

CANADA / JUDGMENT

R. v. T.L.P.

2017 BCSC 1868

COURT

Supreme Court of British Columbia

DECIDED

20 October 2017

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2017 BCSC 1868 R. v. T.L.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. T.L.P.,

2017 BCSC 1868

Date: 20171020

Docket: 25328-2

Registry: Quesnel

Regina

v.

T.L.P.

- and -

Docket: 26049-2

Registry: Quesnel

Regina

v.

T.L.P.

Restriction on publication: Pursuant to s. 486.4(2) and 539.1 of the

Criminal Code of Canada

Before: The Honourable Mr. Justice Davies

Reasons for Judgment

Counsel for the Crown:

J.C. Johnston

Counsel for the Accused:

M.J. Anderson

Place and Date of Hearing:

Quesnel, B.C.

September 7-9, 13-14,

November 30,

December 1-2, 2016 and

July 4-6, 2017

Place and Date of Judgment:

Quesnel, B.C.

October 20, 2017

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INTRODUCTION

- [1] On March 6, 2015 I convicted T.L.P. of 13 counts on a 16 count indictment for sexual offences committed against five very young female victims, all but one of whom were his nieces.
- [2] The offences occurred over a period extending from 2001 to 2013. The circumstances of his offending and those of his victims are recorded in my reasons for conviction filed under Neutral Citation 2015 BCSC 618. In these reasons I will use the same initials for each victim that I used in my reasons for conviction.
- [3] The Crown has applied to have T.L.P. declared a dangerous offender under s. 753(1) of the Criminal Code, R.S.C. 1985 c. C-46 [the Code] and seeks a determinate sentence of from 12 to 16 years followed by a ten year Long term Supervision Order.
- [4] T.L.P. submits that the Crown has not established the statutory criteria for designation of him as a dangerous offender.
- [5] He does, however, admit that the totality of the circumstances of his offending establish that he should be sentenced as a long term offender under s. 753.1(1) of the Code and he accepts that the appropriate length of a Long Term Supervision Order is ten years.
- [6] T.L.P. submits that a global determinate sentence of six years together with that Long Term Supervision Order will appropriately address his offending.

ISSUES

- [7] As a consequence of:
 - 1) Concessions and admissions made by T.L.P. that require that he be sentenced as either a dangerous offender or a long term offender and after;
 - 2) The submissions of both the Crown and defence that T.L.P. should be subject to a determinate sentence followed by a ten year Long Term Supervision Order;

only the following contested issues remain to be decided:

- 1) Has the Crown established that T.L.P. is a dangerous offender rather than a long term offender?
- 2) Are sexual interference contrary to s. 151 and invitation to sexual touching under s. 152 of the Code "serious personal injury offences" under Part XXIV of the Code?
- 3) Do the principles enunciated in *R. v. Kienapple*, [1975] 1 S.C.R. 729 [Kienapple] apply to some of the sexual offences of which T.L.P. has been convicted to avoid multiple convictions for the same criminal wrongdoing?
- 4) What is the length of the appropriate determinate sentence for T.L.P.'s offending?

BACKGROUND

- [8] Although I convicted T.L.P. of sexual offences that occurred between 2001 and 2013 the Crown does not rely on the convictions for his offending in 2001 as a predicate offence with respect to these dangerous offender proceedings. The Crown relies only upon the convictions for his offending against his four nieces over the period from 2011 to 2013 as predicate offences.
- [9] The Crown takes that position because the offences against C (to whom T.L.P. was not related but whose home he was sharing with her parents), for which he was convicted of sexual assault and invitation to sexual touching for his offending occurred between 1997 and 2002. Accordingly, the application of principles and legislation that pre-dated the 2008 amendments to the dangerous offender provisions of the Code would apply to the 2001 offences and unnecessarily complicate statutory considerations related to his later offending.
- [10] Given that the application of those earlier statutory considerations is not necessary to the decisions I must reach and would not substantively effect the result of these proceedings the Crown, without opposition by T.L.P. seeks consideration of the offences committed against C only as part of a pattern of offending when considering whether T.L.P. should be designated a dangerous offender under the present statutory regime and with respect to the appropriate determinate sentence for T.L.P.'s offending against C.
- [11] The predicate offences for which T.L.P. has been convicted and upon which the Crown does rely in seeking a dangerous offender designation were committed by T.L.P. against his four nieces over a period of from January 1, 2011 to January 4, 2013.
- [12] Those convictions were for:
- 1) Sexual assault, invitation to sexual touching and sexual interference against his niece K who was then 9 or 10 years old each of which offences occurred on two occasions between January 1, 2011 and January 4, 2013;
 - 2) Sexual assault, invitation to sexual touching and sexual interference against his then 4 to 5 year old niece J which occurred consistently over a nine month period from February of 2012 to December of 2012;
 - 3) Sexual assault, invitation to sexual touching and sexual interference against his then seven year old niece A which occurred over an 18 hour period on December 31, 2012 through January 1, 2013 when T.L.P. was babysitting A and her younger sister X; and
 - 4) Invitation to sexual touching against his then five year old niece X which also occurred between December 31, 2012 and January 1, 2013 when T.L.P. was babysitting X with her older sister A.

- [13] In addition to those convictions, as a consequence of steps taken during the investigation of the offences against his nieces, T.L.P. was found to be in possession of child pornography.
- [14] At the conclusion of the hearing of submissions on these dangerous offender proceedings, T.L.P. pleaded guilty to possession of child pornography under s. 163.1(4) of the Code.
- [15] The Crown and T.L.P. then jointly submitted that the appropriate sentence for that offence (the subject of the indictment filed in Quesnel Registry 26049-2) is one year to be served concurrently with the determinate sentence to be imposed by me with respect to the predicate offences and the offences committed by T.L.P. against C.
- [16] I have accepted that joint submission.
- [17] In order to put in perspective the competing positions of the Crown and T.L.P. with respect to the substantive issues now to be decided under Part XXIV of the Code and to give context to the opinions of the Crown and defence psychological experts who filed reports and testified it is, unfortunately, necessary to repeat in some detail the circumstances of T.L.P.'s offending against his nieces, my assessment of the denials of criminal liability that he advanced, and before my findings of credibility.
- [18] I start with my observations concerning T.L.P.'s offending against J in respect of which I stated at paras. 76 to 101 of my reasons for conviction:
- [76] I will not specifically detail all of the evidence relating to allegations against the accused involving the complainant J., which are the subject of Counts 10, 11, and 12 which respectively charge sexual assault under s. 271(1), sexual interference under s. 151, and invitation to sexual touching under s. 152.
- [77] I do, however, regret that I must, in order to sufficiently explain my reasons for judgment refer to some of that evidence.
- [78] J. was subjected to the accused's involvement in her childhood sexual development when he came to live with his sister and her husband in Prince George in February of 2012.
- [79] He says he became involved with J. because she came to him and said she thought her daddy was hurting her mommy. The accused says he realized that what J. was concerned with was only her parents love-making but then decided to embark upon the methodology espoused by Anonymous of teaching J. about sex and sexual activity at the age of four going on five.
- [80] The accused testified that the methodology he employed with J. and which he had helped in some part to develop would follow a series of steps engaged in over time. In summary, those steps with J. included:
- general discussion about sex in which he explained that her father was not hurting her mother, followed by;

- a discussion about body parts, during which both he and J. were naked in which he showed her, with particularity, the makeup and different names for the parts of her vagina and the purposes for each. He also showed her his penis;
- a demonstration of "all the common sex acts" she might eventually be forced to engage in by a pedophile in which, while clothed and without penetration by him but with body-to-body contact, he demonstrated each sexual position and described to her in words what would occur with respect to each position, followed by;
- an oral sex act which he said was designed to give her intense sexual pleasure by sucking momentarily on her urethra but which would almost immediately give rise in her to a belief in a need to urinate. He testified that the intent of that oral sex act was to show pleasure but prevent her from seeking it again with others because of the following urge to urinate;
- after that, a discussion of the dangers of sex, including danger that could result from J. herself seeking sex or becoming prey to abusers;
- those steps were followed by months of sexual role-playing based on games that J. would engage in that were based on real-life sexual abuse situations in which the goal was for J. to stop the abuser or have him caught out; and
- this process was initiated to gain the child's trust to become part of her inner circle so that secrets could be kept and her sexual energy would be directed to him in future.

- [81] The evidence establishes that these steps were played out by the accused with J. over a period from February 2012 to sometime in December of 2012. The evidence also establishes that the incident of oral sex I have referred to occurred in the first three months after the accused moved in with J.'s family. Accordingly, I find that it occurred after February and before June of 2012.
- [82] Significantly, the issue of sexual discussion between the accused and J. came to the attention of J.'s parents sometime after the incident of oral sex to which I have referred.
- [83] At about that time, J.'s parents had told J. not to sleep in the accused's bedroom, and she was upset. The accused testified that he thought J.'s parents were being unreasonable so he asked her mother whether he could have permission to talk to J. if she came to him about sex or sexual touching without having to disclose it to her parents unless it was important. He said that J.'s mother agreed that it would be good for J. to have a confidante and that he could do so.
- [84] Whether that was or was not said by J.'s mother, I do not know. What I do find has been established by the evidence is, however, that is that in obtaining whatever consent he may have obtained the accused never told J.'s parents about what he had already been doing by way of discussion and demonstration and his actual sexual activity with J. including the oral sex act he had performed on her.

- [85] I am satisfied that the accused knew that if he had told them what he was actually doing, any further relationship with J. and opportunity to pursue his methodology to carry out that which he wished to do with her would end. I find he did not fully disclose, because of his disregard and disrespect for those social norms with which he does not agree and that he manipulated the situation for his own purposes.
- [86] In the result, J.'s parents did not know of the accused's sexual involvement with J. until January 1, 2013, when his action with J.'s cousins A. and X. that occurred on December 31, 2012, came to be known by their parents who then immediately informed J.'s parents.
- [87] The totality of the evidence to which I have referred, and also much of which I have not, related to the specifics of the demonstration, vocabulary, and role-playing stages of the process by which he sought to indoctrinate J. convince me beyond any doubt that the accused is guilty of both sexual interference and sexual assault on Counts 10 and 11 with respect to J.
- [88] I find, more specifically, that the act of oral sex I have referred to was intended by the accused to be for the sexual gratification of J. Whether she was able to be so sexually gratified or not, that was his admitted intention.
- [89] I also find that the totality of the methodology employed by the accused violated J.'s sexual integrity and that the accused's assertion that it was "educational" or "protective" does not preclude those actions having been taken for a sexual purpose.
- [90] Sexual interaction and sexual interference with a four to five-year-old child was the purpose of the methodology, and I am satisfied by the accused's secretive actions and disingenuous seeking of J.'s parental permission to talk to J. that he knew what he was doing was for a sexual purpose.
- [91] The evidence also satisfies me that the accused's fostering of a secret relationship by entry into J.'s inner circle of trust in which he hoped she would come to him in relation to sexual matters amounted to sexual domination of her.
- [92] In my view, the accused's actions and deliberate following of the methodology he had helped to develop amounted to little more than the methodology by which pedophiles groom their victims.
- [93] There is one further aspect of the accused's sexual involvement with J. that I must reluctantly discuss.
- [94] The accused testified that an incident occurred when J. had hurt herself while masturbating. He said he encouraged her to masturbate but also that he wanted her to know that she should stop using sharp objects in her vaginal and anal areas that might hurt her sensitive skin.

- [95] He said he used a toy taken from a toy box holding toys which she could be using to masturbate that looked like a piece of corn and rubbed it on her anal area which caused her pain so that she would be more careful. I am satisfied that the totality of the context of that incident proves beyond a reasonable doubt the accused's guilt of sexual interference and sexual assault.
- [96] It also proves beyond a reasonable doubt his guilt of the offence of invitation to sexual touching under s. 152, which includes invitation or counselling to touch for a sexual purpose and also includes invitation, incitement, or counselling by the accused for the complainant to touch him or herself.
- [97] The accused admitted that masturbation is for a sexual purpose. He also asserted that it is a regular occurrence in young children, and he may be right. While it is not a crime for a child to masturbate, it is a crime for an adult to counsel or incite the child to do so.
- [98] I am also satisfied that the entirety of the accused's methodology in teaching about sexual body parts while both he and J. were naked, his discussion and demonstration of various sexual acts, as well as his sexual role-playing with her, constituted in their entirety an invitation by his actions to touch himself for a sexual purpose. There was no other purpose.
- [99] The role playing and instruction all involved direct and indirect sexual touching by his invitation, with or without clothing.
- [100] Further, actual touching is not necessary to establish the essential element of the offence of invitation to sexual touching. See *R. v. Sears* (1990), 58 C.C.C. (3d) 62 (Man. C.A.).
- [101] I accordingly find the accused guilty also of Count 12 with respect to his involvement with J.
- [19] Concerning his offending against A, I stated at paras. 115 to 128:
- [115] I turn next to my determination of whether the Crown has proven the guilt of the accused beyond a reasonable doubt in respect of Counts 1, 2, and 3 alleging sexual interference with, the sexual assault of, and the invitation to sexual touching of the complainant A.
- [116] These events occurred on the evening of December 31, 2012, into the early hours of January 1, 2013, when the accused was alone with A. and her sister X. in their home. He was responsible for the overnight babysitting of the children while their parents, brother, and their older sister K. were out together for a New Year's Eve gathering and overnight stay with friends.
- [117] The background to these events as related by the accused was that he was concerned by actions and words by A. at a Christmas party some six weeks earlier that she might be being sexually abused by her father.

- [118] He testified that he had since then been waiting for an opportunity to address those concerns with A. to discover whether there had been any sexual abuse of her. He said he believed there was some urgency and had anticipated an overnight stay by A. with the accused and her cousin J. at J.'s home where he could investigate. That did not occur, however, and the first opportunity he had to inquire further of A. came on New Year's Eve when he was charged with the responsibility of looking after her and her younger sister X.
- [119] I need not provide great detail as to what occurred because the accused admitted that he followed the same "pedophile-proofing" steps with A. that he had done with J. but did so in an 18-hour rather than a nine-month period of time.
- [120] The accused admitted to the same discussions of sex; sexual vocabulary lessons without clothing on to properly name all of the parts of A.'s vagina; his own nakedness to show her his penis; demonstrations, with clothes on, of the sexual positions that people engage in with words and actions; the same act of oral sex he had performed on J. to show her the pleasure of sex but also create the false need to urinate; and, the role-playing of sexual abuse games.
- [121] A. was seven years old at the time. Her sister X. was five and watched much, if not all, that happened between her sister and the accused.
- [122] The accused also showed both girls pictures on his computer showing sexual actions of adults in an orgy scene as well as pictures of a young girl's face showing facial expressions while experiencing oral sex.
- [123] The accused testified that his concerns about sexual abuse of A. by her father were eliminated during the discovery stage of his involvement with A. and his examination of her vagina, which he said disclosed to him that her hymen remained intact. He also admitted that during the demonstration/vocabulary stage, he tried to get an erection to show A. what an erect penis would look like but could only get a partial erection. When A. asked whether she could touch it, he said she could, and she did.
- [124] I am satisfied the Crown has proven beyond a reasonable doubt that the accused is guilty of sexual interference, sexual assault, and invitation to sexual touching with respect to A. as charged.
- [125] I reject entirely, as I did with respect to J., his assertions that these acts were not for a sexual purpose. That was the only purpose for them, and the suggestion that they were for education or "pedophile-proofing" of a six or seven-year-old girl wholly fails to acknowledge or respect the violation of A's sexual integrity, the gratification sought to be given to her by the creation of pleasure by oral sex, and the domination of the her by seeking to become a part of her inner circle.

- [126] I am also prepared to accept A.'s evidence that the accused put his penis into A.'s mouth that night. A. was a very good witness for her age and could communicate what happened to her with the accused more easily than her younger cousin J. could do.
- [127] The accused also acknowledged in cross-examination that he could not deny that he had put his penis into A's mouth, although he did not recall doing so, because of the 18 hour length of time over which these episodes had occurred and because he was suffering from the effects of insomnia.
- [128] That evidence of the accused having no specific recall, when contrasted with his absolute denial of the similar allegations made by C., and A's convincing evidence lead me to believe that the accused did in fact put his penis into A.'s mouth as she testified.
- [20] Concerning the specific offences committed by T.L.P. against X as a participant in his actions with her sister A that same night I found at paras. 131 to 138:
- [131] As I have already said, X. was present during the sexual interactions between the accused and her sister A. most which she watched. The evidence is unclear as to the extent of any actual touching of X. by the accused, and I am not able to say that actual touching by him did occur.
- [132] There is some suggestion in his statement to the police that he examined her vaginal area to see if her hymen was also intact. While the accused denied touching her to do so he did admit that X. took her pants off, put her legs in the air, and spread her legs so he and A. could look closely at her vaginal area. The same had occurred when A. was examined by the accused, and during that process, X. had also helped and observed.
- [133] While I think it is likely that the accused did touch X. while examining her vagina, I cannot find beyond a reasonable doubt that he did so. In the face of his denials, as well as those of A. when she testified that the accused had not touched X., and since I have found A. to be a credible witness, I am satisfied that I must acquit the accused of the sexual interference with and sexual assault of X. alleged in Counts 4 and 5.
- [134] I do not, however, have a reasonable doubt of the accused's guilt with respect to Count 6.
- [135] The totality of the circumstances that night and the accused's sexual involvement with both X. and A, was concerned with sexual knowledge and his satisfaction of the children's sexual curiosity. The accused fostered that with his words, actions, and with pornographic images. He also performed oral sex on A. in the presence of X., who saw other naked and non-naked sexual role-playing and participated - other than as one of the sexual participants-in some of that role-playing.

- [136] The totality of those circumstances constituted an invitation of X to touch contrary to s. 152 of the Criminal Code. She availed herself of that opportunity by helping to examine A.'s vaginal area either with or without touching. She also touched herself while examining her own vaginal area. In addition, had X wanted to touch the accused's penis as her sister did, he would have allowed that to occur.
- [137] I am satisfied that notwithstanding the accused's testimony about his lack of a sexual purpose, the totality of those circumstances constitute an invitation to X to touch for a sexual purpose.
- [138] That is especially so given his desire to engender trust so that he could dominate both A.'s and X.'s future sexual instruction without parental understanding or knowledge.
- [21] As to T.L.P.'s offending against A and X's older sister K, I found at paras. 102 to 114:
- [102] I will next discuss the charges against the accused involving his niece K. in Counts 13, 14, 15, and 16 of the indictment.
- [103] The first two of these counts alleged sexual interference under s. 151 and sexual assault under s. 271 that allegedly occurred in Quesnel. The second two allege the same offences but that they occurred in Prince George. The evidence establishes that the four charges involve two incidents while K. was six or seven in the fall of 2012 but she may even have been eight years of age. Although the evidence does not allow me to be more precise K. was, in any event, well under the age of 16.
- [104] On the first incident which occurred in Prince George, while they were sitting on a hill, the accused asked K. whether she wanted to learn about sex and what to do if someone did something wrong to her. She said she knew what to do. She would tell her mother.
- [105] The accused proceeded to explain that was not right because she first had to engage in a process by which she said no, and if it that was not accepted, she had to give a second rejection, a "notice of default", and if necessary repeat it, and then if the individual persisted, tell her mother.
- [106] In doing so, the accused testified that he demonstrated his teaching by putting his hand over her vaginal area, while K. was clothed, to show what would be the appropriate response and the sequence of those responses. He also told her that she had to reject by words or actions because silence means consent.
- [107] After that event, the accused testified that he was satisfied that no further lessons were then needed.

