in total.
- [96] When they were at the radio station, Mr. Gaglardi would host the program, and KH was allowed to help out by pulling records and taking listener requests over the phone. In cross-examination, KH agreed that Mr. Gaglardi was the program host or "disc jockey".
- [97] In cross-examination, KH testified that he went to the radio station with Mr. Gaglardi perhaps three or four times. They did not go to the radio station on every weekend when he stayed with Mr. Gaglardi. KH also agreed that he was never left alone in Mr. Gaglardi's apartment.
- [98] KH testified that on some of the visits, Mr. Gaglardi's wife was at the apartment, and on other occasions he did not see her. KH confirmed that he was never left in her care.

- [99] KH recalled that when they were at Mr. Gaglardi's apartment, they would play videogames (pong), play pool in the building's recreation room, and swim in the pool. He could not recall where the apartment was, but he believed it might have been in Surrey. In cross-examination, KH confirmed his belief that Mr. Gaglardi's apartment was in Surrey. He did not believe it was in Burnaby.
- [100] KH's recollection was that the living room in Mr. Gaglardi's apartment had white carpets and white furniture. He was shown some photographs of a living room with some bright colored furniture but testified that he did not recognize the room. KH confirmed his recollection that the floor and furniture in Mr. Gaglardi's living room were both white.
- [101] KH recalled that when he stayed over for the weekend, Mr. Gaglardi would get him to take a bath. KH could not recall whether it was on Friday nights or Saturday nights. He had a bath every time he stayed at Mr. Gaglardi's house for the weekend, except when they went to the radio station, and there was no time because they got home too late.
- [102] KH alleges that Mr. Gaglardi touched him inappropriately on two occasions. The first incident occurred while he was taking a bath during a weekend visit. The second incident occurred more than a year later, at a counselling session.
- [103] With regard to the bathing incident, KH described a pattern in which he would go to the bathroom, get undressed, and get into the tub by himself. There was a progression, which started with Mr. Gaglardi coming into the room to find out if he had washed himself properly, and asking if he had washed his penis and how he had done so. Over time, Mr. Gaglardi's enquiries about washing his penis became more intrusive. On one instance, Mr. Gaglardi took the wash cloth and smelled it to confirm that KH had used it. After that, Mr. Gaglardi would stand by and watch KH in the bathtub as he washed his penis. On one instance, he told KH he was not doing it right. Mr. Gaglardi took the cloth, took hold of KH's penis, and showed him how to do it. He pulled the skin back, rinsed, washed KH's penis with soap, and then rinsed it again. Mr. Gaglardi said that is how you are supposed to do it. KH was 13 years old at the time. When Mr. Gaglardi touched his penis, he "started to get an erection", but "it was over quickly". He said it was very awkward and embarrassing. In cross-examination, KH agreed that it did not take Mr. Gaglardi inordinately longer to wash his penis than he would normally have taken to do it himself.
- [104] KH testified that he did not want Mr. Gaglardi to touch his penis. At the time, KH thought Mr. Gaglardi was genuinely concerned about making sure he was washing himself correctly. KH testified that if the touching was not for his health, he would not have consented to it. He could not recall Mr. Gaglardi ever telling him how to wash any other parts of his body correctly. In cross-examination, KH agreed that at the time he was interested in knowing the best way to wash his genitals. When it was suggested to him that he "did not mind" Mr. Gaglardi's advice, KH responded that he assumed Mr. Gaglardi was telling him because he wanted KH to know the best way to clean himself. KH agreed that it would have been embarrassing to talk about such things with his mother, or with his step-

father, with whom he did not have a good relationship.

- [105] After the penis-washing incident, KH tried to avoid going for weekend visits to Mr. Gaglardi's residence. If he did go, he tried to arrange it so the visits were on weekends when Mr. Gaglardi had his radio show, so there would be no time for a bath. At some point, shortly after the penis-washing incident, KH's weekend visits to Mr. Gaglardi's residence stopped entirely.
- [106] KH testified that the second incident was more than a year later, when he was about 14 years old. KH's mother had arranged for him to go and see Mr. Gaglardi for counselling. In cross-examination, KH explained that an incident occurred at school, and he got expelled. At that point his mother gave him a choice about whether to get counselling from Mr. Gaglardi, or to speak with his step-father about the issue, and KH chose the former. In further cross-examination, KH said he was not privy to the conversations between Mr. Gaglardi and his mother about the nature of the counselling he was to receive. KH agreed with the suggestion that the counselling was supposed to be about "dealing with relationships". When asked whether it was supposed to be counselling about "how to deal with relationships with girls", KH replied that he did not know how to answer.[18]
- [107] The counselling was supposed to take place at Mr. Gaglardi's apartment. When KH arrived, he took a shower. He put a towel on and Mr. Gaglardi told him to go into a bedroom. KH thought he was going to go to bed. Mr. Gaglardi then entered the room and told KH to get undressed and lay on the bed. KH complied. In his testimony in chief, KH said he was wearing a t-shirt, and was naked from the waist down. In cross-examination, KH said he could not recall whether he was also wearing shorts when he entered the bedroom, but he did recall being naked below the waist when he laid down on the bed. Mr. Gaglardi took out a box-like device, which KH described as an "Ohm meter" for measuring electrical currents. In chief, KH testified that Mr. Gaglardi told him he was going to take measurements of the blood flow or electrical flow in KH's penis, to determine the kind of counselling KH would need going forward. In cross-examination, KH agreed that Mr. Gaglardi did not say the machine measured blood flow. KH described the device itself as a box with a hand-held apparatus attached. He did not see the front of the device but he believed it had gauges on it. Mr. Gaglardi touched KH's scrotum and penis with the device multiple times, and appeared to be making notes in between each instance. In cross-examination, KH added that Mr. Gaglardi touched him with the device 10 or 15 times, for five to 10 seconds on each instance. KH started to get an erection. Mr. Gaglardi told KH not to be embarrassed. He told KH it was "not a sexual thing", and that KH's reaction was a normal physical response to being touched. The entire incident lasted about five or six minutes. Mr. Gaglardi then told KH to get ready for bed, and left the room with the device.
- [108] In cross-examination, KH said he could not recall how he got to the counselling session. He confirmed that he was not old enough to drive himself, so someone must have driven him. He could not remember what day of the week it was. Nor could he remember what happened before he took the shower. He could not recall speaking with Mr. Gaglardi

beforehand. KH's belief was that Mr. Gaglardi did not tell him to take a shower. His recollection was that he "naturally" decided to take a shower before going to bed. He agreed that it would have been close to his bedtime when he had the shower.

- [109] KH testified in chief that he did not want Mr. Gaglardi to touch his penis. He had no idea that is what the counselling session would involve. He trusted Mr. Gaglardi because he was a person who he had spoken with "about all kinds of stuff". He thought Mr. Gaglardi was a person who was looking after his best interests. If the touching had not been for his health, he would never have consented to it. KH did not sign any forms, and did not recall ever seeing results from any tests. In cross-examination, KH agreed that counselling can be helpful for both physical and mental health. When asked if the procedure he described might have been something to benefit his mental health, KH said he had never considered that.
- [110] KH never went back to Mr. Gaglardi's residence for another counselling session. In cross-examination, he agreed that he might have gone back to Glad Tidings a few times after the incident, but he does not recall ever speaking with Mr. Gaglardi again. He did not recall ever discussing the incident with his mother.
- [111] KH testified in chief that his family moved to Ontario shortly after the counselling incident. He recalls that they sold their house in the spring time, and his step-father was insistent that they move out in time to be in Calgary for the stampede. KH testified in chief that he was "pretty sure" the family moved in the spring of 1981, when he was 15 years old, although he acknowledged that in his statement to the police, he said the move took place in 1980, when he was 14. In cross-examination, KH confirmed his belief that the counselling incident happened in 1981, when he was 15.
- [112] In cross-examination, KH agreed that near the end of his time at Glad Tidings church, his mother and step-father had been discussing some brewing or ongoing controversy involving Mr. Gaglardi's sister Maureen Gaglardi. It had something to do with same sex relationships. KH's understanding was that Maureen Gaglardi was asked to leave the church as a result of the controversy.
- [113] With regard to the timing of his allegations, KH agreed in cross-examination that some time in the late 1990s he started asking around to see if Mr. Gaglardi had done things to other people. KH came to believe that Mr. Gaglardi had in fact done things to others, but he did not know who the other people were. KH agreed that he mentioned the name of RM during one of his statements to the police. KH knew RM at the time in question - that is, in the late 1970s or early 1980s - but at no point did he ever have a conversation with RM about his allegations against Mr. Gaglardi.

(5.2) Mr. Gaglardi's Testimony in Relation to the KH Allegations

- [114] Mr. Gaglardi testified that he had no real recollection of KH. He said that on occasion, "we" would have people stay over at the condo "for whatever reason", thereby acknowledging the possibility that KH may have stayed overnight at his apartment from time to time.
- [115] Mr. Gaglardi further testified that he did not recall "counselling or mentoring" KH, but went on to say that it was "common" for him to counsel and mentor boys in their "teens or older". He then clarified that "maybe it was not common", but it happened "with teens or older".
- [116] In cross-examination, when it was suggested to him that he told KH it would take "a number of sessions" to figure out what approach would be most effective, Mr. Gaglardi responded that he did not recall saying that. He then added that it was "mentoring as opposed to counselling". When it was suggested that he was involved in both "mentoring" and "counselling" with KH, Mr. Gaglardi responded by saying that mentoring is more in the nature of the mentor sharing his experience, which is different from counselling.
- [117] Mr. Gaglardi testified at length about his radio program at the KARI radio station in Bellingham. He said it was a live show, every Saturday night. He was only given four or five weekends off per year, and he used many of those weekends over the summer, to attend the church summer camps. Mr. Gaglardi also said he was only allowed to do a few recorded sessions per year, because the sponsors did not like it. The thrust of all of this testimony is that there were not many occasions when Mr. Gaglardi would be free to spend an entire weekend at his apartment. This is responsive to KH's evidence about the frequency of his stays at Mr. Gaglardi's apartment, the upshot of which was that there might have been as many as six or seven weekends when he stayed over and they did not go to the radio station. That does not fit with Mr. Gaglardi's evidence that he had to do the live radio broadcast more or less every weekend. Of course, all of the evidence about Mr. Gaglardi's commitment to the radio broadcast emanates from Mr. Gaglardi himself, so I would not regard it as independent verification of his position. Still, I can understand that, years later, this might be all the evidence available to him about his arrangement with the radio station.
- [118] When asked if he had a response to the allegation about touching KH's penis while he was in the bathtub, Mr. Gaglardi said the allegation was "absolutely untrue" and he did not do any such thing. He ended this answer by saying, "I certainly I will stop there". When asked in cross-examination what he was about to say when he said, "I'll stop there", Mr. Gaglardi responded that he could not remember, adding that the bathing allegation "did not happen".
- [119] When asked if he had a response to KH's allegation about touching his penis during some kind of test with an "Ohm meter" device, once again Mr. Gaglardi said the allegation was "absolutely untrue". He then said, "It is even more ", but did not finish his sentence. When asked in cross-examination what he was about to say, Mr. Gaglardi responded that he was about to say, "It is even more ridiculous", but thought better of it.

(6) ML's Allegations [Count 12 on the Indictment]

(6.1) ML's Testimony

- [120] ML first met Mr. Gaglardi at the Evergreen Evangelical Church, at the Lincoln Town Centre Mall in Coquitlam, which later merged with or became the Hillside Community Church, on Austen Avenue in Coquitlam. ML believed that Mr. Gaglardi was an elder in the church, that he worked in the church's audio-visual department, and that he played a role with the church youth, as a youth pastor or leader.
- [121] ML first encountered Mr. Gaglardi in 1992, when ML was 17 years old. At that time, Mr. Gaglardi served as a youth leader, speaking or leading worship services for the youth of the church on Sunday mornings.
- [122] Later, when ML was 17 or 18 years old, he started seeing Mr. Gaglardi for counselling that had been arranged through ML's parents. ML testified that he was in a rough state at the time, largely due to excessive marihuana use. ML developed a substance abuse problem, as a means of compensating for his lack of confidence and poor self image.
- [123] ML referred to Mr. Gaglardi as "Ray". He believed Mr. Gaglardi had started training as a medical doctor but never completed his studies. ML knew Mr. Gaglardi had a doctorate in psychology. He used a PhD designation on his letterhead. ML recalled seeing plaques or diplomas on the wall in Mr. Gaglardi's office.
- [124] ML was told that Mr. Gaglardi did not charge his parents anything for the therapy. Mr. Gaglardi told ML this was a fairly big deal, because counselling can cost a lot, so he should take it seriously.
- [125] ML testified that the counselling took place "mainly" in the counselling area in the basement of Mr. Gaglardi's home in Coquitlam, in a one-on-one format, with no one else present. Each counselling session lasted about one hour.
- [126] For the most part, the counselling involved talk therapy, in which Mr. Gaglardi encouraged ML to use positive "self talk", by repeating "positive phrases". Mr. Gaglardi also got ML to do "tap therapy", in which he was supposed to tap various parts of his body like his forehead or his neck, while repeating positive phrases. ML was not sure about the reason for the tapping, but was given to believe it had some psychological benefit. In cross-examination, ML agreed that once Mr. Gaglardi showed him how and where to "tap", it was something he could do on his own.
- [127] ML attended formal counselling with Mr. Gaglardi once or twice per month for about a year. At some point, he lost interest, frankly acknowledging in his testimony that he was not prepared to put in the work or effort that Mr. Gaglardi expected of him.
- [128] Later, when ML was 18 years old, after having moved into a basement suite, he and his roommate got into a conflict and he was evicted. He was still using an excessive amount of marihuana. At this point ML worked out an arrangement with Mr. Gaglardi, where he would go to stay at Mr. Gaglardi's house for a 30-day "detox" program. ML intended to continue working the "graveyard shift" as a janitor at a local mall, but was to otherwise have "no contact with the outside world" during the 30-day detox period. In cross-examination,

ML did not agree that his eviction was the "catalyst" for the detox program, but he agreed that at this point in his life, things were getting unmanageable, and it was an opportune time for him to try to deal with his drug dependency.

- [129] ML testified that Mr. Gaglardi's 30-day "detox" program included "intensive" counselling. In cross-examination, ML agreed that he met with Mr. Gaglardi daily or almost daily during the 30-day program. The program also involved weightlifting and a regimented nutrition program to improve ML's physique as a way to address his negative self image. Mr. Gaglardi also introduced massage as part of ML's therapy. ML was receptive, believing that massage would help him relax. In cross-examination, ML testified that he enjoyed the massage and found it relaxing, although he was not sure whether it reduced his anxiety.
- [130] Mr. Gaglardi told ML that he wanted to take biological samples, to study how long it took the drugs to leave his system, and to identify potential dietary deficiencies. Mr. Gaglardi claimed to have access to a lab that could test for samples. On a single instance, Mr. Gaglardi collected numerous bodily samples from ML, including hair clippings, nail clippings, urine samples, stool samples, and a semen sample. ML provided the samples to Mr. Gaglardi at his home.
- [131] With regard to the semen sample, ML testified that he could not remember if Mr. Gaglardi told him why he was taking it. Mr. Gaglardi collected the sample from ML in the counselling room in the basement of his house. Mr. Gaglardi placed a sheet on the floor and got ML to lie down on his back. He then placed a kind of "vibrating device" like a "massage tool" at the base of ML's penis, next to the scrotum. ML ejaculated and Mr. Gaglardi collected the semen sample.
- [132] ML testified that he never saw any test results or reports for the bodily samples Mr. Gaglardi took from him. In cross-examination, ML said he did recall a conversation in which Mr. Gaglardi told him that the concentration of drugs in his system had gone down, but Mr. Gaglardi did not specify which samples, if any, led him to that conclusion. In cross-examination, ML agreed with the suggestion that Mr. Gaglardi gave a verbal account of the sample results, however he was never shown any reports.
- [133] ML also described two separate incidents in which Mr. Gaglardi gave him what he referred to as "prostate exams". Both incidents occurred during the 30-day detox program, some days after Mr. Gaglardi collected the bodily samples.
- [134] On the first occasion, Mr. Gaglardi put on a glove, inserted his finger into ML's rectum, and "checked" his prostate. On the second occasion, on a different day, Mr. Gaglardi inserted some kind of a device into ML's rectum, which he then used to "measure something" or check ML's prostate. ML testified that he did not see what the device looked like, but he knows Mr. Gaglardi inserted it into his rectum.