- [108] However, a second episode occurred in Quesnel while the accused and K. were sitting and watching a movie, at which time he put his hand on her stomach to see whether she had learned her lessons from before. He said he slipped his hand under her panties at the waist level and that she did not say no. He then asked if she had forgotten, and he said she said, "No, you said silence could mean yes," and he told her, "No, not with your uncle."
- [109] K. testified that the accused actually touched her vagina under her clothing. She also said the accused told that her sex felt good.
- [110] K. was a good witness but, like any child witness, was confused as the timing of events. She was also testifying about events that had occurred more than two years earlier.
- [111] While I believe that what K. testified to about the two incidents was likely true, I am not satisfied on the totality of the evidence that I can make a finding of fact that the second incident happened as she said. In saying that, I take into account the accused's denials and that K.'s memory was understandably imperfect.
- [112] It does, however, in any event, not matter whether the touching in which the accused engaged with K. included direct touching of her vagina. He admitted touching her over the area of her vagina on the first incident and on her skin above her vagina on the second.
- [113] The purpose of that touching could only be sexual since the only context of the events was concerned with sexual activity with a seven or eight-year-old child whom he ought not to have touched in any way in those areas. In doing so, the accused violated K.'s sexual integrity twice and, in the second incident, sought to re-enforce his domination of her sexual thinking that he had commenced with the first episode.
- [114] I find the accused guilty of sexual interference and sexual assault on Counts 13 and 15 as well as on Counts 14 and 16.
- [22] In those passages and in relation to those findings I made reference to defences asserted by T.L.P. (who was unrepresented at trial) in seeking to excuse his offending.
- [23] Those failed defences also remain relevant to the issues now to be decided and the psychological expert opinions adduced by the Crown and T.L.P.
- [24] In summary, the defences advanced by T.L.P. were that:
- 1) notwithstanding the legal incapacity of his victims to consent to the sexual offending against them they were still somehow capable of consenting to that offending; and
 - 2) the sexual activity in which he engaged with his victims was not for a sexual purpose.
- [25] Concerning T.L.P.'s assertion of a defence of "consent" I found at paras. 32 to 38:
- [32] Although the accused did admit to knowing the complainants' ages he did nevertheless seek to suggest that the five children were somehow capable of consenting to the sexual offending with which he is charged.

[33] Those suggestions were made by the accused not only in his testimony at trial but also in the statement he made to the police on January 1, 2013.

[34] I specifically advised the accused that consent was not and is not a defence to the sexual offences for which he is charged. I gave that advice because of the provisions of s. 150.1 of the Criminal Code which provide that:

150.1 (1) Subject to subsections (2) to (2.2), when an accused is charged with an offence under section 151 or 152 . . . or is charged with an offence under section 271 . . . in respect of a complainant under the age of 16 years, it is not a defence that the complainant consented to the activity that forms the subject-matter of the charge.

[35] That provision makes any suggestion by the accused of the complainants' consent legally inapplicable.

[36] The accused's testimony concerning his belief in the ability of a child of tender years to consent is based upon his adherence to a belief system espoused by those persons who style themselves Freeman-on-the-Land or some iteration thereof.

[37] To the extent I understand his evidence, the accused says that consent is a matter of contract formed by offer and acceptance in social settings in which, unless an offer is refused and notice of refusal given to the offeree, consent is established. He asserts also that silence in the face of an offer, whether verbal or physical, for example, an unwanted touching of a person, can result in acceptance and therefore establish consent.

[38] While the accused is entitled to his beliefs and may seek to govern his own conduct by them, they do not form part of Canadian law and, most particularly, do not override the provisions of the Criminal Code of Canada, enacted for the protection of children, to which I have referred.

[26] I then went on to discuss T.L.P.'s assertion that his actions were not for a sexual purpose. At paras. 39 to 42 I stated:

[39] Other than the repugnant notion that children of the ages of these complainants could consent to the sexual activity for which he has been charged, the accused has also sought to justify and decriminalize his behaviour by reference to what he considers to be appropriate methods to teach children of tender years about all aspects of sexual activity they might encounter so that they will not become victims of sexual predators. He also espouses the theory that if such children do become sexual victims, they will know that they are not to blame and will not suffer guilt.

[40] A part of his theory also is that children of tender years are inherently sexual and that if they are not properly taught about sexual activity in all of its aspects and possibilities so that they will have full knowledge about those sexual topics, they will explore sexuality in ways that might prove harmful to them and prevent healthy sexual development in later years into their adulthood.

- [41] Those notions have become an essential part of the accused's belief system based upon his observation and participation in discussions about child sexual abuse and pornography and child development on a website he identified as "Anonymous," which he believes to be credible and in respect of which he has contributed.
- [42] Primarily, based upon those theories, the accused testified and has submitted that the admitted sexual activity in which he engaged with the complainants and most specifically with, his four nieces, were not engaged in for a sexual purpose. He says they were engaged in solely for the purposes of teaching and development of trust relationships with them that would encourage them to come to him with sexual issues, questions, or concerns in the future after having been so instructed.
- [27] I also stated at paras. 68-75:
- [68] Before proceeding to discuss the specifics of the sexual offences alleged against the accused involving his four very young nieces, I will make some general observations that pertain to all four children and the accused's sexual involvement with them.
- [69] In doing so, I am not using the evidence in relation to any one count or set of counts to determine issues specific to another count. The observations and findings I now make are founded in the whole of the evidence and, most specifically, in my assessment of the accused's own testimony as to why he has done what he has done.
- [70] Firstly, I find that the evidence establishes that the accused has become obsessed with childhood sexuality. When that obsession first arose is not capable of determination on the evidence at this trial, but I have no doubt that it had started by at least 2001 when he became sexually involved with C. in violating and dominating her sexually.
- [71] Secondly, I find that his obsession continued and became more entrenched in the years leading up to 2012 when his actions which are the subject of these proceedings escalated to involve his four nieces. That obsession is evidenced by his acknowledgement of the influence of the website "Anonymous" on his thinking and what he says is his study and knowledge of the subjects of child pornography, child sexuality, childhood sexual development, and the effect of sexual abuse on children in years following such abuse.
- [72] Thirdly, I find that the accused decided that his knowledge of childhood sexuality, which he believed exceeded that of the general public and the children's own parents, coupled with his Freeman philosophies, led him to believe that he had the right to insert himself into the lives of his nieces in areas which he knew were primarily the responsibility of their parents even though he knew they were all good parents because the accused believed he had some obligation to "pedophile-proof" the children.

- [73] That concept of "pedophile-proofing" was something which he had discussed on Anonymous and had participated in developing. Part of that participation included techniques that he deliberately later engaged in with respect to his youngest nieces, in part, to seek to bring himself into their "inner" circle so that they would in future come to him with sexual questions and keep the specifics of his techniques secret.
- [74] Fourthly, while he says that what he was doing was for the sexual protection of the children, his waiting for times in which there was no parental or other adult supervision of his interaction with the children leads me to the conclusions that the accused not only knew that what he was doing would be seen to be wrong but was still prepared to deliberately engage in those because he was convinced of his superior knowledge and abilities as well as the correctness of his philosophies concerning childhood sexuality and development which he believed should prevail over the rights of his nieces' parents.
- [75] Fifthly, I am satisfied that the accused's unfounded belief in the superiority of his knowledge, coupled with his other philosophies, caused him to disregard known social norms of which he was well aware, but with which he did not agree, because they conflict his own views of the world. He did so in deliberately seeking out his nieces for sexual instruction and philosophical teachings that he considered appropriate, notwithstanding their tender ages. He also did so notwithstanding that what he was doing in secret to build trust by exposing the children to what he believed had no potential for lasting harm because he said he was trying to protect them from abusers they might encounter in the future.
- [28] The continuing significance of the assertion of those "defences" to his offending, which he sought to justify as "paedophile proofing" or "pedo-proofing" in this dangerous offender proceeding relates to the extent to which he still adheres to the beliefs he expressed and the impact of that upon whether the Crown has established that T.L.P. should be designated as a dangerous offender rather than a long term offender.

ANALYSIS AND DISCUSSION

- [29] To put the competing positions of the Crown and T.L.P. as to whether the Crown has established that T.L.P. should be designated a dangerous offender rather than a long term offender as well as the length of the appropriate determinate sentence for his offending I will:
- 1) discuss the applicable statutory provisions and relevant authorities that inform the designation decision to be made;
 - 2) review concessions and admissions made by T.L.P. and their impact upon that issue;
 - 3) consider and determine whether sexual interference contrary to s. 151 and invitation to sexual touching under s. 152 of the Code are "serious personal injury offences" under Part XXIV of the Code;

- 4) consider and determine whether the principles enunciated in Kienapple, apply to some of the offences of which T.L.P. has been convicted;
- 5) consider T.L.P.'s personal history in the context of his offending;
- 6) discuss the expert psychological evidence adduced by the Crown and T.L.P. as it relates to the designation issue;
- 7) decide the designation issue;
- 8) decide upon the length of the determinate sentence appropriate for T.L.P.'s offending; and
- 9) deduct from the determinate sentence the credit to which T.L.P. is entitled for his post-conviction incarceration from March 6, 2015 to October 20, 2017 awaiting the completion of these sentencing procedures under Part XXIV of the Code.

[30] I will then address ancillary sentencing orders that must be made in respect of T.L.P.'s sexual offending and discuss the provisions of the agreed upon ten year Long Term Supervision Order appropriate for T.L.P.'s eventual control in the community.

- 1) The dangerous offender and long term offender provisions of the Code

[31] The dangerous offender and long term offender provisions of the Code are set forth in Part XXIV of the Code. The purpose of Part XXIV as an adjunct of sentencing is the protection of the public.

[32] In *R. v Steele*, 2014 SCC 61 [Steele] the Supreme Court of Canada observed at para. 1:

Indeterminate detention and long-term supervision under Part XXIV of the Criminal Code, R.S.C. 1985, c. C-46, are exceptional sentences in our criminal justice system. They are reserved for individuals who pose an ongoing threat to the public and accordingly merit enhanced sentences on preventive grounds. Part XXIV outlines the process by which an offender may be designated as a dangerous offender or a long-term offender and be sentenced accordingly. Before either of these designations can be made, a number of conditions must be met. One such condition is that the offence that forms the basis for the dangerous offender or long-term offender application must be a "serious personal injury offence" ("SPIO") as defined in s. 752 of the Criminal Code. [My emphasis.]

[33] All of the preconditions required by s. 752.01 of the Code for the institution of these proceedings against T.L.P. under Part XXIV of the Code have been met by the Crown.

[34] It is noteworthy that although T.L.P. was not required to do so, he co-operated in respect of those preconditions by:

- 1) not opposing his remand for assessment under s. 752.1(1) of the Code; and
- 2) participating in that assessment by consenting to being interviewed by Dr. Hugues Hervé the appointed assessor.

[35] Section 753(1) of the Code stipulates criteria which must be met by the Crown before a convicted offender can be designated as a dangerous offender.

[36] The provisions specifically relevant to these proceedings state:

753 (1) On application made under this Part after an assessment report is filed under subsection 752.1(2), the court shall find the offender to be a dangerous offender if it is satisfied

- (a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752 and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing
 - (i) a pattern of repetitive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a failure to restrain his or her behaviour and a likelihood of causing death or injury to other persons, or inflicting severe psychological damage on other persons, through failure in the future to restrain his or her behaviour,
 - (ii) a pattern of persistent aggressive behaviour by the offender, of which the offence for which he or she has been convicted forms a part, showing a substantial degree of indifference on the part of the offender respecting the reasonably foreseeable consequences to other persons of his or her behaviour, or
- (b) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (b) of the definition of that expression in section 752 and the offender, by his or her conduct in any sexual matter including that involved in the commission of the offence for which he or she has been convicted, has shown a failure to control his or her sexual impulses and a likelihood of causing injury, pain or other evil to other persons through failure in the future to control his or her sexual impulses.
- (4) If the court finds an offender to be a dangerous offender, it shall
 - (a) impose a sentence of detention in a penitentiary for an indeterminate period;
 - (b) impose a sentence for the offence for which the offender has been convicted -- which must be a minimum punishment of imprisonment for a term of two years -- and order that the offender be subject to long-term supervision for a period that does not exceed 10 years; or
 - (c) impose a sentence for the offence for which the offender has been convicted

Sentence of indeterminate detention

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

[My emphasis.]

[37] Sexual assault under s. 271 of the Code is designated a "serious personal injury offence" under s. 752 of the Code and thus engages the provisions of s. 753.

[38] I will later discuss the extent to which the convictions of T.L.P. for sexual interference under s. 151 of the Code and for invitation to sexual touching under s. 152 of the Code also constitute "serious personal injury offences" under s. 752 of the Code so as to also engage s. 753.

[39] Although T.L.P. acknowledges that his offending meets the statutory criteria to establish that he is a long term offender, it is useful to record the provisions of s. 753.1 that are specifically relevant to that designation.

[40] In that regard, s. 753.1 provides:

753.1 (1) The court may, on application made under this Part following the filing of an assessment report under subsection 752.1(2), find an offender to be a long-term offender if it is satisfied that

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

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

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

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

(a) the offender has been convicted of an offence under section 151 (sexual interference), 152 (invitation to sexual touching) , or s.271 sexual assault). and

(b) the offender

(i) has shown a pattern of repetitive behaviour, of which the offence for which he or she has been convicted forms a part, that shows a likelihood of the offender's causing death or injury to other persons or inflicting severe psychological damage on other persons, or

(ii) by conduct in any sexual matter including that involved in the commission of the offence for which the offender has been convicted, has shown a likelihood of causing injury, pain or other evil to other persons in the future through similar offences.

[My emphasis.]

[41] It is also important to note that, s. 753(5)(a) provides that if the court does not find an offender to be a dangerous offender under s. 753(1) it may in the same proceeding consider whether the offender is a long term offender under the provisions of s. 753.1 of the Code.

- [42] In this case, the most significant difference between a dangerous offender designation for T.L.P.'s offending as urged by the Crown rather than the long term offender designation acknowledged as appropriate by T.L.P. relates primarily to considerations as to whether the evidence establishes a likelihood that T.L.P. will re-offend sexually as he has in the past as opposed to a "substantial risk" that he will do so.
- [43] In other words, if the likelihood that T.L.P. will re-offend sexually as he has in the past is established by the evidence, the appropriate designation is that T.L.P. is a dangerous offender under s. 753(1). However, if the evidence falls short of establishing a likelihood of re-offending but establishes a significant risk of such re-offending the appropriate designation is that T.L.P. is a long term offender under s. 753.1.
- [44] That difference engages issues of risk assessment and to a limited extent also engages questions of T.L.P.'s amenability to treatment.
- [45] The extent to which the issue of "treatability" is a factor in determining whether an offender meets the legislative criteria for designation as a dangerous offender as opposed to a long term offender was discussed by the Ontario Court of Appeal in *R. v. Szostak*, 2014 ONCA 15 [Szostak] at para. 36. In discussing the differences between prior dangerous offender legislation and that which was enacted in 2008, Rosenberg J.A. wrote for the Court:

To understand the issues in this appeal, it is necessary to briefly consider the 1977 and 1997 legislative schemes. As I will show, there has been an important shift in the way in which the legislation works. The trial judge's discretion has narrowed in one sense, the judge no longer having discretion not to find a person a dangerous offender who fits the definition. But the discretion has been broadened in that the judge has wider sentencing options for a person who does come within the dangerous offender definition. In my view, these changes have an impact on the interpretation of the dangerous offender definition. In particular, it is my view that the possibility of successful treatment is of limited application in determining whether the person is a dangerous offender. The possibility of successful treatment is significant in choosing the appropriate disposition. [My emphasis.]

- [46] The Supreme Court of Canada dismissed the offender's application for leave to appeal that decision.
- [47] I must, however, also note that:
- 1) the Ontario Court of Appeal's decision in *Szostak* specifically did not consider the issues of amenability to treatment as a constitutional issue;
 - 2) in *R. v. Boutilier*, [Boutilier] Voith J. found that the present legislative framework is overly broad by precluding consideration of amenability of treatment at the designation stage. He subsequently determined (reported at 2015 BCSC 901) that those overly broad provisions were not saved by s. 1 of the Charter;

- 3) the British Columbia Court of Appeal overturned Voith J.'s decisions. See: *R. v. Boutilier*, 2016 BCCA 235; and
- 4) the Supreme Court of Canada granted leave to appeal the Court of Appeal's decision in *Boutilier* on December 1, 2016 and heard the appeal on May 23, 2017. The Court reserved its decision and no decision has yet been pronounced.
- [48] I am accordingly bound by the decision of the British Columbia Court of Appeal in *Boutilier* in which the Court stated at paras. 62 and 63:
- [62] The offender's personal circumstances are relevant at both the designation and penalty stages. At the designation stage, the Crown must establish the likelihood that the offender will cause future harm to others. It is at this stage that the extent of the offender's elevated risk of harm is identified. This can be achieved in part by the s. 752.1 assessment report, which will also provide some evidence of the offender's treatability. At this stage, consideration of the offender's treatability for his identified risk of harm is limited because it is based on the offender's past conduct including the predicate offence(s) and his present circumstances and characteristics. The inquiry requires a prediction of the offender's risk based on the probability that he will cause future harm to others. If the offender's prognosis of future risk is positive, the Crown is unlikely to succeed in establishing this criterion beyond a reasonable doubt and the designation will not be made. If it is not, the consideration of the offender's future treatment prospects at the sentencing stage will assist the judge in determining which of the sentencing options will provide the most responsive and proportionate disposition for the offender's risk of harm. Last, I would note that none of the regimes have included the future treatment prospects of the offender at the designation stage. This was so in *Lyons*, where the two-stage legislative regime was found to be constitutional (at 334, 372).
- [63] Examining the offender's future treatment prospects for his elevated risk of harm at the designation stage would not ensure the protection of the public because the ability to manage the offender's risk of harm would have to be assumed in the absence of the implementation and monitoring of the proposed treatment. Nor could the benefits of an offender's treatment be assessed. As was noted in *R. v. Jones*, [1994] 2 S.C.R. 229 at 290: "[t]o release a dangerous offender while he remains unable to control his actions serves neither the interests of the offender nor those of society." Only at the sentencing stage can the effect of a proposed treatment plan for the management of the offender's risk of harm be effectively implemented and monitored through a custodial treatment program in a determinate or indeterminate sentence, or a long-term supervision order or other supervisory order.
- 2) Concessions and Admissions made by T.L.P.
- [49] T.L.P. has conceded for the purpose of these sentencing proceedings that:

- 1) some of the offences for which he has been convicted constitute "serious personal injury offences" as defined by the Code and are therefore appropriate for consideration as predicate offences for the purpose of these proceedings under Part XXIV of the Code;
 - 2) T.L.P.'s behaviour constitutes a persistent pattern of behaviour as defined in the Code and in case law;
 - 3) this pattern of behaviour shows a failure by T.L.P. to restrain his behaviour;
 - 4) T.L.P.'s behaviour at the time of the commission of those serious personal injury offences for which he has been convicted has shown an indifference to the consequences of his behaviour to other persons;
 - 5) sexual assault is inherently violent and causes severe psychological damage to other persons, particularly children;
 - 6) should T.L.P. commit further serious personal injury offences, the fact of his re-offence would create injury and evil to other persons as those terms are used in s. 753.1(2)(b) of the Code; and
 - 7) T.L.P.'s behaviour up to and including the serious personal injury offences for which he has been convicted represent a failure during the period of the commission of those offences to restrain behaviour and sexual impulse.
- [50] Those concessions are all supported by the evidence adduced at trial and in this sentencing proceeding.
- 3) Are sexual interference under s. 151 of the Code and/or invitation to sexual touching under s. 152 of the Code "serious personal injury offences"?
- [51] T.L.P.'s concession that "some" of the offences for which he has been convicted (sexual assault under s. 271 of the Code) are "serious personal injury offences" requires determination of whether the offences of sexual interference under s. 151 and/or invitation to sexual touching under s. 152 of the Code are also "serious personal injury offences" under the provisions of Part XXIV of the Code.
- [52] Consideration of that issue also touches upon the Kienapple issues raised by T.L.P. that I will later discuss.
- [53] The Crown asserts that sexual interference under s. 151 of the Code and invitation to sexual touching under s. 152 of the Code are "serious personal injury offences" as the term is defined by s. 752 of the Code, referenced in s. 753 (1)(a) as part of the phraseology:
- the court shall find the offender to be a dangerous offender if it is satisfied

(a) that the offence for which the offender has been convicted is a serious personal injury offence described in paragraph (a) of the definition of that expression in section 752, and the offender constitutes a threat to the life, safety or physical or mental well-being of other persons [My emphasis.]