- [135] ML testified that when he finished the 30-day detoxification program under Mr. Gaglardi's supervision, he stopped using marihuana. He continued to see Mr. Gaglardi for counselling for another six months or so, but he ultimately lost interest and lapsed back into drug use. ML believes he was 19 years old when the counselling ended.
- [136] ML went on to explain that he got married in 2002, after which he went to see Mr. Gaglardi for marriage counselling. He saw Mr. Gaglardi for marriage counselling for less than one year. Mr. Gaglardi did not have any physical contact with him during the marriage counselling.
- [137] ML agreed that some time in the mid-1990s, Mr. Gaglardi gave him some furniture. He was shown some photographs depicting what he believed to be the furniture that Mr. Gaglardi had given him.
- [138] ML testified that he trusted Mr. Gaglardi because of his position in the church, his relationship with ML's parents, and presentation as a kind, caring, loving person, interested in helping ML with his issues. He said if the bodily samples and the prostate examinations had not been for his health, he would not have consented to any of these procedures.
- [139] Defence counsel suggested to ML that his heavy drug use may have affected his memory of events that happened some 25 years ago. ML acknowledged that his drug use made certain time periods "fuzzy" in his mind. He could recall certain events, but he might need to sit down with a pencil and paper to figure out where the events fit on a timeline. Defence counsel later suggested that ML last saw Mr. Gaglardi for counselling in 2006 or 2007. ML disagreed, asserting that he last saw Mr. Gaglardi around 2004.
- [140] In cross-examination, ML agreed that Mr. Gaglardi told him he was focused on "alternative" treatments and therapies. Counsel suggested that ML knew Mr. Gaglardi did not provide "conventional" medical treatments, including prescription drugs. ML replied by saying he was not sure what "conventional" medicine was, but agreed that he knew Mr. Gaglardi would not be prescribing any drugs.
- [141] ML acknowledged in cross-examination that Mr. Gaglardi introduced concepts such as "body work" and "energy work" intended to move negative energy around the body, and that these were not "conventional" forms of treatment or therapy. ML never really bought into Mr. Gaglardi's theory on negative energy, but he did not convey that to Mr. Gaglardi.
- [142] ML also agreed that he was not particularly forthright in communicating with Mr. Gaglardi. He would tell Mr. Gaglardi that the treatments were "effective", when in his own mind he was not committed to the process and not diligent in doing the "homework" Mr. Gaglardi assigned to him. ML agreed that there were times when he was not honest with Mr. Gaglardi about his feelings of anxiety.

- [143] ML agreed with the suggestion that Mr. Gaglardi was always careful to explain what he was going to do before he did it, he would answer any questions that ML had, and he would ask ML if he wanted to proceed. ML agreed that Mr. Gaglardi would say if he ever felt uncomfortable, he could say so and they would stop.
- [144] With regard to the semen sample, ML agreed that Mr. Gaglardi described the procedure he would perform, and then went on to conduct the procedure in the way he described it. ML agreed that at the time, he consented to Mr. Gaglardi performing the procedure as he described it. ML rejected defence counsel's subsequent suggestion that Mr. Gaglardi simply asked him to provide a semen sample and that ML went to the bathroom to collect it himself.
- [145] With regard to the prostate exams, ML acknowledged that Mr. Gaglardi explained "what would happen on each occasion", how the procedure would take place, and how long it would take. ML acknowledged the he "agreed to undergo the procedure", and that the procedure was carried out the way Mr. Gaglardi had explained it to him.
- [146] In the second prostate procedure, Mr. Gaglardi told ML he was going to use a device to measure the size of his prostate. Mr. Gaglardi said he would insert the device into ML's rectum, he was supposed to squeeze or grip it, and then it would take a measurement of some kind. ML was unable to recall precisely what the device was supposed to measure. It might have been grip strength, or it might have been size.
- [147] ML rejected the suggestion that Mr. Gaglardi told him the prostate procedures was intended to move "negative emotion" out of the prostate as a way of reducing anxiety. ML maintained that the prostate exams were presented to him as "health" or "medical" procedures, not "therapy" or "release exercises". ML admitted that Mr. Gaglardi never told him he was a medical doctor. When it was suggested that ML was aware Mr. Gaglardi practiced "alternative" health and was not conducting a medical procedure, ML replied that he did not see it that way. Mr. Gaglardi indicated early on that he had some medical knowledge, and he led ML to believe that these procedures were necessary.
- [148] When referred to Mr. Gaglardi's written consent forms, ML said the format of the document and some of the phrases looked familiar to him. When it was suggested to him that Mr. Gaglardi had not acquired any "NES Health" equipment until 2009 (a number of years after he finished seeing ML), ML replied that the term "energy work" seemed familiar to him, but he did not recognize the term "NES Health".
- [149] When asked if he had spoken with anyone about what happened, ML testified that a former youth pastor, BW, told him "in broad terms" about what happened to other people. The worst thing he heard about was an allegation that one man's "butt hole" had been "grazed".

[150] ML's initial reaction was that the whole thing was "ridiculous". He felt he had probably been treated "much worse" than any of the others involved. After reflecting on it some more, ML came to the conclusion that he would not want his sons to go through any of the things that happened to him, so he decided to speak with the police. A police officer later told him that what happened to him was "wrong".

[151] When ML made his report to the police, it was explained to him that it would "not be a good idea" for him to discuss his allegations with anyone else. He has not discussed the matter with anyone else since then.

(6.2) Mr. Gaglardi's Testimony in Response to the ML Allegations

[152] Mr. Gaglardi admitted that he counselled ML. He could not recall when. In his testimony in chief, he said it could have been in 2001, but he was not sure, at least off the top of his head. Mr. Gaglardi's lack of immediate recall is not that surprising, in the circumstances. He was giving testimony in response to allegations by 14 separate complainants, going back more than 45 years from the present. It is understandable that Mr. Gaglardi would not have immediate recall of the specific time frame when he dealt with a complainant.

[153] Mr. Gaglardi's recollection was that ML had "many difficulties", including an addiction to marihuana. Mr. Gaglardi described ML as a "mixed up, addicted young man".

[154] In chief, Mr. Gaglardi said the 30-day detox program was "more to the beginning" of his work with ML, but he was not positive about that. When asked about this in cross-examination, Mr. Gaglardi said the detox program was "at the beginning or close to the beginning" of his work with ML. When pressed on the question of whether ML's parents arranged for him to have counselling with Mr. Gaglardi when he was still living with them, Mr. Gaglardi responded that it was probably ML's mother, but he did not recall for sure. Mr. Gaglardi denied telling ML that it was a "big deal" that he would not have to pay for the therapy. When it was suggested that there was some "touch therapy" with ML prior to the detox program, Mr. Gaglardi responded that he "did not believe so, it would have been talk therapy".

[155] Mr. Gaglardi testified that he developed and implemented a 30-day detox program for ML, and that ML stayed at his house for the entire 30-day period. Mr. Gaglardi described it as a "residential program". ML slept on a bed in the "spare bedroom", in the basement of Mr. Gaglardi's house. Mr. Gaglardi testified that at the time, there was a queen bed in that room, which he subsequently sold. He later purchased a "hide a bed" for the spare bedroom. The significance of that will be referred to below, in relation to JU's allegations.

- [156] Mr. Gaglardi testified that the focus of the detox program that he designed for ML was on "positive talk therapy", but also acknowledged that there was also a "touch therapy" or "alternative therapy" component to his work with ML. Mr. Gaglardi explained that about two-thirds of the way through the detox, he felt that the counselling was getting "bogged down" with no progress, so he raised the possibility of "prostate massage", as a means of "removing emotions from the prostate".
- [157] Mr. Gaglardi testified that he explained the therapy to ML. He said it was a "research technique", meaning that it was "not proven" by empirical evidence. Some people find it effective, and others find it "woo woo". Mr. Gaglardi testified that he explained to ML how he would perform the procedure, showing him "at least one diagram". Mr. Gaglardi said there were two forms of prostate massage, one manual, and one using a device. He said he had "diagrams" for both methods.
- [158] Mr. Gaglardi said that he initially described the manual method to ML. He believes it was two or three days before performing the procedure. Mr. Gaglardi said he used a "cheat sheet" with notes on it, and an accompanying disclaimer for ML to sign. He went through the "cheat sheet", explaining that it was an "experimental technique" and he could not make any assurance that it would work. Mr. Gaglardi testified that to the best of his knowledge, ML "would have signed the disclaimer", although no such disclaimer was ever marked in evidence. Mr. Gaglardi also told ML that if at any point he became uncomfortable, he could say so, and they would stop. Mr. Gaglardi testified that ML's response was that he was prepared to try anything that might help, and "lets go for it".
- [159] Mr. Gaglardi left the room so that ML could get undressed. When Mr. Gaglardi returned, ML was on the floor, covered by a drape. Mr. Gaglardi then inserted his right index finger into Mr. Gaglardi's anus, located the prostate gland, and massaged or palpated it for five to eight seconds. He then paused or took a break for a few seconds, and repeated the palpation cycle "probably four times". As he was doing this, Mr. Gaglardi asked ML if he was experiencing any "pain" or "emotion". He does not recall ML giving a "positive response". In other words, he does not recall the procedure producing the desired result, in terms of a noticeable release of emotion. The entire process lasted "probably less than five minutes". Afterward, Mr. Gaglardi asked ML whether he felt any benefit, and ML responded that he did not feel any different or any better, except perhaps "a bit lighter".
- [160] With respect to the second prostate procedure, Mr. Gaglardi raised it with ML "a few days later". He outlined the procedure to ML in similar terms to the first occasion, except this time Mr. Gaglardi suggested to ML that he would use a device - a prostate stimulator - instead of his finger. Once again ML said he was "fine with it" and approved of proceeding.
- [161] In his trial testimony, Mr. Gaglardi described the prostate stimulation device in some detail. He said it was a "Y-shaped" apparatus, with one arm that was inserted into the anus and another arm that was used to stimulate what he referred to as the prostate "acupressure point", between the anus and the testicles.

- [162] When it came to performing the second prostate procedure, Mr. Gaglardi asked ML to remove the clothing from the lower half of his body, and then lie on the floor, on his knees, with the upper half of his body stretched out in front of him. From this position, Mr. Gaglardi inserted the prostate massage device into ML's anus in the manner described above. He instructed ML to squeeze his sphincter, which ML did, four or five times for about five to ten seconds on each occasion. When the procedure was complete, Mr. Gaglardi asked ML if he felt any different, and his recollection was that ML did not indicate any significant or positive result.
- [163] Mr. Gaglardi testified that at this point, having tried the prostate massage procedure twice without any notable result, it had not been successful in ML's case. Mr. Gaglardi testified that he saw no point in any further such treatments, again observing that the procedure was "experimental" and that some people may not realize any benefit from it. Mr. Gaglardi testified that his position has "always been that if it [prostate massage] does not work in two sessions", then he will "stop" and "move on to something else".
- [164] Mr. Gaglardi expressly denied that he presented the prostate procedure to ML as a form of medical check or examination of the prostate. Mr. Gaglardi said that if that was ML's impression of what was occurring, ML was either "not listening" or "did not retain" what Mr. Gaglardi told him about the procedure. Mr. Gaglardi said he did not know what else to say, because he would "never do a procedure like that for a medical purpose". In cross-examination, Mr. Gaglardi maintained that there would have been absolutely no reason for him to "check" ML for some medical issue related to his prostate.
- [165] Mr. Gaglardi testified that he did not provide any further "hands-on" therapy to ML in the course of his 30-day residential "detox" program.
- [166] When asked about ML's allegation about collecting a semen sample, Mr. Gaglardi said in his testimony in chief that this "absolutely did not occur". Mr. Gaglardi did not say anything else during his testimony in chief about whether he took samples of other bodily substances from ML during the 30-day residential detox program.
- [167] In cross-examination, Mr. Gaglardi said he did not remember taking a urine sample from ML but it was possible, did not remember taking a stool sample, did not remember taking a hair sample but it was possible, did not remember taking a fingernail sample and doubted that he would, and did not remember taking a semen sample, adding that he could not see the need for taking one. Mr. Gaglardi agreed that he had no authority to refer someone to a lab for bodily sample testing, adding that he could arrange sample analysis through a private lab. When it was suggested to Mr. Gaglardi that he never gave ML any lab results, Mr. Gaglardi responded that he gave ML "verbal accounts of whatever was tested" and ML was "satisfied with that". Mr. Gaglardi said that if a sample was sent to a lab in the Prairies, then it would be "in the chart" and ML could see it. Mr. Gaglardi maintained that as far as he knew, ML was content with a verbal account, and "never asked" to see any lab reports.

(7) GA's Allegations [Counts 13 and 14 on the Indictment]

(7.1) GA's Testimony

- [168] GA first met Mr. Gaglardi when he was attending Evergreen Evangelical Missionary Church, when he was about 12 or 13 years old. When the Evergreen church later merged with the Austen Street Chapel to form Hillside Community Church, Mr. Gaglardi served as a youth pastor at the new church. Mr. Gaglardi would lead or speak at youth services on Sunday mornings. At the time, GA did not know Mr. Gaglardi's formal qualifications. GA referred to him as "Ray".
- [169] GA knew his older brother had a job doing computer and office work for Mr. Gaglardi. When GA was around 14 or 15 years old, he approached Mr. Gaglardi to ask for a job. Mr. Gaglardi hired GA to do landscaping, gardening, and maintenance work around his house.
- [170] Later, GA asked Mr. Gaglardi if there was anything else he could do to earn money. Mr. Gaglardi asked if he was interested in participating in a research study. Mr. Gaglardi said he was working on a "scent-based" research project, to study whether toxins in the body affected body smells. Mr. Gaglardi described a process where he would make olfactory observations to determine "baseline" body scents, manipulate the body with massage to release toxins, and then make further olfactory observations to determine if the body scents changed. GA agreed to participate in the research. He was to be paid minimum wage, which was \$7 or \$8 per hour at the time. In cross-examination, GA agreed that Mr. Gaglardi paid him by cheque. GA was unable to recall whether Mr. Gaglardi used the words "experimental" or "unconventional" to describe the research, although GA agreed that it was presented to him as a "new" form of treatment.
- [171] GA recalled that he was not quite 16 years old when he started to participate in the research. GA specifically recalled that Mr. Gaglardi presented him with a consent form indicating that he had to be 16 to participate. GA was not quite 16, but he signed the form anyway, believing he had to do so in order to participate and get paid. He said it was "a few months at most" before his 16th birthday. GA started participating in the project more or less right after he signed the form.
- [172] GA testified that he went to Mr. Gaglardi's house for research sessions about twice per month for around two years. It would have been rare for him to go more than twice per month, and there were periods when a month or two passed between visits. In GA's estimation, he attended somewhere between 30 and 50 sessions in total before his involvement in the research project ended. All of the sessions took place in the counselling area in the basement of Mr. Gaglardi's house in Coquitlam.
- [173] GA testified that each session lasted 60 to 90 minutes. Mr. Gaglardi would first interview him on the couch, for about 30 minutes. He would ask GA about his level of trust or comfort, on a scale of one to 10. He would then enquire about what GA had been ingesting, for example whether he had been smoking, using marihuana, drinking and the like, to determine the

"level of toxins" in his body. Then Mr. Gaglardi would leave the room after instructing GA to remove all of his clothes except his underwear. After GA was undressed, he would lie on the floor, on a sheet or foam mat, with a drape covering his body. Mr. Gaglardi would then re-enter the room and would get on the ground and smell various parts of GA's body, including his hair, his armpits, and his genitals. Mr. Gaglardi removed the sheet from that particular area of GA's body he was smelling, with the rest of GA's body remaining covered. Next, Mr. Gaglardi would massage GA's body, purportedly to move or flush stress from his lymphatic system. Mr. Gaglardi would then smell various parts of GA's body again to see if there were any notable differences, making notes of his observations. During the smelling part of the procedure, Mr. Gaglardi's face was very close to GA, within three inches of his body. It was close enough that GA could feel Mr. Gaglardi's breath on his body.

- [174] Perhaps a year or more into the project, the process changed slightly, when Mr. Gaglardi told GA he would be able to get a "more accurate scent" if GA removed his underwear. GA obliged and from that point forward, he was "completely naked" under the sheet. This became the "normal way" the sessions were conducted from that point forward.
- [175] GA alleges that from time to time, after the examination procedure was completed, Mr. Gaglardi asked GA for a massage. Mr. Gaglardi said his work was strenuous and massage relieved his stress. Mr. Gaglardi would lie on his stomach and get GA to massage his back and neck. GA estimates that this happened at about one third of the "research" sessions. In cross-examination, GA agreed that he did not say anything about giving massages to Mr. Gaglardi in either his statement to the police or his interview with Crown counsel. When it was suggested that he never in fact gave Mr. Gaglardi massages, GA said that was "100% incorrect". In re-examination, GA added that no one had ever specifically asked him about that issue in prior interviews.
- [176] GA alleges that Mr. Gaglardi touched him inappropriately on three separate instances. One of the instances pertained to a supposed sexually transmitted infection ("STI") test, the second related to a "cold brew coffee enema", and the third instance occurred when Mr. Gaglardi touched GA's penis in what ended up being the final research session.
- [177] The STI incident occurred after GA told Mr. Gaglardi that he was concerned he might have contracted a sexually transmitted infection. GA was 16 or 17 years old, and in grade 10 at the time. He told Mr. Gaglardi that he did not want to see a doctor because it would be embarrassing and he might get in trouble. GA testified that Mr. Gaglardi volunteered to conduct a test for him, and GA agreed. Mr. Gaglardi inserted a "medical grade Q-tip" into GA's penis, took a swab, and then said he would have it tested. He then gave GA some kind of pill. In cross-examination, GA agreed that he was the one who raised the topic with Mr. Gaglardi. He was unable to recall whether Mr. Gaglardi suggested that he see a doctor. GA agreed that he did not want to go to the doctor because he was embarrassed. He understood that Mr. Gaglardi was not a doctor, but he felt more comfortable with Mr. Gaglardi, and he wanted to get tested for "peace of mind". GA also agreed that prior to doing anything, Mr. Gaglardi fully described the procedure, and GA agreed to it.

- [178] The coffee enema incident occurred after Mr. Gaglardi raised the topic of using a "detoxification product" to flush toxins from GA's body. Mr. Gaglardi suggested using a very strong coffee, brewed multiple times and then cooled down, to perform an enema. GA agreed to the procedure. Mr. Gaglardi administered it in the room in the basement of his house where they met for the research sessions. Mr. Gaglardi inserted a tube with a pressurized liquid into GA's rectum, and got him to hold it in awhile before going to the bathroom and releasing it. In cross-examination, GA specifically denied that Mr. Gaglardi simply provided him with "information" or "documents" about coffee enemas. GA was very clear that Mr. Gaglardi in fact performed the procedure on him, in the basement of Mr. Gaglardi's house. GA maintained that Mr. Gaglardi performed the procedure in his counselling room, and then GA walked down the hall to the bathroom to relieve himself.
- [179] The final incident occurred during the last research session that GA attended. He was 17 years old, and it was around the end of grade 11 or the beginning of grade 12. During the body-manipulation portion of this session, while Mr. Gaglardi was massaging around GA's groin area, he put his hands on GA's penis and moved it to one side. GA testified that Mr. Gaglardi's normal practice was to use a sheet to move or adjust his genitals. On this occasion, he did not do that. Instead, he used his hand to pick up GA's penis and move it to the side. GA felt "very uncomfortable", and said so immediately. In cross-examination, GA added that he was "shocked". He could not recall Mr. Gaglardi's response, but GA took it for "nonchalance". In cross-examination, GA rejected the notion that Mr. Gaglardi responded by asking what was wrong, or by saying that his hand slipped. GA conceded that, due to his body position, he could not see Mr. Gaglardi's hands. At this point in the cross-examination, GA attempted to anticipate counsel's line of questioning by asserting that no one else came into the room to touch him. When it was put to GA that he did not actually see Mr. Gaglardi's hand touch his penis, GA responded that he could tell the difference between being touched through a sheet and being touched with bare hands. He agreed that the physical contact was brief, lasting only 1.0 to 1.5 seconds, but commented that "the duration does not have much bearing on the act itself".
- [180] At the end of the session, after he had gotten dressed, GA told Mr. Gaglardi that he was not comfortable with what happened. GA left, and did not go back for any more "research" sessions.
- [181] GA also described an instance in which Mr. Gaglardi raised the issue of sexual performance. Mr. Gaglardi asked GA if he was happy with his sexual performance, and GA said he did not have any concerns. Mr. Gaglardi then told GA about a tribe in Africa that measured their sexual prowess by competing in a contest to see who could ejaculate the farthest. Mr. Gaglardi asked GA if that was something he wanted to work on and GA replied that it was not.

- [182] GA testified that some years later, after he got married, he and his wife went to Mr. Gaglardi for couples counselling. They attended about four sessions with Mr. Gaglardi. GA recalls that he was about 25 years old at the time.
- [183] GA also went to see Mr. Gaglardi in 2014 or 2015, when he was 33 or 34 years old, to help him devise a fitness and nutrition program. GA recalled that Mr. Gaglardi had a gym with a treadmill and a weight room, and GA went there for fitness testing.
- [184] GA testified that during his fitness consultation with Mr. Gaglardi, they had a conversation about what happened years earlier at the end of the research project. GA was going through a multi-step substance abuse recovery program, one step of which was to "make amends" to anyone for whom he harboured resentment. In that context, GA tried to speak with Mr. Gaglardi about the incident when Mr. Gaglardi touched him inappropriately. Mr. Gaglardi's response was that nothing happened so there was no need for anyone to make amends. Mr. Gaglardi asked if GA had told anyone else about the incident, and GA replied that the only person he discussed it with was his sponsor in the multi-step recovery program.
- [185] In cross-examination, it was suggested that GA's memory was inaccurate and that all three incidents described in his testimony in chief actually took place much later, when GA was an adult. GA disagreed.
- [186] It was suggested to GA that all of the activities he described as "research" might have occurred during "talk therapy" that GA had with Mr. Gaglardi when he was an adult. Defence counsel put to GA the details of other interactions he has had with Mr. Gaglardi over the years. GA acknowledged that Mr. Gaglardi was the master of ceremonies at his wedding in 2003 or 2004, and that Mr. Gaglardi met with GA and his wife for marriage counselling in 2005. GA specifically denied seeing Mr. Gaglardi for "talk therapy" in 2004. He said he was studying "outside the lower mainland" for most of that year.
- [187] Counsel also suggested to GA that the discussion about African tribes and masturbation took place when GA was in marriage counselling. GA did not agree.
- [188] GA was asked about an incident in which he put his hand on a mouse-like device that Mr. Gaglardi used to gather data about energy or feedback. GA agreed that this might have occurred, but maintained that it happened "early on" as part of the research project when he was a teenager, and not as part of any form of counselling that he engaged in with Mr. Gaglardi in around 2015. GA explained that by 2015 he had completed his studies as an aviation technician, at which point there was "no way" he would have participated in using a mouse type biofeedback device. (GA did not say so expressly, but the implication of his testimony on this point was that with the benefit of his training in electronics, he would have recognized the implausibility of using a mouse-like electronic device to gather biofeedback.)

(7.2) Mr. Gaglardi's Testimony in Relation to the GA Allegations

- [189] Mr. Gaglardi admitted that he hired and paid GA to do some chores for him, like gardening, trimming hedges and the like. He paid GA by cheque. Mr. Gaglardi also testified that he provided counselling services to GA for a "fairly long time".
- [190] With regard to the incident relating to the STI test, Mr. Gaglardi testified that GA was the one who raised the issue. Mr. Gaglardi advised him to go to a clinic or see a doctor, but GA did not want to do so. Mr. Gaglardi says GA asked him for help two or three times, and each time Mr. Gaglardi responded by recommending that GA go see a doctor because it was a medical situation. GA persisted, so Mr. Gaglardi told him he could do a "natural health" test to see if he had chlamydia or gonorrhea. He told GA about the process, which involved inserting a Q-tip into the urethra.
- [191] Mr. Gaglardi testified that he was familiar with STI testing "procedures" because he once worked as a counsellor at a downtown clinic that provided STI testing services. Mr. Gaglardi went on to describe the testing procedure at length. I do not consider the details germane. Mr. Gaglardi conceded before me that he did not have any medical training so there is no point in recounting the state of his professed knowledge on STI testing procedures.
- [192] Mr. Gaglardi went on to describe how he used a Q-tip to take a sample from GA's urethra, which he then examined under a microscope, and found "no discharge indicative of chlamydia or gonorrhea". The next time Mr. Gaglardi saw GA for a counselling session, he told GA that from what he could see there was no indication of chlamydia or gonorrhea. Mr. Gaglardi expressly denied giving GA a pill of any kind.
- [193] In cross-examination, Mr. Gaglardi initially agreed that there was no "visible discharge" on GA's penis when he took the sample. He went on to say discharge could have been "slightly below the surface", but when challenged on this, he ultimately agreed that there was no "visible discharge". When asked whether he expressly told GA that if he went to a doctor he would be given a urine test without any examination of the urethra, Mr. Gaglardi said he could not recall saying that; he did tell GA several times to go see a doctor. Mr. Gaglardi agreed that GA might have been 16 or 17 years old when he administered the STI test, although Mr. Gaglardi maintained that some of GA's evidence was "time shifted".
- [194] When asked about the coffee enema, Mr. Gaglardi went on at length to describe the anthropological origins and naturopathic benefits of coffee enemas. Again, Mr. Gaglardi has no medical or other professional qualifications on which to base his views, so I see no purpose in recounting them. Mr. Gaglardi testified that he has given out information about coffee enemas, and recommended or suggested the procedure to clients in the past.
- [195] Returning to GA's allegation, Mr. Gaglardi "suggested" that a coffee enema could help to remove some of the alcohol and tobacco-related toxins in GA's body. Mr. Gaglardi admitted giving GA some information, but maintained that he never administered a coffee enema to GA. Mr. Gaglardi said it would have been exceedingly unwise - the way Mr. Gaglardi put it was "impossible" - to administer a coffee enema in his counselling area, which had a light pink carpet. Mr. Gaglardi said he would "never do that" because he was "very particular"

about how he kept his house. Mr. Gaglardi said the coffee enema "never happened". His recollection is that when he discussed it with GA, he was not particularly interested. He added that if GA was going to have a coffee enema, he could have done it on his own, as the materials were readily available in any drug store.

- [196] With regard to the allegation that Mr. Gaglardi touched GA's penis during a massage, Mr. Gaglardi asserted that GA must have been "19 or 20" years old at the time of the event in question, because he does not believe they would be doing "that kind of work" unless GA was an adult. Mr. Gaglardi later added that by his recollection, GA had "time shifted" his testimony about this incident.
- [197] Mr. Gaglardi initially denied paying GA for any kind of "research". Mr. Gaglardi explained that he used the term "research" to refer to treatment techniques that were considered "experimental" or "unproven" by empirical evidence. For this reason, Mr. Gaglardi said "there would not have been any payment [to GA] for research". Mr. Gaglardi then added that GA may have "time shifted" certain events, and some of the work might have been in relation to a "drug program" that he ran for GA later, when he was older.
- [198] Mr. Gaglardi also testified in chief that during massage work with GA, he would always ensure that GA was covered with a drape. Mr. Gaglardi testified that in this case, when he went to move the drape, GA's penis "was there", and "I quickly tried to cover it, with the drape". On this basis, Mr. Gaglardi maintained that he did not touch GA's penis, and if he did touch it, it would have been "purely accidental" contact that occurred when he was trying to move the drape to cover his penis.
- [199] In cross-examination, Mr. Gaglardi testified that the penis "appeared", he tried to cover it with a drape, and there may have been an accidental touch. Mr. Gaglardi said it was an accident. He did not say anything "significant" at the time. Mr. Gaglardi was unable to recall specifically, but he might have said, "Sorry", or "What did I do?". He did not say, "What's the big deal?" Under further cross-examination, Mr. Gaglardi asserted that he did not specifically recall what was said, so he was only able to say what he might have said. Mr. Gaglardi summed up his position by saying GA's penis was "exposed" and "he tried to fix it", that is what he recalled. Mr. Gaglardi went on to say "he might not even have known" that he touched GA's penis. When pressed on that statement, Mr. Gaglardi reverted to saying, "I would have known" and "I covered it".
- [200] When pressed in cross-examination about the context in which the massage occurred, Mr. Gaglardi once again denied engaging GA as a subject in a "research project" into the relationship between toxins in the body and body scent. Mr. Gaglardi went on to describe some of his theories regarding "neuro adaptive" programming and the use of smells to precipitate addiction, suggesting that any discussion he had with GA about body smells occurred in that context.

- [201] Under further cross-examination, Mr. Gaglardi admitted that he engaged in a process where he would smell GA's body, do "body work", and then smell GA's body a second time. Mr. Gaglardi then added that he could only remember doing that "one time", as a "preliminary to a program" that GA wanted Mr. Gaglardi to do with him, "as a preliminary to the whole idea of whether smell could affect his use of substances". Mr. Gaglardi concluded his testimony on this point by saying, "all I can say is I only remember it once and it was for that particular reason".
- [202] With regard to the allegation that Mr. Gaglardi got GA to give him a massage, Mr. Gaglardi said he had "no recollection of it". Mr. Gaglardi could "not honestly say that it didn't happen", but he had no memory of it.
- [203] When asked in cross-examination whether he ever made comments to GA about an African tribe that had ejaculation contests, Mr. Gaglardi said he did not remember but it was possible he said such a thing, "in a certain context". Mr. Gaglardi did not offer any further explanation of the "context".
- [204] Mr. Gaglardi was also cross-examined about the conversation in which GA claims to have raised the topic of making amends. Mr. Gaglardi acknowledged that there was such a conversation, in the course of which he asked whether GA told anyone about the incident. Mr. Gaglardi quickly added that this remark did not reflect any admission on his part.

(8) JU's Allegations [Counts 15 and 16 on the Indictment]

(8.1) JU's Testimony

- [205] JU first came to know Mr. Gaglardi at the age of about 12 or 13, while attending the Hillside Community Church. JU believed Mr. Gaglardi was a church elder and a youth pastor. JU felt that Mr. Gaglardi could be trusted because of his relationship with the church and his older brother. When asked in cross-examination about Mr. Gaglardi's role as a church pastor, JU responded that he could remember Mr. Gaglardi giving some sermons and helping out with the youth group when they met on Sunday mornings, but he also acknowledged that at some point Mr. Gaglardi may have "phased out" his role with the church youth.
- [206] JU testified that Mr. Gaglardi was also in charge of the church's sound system. JU described himself as a musical person. When he was about 14 years old, he asked Mr. Gaglardi to show him how to use the sound system. Mr. Gaglardi taught JU how to operate the sound board, and how to hook up musical instruments.
- [207] JU explained that he had emotional issues when he was a teenager. There was "trauma" in his family. He tried to spend as little time as possible at home. He considered himself a vulnerable person, lacking a supportive father figure. It was in this context that JU developed a relationship with Mr. Gaglardi.
- [208] JU spent time with Mr. Gaglardi in formal counselling, and also socializing with him.

- [209] On the counselling side, JU started seeing Mr. Gaglardi for counselling when he was around 15 years old. In cross-examination, it was suggested to JU that his first one-on-one counselling session with Mr. Gaglardi would have been in March of 2001 (at which point he would have been 16 years old). JU responded that it might have been around then, when he was 15 or 16. JU saw Mr. Gaglardi for counselling once every week or two. Sometimes it was less frequent. The sessions took place in the counselling room in the basement of Mr. Gaglardi's Coquitlam home. Sometimes JU's parents would drive him to Mr. Gaglardi's house, and sometimes Mr. Gaglardi would pick up JU at the church.
- [210] JU did not personally pay for the counselling. He speculated about whether his parents paid anything, but his evidence on that point was not based on personal observation or knowledge.
- [211] When asked what he knew at the time about Mr. Gaglardi's qualifications, JU said he believed Mr. Gaglardi was a doctor of psychology. He only discussed Mr. Gaglardi's qualifications with him "very superficially", as it was over his head at the time. JU called Mr. Gaglardi "Dr. Ray". Sometimes the church youth called him "Ray the shrink". In cross-examination, JU agreed that in his statement to the police, he said Mr. Gaglardi had a degree in psychology but was not a clinical psychologist. JU explained that when the counselling began, he did not understand the distinction between someone with a degree in psychology and a clinical psychologist, but since then he learned the difference from a neighbor who works in the field. When it was suggested to JU that Mr. Gaglardi practiced "alternative" therapy, JU said he would not have understood the difference between conventional and alternative forms of therapy at the time.
- [212] JU enjoyed the counselling sessions at the time, because he appreciated Mr. Gaglardi's interest and concern, and the closeness of their relationship. During the sessions, he and Mr. Gaglardi sat together on opposite ends of the couch, with their legs overlapping. Mr. Gaglardi's feet would be close to JU's crotch and vice versa. In cross-examination, JU denied that they simply sat next to each other on the couch, maintaining that they would lay on opposite ends of the couch with their legs intertwined. JU agreed that he did not consider the contact with Mr. Gaglardi on the couch to be sexual.
- [213] JU testified that a lot of his discussion with Mr. Gaglardi during counselling had to do with sexuality and masturbation. JU remembers wondering why they were talking about sexuality so much. JU testified that the sessions were mostly talk at first, and later they progressed and became "more intimate".
- [214] On the social side, JU would do activities with Mr. Gaglardi. They would drive around together. They went out to dinner. Mr. Gaglardi took him to the firing range to shoot guns. They also sat in Mr. Gaglardi's hot tub together. Sometimes they did that after counselling sessions, but it was not part of the counselling. In cross-examination, JU agreed that he was never naked in Mr. Gaglardi's hot tub, and nothing unusual or inappropriate ever happened in the hot tub.