[54] Although T.L.P. does not dispute that sexual interference under s. 151 is a serious personal injury offence for the purposes of Part XXIV of the Code, that position is, at least to some extent, premised or dependent upon the Kienapple submission he advances that the convictions of him for sexual assault under s. 271 of the Code should be stayed in favour of the convictions for sexual interference.

[55] I have accordingly concluded that it is necessary to address the underlying substantive issue without reference to T.L.P.'s concession.

[56] Section 752(a) of the Code provides:

serious personal injury offence means

(a) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving

(i) the use or attempted use of violence against another person, or

(ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person,

and for which the offender may be sentenced to imprisonment for ten years or more, or

[57] Given the role that statutory interpretation plays in the determination of this issue it is important also to note that following the disjunctive "or" at the end of s. 752(a), s. 752(b) goes on to provide:

(b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault).

[58] In some cases before the Supreme Court of Canada rendered its 2014 decision in *Steele* it had been held that in order to constitute a serious personal injury offence, the Crown was obliged to prove that the offender's victim had suffered "severe" psychological damage as a consequence of the offence. See for example *R. v. White*, 1998 CanLII 15134 (B.C.S.C) and *R. v. Harley*, 2000 BCCA 333.

[59] In other cases, however, the contrary conclusion had been reached. See for example: *R. v. Currie*, [1997] 2 S.C.R. 260; *R. v. M.B.H.*, 2004 CanLII 14199 (Ont. C.A.) (which included convictions for one count of sexual interference and seven counts of invitation to sexual touching); and, *R. v. Webster*, 2011 ONSC 2502 (which included convictions for multiple counts of sexual interference).

- [60] I agree with the Crown's submission that any disagreement in the authorities concerning the extent or seriousness of the physical or psychological harm suffered by the victim as being necessary to qualify as a serious personal injury offence under s. 752 of the Code was settled in Steele.
- [61] At paras. 22 and 23 in Steele, Wagner J. wrote for a unanimous Court:
- [22] To determine whether an offence constitutes an SPIO, it is necessary to review the elements of the offence, but it may also be necessary, if that review is insufficient, to consider the factual circumstances in which the offence was committed. Certain offences automatically constitute SPIOs regardless of the manner in which they are committed: s. 752, para. (b) of the definition of "serious personal injury offence"; see *R. v. Currie*, [1997] 2 S.C.R. 260, at paras. 21-22. There are other offences that always constitute SPIOs in that one of their elements automatically satisfies the descriptive criteria set out in para. (a) of the definition of an SPIO. One example would be where personal violence or endangerment forms part of the definition of the offence: see, e.g., *R. v. Cepic*, 2010 ONSC 561, 93 M.V.R. (5th) 129, at para. 18. Robbery is clearly not one of this second type of offences, since it can involve the use of violence or threats of violence to a person or property, whereas subpara. (a)(i) of the definition of an SPIO refers only to the use or attempted use of violence against another person: see Lebar, at para. 65.
- [23] Thus, the question is whether a robbery committed as in the instant case -- by using threats of violence to a person, but without using actual physical violence -- satisfies the criterion of "use or attempted use of violence against another person" set out in the definition. I conclude that it does. I reach this conclusion in light of the modern principle of statutory interpretation that the words of legislation must be read "in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament": E. A. Driedger, *Construction of Statutes* (2nd ed. 1983), at p. 87.
- [My emphasis.]
- [62] At paras. 38 to 41 he also wrote:
- [38] This Court's statement in *Lyons* (at p. 324) that the offences falling within the definition of an SPIO are "very serious violent crimes" reflects the importance of the SPIO requirement in the overall scheme. Some courts took this statement to mean that in every case the predicate offence must on its own warrant the kind of punishment imposed under Part XXIV, but this represents an incorrect reading of *Lyons*. As this Court explained in *Currie*, at para. 28, the words "very serious violent crime" were used in relation to the specific facts of *Lyons* and did not require that all predicate offences fit that description. A predicate offence must be serious, but the degree of seriousness intended by Parliament is exhaustively set out in the definition of an SPIO in s. 752.

- [39] Paragraph (a) of the definition in s. 752 requires, first, that the offence be an indictable offence, second, that the maximum sentence for the offence be imprisonment for 10 years or more and, third, that the offence involve (i) the use or attempted use of violence against another person, or (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person. In subpara. (a)(i), the word "violence" is not qualified, which means that the criteria may be satisfied even if the violence in question is not in itself "serious" (see Goforth, at para. 21; Lebar, at para. 67; R. v. Smith, 2012 ONCA 645 (CanLII), at para. 2). The degree of seriousness intended by Parliament exists if all three requirements of the definition are met. Thus, an offence that involves the use or attempted use of violence against another person is not an SPIO under para. (a) of the definition if it is not an indictable offence or if it is not punishable by a sentence of imprisonment for 10 years or more. Just as para. (b) of the definition does not invite the court to assess the manner of commission of the enumerated offences, subpara. (a)(i) does not invite it to assess the seriousness of the violence the offender used or attempted to use; any level of violence is sufficient.
- [40] This interpretation is consistent with the gatekeeper function of the SPIO requirement. An offender who commits an indictable offence for which he or she may be sentenced to imprisonment for 10 years or more and that involves the use or attempted use of violence against a person commits what Parliament has defined as an SPIO; it is not necessary to further inquire into the level of the violence in question. If the offender is remanded for assessment and is then found, on the basis of past conduct and patterns of behaviour, to be a dangerous offender or a long-term offender, it cannot be said that the offender was "picked up off the street because of his past criminality (for which he has already been punished), or because of fears or suspicions about his criminal proclivities, and then subjected to a procedure in order to determine whether society would be better off if he were incarcerated indefinitely" (Lyons, at p. 328). Rather, the punishment "flows from the actual commission of a specific crime, the requisite elements of which have been proved to exist beyond a reasonable doubt" (ibid.). See also Johnson, at para. 23, in which the Court mentioned that dangerous and long-term offender proceedings form part of the sentencing process.
- [41] This statutory framework enables courts to properly sentence dangerous offenders who have committed SPIOs "without having to wait for them to strike out in a particularly egregious way" (Currie, at para. 26). For our purposes, the jurisprudence confirms that the words "use or attempted use of violence" must be read in their grammatical and ordinary sense, having regard to their statutory context. Neither the purpose of the SPIO requirement nor that of Part XXIV warrants reading in a qualitative minimum level of violence.

[My emphasis.]

- [63] Particularly germane to the issues now are the observations of the Court at paras. 55 and 56 wherein Wagner J. wrote:

- [55] Subparagraph (a)(ii) of the definition of an SPIO refers to "conduct endangering or likely to endanger the life or safety of another person or inflicting or likely to inflict severe psychological damage on another person". Mr. Steele argues that if subpara. (a)(i) of the definition is interpreted more broadly, it would apply to less serious instances of the very conduct to which subpara. (a)(ii) applies, thereby rendering the "severe psychological damage" portion of the definition redundant. If this argument is taken a step further, it might be argued that subpara. (a)(ii) targets violent activity on the basis of its harm or effects -- i.e. danger to life or safety or severe psychological damage -- whereas subpara. (a)(i) targets violent activity on the basis of the force that was applied -- i.e. use or attempted use of violence.
- [56] With respect, after considering the relationship between subparas. (a)(i) and (a)(ii) of the definition, I am led to the opposite conclusion. As a preliminary matter, there is no indication that the various parts of the definition of an SPIO in s. 752 are mutually exclusive: see *R. v. J.Y.* (1996), 141 Sask. R. 132 (C.A.), at para. 22. On the contrary, I can think of many scenarios in which an offence causing the harms outlined in subpara. (a)(ii) would clearly also involve "the use or attempted use of violence". The same can be said about para. (b) of the definition, which lists a number of sexual offences to include them in the definition of an SPIO. The offences enumerated in para. (b) will of course often also meet the qualitative criteria of subparas. (a)(i) and (a)(ii). The fact that a proposed interpretation would bring some offences within the ambit of more than one part of the definition in s. 752 should not, in itself, justify narrowing the definition to avoid such overlaps.
- [64] I refer also to paras. 61 and 62 in which Wagner J. observed:
- [61] I have already briefly addressed the argument that the exclusion of robbery from the offences listed in para. (b) of the definition is relevant to the determination of legislative intent. With respect, this argument is based on two false premises. First, robbery may be committed by way of threats of violence to property and such threats are clearly excluded from the definition of an SPIO, which means that Parliament could not have categorically defined robbery as an SPIO even if it considered the threats to be violent. Second, Parliament identified three sexual offences each of which categorically qualifies as an SPIO in para. (b). There is no indication that Parliament intended to create an exhaustive list of all offences constituting SPIOs in all cases. Rather, as this Court stated in *Currie*, para. (b) serves to make it clear that the enumerated sexual offences, whatever form they may take, are inherently serious and may trigger a dangerous offender application (para. 22).
- [62] The reason why Parliament included a list of sexual offences is surely not that sexual offences are not otherwise covered by the expression "use or attempted use of violence". The more reasonable view is that Parliament included the list to make it clear that such offences will constitute SPIOs in all circumstances, even those that are committed with minimal physical force and that do not result in bodily harm. Furthermore, the view that Parliament, in enacting para. (b) of the definition, was rejecting a narrow approach that might exclude some sexual offences is consistent with my interpretation of subpara. (a)(i), which rules out

a similarly narrow approach in the context of threats of violence.

[My emphasis.]

[65] Although Steele was only directly concerned with the offence of robbery when no physical harm was suffered by the victim of the offence, I am satisfied that the principles enunciated in Steele are equally applicable to both ss. 151 and 152 of the Code when what is at issue is the violation of the sexual integrity of or the sexual domination of a victim under the age of 16 for purposes of sexual gratification.

[66] I say that in part because either offence may involve little or no physical harm but the full extent and the severity of the psychological damage inflicted upon young children by the offender may not be known for many years.

[67] In reaching that conclusion I refer to and adopt the reasoning, observations and findings in the following authorities concerning the psychological harm to children caused by sexual offending:

1) In *R. v. Stuckless*, 1998 CanLII 7143 (Ont. C.A.) Abella J.A. (as she then was) stated at para. 44:

Sexual abuse is an act of violence. When committed against children, the violence is both physical and profoundly psychological. It is coercive and exploitative conduct, and represents the use of compulsion against someone who is defenceless. As Moldaver J. stated in *R. v. McF.*, released April 27, 1992, unreported (Ont. Gen. Div.):

I cannot conclude that [the accused] should be treated in a more lenient fashion simply because he refrained from the use of threats of physical harm or the infliction of limited and measured amounts of force.

. . . I must again reiterate the feelings that I have expressed in similar cases where the lack of serious physical harm has been advanced as a factor to be considered in mitigation. The crimes of incest and sexual assault are inherently violent. They can and often do have a crippling effect upon the psychological and emotional well-being of the victim. Conduct which brutalizes the mind can be far more devastating, painful and long-lasting than conduct which causes injury to the body.

[My emphasis.]

2) In *R. v. D.D.*, [2002] O.J. No. 1061 (C.A.) [D.D.] Moldaver J.A. (as he then was) stated at paras. 35 and 36:

35 We as a society owe it to our children to protect them from the harm caused by offenders like the appellant. Our children are at once our most valued and our most vulnerable assets. Throughout their formative years, they are manifestly incapable of defending themselves against predators like the appellant and as such, they make easy prey. People like the appellant know this only too well and they exploit it to achieve their selfish ends, heedless of the dire consequences that can and often do follow.

36 In this respect, while there may have been a time, years ago, when offenders like the appellant could take refuge in the fact that little was known about the nature or extent of the damage caused by sexual abuse, that time has long since passed. Today, that excuse no longer holds sway. The horrific consequences of child sexual abuse are only too well known.

[My emphasis.]

3) In *R. v. D.M.*, 2012 ONCA 520 the Ontario Court of Appeal summarized principles derived from *D.D.* as follows at para. 38:

38 Although the case [*R. v. Woodward*, 2010 ONCA 610] involved one child victim and one incident with no additional violence, this court made it clear that in sentencing, the principles enunciated in *D.D.* applied. Moldaver J.A. repeated the principles of sentencing arising from *D.D.* and I will repeat them here (at para. 72):

... The relevant considerations and principles from *D.D.*, at paras. 34-38, are summarized below:

- (1) Our children are our most valued and our most vulnerable assets.
- (2) We as a society owe it to our children to protect them from the harm caused by sexual predators.
- (3) Throughout their formative years, children are very susceptible to being taken advantage of by adult sexual offenders and they make easy prey for such predators.
- (4) Adult sexual predators recognize that children are particularly vulnerable and they exploit this weakness to achieve their selfish ends, heedless of the dire consequences that can and often do follow.
- (5) Three such consequences are now well-recognized: (i) children often suffer immediate physical and psychological harm; (ii) children who have been sexually abused may never be able, as an adult, to form a loving, caring relationship with another adult; (iii) and children who have been sexually abused are prone to become abusers themselves when they reach adulthood.
- (6) Absent exceptional circumstances, in the case of adult predators, the objectives of sentencing commonly referred to as denunciation, general and specific deterrence and the need to separate offenders from society must take precedence over the other recognized objectives of sentencing.

[My emphasis.]

4) More recently, in *R. v. G.E.W.*, 2014 BCSC 2597, in this Court Myers J. stated at para. 18:

[18] T-L.C. could not be located and therefore there is no impact statement from her. However, I do not think it can be argued that the abuse did not have a profound impact on her. In *R. v. K.M.M.*, 2012 SKQB 297, Gunn J. inferred from the circumstances that a young victim of sexual assault had suffered "negative and potentially permanent psychological impacts".

Gunn J. cited from R. v. S. (W.B.) 1992 CanLII 2761; 127 AR 65 (A.B.C.A.) describing the research into the harm generally suffered from victims of sexual assault and that in every case of sexual abuse of a child there is a "very real risk of very real harm to the child". Further, that such a victim may suffer greater trauma when she is closely related to the offender. Gunn J. also referred to R. v. Arcand, 2010 ABCA 363 and R. v. G.R.B., 2013 ABCA 93, where the Alberta Court of Appeal discussed the fact that in some cases some of the harm a child victim may have suffered may not be ascertainable at sentencing. For instance, this was found in G.R.B., where, at the time of sentencing the victim was 18 years old and in grade twelve: "just entering adulthood and with the challenge of personal and intimate relationships ahead of her".[My emphasis.]

- 4) Do the principles enunciated in Kienapple, apply to some of the offences of which T.L.P. has been convicted?

[68] In R. v. Meszaros, 2013 ONCA 682 [Meszaros] Blair J.A. speaking for a five member panel of the Ontario Court of Appeal wrote at para. 30:

30 It is a fundamental principle of criminal law that no person may be convicted twice for the same criminal wrong (*nemo debet bis puniri pro uno delicto*). As developed in subsequent Supreme Court of Canada and appellate jurisprudence, the Kienapple rule is an expression of that principle. The rule is that there ought not to be multiple convictions for the same "delict", "matter", or "cause": Kienapple, per Laskin J. at pp. 749-50. For Kienapple to apply there must be both a sufficiently close factual nexus and a sufficiently close legal nexus between the two offences in the circumstances: see R. v. McGuigan, [1982] 1 S.C.R. 284; R. v. Krug, [1985] 2 S.C.R. 255; R. v. Prince, [1986] 2 S.C.R. 480; R. v. Provo, [1989] 2 S.C.R. 3; R. v. Langevin (1979), 47 C.C.C. (2d) 138 (Ont. C.A.); and R. v. R.K. (2005), 198 C.C.C. (3d) 232 (Ont. C.A.).

[69] In this case two issues arise concerning application of the Kienapple principle.

[70] Those issues are:

- 1) although the Crown and T.L.P. agree that the Kienapple principle applies with respect to the convictions entered against T.L.P. for both sexual assault under s. 271 and sexual interference under s. 151 of the Code in relation to some of his victims there is some debate as to which of the two offences should be subject to a conditional stay as the "less serious" of the two offences; and
- 2) the Crown does not accept T.L.P.'s submission that application of the Kienapple principle also requires that the convictions entered against T.L.P. for invitation to sexual touching under s. 152 of the Code against some of his victims must also be subject to a conditional stay as being "less serious" offences than either sexual assault or sexual interference to prevent multiple convictions for the same delict, cause or matter.

[71] I will next address both issues.

- a) Should the convictions of T.L.P. for sexual assault under s. 271 or for sexual interference under s. 151 be conditionally stayed?