- [215] JU referred to an incident when he went into Mr. Gaglardi's house, looked down the hall, and saw Mr. Gaglardi in the bathroom with no pants or underwear, staring back at him. In his testimony in chief, JU said he could see Mr. Gaglardi through the reflection in the bathroom mirror. In cross-examination, when shown photos of the hallway and bathroom in Mr. Gaglardi's house, JU agreed that he could not have seen Mr. Gaglardi through the mirror in the way that he described. He said he must have remembered it wrong, and that Mr. Gaglardi must have been looking directly at him, rather than through the mirror.
- [216] JU described an incident that occurred after they were in the hot tub together, in which Mr. Gaglardi said JU seemed tense and could use a massage. They went into a spare bedroom in Mr. Gaglardi's basement, with candles all around the room, and Mr. Gaglardi gave JU a massage. JU described it as "very sensual". In direct examination, JU testified that he was completely naked on this occasion. In cross-examination, he added that he was covered with a towel. Mr. Gaglardi rubbed oil on him and massaged him. Afterward, Mr. Gaglardi asked JU not to tell anyone about the massage. He said it was just a session but people might take it the wrong way. JU felt that was unusual, but being asked not to tell anyone made it memorable in JU's mind. In cross-examination, JU agreed that Mr. Gaglardi did not touch his genitals or his anus during the massage. When it was suggested that "nothing inappropriate happened", JU responded that he may have gotten physically aroused, which I take to mean that he might have gotten an erection. JU was unable to say whether the bed was a regular bed or a hide-a-bed. He could not recall if there was a couch in the bedroom.
- [217] JU described an incident when he was helping Mr. Gaglardi in his home office. JU explained that he did some work in the office to make money. He was 15 years old at the time and could not get a legal job. JU and Mr. Gaglardi were in the office together, organizing church paperwork or tax forms. Mr. Gaglardi opened up a filing cabinet, took out a photograph of a young man with no shirt on, and told JU that he really appreciated men's bodies. JU agreed but said nothing else.
- [218] JU also described an incident that occurred during counselling, in which Mr. Gaglardi wanted him to participate in some "research" involving "body mapping". JU believed he was 15 years old at the time, although he later acknowledged in cross-examination that the counselling might have started when he was 16. Mr. Gaglardi wanted JU to sign a confidentiality or non-disclosure form, "for liability or something", and JU signed it. The "body mapping" exercise then took place in the gym or exercise room in Mr. Gaglardi's basement. Mr. Gaglardi asked JU to "get naked". When it was suggested to JU in cross-examination that Mr. Gaglardi actually told him he could remove as much clothing as he was comfortable removing, JU replied that he did not remember it that way. To continue with JU's account, he testified that after he laid down on the floor, Mr. Gaglardi started "scanning [JU's] whole body with his hands". He was touching and poking "everywhere", including JU's genitals. At one point Mr. Gaglardi had his fingers around JU's anus, poking around his anus and scrotum. JU was getting "physically aroused". Mr. Gaglardi told him "not to worry" about having an erection, or "getting a woody". He said it was just a physical

response. Somehow the dialogue came around to talking about masturbation and sexuality. Mr. Gaglardi grabbed JU's penis and started stroking it, saying "this is how some boys masturbate".

- [219] In cross-examination, JU maintained that this incident took place in Mr. Gaglardi's gym, not the counselling room. He specifically recalled that there were mirrors on the walls of the room. JU did not recall there being a massage table in the counselling room.
- [220] JU denied that he was covered or partially covered with a sheet or towel during the "body scanning" incident. He recalls seeing himself naked in the wall mirrors. JU said Mr. Gaglardi was not wearing gloves, did not use body oil, and did not use any kind of massage device.
- [221] After this incident, JU started distancing himself from Mr. Gaglardi. He cannot remember if he stopped the counselling right away, but there were no more physical interactions. JU continued to see Mr. Gaglardi at church on Sundays, but he stopped interacting with him. He tried to maintain an outward "air of normality". At the same time, JU felt "heartbroken", because he thought he had found someone who cared about him and was interested in him. JU told himself he must have "misinterpreted the situation".
- [222] JU testified that when he was 16 or 17 years old, he got a girlfriend. At that point he no longer needed to be close to Mr. Gaglardi as he was able to meet his emotional needs elsewhere.
- [223] When asked how many counselling sessions he had with Mr. Gaglardi, JU responded that it was difficult to say because they tended to blend together in his mind, but he estimated that it was somewhere between 14 and 20 sessions in total.
- [224] JU was cross-examined regarding the timeline for his counselling. He agreed that his counselling sessions with Mr. Gaglardi might have started in March of 2001, at which point he was 16 years old. He also agreed that there was an incident in September of 2001 in which he was suicidal and called Mr. Gaglardi to come and pick him up from the side of the road; he ended up staying the night at Mr. Gaglardi's home. Finally, JU agreed that at some point that winter, he went to live in Mexico for six months. JU recalled that he was in Mexico on his 17th birthday, in late December of 2001.
- [225] When asked in cross-examination about the circumstances in which he came to speak with the police, JU agreed that he first spoke with his former youth pastor, BW, who said there were rumours about Mr. Gaglardi's conduct. BW told Mr. Gaglardi that he had spoken to "three or four others" who had come forward, including MD, who JU knew from his time at Hillside. According to BW, MD claimed Mr. Gaglardi had been "a bit touchy", and other people had similar "uncomfortable experiences", but JU never heard any specifics. JU never heard any discussion about Mr. Gaglardi touching "anuses or penises", and he did not believe BW would reveal such personal information. JU agreed that knowing about other people coming forward helped to "validate his feelings" or "reinforce" his belief that Mr.

Gaglardi had touched him inappropriately, but he never learned the details of any other allegations against Mr. Gaglardi.

- [226] Later in cross-examination, JU acknowledged that he also knew ML when the two of them were younger, and that he spoke with ML some time in 2019. JU agreed that he told ML about "his situation" and "what happened to him", but he was not sure how much detail he shared.
- [227] JU was questioned about his statement to the police, in which he claimed that BW said MD had "the same, almost identical" story, and what happened to MD was "exactly what happened to me". JU admitted telling the police that, but went on to explain that BW did not disclose any details. BW simply said his story was similar to others. JU explained that when he was told that the other stories were "similar", he took this to be a reference to inappropriate touching in a similar overall church context. JU maintained that he did not know the personal circumstances or particular allegations of anyone other than himself. JU also agreed that he told the investigating officer that it was "obvious" Mr. Gaglardi was a "sexual predator".
- [228] JU also acknowledged telling the investigating officer in December of 2019 that his memories of what happened were "just coming back", and that there was "ambiguity around the assault". He told the officer that up until two days before he gave his statement, he believed he was "the only person". He was afraid that if he went forward, his concerns would be dismissed, or that someone would say he was making "too big a deal out of it". But when he learned that others were coming forward with allegations against Mr. Gaglardi, he felt "more comfortable about what [he was] saying and [his] responsibility".
- [229] With regard to the state of his memory, JU admitted saying to the police that his memory was "coming back". He went on to explain that after the other allegations came to light, it caused him to "mull it over" and "put [himself] back in [his] mind frame" at the time of the incidents in question. JU maintained that he had "no lack of clarity" or "lack of recollection" of the events he described in his testimony.

(8.2) Mr. Gaglardi's Testimony in relation to the JU Allegations

- [230] Mr. Gaglardi admitted that he interacted with JU in both a counselling context and in a social context. Mr. Gaglardi said he was not sure on the "time frame", but he spent time with JU when he was "fairly young", and also when he was "older".
- [231] Mr. Gaglardi recounted an episode when JU was suicidal and phoned him for help. He believed it was when JU was somewhere between 14 and 16 years old. Mr. Gaglardi went to get JU, who did not want to go home, so they went to Mr. Gaglardi's house. They had a long discussion about JU's problems. Afterward, they went into the hot tub together. Mr. Gaglardi had swim trunks for JU. There was no physical contact between them. After the hot tub, they put bathrobes on, and Mr. Gaglardi "set something up" for JU to sleep on a couch in the counseling room.

- [232] Mr. Gaglardi denied giving JU a candle-lit massage. Mr. Gaglardi said it could not have happened, for two reasons. First, he would not use candles in his house, because a number of people in the house were "allergic to scents". Second, the spare bedroom did not have a bed, but only a "sofa bed" which he would most certainly not have made up for JU, because it was "a pain to set up". Mr. Gaglardi went on to add a third reason, namely that he did not "do massages with oils and candles".
- [233] In cross-examination, Mr. Gaglardi agreed that he had in fact made the sofa bed into a bed before, but maintained that it was difficult to do. He said even when it was made into a bed, it still "looked like a sofa".
- [234] Mr. Gaglardi was also challenged on the assertion that he did not do massage with "oils and candles". When it was suggested that he did in fact use "oils" during massage, Mr. Gaglardi's initial response was that he used "non-perfumed oil, sorry, non-perfumed lotion". He then said it was uncommon for him to use the word "oil", he would normally use the term "lotion". He went on to say that if he did use "oil" it would be a "non-scented oil". Finally, Mr. Gaglardi said, "But if it was oil, it would be non-scented oil, which I don't use". In response to the suggestion that "unscented" candles would not pose a problem for someone with allergies, Mr. Gaglardi first denied that there was such a thing as "unscented" candles, but then pivoted to say "of course" there are unscented candles, but even unscented candles give off smoke, which can cause "significant problems" for "someone with a breathing issue or an allergy to smoke".
- [235] Mr. Gaglardi admitted that he had a counseling relationship with JU, both before and after the suicidal ideation incident. Their sessions took place in the counselling room in the basement of Mr. Gaglardi's house. JU sat on the couch, and sometimes Mr. Gaglardi sat on a chair opposite him, and other times he sat next to JU on the couch, with his legs crossed, and a notepad on his lap. Mr. Gaglardi denied sitting on the couch the way JU alleged in his testimony. He said "it did not happen", and "he did not have his feet in my crotch and I did not have my feet in his crotch".
- [236] With regard to the nature of his counselling with JU, Mr. Gaglardi testified in chief that it was "mostly non-touch counselling". When asked by his counsel whether there was any "touch component", Mr. Gaglardi said he "could not recall a touch component". Later in his testimony in chief, when dealing with a separate complainant entirely, Mr. Gaglardi repeated that he "did not recall any touch therapy with JU at all".
- [237] Mr. Gaglardi's counsel asked him whether he ever told JU "not to discuss the counselling with anyone". Mr. Gaglardi's response was that he may have told JU not to "noise abroad" about their counselling, for two reasons. First, "most people do not understand the concept of natural health and alternative health". Second, Mr. Gaglardi was concerned about a group of churches, which he referred to as the "holiness churches", who believed that almost anything "alternative" is a "New Age" practice attributed to the Devil. Mr. Gaglardi did not want to alienate these churches because he did a fair amount of work with them,

and some of them contributed to his overseas aid work. Mr. Gaglardi asserted that he explicitly provided at least one of these rationales when he asked JU not to tell people what they did in counselling. I should note here that the initial question about not discussing "counselling" with anyone was not really responsive to JU's allegation, which was that Mr. Gaglardi asked him not to tell anyone about the alleged candle-light massage.

- [238] In his testimony in chief, Mr. Gaglardi denied the allegation that he touched JU's erect penis, explaining that he "did not and would not do that", and further that he did not do massage in his gym because there was no space. Mr. Gaglardi went on to explain that he only did massage in the counselling room, where there was enough space for the client to lie down. In cross-examination, Mr. Gaglardi agreed that there were mats hanging on the wall in the gym, for use in the gym. He went on to assert that there was no room for him to "work on a person" in the gym. Mr. Gaglardi agreed that he might have used the term "body mapping". He said it was an "older term", but he might have used it to describe either an assessment, or in the context of "body development".
- [239] In his testimony in chief, Mr. Gaglardi denied telling JU, "This is how boys masturbate". When asked in cross-examination about the allegation that he frequently brought up the topic of masturbation, Mr. Gaglardi responded that he would not discuss masturbation with JU unless JU brought up the topic. Mr. Gaglardi also denied saying, "Don't worry about a woody", explaining that he "would have given him a disclaimer in the standard form" at the outset of the counselling, and would absolutely not have commented about a "woody".
- [240] Mr. Gaglardi denied the allegation that he stared at JU when standing naked in the bathroom, explaining that the incident could not have occurred the way JU described it. Mr. Gaglardi also said he never used the bathroom where JU claimed he was standing.
- [241] Finally, with respect to JU's allegation that Mr. Gaglardi showed him photos of partially undressed men or boys, Mr. Gaglardi appeared to acknowledge under cross-examination that the incident occurred, but claimed that JU pulled the photos out of the filing cabinet and asked him about them. Mr. Gaglardi added that the photos were of men, and the men were wearing clothes.

(9) MD's Allegation [Counts 17 and 18]

(9.1) MD's Testimony

- [242] MD first came to know Mr. Gaglardi at Hillside Community Church, when he was around 14 years old. MD started interacting with Mr. Gaglardi through their common interest in sound work. Mr. Gaglardi ran the sound system at the church, and MD started helping out, as a result of which they started spending time together.

- [243] Later, when he was about 16 years old, MD was struggling with depression and anxiety. His parents arranged for him to go to counselling with Mr. Gaglardi. With regard to Mr. Gaglardi's professional qualifications, MD testified that Mr. Gaglardi always referred to himself as a doctor, and MD believed he was a clinical psychologist. MD was also under the impression that Mr. Gaglardi was knowledgeable about naturopathic therapies, nutrition, and use of health supplements.
- [244] MD testified that the counselling sessions took place in a counselling room in the basement of Mr. Gaglardi's Coquitlam home. The room had a fireplace and several couches.
- [245] MD saw Mr. Gaglardi for counselling once every week or two, although it was not on a set schedule. MD estimated that he saw Mr. Gaglardi for a total of about 12 counselling sessions, over a period of two to three years, starting when he was 16 years old and ending when he was 18 years old.
- [246] MD recalled that Mr. Gaglardi used a variety of different techniques or therapies during counselling. He practiced cognitive behavioural therapy, in other words, "talk therapy". He also used various kinds of touch therapy including tapping, lymphatic drainage, and massage.
- [247] MD described how Mr. Gaglardi performed various forms of touch therapy on him, specifically tapping and lymphatic draining. MD would lie on the floor in the counselling room, on a pad, blanket, or towel, while Mr. Gaglardi performed these therapies on him. MD was fully clothed for these sessions.
- [248] MD testified that he was fully clothed for all but two of his counselling sessions with Mr. Gaglardi. The first incident where MD was unclothed occurred early on in the therapy. Mr. Gaglardi explained that MD needed to have a positive body image. He got MD to remove all of his clothes and stand in front of a mirror. MD could not remember if he was still wearing his shorts. Mr. Gaglardi told MD that he had to accept his body the way it was and be comfortable with it. Mr. Gaglardi did not touch MD at any point during this incident.
- [249] The second incident occurred at one of the last counselling sessions, possibly the last one. Mr. Gaglardi suggested that MD would benefit from a massage. MD was prepared to try it. Mr. Gaglardi explained to him that different parts of the body could be stimulated by massage. He told MD that sometimes massage of the anus can feel good. Mr. Gaglardi also said it was not uncommon to get an erection during a massage, and that if this happened he should not be ashamed or embarrassed. MD was unable to recall whether this discussion occurred during the session before the massage took place, or whether it was in the same session, immediately before the massage.

- [250] MD testified that while Mr. Gaglardi had a general discussion with him about the benefits of massage and how he might respond to it, Mr. Gaglardi did not describe exactly what would take place or how he would do the massage. In cross-examination, MD agreed that Mr. Gaglardi fully discussed the purpose for the massage therapy beforehand, but MD maintained that Mr. Gaglardi never discussed the areas of the body he would be massaging.
- [251] With regard to the massage itself, MD recalls that he got undressed and got onto the massage table, in the counselling room. In cross-examination, MD said he was unable to recall whether Mr. Gaglardi left the room while he got undressed, nor could he recall whether he was covered with a sheet or drape during the massage.
- [252] In chief, MD described how Mr. Gaglardi proceeded to massage his body "all over", from his head to his toes, with his bare hands. In the course of doing so, he massaged MD's buttocks and anus. MD remembers feeling paralyzed when Mr. Gaglardi touched his anus. It made him extremely uncomfortable. In cross-examination, MD added that he could feel Mr. Gaglardi's hands and fingers on his buttocks, but he could not tell what part of his fingers or hands Mr. Gaglardi was using. He maintained that Mr. Gaglardi's fingers definitely touched his anus, although not for a long time. MD reacted to the touch by clenching his butt cheeks. Later in cross-examination, when counsel suggested that Mr. Gaglardi's touching of his anus was a "momentary" event, MD reflected on the question, and responded that "it felt like an eternity" at the time.
- [253] MD believes the massage incident was "near the end" of the time when he was counselled by Mr. Gaglardi as a teenager. He was unable to recall whether there were further counselling sessions after this, but none of them involved any touching.
- [254] When asked in chief why the counselling ended, MD responded that he was "extremely uncomfortable" after the massage incident. He did not really want to see Mr. Gaglardi after that. In cross-examination, MD agreed that he later went back to Mr. Gaglardi for counselling as an adult, over several different periods of time, first in 2006, and then again in 2010.
- [255] When asked in cross-examination about the circumstances in which he came to make a report about Mr. Gaglardi, MD admitted discussing his allegations with BW, a former youth pastor. MD knew or believed that BW had also spoken with others, including JU and ML. MD maintained that BW did not tell him any of "the specifics" about what happened to anyone else. MD agreed that he personally knew JU and ML, and he suspected or believed that both of them had spoken with BW.