[72] In *R. v. D.L.W.*, 2014 BCSC 43 [D.L.W.], Romilly J. reversed the decision he had earlier made (reported at 2013 BCSC 1327) in which, at para. 335, by application of the Kienapple principle he had entered conditional stays of convictions against the offender for sexual interference as being "repetitive of the convictions for sexual assault".

[73] In reversing that decision Romilly J. referred to the decision of Gorman P.C.J. in *R. v. Young*, [2010] N.J. No. 373 (P.C.) [Young] as well as to the Ontario Court of Appeal's decision in *Meszaros*.

[74] At paras. 21 to 26 Romilly J. wrote:

[21] In *Young*, the accused had sexual intercourse with a 13 year old girl on one occasion. He was convicted of sexual interference and sexual assault. The Court held that the same act formed the basis for both convictions and the two offences were substantially the same. Furthermore, there was no indication from Parliament that the Kienapple principle was not to apply. The Court therefore held that the Kienapple principle applied and a conditional stay was entered on the sexual assault charge. In the result, the Court held that the sexual interference charge was the more serious offence.

[22] Gorman P.C.J.'s analysis at paras. 21-26 is instructive. He wrote:

[21] As can be seen, section 151 requires proof that when the accused touched the victim, the accused's intent involved a sexual purpose. Section 271(1) does not require proof of this intent. Section 271(1) involves an objective test. In *R. v. Lutoslawski*, [2010] S.C.J. No. 49, the Supreme Court of Canada indicated that it "was established in *R. v. Chase*, [1987] 2 S.C.R. 293, that '[t]he test to be applied in determining whether the impugned conduct has the requisite sexual nature is an objective one:

'Viewed in the light of all the circumstances, is the sexual or carnal context of the assault visible to a reasonable observer?' (p. 302) Sexual assault does not require proof of an improper or ulterior purpose." Thus, a perfect legal symmetry does not exist between the two offences.

[22] Though the existence of this distinction between sections 151 and 271(1) of the Criminal Code was acknowledged by the British Columbia Court of Appeal in *R. v. R.A.J.* (2010), 289 B.C.A.C. 15, the Court still concluded that the Kienapple principle applied to offences committed pursuant to these two sections when a factual nexus existed (at paragraph 10):

I agree with the position of R.A.J. and the Crown that the convictions for both s. 271 and s. 151 cannot stand. Given the Crown's position I agree that the conviction for s. 153 also cannot stand. This is based solely on the wording of the indictment and the fact that this count was meant to be an alternative to the sexual assault count. This conclusion should not be taken as a determination that there is always a legal nexus between these two offences. The evidence fully supports that the assaults were of a violent nature. I agree with the Crown that the conviction for sexual assault

pursuant to s. 271 best captures the delict in this case. I would enter stays of proceedings on Counts 2 (s. 151) and 3 (s. 153), conditionally, pending any further appeal.

- [23] The same conclusion was reached in *R. v. S.J.M.* (2009), 247 O.A.C. 178. In that case, the Ontario Court of Appeal concluded that the "elements of the sexual interference offence are substantially the same or alternative to the elements of sexual assault either on the basis that one element is 'a particularization of another element' or 'there being more than one method, embodied in more than one offence, to prove a single delict': *R. v. Prince* at pp. 500-2." Also see *R. v. E.W.* (2002), 216 Nfld. & P.E.I.R. 89 (N.L.C.A.), at paragraph 70.
- [24] In this case, though the elements of the two offences are not identical, the two offences are substantially the same and alternatives to each other. The same cause, matter or delict underlies both charges. Thus, this is an appropriate case for the Kienapple principle to be applied, unless there is a clear Parliamentary indication that the common law principle prohibiting multiple convictions for the same delict is not to apply. In this case, that indication is lacking. There is, for instance, no indication in either of the two provisions to suggest that multiple convictions was envisioned by Parliament (see *R. v. McGuigan*, [1982] 1 S.C.R. 284) or that Parliament envisioned an "additional" punishment being imposed when one act by an offender breaches both sections 151 and 271(1) of the Criminal Code (see *Kienapple*, at page 753 and *R. v. Clark* (2008), 234 C.C.C. (3d) 12 (Alta. C.A.), at paragraph 33). Finally, the entering of a stay of proceedings in relation to the section 271(1) offence would not defeat the deterrent effect sought by Parliament in enacting section 151 of the Criminal Code (see *R. v. R.K.* (2005), 198 C.C.C. (3d) 232 (Ont. C.A.), at paragraph 52).
- [25] The rule prohibiting multiple convictions for a single delict is a "fundamental" one (see *McGuigan*) and of long standing. There is nothing in the language used by Parliament in creating either section 151 or section 271(1) which illustrates an intention to depart from that principle when one act underlies convictions for both. Thus, I conclude that rule prohibiting multiple convictions for a single delict requires that a conditional stay be entered. The final step in the analysis requires the Court to determine which is the less serious of the two offences as it is in relation to that offence that the conditional stay is to be entered (see *R. v. Loyer*, [1978] 2 S.C.R. 631, at paragraphs 8 and 9 and *R. v. J.F.*, [2008] 3 S.C.R. 215, at paragraphs 12 and 13).
- [26] In *R. v. W.H.*, [2010] N.J. No. 114 (S.C.), the offender was also convicted of offences, contrary to sections 151 and 271(1) of the Criminal Code. The trial judge entered a conditional stay in relation to the section 151 offence because both counsel agreed that the stay should be entered in relation to that offence and because it permitted "the Court a wider option of sentencing alternatives" (a conditional sentence, for instance, not being an option if a conviction is entered pursuant to section 151 of the Criminal Code). As a result, this decision is distinguishable in that it was reached, in part, by an acceptance of counsel's agreed position. Also see *R. v. C.F.G.* (2003), 181 C.C.C. (3d) 422 (N.S.C.A.), at paragraph 39 and *R. v. Moyles*, 2010 NLTD(G) 178, at paragraph 60.

[23] In arriving at his conclusion, Gorman P.C.J. wrote at para. 27:

[27] I conclude that the section 151 offence best captures the delict in this case and that it is the more serious of the two offences (see *R. v. M.*(S.J.) (2009), 247 O.A.C. 178, at paragraph 10; *R. v. T.J.B.*, [2010] S.J. No. 607 (Q.B.), at paragraph 35; *R. v. Innerebner*, [2010] A.J. No. 341 (Q.B.), at paragraph 30; and *R. v. Gaw*, [2010] O.J. No. 2407 (C.J.), at paragraph 55). This is illustrated by Parliament having decreed that a minimum period of incarceration must be imposed for an offence committed pursuant to section 151 of the Criminal Code, but not in relation to one committed pursuant to section 271(1) of the Criminal Code (see *R. v. B.*(W.R.) (2010), 253 Man.R. (2d) 207 (Q.B.), at paragraph 45). Finally, entering a stay in relation to the section 151 offence would constitute an error because it would frustrate Parliament's intent that for all such offences a minimum period of incarceration must be imposed and it would reinstate a judicial discretion which has been removed by Parliament. As a result, a conditional stay of proceedings is entered in relation to the section 271(1) offence. That leaves for determination the imposition of an appropriate sentence for the section 151 offence committed by Mr. Young.

[24] I agree with Gorman P.C.J.'s conclusion.

[25] Counts 1 and 2 are the sexual assault counts pursuant to s. 271 in relation to the older and younger complainants, respectively. I find Counts 3 and 7, the sexual interference counts pursuant to s. 151, in relation to the older and younger complainants, respectively, to be the more serious offences. Therefore, the Kienapple principle applies to Counts 1 and 2.

[26] As a result, I amend my prior ruling in 2013 BCSC 1327. I hold that the offender will be sentenced on Counts 3 and 7 (sexual interference) and a conditional stay of proceedings will be entered on Counts 1 and 2 (sexual assault).

[My emphasis.]

[75] In her initial submissions on this issue, Crown counsel submitted that stays should be entered on the sexual interference convictions entered under s. 151 of the Code concerning T.L.P.'s offending against K, J and A with respect to the predicate offences and with respect to C concerning his earlier offending.

[76] Counsel for T.L.P. agreed with those submissions which would be consistent with Romilly J.'s initial decision in D.L.W.

[77] Subsequently, after further considering Romilly J.'s reversal of his earlier conclusions Crown counsel submitted that although, strictly speaking, that later decision would require a stay of the sexual assault charges in favour of the sexual interference charges in this case she also noted that in August of 2012 (after the decision in Young upon which Romilly J. relied) Parliament amended s. 271 of the Code so that a conviction for sexual assault now carries a minimum sentence of one year of imprisonment with respect of offences against complainants under the age of 16 when the Crown proceeds by indictment and six months imprisonment if the Crown proceeds summarily.

- [78] On the other hand, although sexual interference under s. 151 also carries a minimum sentence of one year of imprisonment, if the Crown proceeds by indictment it carries a minimum sentence of 90 days of imprisonment (rather than six months as with sexual assault) if the Crown proceeds summarily.
- [79] Since Romilly J.'s reversal of his decision on the application of Kienapple in D.L.W. was, at least in part, based upon his agreement with the reasoning of Gorman P.C.J. in Young that "entering a stay in relation to s. 151 would frustrate Parliament's intent that for all such offences a minimum period of incarceration must be imposed" the Crown submitted that it is now arguable that the amendment of s. 271 that carries a higher minimum sentence than s. 151 when the Crown proceeds summarily renders sexual assault of a person under the age of 16 a more serious offence than does s. 151.
- [80] I am not persuaded that I should decline to follow Romilly J.'s later decision in D.L.W. for that singular reason amongst the many others that served as the bases for his conclusion that sexual assault is the less serious offence.
- [81] In my view, also important is the fact that, on its face, a conviction for sexual interference under s. 151 of the Code recognizes that the crime was committed against a child.
- [82] I am fortified in that conclusion on this issue by the weight of recent authority in Ontario which favors the conditional staying of sexual assault convictions rather than sexual interference convictions under the Kienapple principle: See R. v. F.L., 2016 ONSC 1215 [F.L.]; R. v. Hussein, 2017 ONSC 4202 [Hussein]; R. v. F.C., 2017 ONSC 6059 [F.C.]; and R. v. R.D., 2017 ONSC 5258 [R.D.].
- [83] I will accordingly enter conditional stays of the convictions for sexual assault committed by T.L.P. under: Count 2 against A; under Count 7 against C; under Count 10 against J; and, under Counts 12 and 14 against K.
- b) Should convictions of T.L.P. for invitation to sexual touching under s. 152 of the Code be conditionally stayed?
- [84] T.L.P. relies upon the decision of the Ontario Superior Court in F.L. in which the offender had been convicted of sexual assault under s. 271; sexual interference under s. 151; and, invitation to sexual touching under s. 152 of the Code. Le May J. ruled (at para. 20) that the offences all flowed from the "same delict, cause or mater".
- [85] After considering the Kienapple principle Le May J. stayed both the convictions for sexual assault under s. 271 and invitation to sexual touching under s. 152 of the Code after determining that a conviction for sexual interference under s. 151 was a more serious offence than sexual assault. There was, however, no discussion in the case concerning why a stay of the conviction for invitation to sexual touching was required.

- [86] The decision in F.L. was followed by the Ontario Superior Court in F.C., Hussein and R.D. all of which I referred to in my ruling on the Kienapple issues related to the offences of sexual assault and sexual interference.
- [87] In British Columbia, however, in his re-consideration decision in D.L.W. (which I have followed on the Kienapple issues concerning the offences of sexual assault and sexual interference), Romilly J. also determined that convictions for invitation to sexual touching entered against the accused along with convictions for sexual assault and sexual interference related to the same complainants should not be stayed under the Kienapple principle.
- [88] In doing so, Romilly J. wrote at para. 34:
- [34] Count 4 in the Indictment is the offence charged pursuant to s. 152 in relation to the older complainant. Count 8 is the mirror offence in relation to the younger complainant. Section 152 creates the separate offence of invitation to sexual touching. I initially held that these counts should be conditionally stayed as "repetitive of the convictions for sexual assault". However, upon further review, I find that no legal nexus exists between an offence under s. 152 and the offence of sexual interference under s. 151. Consequently, the Kienapple principle does not apply to Counts 4 and 8.
- [My emphasis.]
- [89] The conflict between the Ontario decisions to which I have referred and Romilly J.'s decision in D.L.W. must be addressed.
- [90] In this Court, the decision of Wilson J. (as he then was) in *Re: Hansard Spruce Mills*, [1954] 4 D.L.R. 590 (B.C.S.C.) [Hansard Spruce Mills] governs the issue of when a judge of this Court can depart from a previous decision of the Court. That may occur only when, as stated by Wilson J. at para. 4:
- (a) Subsequent decisions have affected the validity of the impugned judgment;
 - (b) it is demonstrated that some binding authority in case law, or some relevant statute was not considered;
 - (c) the judgment was unconsidered, a *nisi prius* judgment given in circumstances familiar to all trial Judges, where the exigencies of the trial require an immediate decision without opportunity to fully consult authority.
- [91] Although the Ontario decisions to which I earlier referred were decided subsequent to Romilly J.'s judgment in D.L.W. I am not satisfied that they affect the validity of his judgment:
- [92] I say that because:

- 1) In F.L. and the cases that followed F.L. there was no specific analysis as to why there was a legal nexus between the offence of invitation to sexual touching under s. 152 of the Code and the offence of sexual interference under s. 151. In all of those cases the focus of the decisions was on the application of the Kienapple principle as between convictions for both sexual assault and sexual interference.
 - 2) In Hussein the Crown took the position that invitation to sexual touching should be conditionally stayed.
 - 3) In none of the Ontario decisions to which I have referred (all of which were decided after Romilly J.'s decision in D.L.W.) was there any reference to or consideration of D.L.W.
- [93] In those circumstances I consider myself bound by the principles of stare decisis enunciated in Hansard Spruce Mills to follow Romilly J.'s reasoned decision in D.L.W.
- [94] I am, however, also satisfied that I should follow that decision because in my opinion, D.L.W. was correctly decided.
- [95] I say that because:
- 1) Sexual interference and invitation to sexual touching are different offences targeting different criminal behaviour.
 - 2) To establish the offence of sexual interference under s. 151 of the Code the Crown must prove beyond a reasonable doubt that the accused actually touched any part of the body of a complainant under the age of 16 with an object or part of the accused's body for a sexual purpose.
 - 3) To establish the offence of invitation to sexual touching under s. 152 the Crown must prove beyond a reasonable doubt that the accused invited or counselled a complainant under the age of 16 to touch directly or indirectly the body of any person, including the accused and the complainant, for a sexual purpose and intended that (or was highly reckless as to whether) his words and actions would be received by the complainant as counselling an invitation to touch directly or indirectly the body of a person, including the accused or the complainant for a sexual purpose.
 - 4) In this case, as I discussed in my reasons for conviction T.L.P. was engaged in what he termed the "pedo-proofing" of his victims. I concluded that his actions amounted to little more than grooming his victims for his subsequent abuse of them.
 - 5) While the offence of invitation to sexual touching under s. 152 could be a pre-cursor to the commission of the offences of sexual interference under s. 151 or sexual assault under s. 271 of the Code that is not necessarily the case. What is criminalized under s. 152 is the actus reus of counselling or invitation of a child under the age of 16 to engage in sexual activity not the actus reus of physical sexual violation that is criminalized under both s. 151 (sexual interference) and s. 271 (sexual assault) of the Code.

5) T.L.P.'s personal history

- [96] T.L.P. was born in 1972 in the Lower Mainland of British Columbia. He has two sisters who are the mothers of the complainants J, A, K and X.
- [97] He has no criminal record other than with respect to the offences for which he is now before the Court for sentencing.
- [98] As a child T.L.P. moved frequently, living in the Lower Mainland, Penticton and Quesnel as well as in Calgary. He claims that his parents were not abusive but they were both marihuana users.
- [99] The history that T.L.P. provided to Dr. Hervé who performed the court ordered psychological assessment of him satisfies me that T.L.P. tended to exaggerate his own intellectual abilities as an "advanced child" claiming to have been reading at a Grade 2 level by the time he was four years old.
- [100] T.L.P. also told Dr. Hervé that he had difficulty socially because he was younger and smarter than his peers and that he then purposely started to fail classes to not appear to be too smart. He was, however, able to make friends both in elementary and high school and also reported that he started to binge drink on weekends with friends by Grade 10 but that he stopped by Grade 11 when he quit school to work as a firefighter.
- [101] T.L.P. reported that when his family moved to Keremeos when he was 18 he remained in Quesnel for a while but that he left for Keremeos when his roommate and landlord took advantage of him. He said he was not able to find work and then supported himself by receiving social assistance until he went to Keremeos.
- [102] T.L.P.'s reporting of his life from the age of 19 to his late twenties is difficult to unravel because of many inconsistencies relating to the timing of events that he said occurred. Doing the best I can with the statements attributed to him by Dr. Hervé and Mr. Conrad MacNeil the psychologist who interviewed T.L.P. at his request (whose evidence I will later discuss) I am satisfied that it is likely that T.L.P. met his ex-wife in about 1991 or 1992 when he was about 20 and married her shortly thereafter. They moved to Quesnel shortly after that and had a son in about 1993 when T.L.P. was about 21. They then had a daughter in either 1996 or 1997.
- [103] In part, T.L.P.'s inability to recall specific dates, including the date of birth of his daughter arises from the fact that he has been estranged from her for many years.
- [104] Evidence concerning the reasons for that estrangement and concerning the involvement of the Ministry of Children and Family Development in his life and that of his wife and children at the time involved concerns about T.L.P. having molested his daughter when she was three or four years old.

- [105] That evidence is, however, for the most part, limited to various somewhat contradictory statements made by T.L.P., and by his sister to Dr. Hervé and by statements made by T.L.P. to Mr. MacNeil.
- [106] In addition to those out of court statements, however, T.L.P. also testified at trial that he removed himself from his daughter's life because he wanted to protect her from what he then thought might be his pedophilic urges. He also, however, testified that he was stopped from seeing her by the Ministry or the police to avoid criminal prosecution.
- [107] In those circumstances, given the somewhat contradictory evidence and given that no charges or convictions arose from circumstances surrounding his daughter I accept the submission made by T.L.P.'s counsel that I should not rely upon such unproven allegations as part of a pattern of sexual offending by T.L.P. that could pre-date his offending against C in 2001.
- [108] Having said that, however, while the statements made by T.L.P. are not sufficiently probative of sexual offending to be considered as part of a pattern of behaviour his testimony at trial is probative of his early obsession with child pornography and his beliefs about childhood sexuality that inform Dr. Hervé's and Mr. MacNeil's psychiatric opinions as well as the sentencing decisions I must make.
- [109] In that regard I consider the following testimony of T.L.P. in examination in chief at trial to be particularly illuminating and disturbing.
- [110] On the issue of childhood sexuality he testified:

A child has sex because they are not able to control their -- their primitive drives. So when they are shown sex, when they learn about it, when they know about it then they want to have it and will go and have it and it is no -- there is no shame to them and there is nothing for them to feel guilty about. It wasn't what was wrong with me. It was I was a normal little girl or I was a normal little boy.

The misconceptions within society the bottom line is I think they are doing a lot of harm. They are causing people to offend and they are causing people who have been offended against to not get better.

- [111] Concerning his daughter and his offending against C in 2001 he testified:

So initially I believed myself to be a pedophile and -- and it -- it was in that -- with that understanding that I arranged for my daughter to not live with me. Which I did. I arranged that. That was my control.

So -- because I was worried that I might hurt her, right; because of my feelings that I was having. I was in huge conflict. I didn't yet know critical thinking and without critical thinking, it's very easy to think that you're something that you're not.

And so I was thinking, at the time that I was something that I was not. That I had a sickness. And, of course, pedophilia is a sickness but an attraction to children is not a sickness. It's something that is felt universally by almost all men. They just simply don't acknowledge it or they don't go there. That's typically the thing. Is to just simply don't acknowledge it.

It's only when it becomes problematic for society, where there starts being harm and loss either to the person or others that it becomes a sickness. But at the time I didn't know any of that and I thought that I was sick.

I also looked around at the time for places to go for help. I found none. There was nowhere that I could turn where I wouldn't automatically end up in court. I wasn't a free man then. I had no idea about the things that I know of now.

The things that I know of now actually come from what happened looking at the pictures, because now I understand that "you are what you eat" applies to your mind.- It's important to guard what you put into your mind and that when you put things in, to understand what it is that you're doing. Not eat junk food, so to speak, when you -- when you -- when you're educating yourself.

That understanding that you are what you eat is what led me to be where I am today. It led me, first, to critical thinking, which I have no idea why they don't teach critical thinking in school. I mean, I understand that they do in universities in some courses, but really that should be primary school stuff, along with civics. Right. The study of rights.

So from that understanding that you are what you eat, I found critical thinking, and critical thinking allowed me to move through the feelings that I had from the images of abused children to a point of understanding, where I -- I now know that I don't have the sickness. And pedophile is a pedophile primarily because it's an orientation, which is why pedophiles never get better, right. Pedophiles don't get better. A child abuser can get better. Somebody who believes themselves to be a pedophile but isn't a pedophile can get better. But an actual pedophile, somebody who has a predisposition to be sexually attracted to children, that disposition, will always be there. Just like a gay man is always going to be a gay man, and a straight man is always going to be a straight man.

But there are lots of people out there who are not pedophiles, who believe they're pedophiles because they haven't found critical thinking. Critical thinking puts an end to it. Then you can think, "Well, what would I think if I were this other person?" "Does what I think actually stand up?" "Is what I see and seen to be true actually what is true? Let's go and look at the facts." Right. Which, of course, you find that the -- when you look at the facts, you find that the children who enjoy, are the ones most affected.

The children who are tied up and forced and get burned by cigarettes and things, those children grow up to be fairly stable, regular, productive people, because there's nothing internalized. And that was my purpose with [C]. My purpose with [C] was to externalize. - So instead of built-in shame, yes, the girl fears me and the girl has hatred of me. She fears and hates me, rather than feel guilt and shame herself. And -- and I would really appreciate if nobody tells her the truth. I hope she isn't here.

There was a cost to what I did with her. She has nightmares. But the alternative would have been worse. Built-in shame destroys people. Especially when they can't shake it.

[112] The evidence establishes that T.L.P. began accessing child pornography in the late 1990's or early 2000's.

[113] After his estrangement from his wife and children he lived a transient lifestyle. He worked for BC Hydro for about one and one-half years likely before 2001. By 2001 he was living in Quesnel where he lived with a friend. It was at that time that he committed the sexual offences against C (who was then about four or five years old) for which he has been convicted.

[114] Following a falling out with that friend T.L.P. moved to Penticton to live with a cousin. He moved back to Quesnel shortly after that and supported himself on social assistance.

[115] T.L.P. reported to Dr. Hervé that he then became severely depressed with symptoms of permanent sadness, lack of motivation and oversleeping. He drank heavily and smoked "lots of pot".

[116] Concerning the next period of T.L.P.'s life, Dr. Hervé wrote:

In the interview, [T.L.P.] stated that, during this period of time, he blamed everyone else for his difficulties, including his ex-wife, her parents, the government, and the Freemasons. [T.L.P.] indicated that his experiences with family court and with crown counsel left him disenchanted with the court system. [T.L.P.] stated that this led him to investigate how "this injustice" could have taken place in Canada. He stated that he became "obsessed with doing research" for the next ten years. He stated that this obsession took over his life and replaced his need to self-medicate with alcohol and marijuana. However, he kept smoking marijuana when he could afford it or when it was offered to him.

In the first interview, [T.L.P.] stated that he started his research at the local library after he became depressed. [In contrast, in the second interview, he stated that he first conducted library research while he was living with [deleted]. He stated that he conducted research on child sexual abuse (see 'Sexual Development and Functioning' section for further details)]. [T.L.P.] stated that he eventually purchased a computer, which allowed him to focus his research on the internet. (In the second interview, [T.L.P.] stated that he started conducting internet research while living with [deleted] using [deleted] computer).

In the interview, [T.L.P.] stated that he could spend up to 20 hours per day "in research mode." [T.L.P.] stated that he spent two years researching religion in order to "find solace through faith," but "there was none. Only delusions" Similarly, [T.L.P.'s sister] reported that there was a period of time when [T.L.P.] bounced from one religion to another. [T.L.P.] stated that his internet research eventually led him to the following groups (also see Statement of T.[L.P.], dated 2013-01-01):

1. In the first interview, [T.L.P.] stated that he became involved with a group called "Anonymous" around 2002/2003. According to file information, [T.L.P.] previously stated that he had been involved with the Anonymous network when living in Penticton, before it was even called Anonymous (Proceedings at Trial, R. v. T.L.[P.], dated 2015-03-05). When challenged with this information in the second interview, [T.L.P.] stated that he had been involved in internet chat rooms for years (i.e., since the 1990s). He stated that Anonymous evolved out of these chat rooms. In any case, [T.L.P.] stated that by allowing members to remain anonymous, Anonymous allows its members to speak freely and honestly (also see Proceedings at Trial, R. v. T.L.[P.], dated 2015-03-03). He Stated that members tend to be activists. He stated that this group is linked to "elite hackers" and "hacktivists" but also include many other types of members, including government officials. [T.L.P.] estimated that there are over two billion members, which creates a large network to rely on if one has a particular cause. [T.L.P.] stated that members can operate outside the law and, therefore, can violate people's rights for the greater good. For example, they can create illegal programs to identify child pornography offenders. He stated that anonymous members are responsible for catching tens of thousands of child offenders. [T.L.P.] previously reported visiting the Anonymous website every couple of months (Proceedings at Trial, R. v. T.L.[P.], dated 2015-03-03).
2. [T.L.P.] stated that he became involved with a group called "Creditors and Commerce" around 2006. [T.L.P.] stated that this group taught him more about how the world functions than any other group. He stated that this group taught him that most of what people believe to be facts are in fact opinions. He stated that this group taught him "critical thinking" (e.g., how to seek the original source of information, how to challenge beliefs), how to "enforce rights," and how to create public policy ("if you put something into the public and the public doesn't reject it, then it becomes policy because [the] government can't reject what the public wants.").
3. [T.L.P.] stated that he became involved with a group called Freeman on the Land around 2008-2009. He stated that he learned about this movement from members of the Creditors and Commerce. [T.L.P.] stated that Freeman on the Land deal with the "rights of people," and that members share common beliefs around these rights. [T.L.P.] indicated that the Freeman on the Land beliefs "held up to critical thinking."

In the interview, [T.L.P.] stated that these three groups reshaped his world view into what it has become today. He stated that he came to believe in and live by the "golden rule: do unto others as you wish was done to you." He indicated that his research into Creditors and Commerce and

Freeman on the Land taught him how to put a "commercial lien" against people and organizations and how to "contract" and provide "notices" to protect himself and others when his/their rights are violated. With regard to notices, he explained that first you provide the "notice" (i.e., the expectation), then the "notice of fault" (i.e., a reminder of the prior notice), then the "notice of default" (i.e., a reminder of the prior notices with information about the consequences for failing to comply). [T.L.P.] stated that he also came to value the importance of honouring contracts (i.e., keeping your word).

In the interview, [T.L.P.] stated that, during this ten-year period of research, his main social interactions were with like-minded people he met through the internet. He stated that he did not know these individuals' names. He stated that he also periodically attended church. However, he would frequent different churches, reportedly for the opportunity to meet different people.

In the interview, [T.L.P.] stated that, while he remained depressed during this period of time, his depression had changed. He was no longer "moping around" because he found "solace through knowledge." He stated that he went from blaming others to blaming himself. He stated that he blamed himself for sending his family to live with his in-laws in the late 1990s ("I ran from something I shouldn't have"). He blamed himself for fighting his in-laws for custody, and for taking the deal that crown counsel offered him. He stated that if he had made different choices, he would not have lost his children. [T.L.P.] stated that, as he gained knowledge about the world (i.e., as espoused by Anonymous and Freeman on the Land), he eventually stopped blaming himself.

In the interview, [T.L.P.] also described experiencing what appears to be hypomanic episodes during this time period (e.g., not sleeping for days, during which time he would become more energetic, talkative, confident, extroverted, and impulsive). He stated that he would experience racing thoughts during hypomanic episode. He recalled his thoughts as being more clear but also more superficial, scattered, and tangential. He recalled that these episodes were often triggered by insomnia, which he has experienced throughout his life (also see Proceedings at Trial, R. v. T.L.[P.], dated 2015-03-05). He stated that he, therefore, learned to cope with these episodes by managing his sleep. [T.L.P.] stated that stress could also trigger such episodes, in part because stress caused obsessive rumination that disturbed his sleep. However, when asked how he managed stress, he stated he does not experience much stress. He explained that all stressors are controlled by contracts and, therefore, that all he has to do is change the contract when he faces a stressor. In any case, [T.L.P.] stated that hypomanic episodes were often followed by periods of increased sleep (e.g., 48 hours). However, they were not followed by depressive episodes. He stated that these cycles would last less than seven days. *[Italics in original.]*

[117] T.L.P. moved to Prince George in 2012 to live with his sister and her husband. He then moved to Quesnel with them in November of 2012.

[118] It was shortly after his move to Prince George that his sexual offending against K and J began and then continued virtually unabated with J for months both before and after the move to Quesnel where and when he then also offended against J's cousins A and X on December 31, 2012.

[119] T.L.P. was arrested for his offending against his nieces on January 1, 2013 and released on bail on January 3, 2013.

[120] Concerning the time between T.L.P.'s release on bail and February 23, 2015 when the trial of the charges for which he was convicted commenced Dr. Hervé wrote:

[T.L.P.] was released on bail on 2013-01-03 with the following conditions (Client Log for T.[L.P.], dated 2013-01-04 to 2015-03-16; Recognizance of Bail, Court File No: 5921:25328-2): keep the piece and be of good behaviour; report to bail supervisor as directed; reside in residence approved by bail supervisor; obey curfew; have no contact with victims or their immediate family members; have no contact with children under the age of 16 years; and do not go to places where children congregate.

According to file information, [T.L.P.] violated his bail conditions by going to the library, a place frequented by children (Client Log for T.[L.P.], dated 2013-01-04 to 2015-03-16). He was arrested at least once for this type of violation. [T.L.P.] argued with his bail supervisor that he needed to go to the library to conduct research, and that he only frequented the library when children were not present. It appears that the court temporarily gave him access to the library between 1 and 2 pm. [T.L.P.] was upset when his library restrictions were reinstated. File information noted several other arrest warrants, the details of which were not documented (Client Log for T.[L.P.], dated 2013-01-04 to 2015-03-16; Recognizance of Bail, Court File No: 5921:25328-2). In the interview, [T.L.P.] stated that he was also breached for failing to carry his recognizance papers. [T.L.P.] also previously reported seeing one of his victims, [J] on two occasions while out on bail (Proceedings at Trial, R. v. T.L.[P.], dated 2015-03-03). He reposed that, both times, she was not afraid of him.

While [T.L.P.] was otherwise compliant with his supervision orders, he was described as "defiant," "non-compliant," "argumentative," "at times pushy," and generally difficult to deal with because he is a "Freeman on the Land" (Client Log for T.[L.P.], dated 2013-01-04 to 2015-03-16). For example, in January 2014, [T.L.P.] indicated to his bail supervisor that he was only initialling and signing the order by necessity. [T.L.P.] concluded that session by saying he was a child of god, which meant that he did not acknowledge or follow any statutes of law that was produced by his bail supervisor's "twisted delusional reality," [T.L.P.] only conceded to being tied to the order when told that he would be breached for failure to comply.

In the interview, [T.L.P.] complained about being mistreated by police officers and correctional professionals while on bail (also see Client Log for T.[L.P.], dated 2013-01-04 to 2015-03-16; Proceedings at Trial, R. v. T.L.[P.], dated 2015-03-03). He stated that everyone involved in his case (i.e., his family, the courts, his bail supervisor, and the police) were convinced that he was guilty from the beginning. [T.L.P.] stated that police officers would tell members of the public that [T.L.P.] had abused his nieces and/or that he was a child molester, despite the fact that he was

only facing charges at that time. [T.L.P.] stated that he was upset by this because it put his nieces and himself in danger. Consistent with previous statements he has made, [T.L.P.] stated that he received many death threats (Client Log for T.[L.P.], dated 2013-01-04 to 2015-03-16). [T.L.P.] stated that the police also informed his landlords of his charges, resulting in his eviction. At times, his landlords reportedly kept or threw out his belongings, resulting in financial hardship to [T.L.P.]. When he appealed his landlords' evictions, he reportedly lost because the police told the arbitration panel that he was a child molester. [T.L.P.] stated that he was also ticketed for jaywalking and failure to wear a helmet when bicycling, when other people were not. He described his time on bail as "two years of punishment." [T.L.P.] stated that he did not take part in treatment while in the community because none was offered and/or available. [Italics in original.]

[121] Concerning T.L.P.'s incarceration after his conviction on March 6, 2015 Dr. Hervé wrote:

shortly after arriving at PGRCC, [T.L.P.] wrote a letter to crown counsel noting, among other things, how much he liked prison life ("I love it here. Are you surprised? Everyone is so real, so alive. I wish I had come years ago.") and that he planned to appeal his convictions (Letter by [T.L.P.] to J. Johnston, Assistant Crown Counsel, dated 2015-03-13; in regard to his intention to appeal, also see Client Log for T.[L.P.], dated 2015-03-10 to 2015-04-09). He signed this letter, "Your friendly enemy."

In the interview, [T.L.P.] stated that he was initially placed in a regular unit with convicted individuals, which he stated was "against policy." [T.L.P.] stated that everyone on his unit knew of his charges, which he stated should not have occurred given that there was a publication band in effect. He stated that he was assaulted by another inmate. However, according to file information, [T.L.P.] requested that he be placed on "Section 19" for his own safety shortly after arriving at PGRCC, and was only assaulted after he took himself off Section 19 (Client Log for T. [L.P.], dated 2015-03-10 to 2015-04-09).

Consistent with file information, [T.L.P.] stated that that he was then placed in segregation, from which he was transferred to a special handling unit (Client Log for T.[L.P.], dated 2015-03-10 to 2015-04-09). According to file information, [T.L.P.] left a letter on 2015-03-16 in the common room for other inmates to read, informing them of his charges (Adult Custody Incident - Supplementary, dated 2015-03-16). In the interview, he explained that he did so to provide a "full explanation" of why they "shouldn't kill" him. He was assaulted by another inmate on 2015-03-25 (Client Log for T.[L.P.], dated 2015-03-10 to 2015-04-09). In the interview, [T.L.P.] stated that, since that time, he has been telling other inmates that he was convicted of drug-related offences. He stated that he has only informed one other inmate about his actual charges. In the interview, [T.L.P.] stated that he feels "out of place" in prison because most inmates are "junkies" and "dealers" who he would normally not associate with. Yet, he also stated that he does well in prison ("I run the unit") "because of contracting".

According to file information, [T.L.P.] has generally been compliant with rules and regulations, and he has not been a significant behavioural problem while incarcerated (Client Log for T.[L.P.], dated 2015-03-10 to 2015-04-09; Client Log for T.[L.P.], dated 2015-04-11 to 2015-06-14). While he tends to be respectful and polite with staff, he can also be quite argumentative regarding his rights and responsibilities due to his Freeman on the Land beliefs. [T.L.P.] was also noted to put in many "odd requests," including wanting to contact the Queen and to change laws and legislation. (In the interview, [T.L.P.] explained that, as a "Crown Freeman," he communicates with his "monarchy."). Overall, [T.L.P.] was described as a "drain on resources." With that said, [T.L.P.] has responded well when spoken to "sternly" about behavioural expectation, including about reducing the amount of requests he makes. However, his demands and requests eventually return.

In the interview, [T.L.P.] stated that he has not had any problems with insomnia, depression, and/or hypomania while incarcerated. [T.L.P.] stated that, after he noticed blood in his urine, he was diagnosed with an enlarged prostate, and given medication to help facilitate urination. He reported no other medication use. [T.L.P.] reported no other health issues, including no sexually transmitted diseases. [T.L.P.] stated that he has not taking part in any programs/treatments as there are none available. *[Italics in original.]*

[122] Those reports are consistent with the evidence adduced on this hearing concerning T.L.P.'s incarceration.

[123] In addition, however, while he was incarcerated and awaiting sentencing T.L.P. continued to communicate with Crown Counsel by way of a relentless stream of letters that had commenced on March 15, 2015 and that continued until August 16, 2016.

[124] The content of those letters is bizarre and raises serious concerns about not only T.L.P.'s lack of remorse but also his refusal to accept societal norms, both of which concerns underscore the very serious risk that he will re-offend.

[125] Many of T.L.P.'s letters are styled as "Private International Notices of Claim-Offer to Forgive" apparently invoking T.L.P.'s Freeman on the Land philosophy. They are repetitive and express in various ways a theme of the alleged injustices suffered by him due to the Crown's prosecution of him.

[126] The content of one of those letters (dated May 13, 2016) naming himself as the "Claimant" and naming Crown Counsel; this Court and the Attorney General for the Province of British Columbia as "Respondents" is representative and instructive. It reads:

- (1) The CLAIMANT understands that CANADA, its Courts, Crowns, and Governments, are de facto, and have no authority to convict; AND NOTWITHSTANDING
- (2) The CLAIMANT understands that the CLAIMANT is sovereign, and is therefore superior to the RESPONDENT and immune to prosecution; and NOTWITHSTANDING

- (3) The CLAIMANT understands that the CLAIMANT has a lawful excuse to ignore any order from any court in CANADA; and NOTWITHSTANDING
- (4) The CLAIMANT understands that the CLAIMANT has a lawful excuse to disobey any Act or statute of CANADA; and NOTWITHSTANDING
- (5) The CLAIMANT understands that the CLAIMANT has Diplomatic Immunity, and is thereby protected from attacks and threats; AND NOTWITHSTANDING
- (6) The CLAIMANT understands that there is and can be no proof of mens rea, as the CLAIMANT had only lawful intentions; AND NOTWITHSTANDING
- (7) The CLAIMANT understands that the CROWN represents Evelyn Rothschild, and therefore has no standing; WHEREBY ALL ARE OFFENCES, AND SO
- (8) The CLAIMANT will claim \$10,000,000.00 Canadian as damages, (unless the RESPONDENT repents and seeks forgiveness,) for each offence.