(9.2) Mr. Gaglardi's Testimony in Relation to the MD Allegations

- [256] Mr. Gaglardi acknowledged doing counselling work for MD. With the aid of written consent forms with respect to MD, Mr. Gaglardi was able to confirm that he first counselled MD when he was a teenager in 2001, and then again as an adult, for one stint in 2006 and another in 2010.

- [257] With regard to his dealings with MD when he was a teenager, Mr. Gaglardi recalled that MD had some suicidal thoughts, stemming from emotional issues, poor self-image and lack of self-confidence, and a strained relationship with his parents. Mr. Gaglardi recalled doing talk therapy or cognitive behavioural therapy with MD to address negative thoughts or emotions. Mr. Gaglardi also conceded based on the fact that his records included a parental release form, that there was likely some "touch therapy" or "energy work" with MD, although Mr. Gaglardi could not recall any details.
- [258] Mr. Gaglardi appeared to acknowledge in his testimony in chief that he may have done some "body image work" with MD in front of a mirror. Mr. Gaglardi went on to discuss his theories on this technique and his belief in its potential benefits.
- [259] Mr. Gaglardi testified in chief that he had no specific recollection of massaging MD. With regard to the allegation that he touched MD's anus, Mr. Gaglardi did not recall doing so, but he said that if there was any touching of this sort it would have been because he was moving a drape, or the drape slipped, and "if we are talking about an organ, then I would have tried to cover it". When his counsel directed him to the fact that the allegation was about touching MD's anus, Mr. Gaglardi responded first by answering in conditional terms, saying that when working on MD's glutes, there "would have been" a "fair amount of chopping, kneading, and [use of] knuckles". When asked if he actually recalled massaging MD's glutes, Mr. Gaglardi responded, "I believe I do at the moment. They meld together, but when we discuss the details, it makes it come to mind better". Mr. Gaglardi then added that, "If anything touched the sphincter at all it would have been totally accidental, and not on purpose". Mr. Gaglardi testified that he "could have been" using "oil" or "cotton gloves" while massaging MD.
- [260] Mr. Gaglardi went on to suggest that there might have been no touching of the anus at all, speculating that MD might have had some kind of out of body experience. Mr. Gaglardi claimed that when he is "working in these areas", there can be "a significant amount of emotional discharge", which can make people feel as if they are out of their body". Mr. Gaglardi suggested that MD's "experience" could have been "a release of energy", adding, "I am not saying it was, but it could have been".
- [261] In cross-examination, Mr. Gaglardi agreed that he had a conversation with MD about massage beforehand, but said he probably would have referred to it as "body work", not massage. Mr. Gaglardi denied telling MD that it was "perfectly normal" to get an erection, and "totally" denied telling MD that massage of the anus could feel good.
- [262] Mr. Gaglardi was asked in cross-examination about his explanation that a drape may have slipped and he might have touched an "organ" when trying to cover it. Mr. Gaglardi agreed that this was his position. He then acknowledged that this explanation would probably not apply to an allegation that he touched MD's anus, "because if we were moving a drape I might have touched his anus and tried to move it, but not likely". Mr. Gaglardi agreed there would be "no purpose" for touching MD's anus.

[263] When it was pointed out to Mr. Gaglardi that in his testimony in chief describing the "body work" with MD, he said "could have" been using "oil", Mr. Gaglardi replied that he did not recall saying this and that he normally uses the term "lotion". When it was suggested that his comment about "slipping" due to the use of oil or lotion would only apply to touching the penis, not the anus, Mr. Gaglardi disagreed. He said massaging the glutes involves lubrication and effort. He said, "an accidental movement" might have caused him to touch "a small part of the sphincter". He disagreed that it would necessarily be a "forceful touch".

[264] When it was pointed out to Mr. Gaglardi that the written parental consent form he had obtained for MD did not specifically mention "touch therapy", Mr. Gaglardi responded that there is a line in the consent form referring to "whatever other therapy". When it was suggested to Mr. Gaglardi that there was no parental consent to "touch therapy", he agreed and added that, "at age 16, there was not".

(10) SH's Allegations [Count 19]

(10.1) SH's Testimony

[265] SH came to know Mr. Gaglardi as a fellow-congregant at Hillside Community Church, in approximately 2003. SH was in his mid to late 20s at the time. He played in the church band, and got to know Mr. Gaglardi because he ran the sound system.

[266] SH started seeing Mr. Gaglardi for counselling when he was 27 years old. SH had problems with his emotions, problems feeling anything, and did not have a father figure in his life. The pastor at Hillside suggested that he see Mr. Gaglardi for counselling.

[267] SH attended counselling with Mr. Gaglardi once per week for about three years. SH missed some weeks, but as a general rule they met quite regularly. SH estimated that they had a total of 150 counselling sessions over three years. In cross-examination, he said they had "at least" 100 counselling sessions. Their meetings took place in the counselling room in the basement of Mr. Gaglardi's house in Coquitlam.

[268] SH did not pay Mr. Gaglardi anything for his services. Mr. Gaglardi suggested that SH make donations to some kind of foundation, and SH made two or three donations over the three years, but for the most part, he did not pay anything.

[269] With regard to the nature of the counselling itself, SH described it as a mentorship relationship. SH assumed Mr. Gaglardi was a doctor of some kind. There were degrees hanging on Mr. Gaglardi's wall as one would see in a doctor's office. Mr. Gaglardi also said he was a sex therapist. People called him "Dr. Ray". SH called him "Dr. Ray", or "Ray". In cross-examination, SH agreed that Mr. Gaglardi did not present himself as an MD, but rather a counsellor or a therapist. SH saw Mr. Gaglardi's degrees on the wall, and he thought Mr. Gaglardi was a doctor, although he acknowledged that he might have been a PhD rather than an MD.

- [270] In the course of the counselling, Mr. Gaglardi engaged SH in a number of different forms of "therapy". Much of the time they did "talk therapy", or mentorship. SH's main issue was an inability to experience feelings or emotions, and he had a need for a father-son bond. Over time, SH came to regard Mr. Gaglardi as a father figure, and Mr. Gaglardi appeared to reciprocate. Mr. Gaglardi also provided "body scanning" and "body work" therapies.
- [271] With regard to "body scanning", SH testified that there were two separate components. The first component involved SH placing his hand on a mouse-like electronic device connected to a computer that produced some kind of read-out. In cross-examination, SH agreed that Mr. Gaglardi did not have this device until 2009 or 2010. Later in his testimony, SH described a separate hand-held device that looked like a TV remote, which Mr. Gaglardi would run over his body to cause a tingling sensation. The second component was a visual or physical scan of SH's body, in which he stood naked while Mr. Gaglardi examined his entire body, looking for "imperfections". For the most part, it was a visual examination, but there was some "touching" or "prodding", with Mr. Gaglardi's bare hands.
- [272] With regard to "body work", SH would lie naked on the massage table, with a towel covering his privates, and Mr. Gaglardi would massage parts of his body that were particularly tense. While this was happening, SH would describe his feelings and emotions. Sometimes Mr. Gaglardi used a massaging device. It was a hand-held device that vibrated. Mr. Gaglardi also used oil for the massages.
- [273] In response to the suggestion that before he got undressed for "body work", Mr. Gaglardi would tell him to get "undressed to the level of his comfort", SH said it would be more accurate to say Mr. Gaglardi asked him if it was "okay if you are naked" and SH responded that he was. When it was suggested that Mr. Gaglardi would leave the room while SH got undressed, SH responded that this might have happened in the beginning, but later on, as things progressed, SH felt it was "no big deal" for Mr. Gaglardi to be present while he got undressed. When it was suggested in cross-examination that there was never an instance when SH felt uncomfortable being undressed, he responded that this was not true. Sometimes he felt uncomfortable, but he got undressed anyway because he trusted Mr. Gaglardi.
- [274] SH testified that the "body work" would often involve massage of his groin, because he was often tense in that region. Mr. Gaglardi told him he might get an erection, because of the sensitivity of the area. SH testified that he did in fact get an erection on occasion. When that happened, Mr. Gaglardi would ask him if he was ok, and SH would respond that he was fine because he trusted Mr. Gaglardi. Sometimes SH was completely exposed, with nothing covering his genitals, when Mr. Gaglardi worked on his groin. SH believed contact with his genitals was "not part of the procedure", but it happened from time to time. SH described it as "occasional contact" with his genitals that happened "quite often", although there was no regular pattern to it. SH testified that if the touching of his genitals was not necessary for his health, he would not have consented to it.

- [275] In cross-examination, SH agreed that Mr. Gaglardi took time to explain his theories on energy work, movement of energy, and movement of emotion around the body. Mr. Gaglardi asked for SH's consent to do work of this kind and SH provided it.
- [276] SH also conceded in cross-examination that often when Mr. Gaglardi did massage in his groin area, he felt as if it released tension and emotion. SH accepted that Mr. Gaglardi's therapy was "absolutely effective". SH further agreed that the contact with his genitals was "incidental to" the massages. SH conceded that, because of the areas involved, "there would be contact". Mr. Gaglardi used both hands, and massage oil.
- [277] SH also agreed that Mr. Gaglardi told him on many occasions that if at any point he felt uncomfortable, he could tell Mr. Gaglardi to stop and he would do so. SH agreed that at least in the first few sessions, Mr. Gaglardi would fully explain a treatment before performing it. After a while, SH had a good understanding of what Mr. Gaglardi's treatment methods entailed, and there was less explanation, and "nothing surprising".
- [278] SH agreed that he occasionally gave Mr. Gaglardi massages. Mr. Gaglardi had his clothes on during the massages. SH agreed that he was not a trained massage therapist, but he was still "good at it".
- [279] Apart from the touching of his genitals, SH described several other instances in which Mr. Gaglardi touched his privates, specifically: (i) physically handling his testicles, ostensibly to check for lumps or signs of cancer, (ii) taking swabs from his groin and anus, purportedly to test for Candida, (iii) taking a swab from his anus, purportedly to test for "parasites".
- [280] With regard to the testicular "examination", SH testified that during a counselling session he told Mr. Gaglardi he was concerned about "an issue" regarding his testicles. In cross-examination, SH clarified that he told Mr. Gaglardi he had a bump or lump on one of his testicles. Mr. Gaglardi examined SH's testicles. SH said it was "like a doctor's exam". In cross-examination, SH agreed that he consented to Mr. Gaglardi examining his testicles. SH could not recall whether Mr. Gaglardi recommended that he do a self exam, or that he see a doctor. SH added that he more or less considered Mr. Gaglardi to be his doctor at the time.
- [281] With regard to the Candida testing, SH testified that he had a rash around his groin and anus. He asked Mr. Gaglardi to help him with it. Mr. Gaglardi was "quite certain" that it was Candida, but he said he should take samples to be sure. Mr. Gaglardi took "swabs" from both his groin and his anus. SH did not recall receiving any results in relation to the swabs. Mr. Gaglardi gave SH a "tincture" that was supposed to help with the rash. It appeared to work. In cross-examination, SH said he did not recall Mr. Gaglardi recommending that he see a doctor.

- [282] With regard to the parasite testing, SH testified that within a day or two of the Candida incident, he was having trouble with his digestive system. Mr. Gaglardi said he might have a parasite, and offered to take a swab for testing. SH got on the massage table, with his knees pulled up to his chest, and Mr. Gaglardi took a swab from in or around his anus. Mr. Gaglardi later told him that the sample had been tainted by soap, but he looked on the computer and determined that SH probably had a minor parasite issue.
- [283] SH recalls an occasion, about a year after he started seeing Mr. Gaglardi for counselling, in which Mr. Gaglardi asked him not to tell anyone what they did together because he could "get in trouble". Mr. Gaglardi did not say how he would get in trouble. At this point, SH was fully involved in the counselling and he trusted Mr. Gaglardi.
- [284] SH testified that he stopped attending counselling with Mr. Gaglardi after he got married. SH's overall sense was that Mr. Gaglardi's counselling and mentorship helped him a lot emotionally. SH and his wife later went to see Mr. Gaglardi for marriage counselling, but only sporadically. SH and Mr. Gaglardi also got together socially on occasion, for dinner and on holidays.
- [285] In cross-examination, SH agreed that he saw Mr. Gaglardi about once per month during this time frame, for dinner, for coffee, or just to visit. Sometimes Mr. Gaglardi and his wife would babysit SH's children. SH also agreed that once in a while he would go to Mr. Gaglardi's house for a "tune up" treatment session. SH continued to see Mr. Gaglardi until he was 40 or 41 years old.
- [286] SH testified that the last time he and Mr. Gaglardi met for a session it was "uncomfortable". Mr. Gaglardi was not very communicative. SH did not contact Mr. Gaglardi again after that, and Mr. Gaglardi never tried to contact him. In cross-examination, SH agreed that this was in about 2016 or 2017. He agreed that the relationship "fizzled".
- [287] When asked in cross-examination about the circumstances in which he came forward to speak with the police, SH said he heard media reports about the allegations against Mr. Gaglardi. When he heard the reports, he was shocked and confused, because he believed he benefitted from the years of counselling and therapy he received from Mr. Gaglardi. However, the news reports make him question whether some of the things Mr. Gaglardi did were wrong.
- [288] SH later learned about allegations from a number of different people, including individuals named ED, ZL, and BC. (None of these individuals were complainants or witnesses in this trial). This caused SH to think there might be a pattern in terms of Mr. Gaglardi's conduct. SH did not appear to be familiar with any specific allegations, although he did say in his testimony that someone told him something about a masturbation incident.

(10.2) Mr. Gaglardi's Testimony in Relation to the SH Allegations

- [289] Mr. Gaglardi testified that he had a mentoring relationship with SH for about 13 or 14 years, from around 2003 or 2004 until around 2016 or 2017. Mr. Gaglardi explained that a mentoring relationship was different from a counselling relationship, because the former was more friendly and more personal than the latter. Mr. Gaglardi estimated that he had at least 100 mentoring sessions with SH. He also had interactions with SH in other, social contexts. He went out to dinner with SH and his wife, visited SH and his family at their house on Christmas, and visited SH at his workplace.
- [290] Initially, SH had mentoring sessions with Mr. Gaglardi about once a week, for a period of several years. The sessions included counselling in the form of talk therapy, as well as "adjunct" therapies, or "touch therapies", to help SH access and release his emotions.
- [291] Mr. Gaglardi told SH that his "energy release" therapy was "experimental" and "unproven", and that some people think it is "woo woo" or "quacky". He gave SH a written consent and insisted that they go over it together before SH signed it.
- [292] Mr. Gaglardi testified that he did "energy work" or "touch therapy" with SH about 50 times. Mr. Gaglardi endeavoured to carefully describe the techniques he was going to use before each and every session, to the point where SH said he knew the explanation by heart and did not need to hear it. Mr. Gaglardi would then tell SH to get undressed to "his level of comfort" and would leave the room while SH did so. When he returned, SH would be on the massage table, covered by a drape. Mr. Gaglardi testified that during "body work", he would take steps to ensure that only the part of SH's body that he was working on was exposed, while the rest of SH's body remained covered by the drape.
- [293] In cross-examination, Mr. Gaglardi denied ever asking SH if he was "okay to get naked" or "okay to be naked". He maintained that he always told SH to undress to his level of comfort. Mr. Gaglardi did not ever consider suggesting to SH that he could leave his underwear on for a portion of the "body work".
- [294] Later in the cross-examination, when Mr. Gaglardi was being questioned about another complainant, he was pressed on whether there were instances in which he did massage work on SH's groin without any drape covering the area. Mr. Gaglardi replied that he did not recall doing so, but if this did happen, it was a product of SH's choice, in the context of a 14-year counselling or mentoring relationship.
- [295] Mr. Gaglardi testified that SH was "in tune" with his body and would direct Mr. Gaglardi to parts of his body that were tense. Often, SH said he had tension in the groin, so Mr. Gaglardi frequently "spent time working around [SH's] groin". In this context, Mr. Gaglardi testified that contact with the genitals was "impossible to avoid". He said any touching of the genitals was "not intentional". Mr. Gaglardi said he would frequently use a drape to "tuck the genitals" away, but "[s]ometimes it would not stay".

- [296] In cross-examination, Mr. Gaglardi confirmed that even though it was a "mentoring relationship", it also involved "extensive counselling and therapy". Having testified that there were at least 100 sessions in total, and about 50 of them involved touch therapy, Mr. Gaglardi was not prepared to agree with the suggestion put to him in cross-examination that "about half" of his sessions with SH involved touch therapy. He said it was "not half", but "some". He then agreed that "a fair amount" of the sessions involved touch therapy.
- [297] With regard to the testicular exam, Mr. Gaglardi testified that during talk therapy, SH mentioned that he felt a lump on his testicles. Mr. Gaglardi responded that a lump on the testicles could be serious and SH should go and see a doctor. SH asked Mr. Gaglardi to "check it" and then if necessary, he would see the doctor. Mr. Gaglardi testified that he urged SH twice more to see a doctor, but SH did not want to do so. At that point, Mr. Gaglardi said he would examine SH's testicles, for information purposes only, as a natural health practitioner and not a doctor. Mr. Gaglardi went on to testify at length about his base of knowledge concerning examination of testicles for signs of cancer. To return to SH's case, Mr. Gaglardi testified that after SH gave him express permission, Mr. Gaglardi proceeded to perform a testicular examination, using both hands. He did not find any lumps or signs of anything unusual, and reported that to SH.
- [298] In cross-examination, Mr. Gaglardi agreed that when he did the testicular exam for SH, he had no formal training or prior experience in performing testicular exams on other people. Mr. Gaglardi added that he had studied videos and read Cancer Society materials on the topic.
- [299] With regard to the Candida swabs, Mr. Gaglardi gave a similar account. SH told him he had irritation around his groin. Mr. Gaglardi said SH should see a doctor, and SH responded, "You're my doctor". Mr. Gaglardi clarified with SH that he was not a doctor and then urged SH again to see a doctor, but SH wanted Mr. Gaglardi to look at it. Mr. Gaglardi testified that while perhaps it was not a good idea, he agreed to look at SH's groin. It appeared to be Candida. Mr. Gaglardi then gave testimony about his theories on how nutrition could influence Candida. Returning to SH's case, Mr. Gaglardi told SH he could take swabs of the area. When asked why he recommended swabs, Mr. Gaglardi said it was "to reconfirm", because he was "not an expert". He told SH that he could take swabs to "make sure". SH agreed. Mr. Gaglardi took swabs from SH's groin and anus and then examined them under a microscope, comparing the images to photographs of Candida. Later, more than likely the next day, Mr. Gaglardi told SH that it was Candida and he could either go and see the doctor or get an over-the-counter remedy. SH opted for the latter. Mr. Gaglardi had "wholesale connections" and obtained some kind of treatment product, which he then gave to SH.
- [300] Mr. Gaglardi did not mention the "parasite" issue in his testimony in chief, but in cross-examination he agreed that he performed a separate swab of SH's anus to test for "parasites". Under further questioning, he denied inserting the swab into SH's rectum, explaining that he just "swabbed around the sphincter".

[301] In chief, Mr. Gaglardi admitted that he asked SH not to tell other people what they did at their sessions. Mr. Gaglardi gave the same two reasons he had discussed earlier in his testimony, namely (i) most people do not understand "energy work" and might consider it to be "inappropriate", and (ii) Mr. Gaglardi was concerned about his reputation with the "holiness churches".

(11) AH's Allegations [Count 20 on the Indictment]

(11.1) AH's Testimony

[302] AH met Mr. Gaglardi when he was attending Hillside Community Church. He knew Mr. Gaglardi operated the church's audio-visual system. This was in 2006 or 2007, about a year and a half after AH graduated from university.

[303] At the time, AH was a shy person. He had a speech impediment, which made him nervous. He was particularly awkward and lacking in confidence when it came to meeting women. A friend suggested that AH should see Mr. Gaglardi for counselling services. AH arranged, through the church, to get an appointment with Mr. Gaglardi.

[304] AH went to see Mr. Gaglardi in the counselling area in the basement of his house in Coquitlam. Mr. Gaglardi described his counselling services and asked whether AH was interested in "secular" or "Christian" counselling services. AH opted for the latter. He signed a number of forms, including a consent form and a commitment form.

[305] Thereafter, AH saw Mr. Gaglardi for counselling about once per week, for a period of one or two months. Overall, AH saw Mr. Gaglardi eight times. When it was suggested to AH in cross-examination that he might have attended 14 sessions in total, AH responded that it was not that many. AH paid Mr. Gaglardi \$150 per session. On a few instances, AH did some website design work for Mr. Gaglardi in exchange for Mr. Gaglardi's counselling services.

[306] The counselling began with "talk therapy", focusing on the use of "positive affirmation" to replace negative thoughts. AH sat on a couch, and Mr. Gaglardi sat in a seat across from him, five or six feet away. Mr. Gaglardi also engaged in EFT therapy, although in direct examination AH could not recall what the letters stood for. In cross-examination, it was suggested that EFT was short for Emotional Freedom Technique, but AH responded that he was still unable to recall. AH testified that Mr. Gaglardi gave him a fair number of CDs and DVDs to review on his own.

[307] As the sessions progressed, Mr. Gaglardi told AH that he needed to get more comfortable with his body and with touch. Mr. Gaglardi proposed a new procedure involving the use of a massage device. Mr. Gaglardi got AH to lie on his back on the floor with his legs spread and his knees bent. Mr. Gaglardi was situated basically between Mr. Gaglardi's legs, from which position he applied a hand-held vibrating massage device to the area between his scrotum and anus. AH found the procedure "weird and uncomfortable".

- [308] In cross-examination, AH agreed that Mr. Gaglardi used terms like "energy work", "releasing negative energy" or "bad energy" when describing the theory behind the massage technique. AH agreed that Mr. Gaglardi told him it was a "new" kind of "touch therapy", but denied that Mr. Gaglardi told him it was "controversial". AH did not recall Mr. Gaglardi ever telling him that it might not work. Mr. Gaglardi just recommended that AH "try it" to see if it worked, and AH agreed because he trusted Mr. Gaglardi. When it was suggested to AH that Mr. Gaglardi fully described the procedure before performing it, AH responded that he could not remember exactly what Mr. Gaglardi said, but he believes Mr. Gaglardi discussed it with him on the first day. AH added that Mr. Gaglardi did not describe "the exact process". Mr. Gaglardi's description did not really explain how weird the procedure was in practice, although AH was unable to articulate in his testimony how Mr. Gaglardi's description deviated from what actually happened. AH did not recall if Mr. Gaglardi told him that he could say stop if he was uncomfortable.
- [309] AH testified that Mr. Gaglardi performed this procedure on him three times, in three separate sessions, each lasting about five minutes. In cross-examination, AH denied that the treatments only lasted two to three minutes each.
- [310] On the first occasion, AH wore his pants. On the second and third occasions, AH had his pants off, with a towel covering his waist area. AH's recollection was that Mr. Gaglardi said the procedure would probably be more effective without pants on, but he was unable to recall exactly what Mr. Gaglardi said in this regard. He could not recall whether he removed his underwear. In cross-examination, AH testified that Mr. Gaglardi told him the process would be better with his pants off, if AH was comfortable with that.
- [311] As for Mr. Gaglardi's conduct during the procedures, AH testified in cross-examination that he felt that the procedure was "very clinical", and that Mr. Gaglardi appeared to know what he was doing, like a doctor.
- [312] AH did not agree with the suggestion that there might only have been two sessions using the massage device. AH was "pretty sure" that there were three sessions involving the device.
- [313] After the third massage session, AH concluded that the treatment was not working. It made him feel uncomfortable and he was not realizing any results, so he stopped. Mr. Gaglardi told AH that he had signed a commitment to counselling, and he should stick with it, to invest in himself. Mr. Gaglardi said it was a new kind of counselling service. Nonetheless, AH decided not to continue.
- [314] AH testified that he thought the massage procedure was a form of medical treatment that would improve his health. He believed Mr. Gaglardi had a background as a legitimate Christian counsellor, connected to the church. His title was "Dr. Ray Gaglardi". At the time, AH trusted Mr. Gaglardi and believed he knew what he was doing. AH also testified that when he was presented with the consent forms, he was overwhelmed by them. AH asserted that if the massage procedure was not for his health, he would not have consented to it. In

retrospect, AH does not believe Mr. Gaglardi's methods were appropriate.

- [315] In cross-examination, it was suggested that because Mr. Gaglardi called himself "Dr. Ray", AH assumed he was a doctor. (I consider that question to be misleading and the answer of no value.) AH did acknowledge that the term doctor might have been a reference to a non-medical doctor, but AH believed Mr. Gaglardi had some medical qualifications. AH agreed that Mr. Gaglardi never expressly said he had medical training. AH acknowledged that all along he was aware the treatment was not intended to address a "medical malady". Later in cross-examination, AH added that he believed Mr. Gaglardi to be a clinical psychologist, but then acknowledged that Mr. Gaglardi never expressly identified himself as such.
- [316] AH acknowledged in his testimony in chief that aside from the three instances in which Mr. Gaglardi used the massage device, and perhaps some hugging, Mr. Gaglardi did not physically touch him in the course of his counselling.
- [317] When asked about the circumstances in which he reported his allegations, AH responded that he saw a press release and it triggered him to go to the police. He spoke to others, but did not describe his experience. He heard people say that it was weird, but no one shared any details or allegations with him.

(11.2) Mr. Gaglardi's Testimony in Relation to the AH Allegations

- [318] In his testimony in chief, when asked about AH, Mr. Gaglardi replied that he could remember AH, but could not recall the time frame when he dealt with him. He initially suggested that it was in the 1990s. When counsel pointed out AH's allegation that he had been treated in 2006 and 2007, Mr. Gaglardi responded that this was probably the right time frame, adding that there were quite a few people and it was difficult for him to "lock into dates".
- [319] Mr. Gaglardi was able to recall that AH was a shy person, who had problems with a speech impediment, and had difficulty meeting women. He recalled meeting AH at Hillside, when AH was doing computer work for the church.
- [320] Mr. Gaglardi testified that while AH claimed to have had only seven or eight sessions, Mr. Gaglardi believed it was more like 12 to 13 sessions in total. Mr. Gaglardi did not give an explanation for how he would remember this, when only a few minutes earlier in his testimony he was not clear on the decade during which the treatment occurred.
- [321] Mr. Gaglardi testified that after the first four or five counselling sessions with AH, they were not making much progress. Mr. Gaglardi used techniques like talk therapy, and EFT "in front of the mirror". Mr. Gaglardi's impression was that AH was really "locked up", had trouble expressing himself, and did not appear to be enthusiastically embracing the "homework" Mr. Gaglardi gave him.

- [322] Mr. Gaglardi raised the topic of touch therapy. AH was "shy" and did not appear to be comfortable with touch. Mr. Gaglardi discussed "energy release" therapy but AH did not seem interested. Mr. Gaglardi then suggested "external prostate release" because it could be done "over the clothes", and it might help AH to relax and open up so that the talk therapy would be more productive.
- [323] Mr. Gaglardi testified that he tried to explain the theory behind energy release to AH. He told AH that his therapies were unproven, experimental, and would be considered "weird" by some. Mr. Gaglardi told AH about how energy and emotion can be stored up in the prostate, and suggested "prostate release". Mr. Gaglardi says he had an information session with AH in which he described the prostate release procedure and the nature of the device in some detail. Mr. Gaglardi believed he actually showed AH the device "at some point prior to the procedure", but he was not sure.
- [324] Mr. Gaglardi testified that he presented AH with a written consent release form and went over it with him. In the course of doing so Mr. Gaglardi told AH that there "could be slight arousal" during the procedure, and that AH could decide if he wanted to stop the procedure or continue with it. Mr. Gaglardi testified that he "would have" discussed this when he went over the written consent form, and he "would have" given AH advice about "arousal" when he outlined the procedure.
- [325] In his testimony in chief, Mr. Gaglardi described the prostate stimulation device in some detail. He said it was 18 inches long and had various detachable massage heads of different sizes. He explained how the device was placed between the scrotum and the penis to stimulate the prostate acupressure point.
- [326] Mr. Gaglardi testified that he performed the external prostate release procedure on AH twice.
- [327] On the first occasion, Mr. Gaglardi went over the written disclaimer and consent form, which included a disclaimer on arousal. He then showed AH the device, and described the process. He told AH he could have his clothes on during the procedure. He asked AH if he wanted to proceed and AH confirmed that he did. Mr. Gaglardi then began the procedure. AH was wearing pants. Mr. Gaglardi could not recall whether AH was on the floor or on a massage table. He described two possible body positions but was unable to say which one he used with AH. Mr. Gaglardi does not recall AH saying anything during the procedure. After the procedure was done, Mr. Gaglardi asked AH how he felt and his response was equivocal, meaning there was no clear benefit. Mr. Gaglardi suggested they try the procedure one more time on another occasion.
- [328] On the second occasion, Mr. Gaglardi suggested that the procedure might work better if AH wore less clothing. He says AH suggested that he could try it with no pants and just underwear, to which Mr. Gaglardi responded that would be "perfectly fine"; there was "no coercion". Mr. Gaglardi then performed the procedure in the same manner as he did on the first occasion, except that AH was "draped". Mr. Gaglardi could not recall whether AH was

situated on the floor or on a massage table during the procedure. He did state that on this occasion, AH was on all fours and Mr. Gaglardi was positioned behind him to use the device. He found it "easier to target the acupressure point" with AH wearing less clothing. After the procedure, Mr. Gaglardi asked AH if he experienced any result. His recollection was that AH said he might have felt "a bit lighter", but had no release of "emotion".

[329] Mr. Gaglardi testified that at this point, having tried the external prostate stimulation twice without success, he concluded that it was not going to be effective. Mr. Gaglardi explained that he was only interested in techniques that were "helpful and repeatable", and after two attempts this procedure was not. Mr. Gaglardi recommended to AH that they not continue with prostate stimulation and AH agreed.

[330] Mr. Gaglardi was very clear in his testimony in chief that he only performed the prostate massage procedure on AH twice. He maintained that position in cross-examination.

[331] In his testimony in chief, Mr. Gaglardi said the prostate massage device was a "professional prostate massager". When asked about that in cross-examination, Mr. Gaglardi was unable to identify the "profession" for which the device was designed or used. Mr. Gaglardi clarified that he was referring to the fact that the device was described that way by the manufacturer. Mr. Gaglardi was unable to recall the brand name of the device or the name of the manufacturer.

(12) SJ's Allegations [Count 22 on the Indictment]

(12.1) SJ's Testimony

[332] SJ testified that he had anxiety and mental health challenges in his teen years. His primary issue was an eating disorder, although it was not diagnosed, and not disclosed to his parents until after he started counselling with Mr. Gaglardi.

[333] SJ's father knew he needed help, and referred him to Mr. Gaglardi in June of 2014. SJ sent an email to Mr. Gaglardi asking about counselling. This led to a meeting at Mr. Gaglardi's house in Coquitlam, where Mr. Gaglardi outlined his services. SJ decided to begin a "therapeutic relationship" with Mr. Gaglardi. In his testimony, SJ described it as a relationship that involved counselling, mentoring, and friendship.

[334] SJ understood that Mr. Gaglardi had "a lot of schooling". He had a doctorate of some sort, and had also completed training as a counsellor. SJ believed Mr. Gaglardi to be a "life long learner", and also a professional counsellor who helped many people. In cross-examination, when shown a copy of the release form he signed, SJ agreed that the form said Mr. Gaglardi was not a medical doctor.

[335] Mr. Gaglardi and SJ had a discussion about fees, but SJ believed that Mr. Gaglardi was "retired" and ran a non-profit organization, so he would not charge anything for his services. SJ believes his parents may have made donations to Mr. Gaglardi's organization.