Respond ONLY with a qualified response or by default agree with the points presented and consent to receive a 'Notice of fault' and a bill for \$70,000,000.00. To be certain, a qualified response is a timely and verifiable response sworn or affirmed upon your full commercial liability and under the penalty of perjury which deals in honour with the points presented. Any other response is a non-response and will be refused for cause without dishonour for being an insufficient and frivolous response.

Note: These proceedings follow Matthew's method as close as possible, and deficiencies are by necessity and are of no force or effect; true Justice can not be stopped. [Matt 18:15.20]

[Underline in original.]

[127] On one hand, that correspondence can be dismissed as the type of linguistic pseudo-legal nonsense seen regularly in Canadian courts from the mouths and pens of litigants who espouse "Freeman" beliefs in seeking to avoid payment of taxes or otherwise challenge societal norms.

[128] On the other hand, in a case like this when the author has been convicted of heinous crimes of sexual predation against children, and has espoused the belief that those children consented to his offending against them, the content of the correspondence demonstrates a deeply engrained and dangerous attitude towards children and a firmly held belief that T.L.P. remains above the law.

[129] While standing alone, it would be wrong to punish T.L.P. for his Freeman on the Land beliefs, when those beliefs demonstrate not only that he is not remorseful for his actions but also considers his actions to be acceptable, those beliefs must be considered as an adjunct of risk assessment and sentencing.

[130] In that regard, even more troubling than the content of those "Notices of Claim" are the contents of another rambling five page letter dated May 24, 2016 addressed only to Crown Counsel but adduced as evidence on this sentencing hearing. Excerpts from that letter include the following:

I would be happy to agree to an LTO if we can come to terms, but first, let us agree that I am not an offender, but a deceiver for the Great Work; where lies are excused because the ends justifies the means. I did not abuse my nieces. Rather, I taught them about sex, and about their rights, and about how to say no, and about when to say yes, and about a great many other things, and I taught them with role play games, because kids understand when they are involved, and I did all this because of the immense love that I have for them. As a crusader, when I saw the opportunity to do a "Great Work", a means by which I could teach many children to be sexually safe and aware, and at the same time; reform regulate; control, and/or punish those who would or do sexually abuse them, I took it, even though the way would be hard; full of sacrifice.

The plan then, is to create a secret society; wherein the outward appearance is a pedo-friendly community were pedo-sexuals (they prefer that designation) can meet and mingle with others like themselves, and possibly even meet sexually active children to have relationships with, but inwardly, secretly, the society is a prison for them, and a place of safety and healing for their victims.

For such a plan to work, I need standing with the pedophiles. I must be able to stand among them, as one of them, so that they could believe me when I say that such a society exists (and has existed for thousands of years, or so the lie will go.) and that they could be a member too, if they choose

Now that you know my mind, here is what I wish. I want as short a sentence as possible. I would have liked to take the corrective programs myself, to have the experience, as I will be sending countless others to do so, but it is enough to know that the program is, at least, partly; effective. That said, if I must serve some (more) time, then I do want to take such programs. I want a 10 year L.T.O., so I can have proof on hand for as long as possible that I am "one of them"; but I want lenient conditions. Reporting is to be by phone only, as I will be travelling often; to go where the pedophiles are, to recruit them into service and initiate them into 'The "SS" club', which is what I will commonly call the secret society which I create. I will need to reside at a designate location; but this must never be checked; as I will often not be there. I can have no restrictions on weapons, as I will carry a gun by claim of right, because my life will be in constant danger, even more so than it is now. Neither can I have restrictions on Internet access, as initial contact will be made, in most cases, by computer or, if such a condition is included, an agreement that it not be enforced. I am agreeable to any other condition which does not limit my ability to be effective in the protection of children or the correction of pedophiles, via the creation of 'The S"S" Club'.

[My emphasis.]

[131] Aside from the egomaniacal content of that letter what is most disturbing are T.L.P.'s suggestions that after limited and lenient punishment for his offending he will, as a "teacher/deceiver", actively pursue association with those of like mind to promote his distorted views of and obsession with childhood sexuality - both of which were at the root of his offending.

6) Psychiatric Opinion Evidence

[132] As noted, T.L.P. did not oppose the Crown's application under s. 752.01 Part XXIV of the Code that he be remanded for psychological assessment.

[133] T.L.P. also fully co-operated in the assessment that was then conducted by Dr. Hervé.

[134] Dr. Hervé's assessment report dated August 25, 2015 was filed with the Court on August 28, 2015. Dr. Hervé was also called by the Crown as an expert witness during these sentencing proceedings.

[135] In response to Dr. Hervé's report and opinions T.L.P. tendered a psychological assessment report dated October 20, 2016 prepared by Mr. Conrad MacNeil who also testified.

[136] Dr. Hervé is a registered psychologist in the Province of British Columbia who specializes in Forensic Psychology. He has over eighteen years of experience in conducting assessments including risk and threat assessments both generally and in the context of dangerous and long-term offender applications.

[137] Dr. Hervé interviewed T.L.P. for slightly more than 12.5 hours in July of 2015. He also administered two psychological tests, being, the Personality Assessment Inventory (PAI) and the Hare Psychology Checklist-revised (PCL-R) both of which measure personality and psychopathology.

[138] In formulating his opinions that are contained in his assessment report Dr. Hervé also conducted a collateral interview with one of T.L.P.'s sisters. In addition he reviewed: British Columbia Corrections files concerning T.L.P.; transcripts of the Proceedings at Trial; copies of interviews of T.L.P. by the police during their investigation of him; and, the reasons for judgment in which I convicted T.L.P.

[139] Mr. MacNeil has a Master of Arts degree in Psychology from Carleton University in Ottawa, Ontario that he obtained in 1981. He has worked in the field of forensic psychology as a clinical and consulting psychologist in Alberta until 2008 and in British Columbia since then but is not a registered psychologist in either province. He has, however, worked extensively in correctional facilities primarily as a private contractor involved in assessment and treatment of offenders and program development. Mr. MacNeil has also lectured on various psychological topics including violence and criminal behaviour at the third and fourth year level at Lethbridge Community College (1988 to 1993), Athabasca University (2002 to 2007) and the University of Lethbridge (2005 to 2007).

[140] Mr. MacNeil interviewed T.L.P. for five hours on October 20, 2016 and administered two psychometric tests: the Minnesota Multiphasic Personality Inventory-2 (MMPI-2) and the Beliefs Attitudes and Sexual Experiences Composite (BASEC).

[141] Before doing so Mr. MacNeil reviewed court documents and transcripts, police interviews of T.L.P. conducted during the investigation of him, information from the Correctional Service of Canada concerning assessment and treatment protocols; documentation from British Columbia Corrections concerning T.L.P.'s post-conviction incarceration; Dr. Hervé's report and "a multitude of letters written by T.L.P. between March 13, 2015 to August 16, 2016", the contents of two of which I have addressed.

[142] Although the expertise and qualifications of Dr. Hervé and Mr. MacNeil are very different, with Dr. Hervé being more academically accomplished and having greater assessment experience, I qualified both as experts able to provide opinion evidence on the psychological and risk assessment issues that must be addressed in respect of applications under Part XXIV of the Code.

[143] I did so because, given Mr. MacNeil's extensive experience with treatment in corrections settings, his more limited academic qualifications and assessment expertise are matters that go to the weight to be accorded to his opinions rather than the admissibility of them.

a) Dr. Hervé's opinion

[144] Dr. Hervé's report is a detailed and comprehensive document that canvasses T.L.P.'s background history as it relates to his sexual offending, his interpretation of T.L.P.'s psychological testing; provides a diagnostic formulation concerning T.L.P.'s personality traits and identifiable psychiatric disorders; and, provides a complex risk assessment that considers both risk and protective factors.

[145] Concerning his diagnostic psychological assessment of T.L.P. Dr. Hervé concluded:

By 2012, [T.L.P.] had also resumed seeking child pornography, reportedly for the purpose of developing his software. [T.L.P.] did this despite knowing that such material sexually aroused him. Overall, [T.L.P.] appears to have well-engrained deviant sexual interests towards prepubescent girls that he has acted upon, resulting in problems for himself, the victims, and his/their families. Accordingly, he met criteria for a Pedophilic Disorder, likely of the Non-Exclusive Type given that his self-report suggests that he may also be attracted to adult women.

Therefore, at the time this assessment was completed, [T.L.P.] impressed as meeting the following DSM-V diagnosis:

1. Schizotypal Personality Disorder with Paranoid, Narcissistic, and Antisocial Features;
2. Cannabis Use Disorder in Early Remission in a Controlled Environment; and
3. Pedophilic Disorder, Non-Exclusive Type.

[146] Dr. Hervé's conclusion and recommendations are also comprehensive and well supported not only by his psychological analyses but also by the evidence adduced at trial and during these sentencing proceedings.

[147] The following conclusions reached by Dr. Hervé are particularly relevant to the sentencing decisions I must make.

1) Concerning T.L.P.'s risk for recidivism, amongst other things, Dr. Hervé wrote:

Risk for Recidivism. [T.L.P.'s] risk relates to the likelihood that he will commit another sexual offence, particularly towards prepubescent girls that are known to him. While [T.L.P.'s] tendency to engage in positive impression management makes it difficult to determine his offending pattern with precision, the information on hand suggests the following hypotheses with regard to predisposing, precipitating, perpetuating, and protective factors in this case.

Predisposing Factors: There are two general types of factors that predispose an individual to commit an offence: motivating factors that drive the behaviour, and disinhibiting factors that lower behavioural controls to offending.

In [T.L.P.'s] case, his personality disorder made it difficult for him to establish and maintain friendships and intimate partners as a youth and adult. As a result, he felt more comfortable with younger individuals, although initially not necessarily children. For example, he married a woman with significant intellectual limitations who was described as 'childlike.' Over time, he became increasingly more comfortable interacting with children than with adults. His problems connecting with adults and his tendency to seek non-sexual intimacy and self-worth from children will motivate him to seek contact with children in the future, which is a significant motivating factor in this case.

[T.L.P.] has been preoccupied with child sexual abuse and child pornography since at least his late twenties. This suggests that his deviant sexual interests and behaviours are relatively well entrenched. Entrenched thinking and behavioural patterns are known to be resistant to change. Accordingly, the urge to engage in habitual behaviours may motivate [T.L.P.] to relapse into his crime cycle. Entrenched behavioural patterns can also serve to disinhibit individuals. To engage in socially unacceptable behaviours, individuals create various justifications and rationalizations which allow them to engage in the behaviour. This may explain, for example, why [T.L.P.] developed "pedo-proofing" techniques. By seeing his actions as beneficial to the victims, he was able to act upon his urges without feeling the guilt and shame he reportedly once felt (however, see below for an alternate explanation).

[T.L.P.] reported that he was initially quite disturbed by his sexual arousal to child pornography. He experienced his deviant sexual arousal as shameful and ego-dystonic, and he viewed adult-child relations as inappropriate. However, through research on the internet and discussions with like-minded individuals, [T.L.P.] came to see attraction to children as a 'natural' phenomenon and, more generally, he developed a variety of attitudes and beliefs supportive of adult-child sexual relationships. In other words, [T.L.P.] went from a morally-conflicted individual with

pedophilic interests to a socially-conflicted individual with a pedophilic disorder. At present, while he understands that society views adult-child sexual relationships as immoral and illegal, he does not necessarily share this opinion. Rather, [T.L.P.] sees benefits in such relationships. As a result, he has limited victim empathy and remorse for his sexual offending. He is able to minimize the consequences of his actions on his victims and justify his offending to himself. These features are significant disinhibiting factors that would facilitate offending.

The functional problems resulting from [T.L.P.'s] personality disorder, including his difficulties with intimate and non-intimate relationships and his problems with employment, place him at risk to experience stress on a regular basis. His physical health problems, irrespective of their cause, may serve as an additional source of stress. His marijuana abuse, given that it likely contributes to his paranoia, mood problems, and social problems likely contributes to both his stress level and difficulty with stress management. His problems with self-awareness and stress management suggest that he will have difficulty identifying and managing stressful periods. [T.L.P.'s] problem with stress and coping is a significant, disinhibiting factor in this case.

Indeed, it was [T.L.P.'s] inability to cope with his interpersonal problems and various other stressors that motivated him to escape into the internet. He found solace and a sense of self-efficacy by doing research on the internet, and a sense of belonging and acceptance by joining fringe organizations. His association with these groups gave him a new sense of purpose and, moreover, allowed him to hide his inadequacies, poor functioning, and fragile ego behind the veil of antiauthority and antisocial beliefs espoused by these various groups. Subsequently, [T.L.P.] developed some grandiose beliefs that, among other things, increased his confidence in the 'correctness' of his grooming techniques. He also developed a sense of entitlement that made him feel justified to implement these techniques with his nieces despite being fully aware that these behaviours violated social norms and the law. His merging of Freeman on the Land beliefs with his grooming technique appears to have lent further justification to the latter, thereby further facilitating his offending. In other words, [T.L.P.'s] association with and belief in the values and practices espoused by these fringe organizations are disinhibiting factors in this case.

[T.L.P.] has a history of Bipolar II Disorder. The symptoms associated with this condition can impair decision making, impulse control, and stress management, which would serve to disinhibit him. In [T.L.P.'s] case, his symptoms can also contribute to his obsessive preoccupation with child abuse and/or a particular victim, which would serve to further motivate offending.

Precipitating Factors: Like predisposing risk factors, there are two general types of factors that precipitate (i.e., help trigger) offending: motivating and disinhibiting factors. In this case, communicating with like-minded individuals (i.e., other pedophiles and other individuals with antiauthority and antiestablishment views) appears to help [T.L.P.] rationalize his thoughts, urges, and actions (i.e., disinhibiting factor), while accessing child pornography (irrespective of the reason for this) serves to increase his deviant sexual urges (i.e., motivating factor).

As his deviant sexual urges increase and his behavioural controls decrease, [T.L.P.] becomes motivated to gain access to potential victims by reconnecting with friends or families with prepubescent girls (i.e., motivating factor). Alternatively, as he becomes more preoccupied with the topic of child abuse, he starts seeing 'signs' of abuse in girls he knows, which motivates him to 'help' them via his "pedo-proofing" techniques. [T.L.P.] then becomes fixated on seeking opportunities to have one-on-one time with his victim(s) so that he can initiate grooming, which further motivates him to offend. His immediate risk would be further increased if he concurrently experiences problems with stress and coping, a hypomanic episode, and/or marijuana use (i.e., disinhibiting factors).

Perpetuating Factors: Like predisposing and precipitating risk factors, there are two general types of factors that perpetuate (i.e., help maintain) offending: motivating and disinhibiting factors. In this case, [T.L.P.'s] grooming techniques, promotion of secrets between him and his victims, continued involvement with like-minded individuals, and access to child pornography are all likely to fuel his deviant sexual urges and, therefore, motivate him to continue offending.

Not only can grooming be intrinsically motivating to many offenders, but it can also serve to reduce inhibitions to offending. That is, the more an offender sees himself as serving an important and beneficial role in his victim's life, the more he is able to justify his sexual offending. Given the dynamics of grooming and given that [T.L.P.] is not morally conflicted about his offending, the longer his offending goes undetected, the more reinforcing it becomes.

[T.L.P.'s] extreme minimization of his offending is a notable perpetuating factor in this case, as are his entrenched attitudes supportive of sexual violence, and his problems with self-awareness and planning. Problems in functioning (e.g., employment and relationship difficulties) are likely to destabilize him, particularly if he engages in maladaptive coping strategies (e.g., self-medicating with marijuana or obsessive internet research, seeking the support of negative peer influences). All of these factors serve to disinhibit [T.L.P.] and, therefore, facilitate his sexual offending. Furthermore, [T.L.P.'s] schizotypal, paranoid, grandiose, and antisocial personality features, coupled with his continued association with fringe organizations, enables him to justify his offending, despite fully knowing that these are illegal and against social norms.

Protective Factors: There are other aspects of an individual's life (i.e., protective factors) that can serve to mitigate the effects of risk factors. Unfortunately, in [T.L.P.'s] case, he has few ties to the community (i.e., be it interpersonal, recreational, or professional) that could motivate him to establish more prosocial pursuits and/or help him sever his ties with fringe organizations.

However, [T.L.P.] does have the intellectual and emotional capacity to benefit from treatment, and he has shown himself to be capable of complying with supervision. In addition, [T.L.P.] is a 43-year-old offender, and the literature has identified age as a mitigating factor for sexual offending. That being said, there is also some research which suggests that the protective function of age is less relevant to risk than other criminogenic factors.

Risk Estimate: Given the pattern of risk and protective factors in this case, [T.L.P.] is currently at a High Risk to re-offend in a sexual manner. This is consistent with his profile of scores on the RSVP, an accepted measure of sexual recidivism risk.

[T.L.P.'s] history suggests that he is specifically at high risk to commit sexual offences towards prepubescent girls, particularly very young girls (i.e., age 4 years or younger) that he knows (e.g., girls in his immediate environment, such as the daughters of roommates, friends, or relatives; daughters and granddaughters). [T.L.P.] may try to gain access to victims by getting involved in intimate relationships with women who have prepubescent daughters. It is not uncommon for child molesters to gain access to victims in this manner.

[My emphasis.]

2) Concerning treatment recommendations for T.L.P., among other things, Dr. Hervé wrote:

Treating professionals are reminded that [T.L.P.] has several responsivity issues including: a personality disorder, poor insight, a tendency to engage in positive impression management, grandiosity, a sense of entitlement, a tendency to use his physical health problems for secondary gain, a tendency to avoid dealing with underlying issues, antiauthority and antisocial attitudes and associates, and poor treatment motivation. He has a tendency to use his Freeman on the Land beliefs and practices to try to influence others. Accordingly, [T.L.P.] is likely to respond best to therapists with experience in treating personality disorders, using behavioural interventions and motivational approaches, and confronting impression management and manipulation.

Individuals treating [T.L.P.] are reminded that he appears to respond relatively well to strict and clear direction that outline the consequences for failing to comply. Given his tendency to engage in impression management, individuals working with [T.L.P.] are urged to verify his self-report via file and/or collateral information.

With regard to treatment modality, [T.L.P.] will respond best to cognitive-behavioural approaches that teach him to challenge thinking errors, and provide him with tools to neutralize and/or manage risk factors. A course of aversion therapy may also be warranted to help [T.L.P.] overcome his deviant sexual interests and urges. Finally, [T.L.P.] may also benefit from pharmacotherapy that focuses on reducing sexual preoccupation and sexual fantasies, such as a Selective Serotonin Re-Uptake Inhibitor (SSRI). This type of treatment would be particularly relevant when [T.L.P.] is in the community and, therefore, exposed to potential victims. I defer to the appropriate medical professionals for further details in this regard.