- [336] In his trial testimony, SJ estimated that he attended a total of 20 or 30 sessions with Mr. Gaglardi, over the course of five or six years. Most were in-person, in the counselling room in the basement of Mr. Gaglardi's home. Some of the final sessions were online. In cross-examination, SJ did not agree with the suggestion that he had as many as 75 counselling sessions with Mr. Gaglardi.
- [337] SJ testified that his sessions with Mr. Gaglardi involved a variety of therapies or techniques, including talk therapy, Biblical counselling, relaxation and "body work", and something called "quantum health" medicine.
- [338] For talk therapy, SJ sat on a couch and Mr. Gaglardi sat in a chair across from him. They reviewed SJ's week. Mr. Gaglardi made suggestions based on Biblical and scientific principles. They discussed brain health issues. Over time, Mr. Gaglardi described SJ as the son he never had. For his part, SJ viewed Mr. Gaglardi more as a friend than a father figure. SJ testified that about 50% of their time together involved talk therapy.
- [339] The relaxation and body work involved massage on parts of SJ's body where lymph nodes were located, using a handheld massage device, to move lymph and help it flow around the body. SJ did not really understand it, but he trusted Mr. Gaglardi, who seemed knowledgeable. In cross-examination, SJ agreed that Mr. Gaglardi would always explain the therapy in advance, and confirm that SJ wanted to proceed, before getting underway. SJ also agreed that Mr. Gaglardi always asked him his comfort level, and made it clear that they could stop whenever SJ said he did not want to continue. SJ agreed with the suggestion that Mr. Gaglardi told him he could undress to his level of comfort, but added that Mr. Gaglardi also said it would be "more effective to take off more clothing".
- [340] There were two components to the "quantum health" treatment. One component involved SJ putting his hand on a mouse-like device connected to a computer that gave feedback on SJ's "energy levels". The other involved Mr. Gaglardi using a hand-held device like a TV remote that he ran over SJ's body, creating a static type feeling. In cross-examination, SJ agreed that the mouse-like device appeared to be a commercial product sold under the brand name NES Health, and the hand-held remote device was also an NES product. SJ once looked at the NES website and satisfied himself that it was a legitimate company.
- [341] SJ asserted that sometimes Mr. Gaglardi asked him for samples of bodily substances, including saliva and urine samples, for testing. Mr. Gaglardi kept sample urine containers and vials for saliva under the sink in the bathroom. SJ never filled out a lab requisition form, never saw any lab reports, and does not recall Mr. Gaglardi ever discussing the results with him.
- [342] The sole allegation of impropriety arising from SJ's testimony pertains to an incident where Mr. Gaglardi examined SJ's rectum with some kind of device. The incident occurred after SJ raised a concern with Mr. Gaglardi about blood coming from his rectum. SJ recounted in his testimony that he was presented with, "the option to go to the doctor, or the option of Mr. Gaglardi looking at it". SJ felt comfortable with Mr. Gaglardi, so he asked him to do it. SJ

took his clothes off and laid on the massage table in Mr. Gaglardi's counselling area, with his knees on his elbows, and his buttocks tilted up. Mr. Gaglardi inserted some kind of a device into SJ's anus. SJ described it as a "claw" type of device. He could not remember whether the device touched his anus or not, but "there was some touching of the anus". The process lasted "at least a few minutes". In the course of the procedure, Mr. Gaglardi told SJ they could stop at any point where he became uncomfortable. SJ testified that an inspection like that would have been uncomfortable regardless of who was conducting it. SJ concluded his testimony in chief by saying that if the examination had not been for a medical purpose, he would not have consented to it.

- [343] In cross-examination, SJ said he did not recall asking Mr. Gaglardi to do the rectal examination procedure. SJ agreed that Mr. Gaglardi raised the possibility of going to see a doctor. SJ acknowledged his reluctance to go to a doctor. SJ further agreed that Mr. Gaglardi fully explained the procedure before performing it. SJ did not recall Mr. Gaglardi using the term "anoscope". Mr. Gaglardi told him the process might be uncomfortable. SJ decided to have Mr. Gaglardi do the examination. The purpose was to determine whether there was any visible source of bleeding. During or after the exam, Mr. Gaglardi told SJ he could not see any visible lacerations. SJ agreed that even after the anal examination, he continued to see Mr. Gaglardi for counselling.
- [344] When it was suggested to SJ that he found Mr. Gaglardi's therapies helpful, SJ equivocated. At the time, SJ was "keen to improve" his physical and mental health, and was prepared to try Mr. Gaglardi's therapies, but he was not sure he ever saw any results. SJ did confirm that Mr. Gaglardi explained all of the therapies to him in advance, and that Mr. Gaglardi always secured SJ's consent before performing a particular therapy or procedure.
- [345] When asked about the circumstances in which he came forward to speak with the police, SJ said he became aware of a police press release about Mr. Gaglardi. He spoke with his sister in law, who is a police officer, and who pretty much told SJ that "where there is smoke there is fire". Knowing that he had been in counselling with Mr. Gaglardi for years, SJ reflected on whether there had ever been any inappropriate contact. He ultimately made the decision to speak with the police about his experience.

(12.2) Mr. Gaglardi's Testimony in Relation to the SJ Allegation

- [346] Mr. Gaglardi testified that he was involved in counselling SJ for some seven or eight years, up until some time in 2020. Mr. Gaglardi estimated that he had "more than 100" counselling sessions with SJ over that time frame. SJ's principal issue was an eating disorder.
- [347] Mr. Gaglardi testified that in the course of his counselling relationship with SJ, he employed (i) various forms of "talk therapy", principally cognitive behavioural therapy, EFT, and a specific program for eating disorders, (ii) body scanning techniques using NES products as described earlier in the evidence, and (iii) various forms of "touch therapy", including "energy work" and "lymphatic draining".

- [348] Mr. Gaglardi acknowledged that at some point during his counselling relationship with SJ, he performed an anal examination. He explained that SJ raised a concern about rectal bleeding. Mr. Gaglardi responded that SJ should go to the doctor and get a colonoscopy. SJ asked if Mr. Gaglardi could do it, and Mr. Gaglardi responded that he was not a doctor, but rather a "natural health practitioner", and it was "not really in [his] field". SJ responded that he knew all of that that, he had signed the consent forms. Mr. Gaglardi then agreed to examine SJ's rectum.
- [349] SJ was positioned on a massage table as he had described in his testimony. Mr. Gaglardi testified that from his "educated perspective", he saw what appeared to be minor tearing on the wall of SJ's sphincter. He reported the results to SJ.
- [350] Mr. Gaglardi then inserted a device that he referred to as an "anoscope", about one inch into SJ's rectum. Mr. Gaglardi says that he described the device and the procedure to SJ before using it. Mr. Gaglardi did not see "anything of concern". He again reported the results to SJ. He told SJ that if he had any further bleeding he should go to the doctor.
- [351] In cross-examination, Mr. Gaglardi maintained that his discussion with SJ about going to the doctor went "back and forth" before he ultimately agreed to do the anal examination. Mr. Gaglardi denied that SJ was unsure about whether to go ahead with it. Mr. Gaglardi agreed that he had done extensive "talk therapy" with SJ. When it was suggested that Mr. Gaglardi might have tried to address SJ's reluctance to see the doctor through "talk therapy", Mr. Gaglardi responded that he did try to get SJ to go to the doctor and SJ was aware of his position. Mr. Gaglardi added that in the course of talk therapy he frequently recommended that SJ go to see a dentist about the effects of his bulimia, but SJ was reluctant to do that as well. They had discussed SJ's view toward seeing doctors at length in their talk therapy.
- [352] In his testimony in chief, Mr. Gaglardi described the "anoscope" device in some detail. He explained that it was a commercially manufactured device. He said he got it from a container of medical supplies that one of his charities was supposed to ship to Africa as part of a church missions project.
- [353] In cross-examination, when asked about whether he collected saliva and urine samples from SJ, Mr. Gaglardi responded that he did not recall doing so, but if he did, it would have been with SJ's permission, to test the "Ph levels". Mr. Gaglardi agreed that he did not send any samples taken from SJ to a lab, explaining that he did not need to send samples to a lab to test "Ph levels". Mr. Gaglardi disagreed that SJ was never given any results. He was unable to recall whether he gave SJ any "written results".

(13) CP's Allegation [Count 23 on the Indictment]

(13.1) CP's Testimony

- [354] CP testified by video under s. 486.2(2) of the Criminal Code.

- [355] CP met Mr. Gaglardi in 2014. CP was 26 years old at the time. He was looking for a counsellor and a friend at work referred him to Mr. Gaglardi. He contacted Mr. Gaglardi by email and later had a meeting with him by video. CP said he was interested in counselling but did not have much money and was concerned about the cost. Mr. Gaglardi said he prayed about it and concluded that he should counsel CP free of charge. CP considered it to be a great opportunity.
- [356] It was CP's understanding that Mr. Gaglardi had "three doctorates", one in theology, one in natural medicine, and one in psychology. CP further believed that Mr. Gaglardi had "a variety of other certifications", including a certification from something called the "Amen Clinic" in the United States. CP called Mr. Gaglardi "Ray".
- [357] CP received counselling services from Mr. Gaglardi for a number of years, from 2014 until 2018. The vast majority of CP's counselling sessions with Mr. Gaglardi were over the internet. They had sessions about once per month. The sessions lasted 50 to 60 minutes each. At various points in his testimony, CP described the counselling as "talk therapy". In cross-examination, CP agreed that it was called "cognitive behavioural therapy". CP also agreed that Mr. Gaglardi's therapy was not presented as conventional medical therapy, but rather it was a form of "alternative health therapy". CP accepted the suggestion that Mr. Gaglardi presented his therapies as part of a "holistic approach" that included health issues and nutrition.
- [358] From 2018 to 2020, CP had occasional "follow up" video sessions with Mr. Gaglardi. CP's dealings with Mr. Gaglardi ended abruptly in July of 2020 when Mr. Gaglardi informed him that he was "shutting down his practice".
- [359] CP testified that over the time that he was counselled by Mr. Gaglardi, they probably had a total of four in-person sessions. The in-person sessions took place in the basement of Mr. Gaglardi's house in Coquitlam. CP sat on a couch and Mr. Gaglardi sat across from him in a chair.
- [360] CP's first in-person counselling session with Mr. Gaglardi was on 2 May 2014. They spoke for about an hour. In the course of the discussion, Mr. Gaglardi recommended that CP might benefit from something CP described in his testimony as "energy meridian electromagnetic treatment". Mr. Gaglardi suggested that CP try it, and he agreed. In cross-examination, CP agreed that Mr. Gaglardi told him that if at any point he became uncomfortable, he could say so, and they would stop.
- [361] Mr. Gaglardi got CP to remove his clothes and lay on a massage table, covered by a sheet. In cross-examination, CP agreed that Mr. Gaglardi told CP to "undress to his level of comfort" and left the room while he did so. When Mr. Gaglardi returned to the room, he ran some kind of hand-held device over CP's body. In cross-examination, CP agreed that this treatment involved the use of two separate NES Health devices, one being the hand-held device that was run over his body, and the other being a mouse-like device that he placed his hand on and received biofeedback through a computer.

- [362] CP went on to describe how, in the course of the 2 May 2014 in-person session, Mr. Gaglardi gave him a full body massage, using oil, and his bare hands, and also using a handheld massage device. At one point, Mr. Gaglardi asked CP to roll over from his stomach onto his back. CP had an erection. Mr. Gaglardi used a towel to push on CP's penis, saying, "You are not worried about this erection, are you?" CP testified that he was "shocked" and did not know what to do. Mr. Gaglardi continued with the massage. In cross-examination, CP rejected the suggestion that Mr. Gaglardi picked the drape up and placed it at eye level while CP rolled over. CP denied that Mr. Gaglardi touched his penis while adjusting the drape.
- [363] CP's second in-person counselling session took place on 16 July 2014. The session started with about an hour of "talk therapy", which included a discussion about fitness and nutrition. Mr. Gaglardi mentioned how he was consulted by many people involved in fitness to guide them in their training. Mr. Gaglardi offered to take some samples and run some tests. In cross-examination, CP agreed that Mr. Gaglardi might have said something about "microbiome" testing. CP could not recall if Mr. Gaglardi said it was "experimental". Mr. Gaglardi said he would have to take a rectal swab using a Q-tip. CP said he was not sure he wanted to do that.
- [364] At the end of the counselling session, Mr. Gaglardi returned to the topic and asked if CP wanted to do the test. CP testified that he was "not really keen on it", but Mr. Gaglardi had told him he had "three doctorates" and "coached professional athletes", so he agreed. When it was suggested that Mr. Gaglardi told CP that the lab would be able to do a test on a "suitable sample", CP responded that, by his recollection, Mr. Gaglardi said he had "a friend in a lab that could test the sample", but he never said anything about any requirements for suitability of the sample.
- [365] Mr. Gaglardi left the room while CP got undressed and got onto the massage table. Mr. Gaglardi returned and instructed CP to lay on his side and pull his knees up to his chest. Mr. Gaglardi then rubbed a Q-tip around CP's rectum for "a few seconds". That was the end of the procedure. In cross-examination, CP agreed that Mr. Gaglardi performed the procedure as he had described it.
- [366] A few weeks later, during a counselling session by video, Mr. Gaglardi told CP that the sample did not come out right and he was unable to use it. He gave a general description, but did not provide a lab report. Mr. Gaglardi also referenced a urine sample, but CP had not given a urine sample. In cross-examination, CP agreed that Mr. Gaglardi sent him an email with some "preliminary results", but added that this consisted of nothing more than "general health information". CP thought the entire situation was odd, but he had "respect for Mr. Gaglardi's education and qualifications". CP testified that if the rectal swab had not been taken for his health, he would not have consented to it.

- [367] CP testified that "nothing untoward" happened at the other two in-person counselling sessions with Mr. Gaglardi. He added that there was one occasion where Mr. Gaglardi suggested a "coffee enema" for detoxification, but CP was not interested.
- [368] In cross-examination, CP agreed that his wife participated in some of the video counselling sessions with Mr. Gaglardi. CP further agreed that one of the purposes of his attendance at in-person sessions was for Mr. Gaglardi to administer some kind of "lie detector test" on CP, to address trust issues between CP and his wife. CP said this was one of the reasons for the in-person sessions, but not the "principal reason".

(13.2) Mr. Gaglardi's Testimony in Relation to the CP Allegations

- [369] Mr. Gaglardi testified that he met CP at the church, which I would interpret to be a reference to the Hillside Community Church. This assertion conflicts with the testimony of CP, who testified that he was referred to Mr. Gaglardi through a work associate. There was no suggestion in CP's evidence that he ever attended Hillside.
- [370] With the aid of the date on CP's written consent form, Mr. Gaglardi testified that he started counselling CP in March of 2014. He counselled CP for about seven years. Mr. Gaglardi recalled that CP's principal concerns were substance abuse, and trust issues with his wife. Mr. Gaglardi estimated that he had more than 100 counselling sessions with CP, the vast majority of which were over the internet.
- [371] Mr. Gaglardi testified that he had "four or five" in-person sessions with CP. One of the reasons for the in-person meetings was for Mr. Gaglardi to administer a "lie detector test", for CP to assuage his wife's concerns about honesty and fidelity. Mr. Gaglardi explained that back in the 1980s, he had done some work for a doctor who had a "sort of" polygraph machine. Mr. Gaglardi was "intrigued" by it, so the doctor gave it to him.
- [372] In cross-examination, Mr. Gaglardi admitted that he was not a trained polygraph examiner. He was questioned at some length about his background and knowledge of the lie detector device but I do not find the details elucidating. Mr. Gaglardi agreed that polygraphs are generally not considered reliable and testified that the only reason he used the device in CP's case was for CP to show the results to his wife so they could "save their marriage".
- [373] Mr. Gaglardi testified that his in-person sessions with CP also involved some forms of "energy work" or "touch therapy". He explained that prior to the first in-person session, he "would have" sent CP information about "energy work" and the "NES programs", so that CP would be aware of what was involved.
- [374] At the first in-person session, Mr. Gaglardi and CP talked for about 60 minutes. Mr. Gaglardi then administered the "lie detector" test. After that, Mr. Gaglardi asked if CP was interested in "energy work" as an adjunct to talk therapy, and CP said he was prepared to try it. Mr. Gaglardi went over the consent and release forms with CP and got him to sign them. In the course of doing so, Mr. Gaglardi explained to CP the "possibility of arousal". Mr. Gaglardi then gave CP a brief demonstration of the NES equipment and described in detail what the

"energy work" would involve.

- [375] Mr. Gaglardi told CP to "undress to his level of comfort" and get on the massage table with the drape over him, and Mr. Gaglardi then left the room. Mr. Gaglardi returned and CP was on the massage table with the drape.
- [376] Mr. Gaglardi's belief was that he "would have" started the touch therapy session with a hand-held massage device, so that CP was relaxed. He would start with CP lying on his stomach. At a certain point, he would ask CP to roll over onto his back.
- [377] Mr. Gaglardi described what would appear to be a standard protocol that he used to adjust the drape when a client rolled over from his stomach to his back. Mr. Gaglardi's practice was to hold the drape up at eye level, so he could not see the client, while the client rolled over, and then place the drape back over the client's body. Mr. Gaglardi said that is what he "was taught" but he never explained who taught him this.
- [378] With regard to CP's allegation that Mr. Gaglardi touched his erect penis, Mr. Gaglardi testified that "all of the sessions blend together" so he was not sure if this incident happened during the first session as alleged by CP. Mr. Gaglardi went on to say that "it happened only once", and it was "accidental" and he had no intent to touch CP's penis. Mr. Gaglardi's belief was that CP was "partially erect" and that Mr. Gaglardi's hand "would have" touched CP's penis, which he could not see because the drape was covering it. Mr. Gaglardi further testified that if an erection was noticeable, then he "would say to the client" that they had talked about the possibility of an erection, it is no big deal, but if you want to stop at any point then let me know.
- [379] Mr. Gaglardi was cross-examined at length regarding the circumstances in which he touched CP's penis. He was cross-examined about how he moved the drape and whether it would have been possible for him to see CP's penis from that position. Mr. Gaglardi maintained that he did not know or believe that CP had an erection before his hand touched CP's penis. He said that if he did touch CP's penis, it was not intentional.
- [380] With regard to the anal swab, Mr. Gaglardi admitted in his testimony in chief that he took an anal swab from CP. Mr. Gaglardi said he had discussed with CP the possibility of doing a "microbiome" test, that is, some kind of test to determine CP's gut health.
- [381] Mr. Gaglardi then offered an explanation of his interest in and study of "microbiome analysis". He said there were a number of "companies" developing "microbiome tests using stool samples", but none of the companies had their technology "up and running". Mr. Gaglardi had dealings with one company that was "interested in obtaining samples" together with "questionnaires" from subjects, to put into a database. The company would use "AI" to assess the results. Mr. Gaglardi testified that the company sent him some test kits. Mr. Gaglardi said he used one of the kits for himself. His intention was to offer the second test kit to CP. Later, Mr. Gaglardi said "the things are usually \$280", but in this case he could do it with no cost.