Finally, [T.L.P.] is suitable for either group or individual therapy. Providing [T.L.P.] group therapy early in his treatment may prove particularly useful, given that group work is often best for offenders with poor insight who minimize their offences and engage in impression management. In such cases, the other participants become instrumental in challenging the individual's cognitive distortions and defences.

[My emphasis.]

3) Concerning his prognosis for T.L.P., Dr. Hervé wrote:

Prognosis. [T.L.P.'s] prognosis for institutional adjustment is relatively good. As per his recent history, he functions relatively well in institutional settings. While he can be a challenging inmate with many demands, he generally follows rules and regulations, and responds well to strict and clear guidelines. [T.L.P.'s] personality disorder and Freeman on the Land beliefs place him at risk to experience problems with, and to be victimized by, other inmates.

[T.L.P.'s] treatment prognosis (i.e., the likelihood of fully neutralizing his various criminogenic factors through treatment) is poor, given the following: the longstanding, multifaceted, and entrenched nature of [T.L.P.'s] sexual offending; the hard to treat nature of his various criminogenic factors (i.e., personality issues, substance abuse, bipolar disorder, sexual deviancy, preoccupation with child abuse, and attitudes supportive of adult-child sexual relationships are known to be difficult to treat to extinction); his responsivity issues, which are likely to complicate the treatment process; his positive impression management; his poor insight; his poor treatment motivation; his limited prosocial social support system; and his intention to continue to affiliate with like-minded individuals and fringe groups.

With that said, should [T.L.P.] put concerted, sustained effort towards his rehabilitation, follow treatment recommendations, and have access to the appropriate treatments, he has the intellectual and emotional capacity to make progress in treatment. He is likely to be most successful in the context of ongoing community support and treatment.

[T.L.P.'s] prognosis for successful community reintegration is guarded (i.e., between good and poor). On the one hand, his treatment prognosis is poor and, therefore, he is unlikely to fully address his criminogenic needs so as to be able to substantially reduce his risk to children. On the other hand, [T.L.P.] was able to live in the community without reoffending for over two years while on bail. Accordingly, his risk is likely to be manageable within the community with ongoing, intensive supervision and consistent community support.

[148] Dr. Hervé also addressed issues related to the management and supervision of T.L.P. both while incarcerated during the term of a determinate sentence as well as in the community after his release on a Long Term Supervision Order whether T.L.P. is designated as a dangerous offender or a long term offender.

b) Mr. MacNeil's opinion

[149] Mr. MacNeil's opinion was adduced by T.L.P. in response to Dr. Hervé's report.

[150] T.L.P.'s reporting of his background history to Mr. MacNeil was largely consistent with that which he recounted to Dr. Hervé.

[151] Of particular importance are the following excerpts from T.L.P.'s background history as reported by Mr. MacNeil in his report dated October 20, 2016:

[T.L.P.] met his estranged wife when they were 19 years of age when he was living in Keremeos, and after their marriage they moved to Quesnel so that he could return to work fighting forest fires, in the offseason [T.L.P.] worked in construction while his wife remained a home maker taking care of their two children. He and his wife remained together for approximately 15 years, and he stated that he left her because of her addiction to crack cocaine. His son is now approximately 22 years of age where as his daughter is approximately 19 years old. Both children were essentially raised by his in-laws with the Ministry becoming involved and ultimately custody being granted to his estranged wife's parents. Collateral information suggests that there were some issues associated with abandonment and possibly neglect, with the children's mother signing over custody to her parents; however [T.L.P.] stated that there was a "string of allegations, falsehoods and lies" that led to his children being removed from his care.

Most significantly [T.L.P.] continued to spend unsupervised time with his children, and it was during this period that his daughter disclosed that she had been sexually molested. Allegations were made that the perpetrator was [T.L.P.'s] brother-in-law; however the focus came to be placed upon him when further disclosure details from his daughter pointed to him. It was during this time that [T.L.P.] developed a preoccupation with sexual predators/pedophiles and began a long history of searching for child pornography sites on the internet; acquiring child pornography images and making alleged efforts to develop a complex software program designed to detect these sites, reveal the identity of those involved and report such to authorities.

[T.L.P.'s] sister indicated that her brother had already begun to demonstrate fairly odd and peculiar thinking patterns and beliefs; especially those involving conspiracy theories which she reported he liked to talk to others about extensively. [T.L.P.] also visited internet chatrooms and became involved with others who supported and/or allied with him in his efforts to bring child pornographers and sexual predators to justice. He stated that his involvement with the sub-cultural internet group Anonymous evolved from these pursuits.

It was also at or around this time that [T.L.P.] adopted his self-appointed status as a Freeman on the Land and expounded his loosely structured associated beliefs with this doctrine as the means to counteract perceived injustices imposed by the Government. Collateral information suggested that the anti-authority activities arose in the face of [T.L.P.'s] frustrations in dealing with the Ministry with respect to the removal of his children.

[152] This self-report by T.L.P. to Mr. MacNeil is consistent with some versions of the events concerning his daughter testified to by T.L.P. at trial and told to Dr. Hervé but inconsistent with others.

[153] As I have previously noted what I am left with are somewhat contradictory versions of events told both in and out of court. As I have noted above at para. 107 of these reasons given that no confirmed charges or convictions arose from these events I have accepted the submission of T.L.P.'s counsel that I should not rely upon such unproven allegations as part of a pattern of sexual offending by him that pre-dates his offending against C in 2001.

[154] Mr. MacNeil also reported that:

[T.L.P.] has consistently denied that he engaged in any intentional sexual activity with his victims; rather it was all a matter of instruction in order to help safe guard them against the advances of pedophiles with whom he perceived they were at a high risk to encounter. [T.L.P.'s] rationale and methods for carrying out his alleged education practices have reflected a great deal of distorted thinking, irrational beliefs, and self-perceived special abilities to detect such children in need and teach them unique methods to affectively protect themselves from sexual predators. There has been a significant amount of denial, minimization and rationalization for what clearly has been sexually intrusive and assaultive behavior against children.

[T.L.P.] also described episodes in the past that perhaps began as early as late 1990 in which he experienced a decreased need for sleep, high levels of excitement and spending as much as 20 hours a day actively working on his efforts to combat child sexual predators. Along with these symptoms and his inflated self-esteem and grandiosity, he also reported thought flooding and perhaps flights of ideas, high levels of energy and dearly excessive involvement in activities with a high risk for significant consequences of an adverse nature.

[155] Concerning the letters that were written by T.L.P. while awaiting sentencing to which I have earlier referred, Mr. MacNeil wrote:

Most interesting are the content of the multitude of letters [T.L.P.] sent to a number of individuals that included: his sister, correction officials, the crown prosecutor, the presiding judge and the Attorney General of BC. What was written clearly indicated a high level of grandiosity, beliefs in special abilities and powers associated with irrational thinking patterns, loose associations and some tangential thinking dismissing the authority of the power structure involved with his prosecution, convictions and confinement. Despite how clear it became that his pseudo-legal claims met with little response he persisted in his efforts until recent times. The threats of litigious consequences in the manner in which they were presented were bizarre to say the least. One letter at the beginning of his period of incarceration was addressed to the Monarchy in a congratulatory vein after the birth of Princess Charlotte; but also as an extension of the beliefs loosely tied to the Freeman ideology as it relates to the sovereign rule of the Queen. [My emphasis.]

[156] Mr. MacNeil offered the opinion that those letters were supportive of a diagnosis that T.L.P. suffers from a delusional disorder. As I will later discuss, Dr. Hervé disagrees with that opinion.

[157] Concerning T.L.P.'s future goals and plans Mr. MacNeil reported:

With respect to his goal/plans, [T.L.P.] communicated that it is his intention to complete his GED and that he wants to "take a crack a fixing some of the injustices in the Justice System". He then went on to elaborate what he perceives as vast corruption, stating "sexual abuse against children, a tendency for video equipment not to work...elicit false testimony...leading questions... (ambiguity)...self-representing people can't interview so called victims...".

[158] Concerning the crimes for which T.L.P. has been convicted and now faces sentencing Mr. MacNeil wrote:

He spoke of his 13 convictions for sexual offences against 5 female children and stated; "I am not guilty of anything...Judge took one thing I said...the Crown did not disclose exactly what I was teaching these children...took that as proof of a sexual purpose...I don't know how he can...presumption". [T.L.P.] went on to talk about how children do not disclose when they have been sexually abused and that; "I know there is a lot of pedophiles out there...sexual attraction to children...not an intentional conspiracy sexual abuse against children is such a taboo...against me". He was adamant in stating that he had no sexual interest in children and never did. He explained that what he engaged in was a teaching exercise in order to help protect these children from being sexually abused by the significant number of pedophiles that exist in our communities.

He further added; "when half the men out there have sexual attraction to children...3 out of 10 will act on it...outside of society's norms". [T.L.P.'s] comments and elaborations were consistent with previous reports/statements where he perceives child sex abuse to be occurring everywhere and pedophiles predating rampantly outside of the awareness of family and law enforcement officials.

Most interestingly [T.L.P.] in an unsolicited manner stated that he would never become involved in trying to teach any other children how to protect themselves against the advances of sexual predators as "there is no one else that is close to me" (i.e. no remaining children in his more immediate family that he has not already been involved with).

[My emphasis.]

[159] On the question of T.L.P.'s "knowledge of childhood development" that was a significant aspect of his offending, Mr. MacNeil wrote:

[T.L.P.] was also questioned about his knowledge of child development and particularly that which is psychosexual in nature. This included what would constitute an appropriate age for sexual education and where more graphic exposure and physical contact can in fact be intrusive, interfere with appropriate development, be abusive, in violation of a child's rights and be adjudicated as criminal under the codified laws of Canada.

Although continuing to profess that he had vast knowledge of this subject [T.L.P.] acknowledged that there are experts in child development, and he would be eager to learn from them. He further explained that it has always been his intent to participate in discussions and gather information from others who were knowledgeable. He further stated, "I will accept any treatment they give me"; and when asked what treatment he feels he would need, he stated: "I need help to get rid of the images I have in my head". When questioned about his motivation he stated that he will "absolutely" invest himself into the treatment process. [T.L.P.'s] further explanations gave clear indication that he is experiencing unwanted and intrusive visual images of a pedophilic nature that are very disturbing to him.

Consistent with what he stated previously he remains adamant that he has never had any direct sexual intent towards children; however there is an acknowledgement that pedophilic urges and behavior have emerged and he desires help to rid himself of these intrusive and unwanted experiences.

[My emphasis.]

[160] T.L.P.'s reported willingness to accept treatment as expressed to Mr. MacNeil is inconsistent with his many letters to Crown counsel, written only months before he was interviewed by Mr. MacNeil. That leads me to doubt the reliability and sincerity of T.L.P.'s assertions to Mr. MacNeil.

[161] Concerning the psychological tests administered by him Mr. MacNeil reported:

[T.L.P.] was administered the Minnesota Multiphasic Personality Inventory - 2 (MMPI-2) and the Beliefs Attitudes and Sexual Experiences Composite (BASEC).

The MMPI-2 is a most comprehensive, well researched and highly respected psychological measure of adult psychopathology.

An extensive array of validity scales are incorporated into this instrument and a careful examination of these configurations indicated a high degree of response consistency; and although there was a tendency to be moderately defensive and to present himself in a favorable light, [T.L.P.] generated a valid profile.

Individuals who produce such profiles engage in significant repression, lack self-insight and self-understanding and have a tendency to demonstrate little awareness of the consequences to other people of their behavior. These are individuals who are quite grandiose and over value their self-worth; and are moralistic and maintaining a strong sense of justice.

They tend to be rigid in their beliefs, are likely over-controlled and unable to express negative feelings appropriately. There is internalized anger and repressed hostility, and they are likely to have shown poor judgment and are rebellious towards authority figures.

These types of individuals are suspicious of the motivations of others and view their environment as demanding, and they maintain a somewhat paranoid orientation towards life. They have engaged in antisocial behavior and admit to having been in trouble at school and with the law; the latter as a result of their sexual behavior.

They tend to blame others for their difficulties and occasionally they act-out in a sexual or aggressive manner with little apparent insight into their actions. Those who produce such results may be experiencing some form of sexual maladjustment.

They are high needs to excel, and they are likely to have strong opinions about many things and are not reluctant to defend them vigorously.

These are individuals who have definite opinions about what is right or wrong, are likely to have experienced social normative conflicts and therefore have become resentful of societal demands and what they perceive as unfair rules designed to govern their behavior.

They deny hostile and aggressive impulses as well as social anxiety; yet they are quite sensitive to how others respond to them and are likely driven to seek attention, sympathy and affection.

Treatment indicators reflect a generally positive attitude towards those in the mental health profession, with a belief that others can understand and help them. They report being capable of making significant changes in their lives and do not give up easily when problems are encountered.

The BASEC contains 110 statements in which the respondent is asked to provide a score for each one based on a 5 point Likert-Type scale; ranging from 1 (strongly disagree) to 5 (strongly agree). The content of this questionnaire has been designed to address more subtle responses that may be associated with pedophilia. This instrument has not been psychometrically validated and each response is individually interpreted so as to assist with clinical judgment.

Items of interest include agreement with the following statements: children from single parent or broken homes are often lonely and need affection; some children or young adolescents can dress and act seductively; a child should know how to keep a secret; a child's relationship with a trusted adult in many ways is a better relationship than they can have with their peers; most children find that they can talk and play with me as a friend; the love and trust of a child is the most precious thing in the world, and there are too many adults who don't recognize this; too often respect for a child's or adolescent's privacy is taken to the extreme, and they can end up neglected; the innocence of a child is a beautiful thing that we could all learn from; I have looked at pornography on the internet; I did not learn about sex until later in life (strongly agree); I have been accused of molesting a child (strongly agree); most people are too inhibited or shy about their sexuality; it is easier to trust children than most adults; I truly believe I understand children and young adolescents better than most; the naked human body is a beautiful thing to observe; unfortunately many believe in excessive clothing and cover; sexual education is best taught in the home (strongly agree); unfortunately many children grow up thinking that sex is dirty (strongly agree); and authorities don't seem to have much respect for what goes on in a family.

[My Emphasis.]

[162] Under cross-examination as to the statement in his report that the "BASEC" that he relied upon has not been psychologically validated, Mr. MacNeil disclosed that it has been developed by him.

[163] In his report under the heading "Formulation, Diagnostic Impressions and Evaluation of Risk", amongst other things, Mr. MacNeil offered the following opinions:

As a result of the impact of his exposure to pedophilic abuse and developing a sense of need to protect (first emerged at a young age after witnessing the sexual assault of his younger sister) [T.L.P.] became preoccupied with and engrossed in the underworld of child pornography, their

associated websites and the predatory pedophiles he perceived that were abundant in the world around him. The ego dystonic conflicts arising in his psycho-sexual development were associated with pedophilic urges and a conscious level of repugnancy in recognizing that they existed. His denial of such an orientation is not infrequently found in those who tend to become crusaders; and who exert this form of 'projective protest' in an overt display of antagonism and intense efforts to discover who the predators are and bring them to justice. In many ways this may be an unconscious effort to alleviate the guilt and shame that is associated with the pedophilic urges they experience and find so distasteful.

As a result of his early exposure to graphic sexual stimulation and pedophilic abuse towards those whom he felt a great need to protect, [T.L.P.] developed self-perceptions of having greater insight into symptoms of child sexual victimization; as well as special skills at identifying subtle signs associated with those who would predate against them.

There were some indications that [T.L.P.] suffered from bouts of depression, much of which was related to loss of the care of his children and some rejection from close friends. Self-reported symptoms of manic or hypomanic episodes were also presented, largely in conjunction with grandiosity and inflated self-esteem; with a decreased need for sleep, excessive verbosity and intensive preoccupation with his research. This suggested the possible existence of a bipolar two if not one disorder.

The degree of grandiosity reached delusional levels particularly after his beliefs of self-perceived special skills and expertise became merged with a distorted view of the ideology of the doctrines associated with the Freeman on the land and the secret world power (especially with computer hacking) of Anonymous. These irrational beliefs also extended to his perceived unique knowledge of child psychosexual development and how children can better learn to self-protect with hands on exposure and engagement in sexual activity described as role playing; what was clearly an outlet for the pedophilic urges [T.L.P.] could no longer contain within.

His irrational beliefs although fairly circumscribed had become quite fixed; and have only become subject to slight change in the face of conflicting evidence that can be no more intrusively presented than when subject to the consequences of the Criminal Justice System. It is clear that [T.L.P.] believes that he has exceptional abilities; however his behavior is not grossly bizarre. A classic indication of such a delusional syndrome occurs when the individual engages in litigious or antagonistic behavior such as with sending many letters of protest to the authorities and other government officials containing irrational claims and expectations.

[My emphasis.]

[164] Concerning his psychological diagnosis of T.L.P. Mr. MacNeil then wrote:

Diagnostic impressions include: Delusional Disorder: Grandiose type (with some Persecutory and Somatic themes); Continuous, Moderate to Severe (pressure to act on and did so) (DSM-5; 297.1 (F22)).

Pedophilic Disorder (302.2) (F65.4): Nonexclusive type; sexually attracted to females, Limited to incest (including a child friend of a first degree relative accessed within the home environment) (302.2 (F65.4))

[165] On the important issue of risk evaluation Mr. MacNeil wrote:

Evaluation of risk for sexual offence recidivism was made utilizing a fairly large number of actuarial instruments that included: MnSOST-R; RRASOR; VASOR; Virginia Risk Assessment Instrument; Static-99R and the SORAG. [T.L.P.'s] obtained scores across all of these instruments consistently placed him at the Low Level of risk for sexual offence recidivism; however it is clearly noted the use of such tools have significant limitations.

A more structured risk formulation guide (RSVP) was also used to guide clinical judgment. This is the same instrument that was utilized by Dr. Herve' in his assessment, and although there is a fair degree of consensus with his delineation of the Risk factors that are present and relevant, a greater significance was lent to the protective factors associated with the dimension of Manageability. Specific factors that are noteworthy include [T.L.P.'s] amenability to treatment and the success he had with structured supervision while in the community for approximately two years after being charged and prior to his convictions.

Consistent with Dr. Herve's impression is that [T.L.P.] is deemed to be a High Risk to sexually re-offend against prepubescent children; however this degree of risk is associated with [T.L.P.] being in the community unsupervised and without limitations or restrictions, and having access to children within a home environment. Further, [T.L.P.] is a Low-Moderate Risk to reoffend under similar community limitations and restrictions while under supervision as occurred while he was on bail release. The risk would move lower in that range upon the successful completion of treatment programs that would be made available to him by Correctional Services of Canada within a federal penitentiary setting.

[My emphasis.]