- [382] In cross-examination, Mr. Gaglardi was questioned about the extent of his education, knowledge, and study of microbiome health and microbiome analysis. I do not find this line of questioning to be particularly elucidating, considering that the purpose of this trial is not to enquire into the validity or soundness of Mr. Gaglardi's theories and beliefs regarding natural health practices.
- [383] To return to CP's case, Mr. Gaglardi testified that at some point during the "talk therapy" portion of one of their sessions, he asked if CP was interested in a microbiome analysis. CP was "not enthralled". Mr. Gaglardi went on to say that it did not matter to him whether CP agreed to the test or not. Later, near the end of the session, Mr. Gaglardi returned to the topic of the microbiome analysis, and CP gave Mr. Gaglardi permission to take a sample. As Mr. Gaglardi put it, CP "was not thrilled about it, but he was willing to give it a go".
- [384] In cross-examination, Mr. Gaglardi agreed even though CP expressed a "lack of enthusiasm" about providing a sample via an anal swab, Mr. Gaglardi asked him about it more than once. Mr. Gaglardi added that he did not apply any "pressure", he just asked CP near the end of the session whether he wanted the test. According to Mr. Gaglardi, CP was "enthralled" about microbiome analysis, but was not "enthralled" about Mr. Gaglardi using a swab to take a sample from his anus. Mr. Gaglardi also testified in cross-examination that he initially told CP it would cost \$300 US to do the test, and CP responded that he was not interested. Mr. Gaglardi admitted knowing that cost was a concern for CP.
- [385] With regard to the manner in which he took the swab, Mr. Gaglardi testified that he used a sterile Q-tip to "swab around the anus and sphincter". Mr. Gaglardi testified that "as a natural health person", he "would not go further into the rectum". He said, "there was not a great deal" of "fecal material" to collect, so "it did not look like it was going to meet their criteria".
- [386] In cross-examination, Mr. Gaglardi was challenged on his statement that as "as a natural health person", he "would not go further into the rectum". When it was pointed out that Mr. Gaglardi admittedly inserted his finger into ML's rectum to do a "prostate massage", and admittedly inserted an "anoscope" into SJ's rectum, Mr. Gaglardi's response was that those procedures did not involve a "stick", which I take to be a reference to Mr. Gaglardi's use of a long Q-tip on a stick in CP's case.
- [387] When asked in chief what he did with the swab, Mr. Gaglardi testified that he put it in a test tube with the intention of examining it later. When he did so, probably later that day, he determined that it did not contain enough fecal material to satisfy the company's testing procedures. Mr. Gaglardi communicated this CP, and sent him some generic information about microbiome health and diet.

(14) JK's Allegation [Count 25 on the Indictment]

(14.1) JK's Testimony

- [388] JK first met Mr. Gaglardi at Hillside Community Church in the spring of 2007. JK was not a church congregant. He went there for work, to assist in setting up the church's new computer system. JK understood Mr. Gaglardi to be a church elder responsible for overseeing the installation of the new computer system. JK also went to Mr. Gaglardi's house in Coquitlam to assist in setting up Mr. Gaglardi's home computer.
- [389] In the course of their interactions, JK learned that Mr. Gaglardi was involved in counselling. JK was interested because he had experienced trauma growing up, and felt he could benefit from counselling.
- [390] With regard to Mr. Gaglardi's education and qualifications, JK believed that Mr. Gaglardi had a PhD, and was a certified counsellor. He had a number of certificates on the wall in his office. JK also believed Mr. Gaglardi had done studies and authored academic papers. JK trusted Mr. Gaglardi and believed he was qualified to provide counselling services.
- [391] When they discussed how JK would pay for the counselling, Mr. Gaglardi said he was doing a "study", and the sessions would be free. He got JK to sign some kind of release document pertaining to the study. In cross-examination, JK conceded that Mr. Gaglardi might have said something about running a non-profit organization. However, he denied that Mr. Gaglardi told him the fees were by donation, maintaining that Mr. Gaglardi claimed to be working on a study and JK's counselling would be free if he participated.
- [392] JK testified that the counselling sessions took place in the counselling area in the basement of Mr. Gaglardi's house. In chief, JK said the "first few" sessions consisted entirely of talking. JK told Mr. Gaglardi about his past trauma and history, and Mr. Gaglardi explained his counselling philosophy and methods.
- [393] JK recalled that in the course of their sessions, Mr. Gaglardi frequently talked to him about topics that were sexual in nature. JK described one instance when, in the course of their discussions, JK mentioned that he had a strong gag reflex. Mr. Gaglardi said it could be attributed someone putting a penis down his throat at a young age. JK responded that nothing like that ever happened to him.
- [394] JK testified that his sessions with Mr. Gaglardi progressed quickly to "touch therapy". Mr. Gaglardi explained that he would use various methods of touch to "transfer the body's energy" and remove trauma.
- [395] In cross-examination, JK testified that in the first session, Mr. Gaglardi introduced the topic of touch therapy. He gave JK some literature to read. JK was willing to try it because he thought it might help him work through his trauma. Mr. Gaglardi did not actually use touch therapy techniques on JK until subsequent sessions.
- [396] The touch therapy started with Mr. Gaglardi instructing JK to remove all of his clothes and lie on the floor, on top of a sheet. The first time Mr. Gaglardi got JK to undress, he said not to worry if he got an erection as that was a "normal" part of the treatment. In cross-examination, JK agreed that Mr. Gaglardi left the room while he got undressed. JK denied

that there was a sheet covering his body. Rather, Mr. Gaglardi had him lay on a sheet completely naked. JK did not recall Mr. Gaglardi telling him that if he got uncomfortable they could stop.

- [397] After he was undressed and lying on the floor, Mr. Gaglardi would "rub his hands all over [JK's] body", including his back, his legs, his inner thigh, up to his scrotum. Mr. Gaglardi used his bare hands, with no gloves, and no oil or lotion.
- [398] JK felt that the sessions got more and more "sensual" or "intimate", and it made him uncomfortable. JK's impression was that Mr. Gaglardi was getting progressively closer to directly touching his genitals.
- [399] On the final occasion, while massaging JK's inner thigh, Mr. Gaglardi touched or brushed JK's scrotum. In cross-examination, JK described it as a "brushing motion", in which Mr. Gaglardi touched his scrotum with the back of his hand. JK did not consider it to be a form of "momentary contact". He estimated the contact with his scrotum lasted "about 30 seconds". JK told Mr. Gaglardi he was uncomfortable. Mr. Gaglardi got upset and angry with him.
- [400] After that incident, it was clear to JK that he and Mr. Gaglardi did not see eye to eye. He went to a few more counselling sessions, but did not want Mr. Gaglardi to give him any more massages. He and Mr. Gaglardi became increasingly distant, because JK did not want to do "naked massage". JK decided to stop entirely, after which he and Mr. Gaglardi communicated a few more times by phone and email, but he never went back to Mr. Gaglardi's home.

(14.2) Mr. Gaglardi's Testimony in Relation to the JK Allegation

- [401] Mr. Gaglardi explained that he was in charge of the computer system at the Hillside Community Church. In that context, he met JK in 2014, when JK did some work on the church's computer.[19] Later, Mr. Gaglardi got JK to do some work on his home computer.
- [402] In the course of their working together on the computers, JK learned that Mr. Gaglardi was involved in counselling. JK was interested because he had "some issues".
- [403] Mr. Gaglardi testified that he and JK had an initial meeting to discuss his counselling services. Mr. Gaglardi recalled that it was similar to many of the other introductory meetings described in his testimony, only it was perhaps a bit longer because JK was "completely unfamiliar" with Mr. Gaglardi's background. At the end, Mr. Gaglardi told JK to go away and think about it. JK did so and later told Mr. Gaglardi he was interested in pursuing counselling.
- [404] Mr. Gaglardi testified that he was "not exactly sure", but believed that he met with JK for counselling about 12 to 14 times. The counselling started with talk therapy. In cross-examination, Mr. Gaglardi agreed that he sometimes discussed sexual topics with JK, but only when JK raised them. Mr. Gaglardi said, "I did not bring it up, he brought it up". When

asked if he specifically recalled that, Mr. Gaglardi responded, "No I do not". When asked about the gag reflex discussion, Mr. Gaglardi testified that he could remember JK having an issue with his gag reflex. Mr. Gaglardi did not recall telling JK that his gag reflex was a function of someone putting a penis in his mouth when he was young, but "if it was discussed", it would not have come "out of the air", it would have been when they were discussing sexual issues during talk therapy.

- [405] Mr. Gaglardi testified that his talk therapy discussions with JK revealed "some issues" that led Mr. Gaglardi to believe that some "other therapies" could be added as an "adjunct" to the talk therapy.
- [406] Mr. Gaglardi testified that he discussed his theories and practices in relation to "energy work" with JK. Mr. Gaglardi "would have" given JK some information and referred him to some information in the session preceding the one in which they started touch therapy. (The conditional language in Mr. Gaglardi's testimony suggests that he did not have an independent recollection of what he said to JK, and that he was describing his general practice in this regard). Mr. Gaglardi went on to explain in his testimony that he told JK about the "possibility of arousal" during "energy work", and that if at any point JK was uncomfortable, he could say so and they would stop. (Again, it is not clear whether Mr. Gaglardi had an independent recollection of all this, or whether he was describing his general practice). In cross-examination, Mr. Gaglardi denied telling JK that it would be "normal" for him to get an erection during energy work.
- [407] In the first touch therapy session, Mr. Gaglardi told JK to disrobe to his level of comfort, get on the massage table, and cover himself with a drape. Mr. Gaglardi testified that he could recall returning to the room to find JK on the table, covered by a drape. Mr. Gaglardi testified in chief that this was his "full recollection" and that he had "no other recollection" with respect to JK. (I interpret this evidence to mean that Mr. Gaglardi had no other independent recollection of his interactions with JK during "touch therapy".)
- [408] When asked in direct examination about the allegation that he touched JK's scrotum, Mr. Gaglardi responded that he had "no recollection of that". Mr. Gaglardi went on to testify that he recalled JK having a "fair amount of tension" in his groin area, and that he "would have worked in that area", with JK's permission. Mr. Gaglardi testified that if any contact occurred, "it would be accidental or incidental" to "working in that area". He added that the lotion made his movements "a bit imprecise", and that at no point did JK voice any concern or objection.
- [409] Mr. Gaglardi testified in chief that JK was draped during energy work. Mr. Gaglardi testified that he "always" used a drape when doing "energy work". The only time he recalled not doing so, in "40 some odd years", was with a fellow named Tyler, who consistently refused to use a drape. Mr. Gaglardi went on to describe the system or practice he used to keep a client covered when massaging the client's waist area. He testified that sometimes the system "does not always work the best", or there could be a "partial erection". If the client

voiced discomfort he would stop. Otherwise, he would just continue working.

- [410] In cross-examination, Mr. Gaglardi denied JK's allegation that he was completely naked during the massage. Mr. Gaglardi testified that "from my best recollection", "he was draped", and went on to explain that he did not do therapy with anybody who is not draped, with the one exception being the fellow he referred to in chief who insisted on removing the drape. When it was suggested to Mr. Gaglardi that he also did massage work on SH when he was not draped, Mr. Gaglardi responded that he did not specifically recall that, but if that is what SH chose, then it was his choice, in the context of a 14-year relationship. Mr. Gaglardi maintained that in JK's case, he "absolutely" did not do massage work on JK without a drape.
- [411] Mr. Gaglardi was also challenged in cross-examination about his assertion that he used lotion when doing massage on JK. On JK's account, there was no lotion. Mr. Gaglardi responded by saying that he used lotion to reduce friction. He went on to say, first of all there was a drape, and second of all I used lotion, "from my memory", "because the work that we were doing would be very difficult without lotion".
- [412] Mr. Gaglardi was also asked in cross-examination about whether his hand touched JK's genitals during massage. When asked if he had a specific memory of what happened, Mr. Gaglardi said his "memory" was that JK was draped, his "memory" was that he was using lotion, and his "memory" was that he was working in an area when the drape slipped. Mr. Gaglardi tried to "fix it", and his hand "could have connected with his genitalia, accidentally". In further cross-examination, Mr. Gaglardi agreed that he could recall the drape slipping, and accidentally touching JK's genitalia.
- [413] When asked if he recalled JK making a comment about the touching when it occurred, Mr. Gaglardi said he did not recall that. Mr. Gaglardi added that if JK did make a comment, Mr. Gaglardi would have stopped the whole process right away. When it was suggested that JK did in fact make a comment at the time, Mr. Gaglardi responded that JK was "extremely spacey" and had "huge gaps with his memory". Mr. Gaglardi "vehemently" denied getting angry or upset with JK.
- [414] Mr. Gaglardi testified that to his recollection, JK just stopped attending and did not call to schedule any more sessions. Mr. Gaglardi left it up to the client to call, and he did not "chase people" who chose not to continue.
- [1] Unless the event in issue is of such significance to the witness that the claim to have forgotten it is suspect or incredible, in which case the claim to have no memory would not be genuine.
- [2] GP, ML, GA, MD, CP, JP
- [3] RF, GP, GP, KH, JU, JU, MD, SH, CP
- [4] GA, CP

- [5] DP, MD, JK
- [6] JU, JU, MD, CP
- [7] DP, DP, JU, GA, SJ
- [8] Estimated total of some 20,000 clients. Of these, some 2,000 (10%) received "alternative therapies". Of these, some 1,000 (50%) to 200 (10%) were treated with "touch therapy" of some kind.
- [9] Estimated total of 20,000 clients. Of these, some 4,800 (24%) to 4,000 (20%) were male. Of these, some 480 to 400 (10%) received "alternative therapies". Of these, somewhere between 240 (50% of 480) and 36 (9% of 400) were treated with "touch therapy" of some kind.
- [10] PP was the complainant in counts 1 and 2 on the Indictment. The Crown stayed those counts after I ruled that the similar fact evidence would not be admissible to prove them.
- [11] Mr. Gaglardi's position, which I have rejected, was that the touching did not occur. Mr. Gaglardi did not assert that he touched RF with an honest but mistaken belief that RF had given consent, and indeed Mr. Gaglardi could never have realistically or credibly made such an assertion on the facts of this case.
- [12] More specifically, Mr. Gaglardi testified that he did not recall GP saying anything about being interested in guns when he was young ("I do not recall him saying that to me"), nor did he recall GP saying anything about this in his police statement. It is the former statement, that Mr. Gaglardi did not recall GP saying anything to him about being interested in guns when GP was young, that does not fit with Mr. Gaglardi's claim to have no actual recollection of GP when he was young.
- [13] Mr. Gaglardi claimed that his holster could not be "unclipped" from his belt, contrary to GP's recollection, but I do not consider that to be a material detail of GP's account. The difference between the testimony of the two witnesses on this point is minor.
- [14] See paragraph 182, footnote 15.
- [15] KH testified that he may have stayed over at Mr. Gaglardi's apartment as many as ten times in total, that he accompanied Mr. Gaglardi to radio broadcasts on three or four occasions, and that they did not go to the radio station every weekend when he stayed over at Mr. Gaglardi's apartment. Putting all of this together, the upshot of KH's testimony is that there may have been as many as six or seven weekends when KH stayed over at Mr. Gaglardi's apartment without accompanying him to the radio station.
- [16] See Ex. 3.1, signed by complainant MD on 13 December 2006

[17] To be clear, I am not relying on the similar fact evidence to support the credibility and reliability of CP's testimony, as that was not one of the bases on which I ruled the similar fact evidence of the Coquitlam complainants admissible. I am simply referring to the similar fact evidence to explain that in relation to the Coquitlam counts, its probative value lies in the similarity of context, which is of assistance to the court in considering whether certain elements of the offence have been made out, as explained in more detail below.

[18] It is possible that KH said this because he was made aware of the limits on questioning a complainant about prior sexual history.

[19] Mr. Gaglardi appeared to have been confused about the date, but beyond this, his description of JK's personal circumstances and the nature of their relationship was largely consistent with the testimony of JK himself.

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