[166] Under the heading "Recommendations" Mr. MacNeil wrote:

It is highly recommended that [T.L.P.] upon sentencing be given an opportunity to attend a federal penitentiary where he can participate in individual treatment and the group treatment associated with the High Intensity Sex Offender Program. This is a state of the art, highly integrated program involving an amalgamation of harm reduction and relapse prevention strategies with the more recent advancements associated with the focus on positive sexuality as contained in the Good Lives Model. Recent studies have indicated a high degree of success (with respect to recidivism rates) associated with adult offenders engaging in this positive approach towards the development of a healthy sexual orientation with both incarcerated and non-incarcerated adults non-exclusive of those diagnosed with pedophilic disorder.

It also is imperative that [T.L.P.] be given an opportunity to access a psychiatric evaluation and likely treatment that would be designed to help him mitigate the symptoms associated with his Delusional Disorder; as well as the intrusive images associated with recall of graphic child pornography.

It should also be noted that assessment is an ongoing process, and built into CSC's treatment protocols are recurring evaluations of treatment progress and associated risk reduction levels. More recent advancements have also been made with respect to assessing treatment progress.

During this assessment an opportunity was taken to focus on what [T.L.P.] may become amenable to within an individual psychotherapeutic relationship; and it seemed clear that he would be responsive to direction when he develops confidence in a therapist with respect to experience and knowledge that will motivate him to learn and gain better insight into the nature of his difficulties. Indeed, CSC also provides initial individual treatment for those who may require enhanced motivation and insight in order to benefit most from the main program that would follow.

Once it has been determined that [T.L.P.'s] progress through the completion of treatment programming within the institution is sufficient for follow up maintenance programming within the community he would be seen as a good candidate for release with a supervision period of sufficient length. This would allow for a graduated reduction in limitations/restrictions in accord with the success he achieves through the application of what he has learned through treatment towards the development of a healthy community lifestyle. This clearly includes success with heterosexual interpersonal relating, educational/vocational pursuits, employment, prosocial recreational pursuits and a more healthy sense of self associated with high levels of self-esteem and the confidence he may gain through the successes he has achieved.

7) Has the Crown established that T.L.P. is a dangerous offender?

[167] In substance there are essentially three significant differences in the opinions proffered by Dr. Hervé and Mr. MacNeil that impact the question of whether the Crown has proven that T.L.P. must be sentenced as a dangerous offender.

[168] Those are:

- 1) Does T.L.P. suffer from a delusional disorder because of his bizarre belief in his version of the Freeman on the Land philosophy and the "secret world power of Anonymous" that together with other disorders is a cause of his offending as opined by Mr. MacNeil or is his offending driven only by non-delusional psychological and personality disorders as opined by Dr. Hervé?
- 2) Is T.L.P. genuinely motivated for and amenable to rehabilitative treatment as opined by Mr. MacNeil and questioned by Dr. Hervé?

- 3) Is the high risk that T.L.P. will in future re-offend against prepubescent female children limited to situations where he is "in the community unsupervised, without restrictions and having access to children within a home environment" as opined by Mr. MacNeil or as opined by Dr. Hervé does the high risk that T.L.P. will re-offend as he had done in the past continue while under supervision or when any period of supervision ends?

[169] I will address each of those differences of opinion in the context of the applicable statutory considerations.

- a) Does T.L.P. suffer from a delusional disorder?

[170] Whether T.L.P.'s criminal offending derives in part from a delusional disorder (as suggested by Mr. MacNeil) together with other personality and psychiatric disorders or is driven only by a non-delusional Pedophilic Disorder, Schizotypal Personality Disorder with Paranoid, Narcissistic and Antic-social Features as suggested by Dr. Hervé, is in my view largely irrelevant because I am not persuaded that T.L.P.'s criminal offending is based upon delusional beliefs.

[171] I find that, T.L.P.'s adherence to a Freeman on the Land philosophy as he interprets it and his belief in the secret power of Anonymous constitutes only his adoption of anti-social belief systems shared by others of like mind. In reaching that conclusion I accept Dr. Hervé's view that when an identifiable group such as those espousing the Freeman on the Land philosophy adhered to by T.L.P. believes in and espouses similar beliefs as being reality based those beliefs are not delusional in the psychiatric sense of the word.

[172] I am also satisfied that T.L.P.'s adherence to the anti-establishment views that he espouses speak more to his lack of remorse and sense of entitlement than they have acted or will in future act as a psychological driver of his offending against prepubescent female children. They do, however, constitute serious risk factors with respect to the likelihood that he will perpetrate similar criminal sexual offences against such children in the future because of his distorted perceptions of child sexuality and the excuses he makes for his pedophilic behaviours.

- b) Is T.L.P. genuinely motivated and amenable to rehabilitative treatment?

[173] On the present state of the law as enunciated in Szostak, and the Court of Appeal's decision in Boutilier the possibility of successful treatment is of limited application in determining whether an offender is a dangerous offender. Rather, the possibility of successful treatment is significant in choosing the appropriate disposition.

[174] In this case given that the Crown has agreed that if he is found to be a dangerous offender, T.L.P. should be sentenced to a determinate rather than indeterminate term of incarceration the only remaining issues concerning "appropriate disposition" in contest are the length of the determinate sentence that will appropriately address T.L.P.'s offending and the terms of the ten year Long Term Supervision Order that should be imposed upon him.

- [175] What is at issue at the designation stage of the dangerous offender inquiry is whether the Crown has met the burden of proving that T.L.P. is a dangerous offender under the provisions of s. 753(1)(a) or (b).
- [176] If not he must be sentenced as a long term offender under s. 753.1.
- [177] To the extent that I may undertake a limited inquiry into the issue of treatability at the designation stage I find that the totality of the evidence requires a finding that while T.L.P. may at times pay lip service to a willingness to engage in treatment to address the causes of his sexual offending against children -- as he expressed to Mr. MacNeil - the genuineness of that willingness is highly suspect.
- [178] Both Dr. Hervé and Mr. MacNeil have opined that T.L.P. meets the DSM-5 criteria necessary for the diagnoses of a Pedophilic disorder of the non-exclusive type.
- [179] Both experts also agree that the greatest risk of T.L.P. re-offending sexually against children as he has in the past is with respect to prepubescent female children with whom T.L.P. is in a familial or similarly close adult-child relationship.
- [180] T.L.P. has demonstrated in his evidence at trial, in his interviews with Dr. Hervé, and Mr. MacNeil and in his letters to Crown counsel to which I have referred the belief that: he is not a pedophile and that others are; that he is a protector of children, not a predator; and, that he understands childhood development and sexuality better than medical or other professionals.
- [181] As far as I am aware T.L.P. continues to make those assertions and has never espoused a different or ameliorated view of his offending.
- [182] Perhaps the most disturbing of the evidence related to the prospect for effective rehabilitative treatment to address the pedophilic causes of his offending identified by both Dr. Hervé and Mr. MacNeil is that found in T.L.P.'s letter to Crown counsel which I excerpted at para. 130 of these reasons. He writes that he will take treatment programs to gain knowledge of the treatment available so that he can credibly pose as a pedophile for the purposes of his proposed "secret society" to be created so that, as a protector of children, he can expose pedophiles.
- [183] The totality of the evidence satisfies me that T.L.P. is not genuinely motivated for rehabilitative treatment and that in those circumstances together with his long standing and still continuing obsession with childhood sexuality and prepubescent female children it is highly unlikely that any treatment will be successful in addressing the root causes of his criminal offending.
- [184] That evidence also leads me to conclude that given his conduct in the commission of the predicate offences and the pattern of his sexual offending against children since 2001 it is highly unlikely that any treatment he may receive will in future restrain his behaviour or control his sexual impulses against prepubescent female children.

- c) Is the risk that T.L.P. will in future re-offend against prepubescent female children limited to situations where he is "in the community unsupervised, without restrictions and having access to children within a home environment"?
- [185] The Crown has conceded that the evidentiary record of T.L.P.'s performance both under community supervision while on bail pending the trial of the charges against him as well as while incarcerated demonstrates that he can be subject to control in the community.
- [186] As a consequence of that evidence the Crown has taken the position under s. 752(4.2) of the Code that notwithstanding its position that T.L.P. should be designated as a dangerous offender under s. 752(1) he should be subject to a determinate sentence rather than an indeterminate sentence followed by a ten year Long Term Supervision Order.
- [187] It is somewhat difficult to rationalize those provisions of Part XXIV of the Code that allow for a determination that an offender meets the criteria for designation as a dangerous offender yet can be sentenced to a determinate sentence because of evidence showing a reasonable expectation of control in the community under supervision after release from prison.
- [188] That is, however, the legislative regime now in place after the 2008 amendments to the Code as discussed in Szostak and by our Court of Appeal in Boutilier. The issue of dangerousness is determined at the designation stage based upon proof that the offender meets the statutory criteria for a finding that he or she is a dangerous offender. The issue of whether there is a reasonable expectation of control in the community is a part of the inquiry at the disposition stage.
- [189] A finding that there is a likelihood, as opposed to only a substantial risk that, based upon a pattern of either previous aggressive behaviour or failure to control sexual impulses, the offender will re-offend in the same way with the same consequences for his or her victim requires the designation of the offender as a dangerous offender under s. 752(1).
- [190] While the issue of eventual control in the community may ameliorate the sentence to be imposed upon the dangerous offender it does not affect the designation.
- [191] The consequence of designation as a dangerous offender is that in the event of the commission of another serious personal injury offence by the offender the dangerous offender designation will govern any prosecution of that future offence.
- [192] To that extent, I find that Mr. MacNeil's opinion that the high risk that T.L.P. will in future re-offend against prepubescent female children is limited to situations where he is "in the community unsupervised, without restrictions and having access to children within a home environment" conflates issues of control with issues of intractability.
- d) Conclusion on designation issue

- [193] In my opinion a "reasonable expectation of control in the community" must be read as extending beyond any period under which T.L.P. may be subject to a Long Term Supervision Order.
- [194] In those circumstances I am satisfied that notwithstanding the evidence of T.L.P.'s past performance while under supervision does establish a reasonable expectation for his control and the protection of the public, it does not overcome the likelihood that he will in the future fail to control his sexual impulses as he has in his offending against his four nieces that is the subject of the predicate offences as well as in his sexual offending against C in 2001.
- [195] The totality of the evidence adduced at trial and during this Part XXIV sentencing hearing, in combination with concessions and admissions made by T.L.P. identified by me in para. 49 of these reasons establishes that by application of s. 752(1)(b) of the Code T.L.P. must be designated as a dangerous offender.
- 8) The appropriate determinate sentence for T.L.P.'s offending
- [196] The Crown has submitted that the appropriate determinate sentence for T.L.P.'s offending is 16 years of incarceration.
- [197] I will address the sentences sought by the Crown in the chronological order of the offences which T.L.P. committed.
- [198] Given the conclusion I have reached with respect to the application of the Kienapple principle I will not address the Crown's submissions with respect to sentencing for the offences of sexual assault of which T.L.P. was convicted.
- [199] In all of those cases in which a concurrent conviction for sexual interference was entered, only a sentence for sexual interference will be entered and the convictions for sexual assault will be conditionally stayed.
- [200] The Crown seeks the following sentences:
- 1) For his offending against C (one count of sexual interference) a sentence of two years consecutive to sentences for his offending against his other victims;
 - 2) For his offending against K (two counts of sexual interference) a sentence of two years on each conviction for sexual interference concurrent to each other and consecutive to all other sentences;
 - 3) For his offending against J (one count of sexual interference and one count of invitation to sexual touching) a sentence of six years concurrent to each other and consecutive to all other sentences;

4) For his offending against A (one count of sexual interference and one count of sexual touching) a sentence of four years concurrent to each other and consecutive to all other sentences; and

5) For his offending against X (one count of invitation to sexual touching) a sentence of two years consecutive to all other sentences.

[201] The Crown submits that if the total length of sentences it seeks would offend the totality principle the appropriate reduction would be to reduce the total sentence to from 12 to 14 years.

[202] T.L.P. submits that the maximum period of incarceration to which he should be sentenced is from 6.5 years to 9 years. Individually he submits that the following sentences will appropriately address his offending against each of the complainants:

- 1) Against C: 12 to 18 months;
- 2) Against K: 12 to 18 months;
- 3) Against J: 2 to 2.5 years;
- 4) Against A: 18 months to 2 years; and
- 5) Against X: 12 to 18 months.

[203] T.L.P. also submits that the sentence to be imposed for his offending against X should be made concurrent to any sentence for his offending against A because the offences for which he was convicted were committed at the same time and in the same place.

[204] T.L.P. further submits that the sentences sought by the Crown are more severe than are warranted. He asserts that his offending should be seen as being at the "low end of the spectrum with respect to both violence and the objective seriousness of the results" and that the ranges he suggests will appropriately address that offending.

a) Applicable principles of sentencing

[205] The purpose of sentencing is codified in s. 718 of the Code which provides:

718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;

- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[206] Section 718.01 of the Code which was enacted in 2005 provides that:

718.01 When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct.

[207] Section 718.1 of the Code provides that a fundamental principle of sentencing is that "a sentence must be proportionate to the gravity of the offence and the degree of culpability of the offender."

[208] Section 718.2 of the Code delineates other sentencing principles. Of relevance to the sentencing of T.L.P. are the following provisions:

718.2 A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

(iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,

(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation

shall be deemed to be aggravating circumstances;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

- [209] I have recoded the provisions of s. 718.2(d) and (e) not because they are engaged in the determination of the appropriate sentence to be imposed upon T.L.P. but rather to confirm that:
- 1) no sentence short of incarceration is available with respect to his offending because of the findings I have made in determining T.L.P. to be a dangerous offender under s. 752(1); and
 - 2) T.L.P. is not an Aboriginal offender so that considerations under s. 718.2 (e) do not arise.
- [210] Also of importance to the sentencing issues in this case is that both the offences of sexual interference under s. 151 and invitation to sexual touching under s. 152 of the Code require the imposition of minimum mandatory sentences of incarceration for one year when the Crown proceeds by indictment as it has against T.L.P.
- [211] There has been no constitutional challenge by T.L.P. to either of those provisions.
- [212] Although s. 271 of the Code also now provides for minimum punishment of one year of incarceration for a conviction for sexual assault when the Crown proceeds by indictment, that mandatory minimum sentence was not a part of the Code provisions in 2001 when T.L.P. committed the offence of sexual assault against C. Given that I have conditionally stayed that conviction by application of the Kienapple principle in favour of the concurrent conviction for sexual interference I will only address the conviction under s. 151 of the Code. In doing so I note that in 2001 there was no mandatory minimum punishment for a conviction for sexual interference. I will accordingly address the sentencing of T.L.P. for his offending against C without reference to the present statutory minimum mandatory requirement of a sentence of one year of incarceration.
- [213] The amendments to the Code by the enactment of s. 718.2 and 718.2(a)(ii.1) as well as the enactment of mandatory minimum sentencing provisions for sexual offending against young persons has had a pronounced impact on the appropriate range of sentencing for such offences committed.
- [214] As observed by Saunders J.A. in *R. v. Worthington* 2012 BCCA 454 [Worthington] at paras. 31 to 34:
- [31] Section 718.01 was included in An Act to amend the criminal code (protection of children and other vulnerable persons) and the Canada Evidence Act, S.C. 2005, c. 32. In this court's decision in *R. v. M. (B.C.)*, 2008 BCCA 365, Madam Justice Neilson, for the court, in dealing with an offence of making pornography which has a minimum sentence of one year, observed that minimum sentences have the effect of raising sentences across the board for such offences to maintain proportionality. She referred to the mention in the preamble of the Act, to the vulnerability of children, to all forms of sexual exploitation, abuse and neglect, and to the United Nations Convention on the Rights of the Child.

- [32] It would be fair, I think, to describe s. 718.01 and the other augmented provisions for offences concerning abuse of children as an attempt by Parliament to re-set the approach of the criminal justice system to offences against children.
- [33] I recognize that there are many clear examples in cases pre-dating that Act that responded firmly to offences against young people, such as *R. v. T.A.D.* (1995), 68 B.C.A.C. 236, but there has been significant legislative action, all to the emphasis of protection of young people. At the same time it enacted s. 718.01, the Act addressed other sections of the Code, including the three sections referred to in the stayed charges. I would observe that those sections, all applicable to offences against young people, have lower maximum sentences than the offences of sexual assault to which Mr. Worthington pleaded guilty. Section 718.2(a)(iii) is also relevant. It lists the fact the abuse is by a person in a position of trust or authority in relation to the victim as an aggravating factor.
- [34] With these observations, I would say that the range of sentences drawn from a former era may not reflect the appropriate balance of principles now required by the Criminal Code.
- [215] The requirement in s. 718.01 that when a court imposes a sentence for an offence that involves the abuse of a person under the age of 18 it shall give primary consideration to the objectives of denunciation and deterrence also requires consideration in the context of the totality of the amendments that reflect Parliament's intention to protect children from criminal offending against them.
- [216] In *R. v. Allen*, 2012 BCCA 377 at paras. 59 and 60 Ryan J.A. stated:
- [59] I have referred a number of times in these reasons to the objective of denunciation, an objective to which the sentencing judge was required to give primary importance in this case. In *M. (C.A.) Lamer C.J.C.* discussed the objectives of a denunciatory sentence. He said:
- [81] Retribution, as well, should be conceptually distinguished from its legitimate sibling, denunciation. Retribution requires that a judicial sentence properly reflect the moral blameworthiness of that particular offender. The objective of denunciation mandates that a sentence should also communicate society's condemnation of that particular offender's conduct. In short, a sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law. As Lord Justice Lawton stated in *R. v. Sargeant* (1974), 60 Cr. App. R. 74, at p. 77: "society, through the courts, must show its abhorrence of particular types of crime, and the only way in which the courts can show this is by the sentences they pass". The relevance of both retribution and denunciation as goals of sentencing underscores that our criminal justice system is not simply a vast system of negative penalties designed to prevent objectively harmful conduct by increasing the cost the offender must bear in committing an enumerated offence. Our criminal law is also a system of values. A sentence which expresses denunciation is simply the means by which these values are communicated. In short, in addition to attaching negative consequences to undesirable behaviour, judicial sentences should also be imposed

in a manner which positively instills the basic set of communal values shared by all Canadians as expressed by the Criminal Code. [Bold emphasis added by Ryan J.A.; underline emphasis in original.]

- [60] Parliament has made it very clear that the protection of children is a basic value of Canadian society which the courts must defend. It has done this by creating a minimum sentence of imprisonment for the distribution of child pornography (s. 163.1(3)(a)) and by requiring that offences that involve the abuse of persons under 18 years of age be both an aggravating factor in sentencing and the subject of a sentence which primarily addresses denunciation and deterrence (ss. 718.2 and 718.01). Thus the sentence imposed on Mr. Allen ought to have communicated society's condemnation of his conduct. It ought to have been one which represented a symbolic, collective statement that the offender's conduct "should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law".
- [217] I have reviewed all of the sentencing authorities referred to by the Crown as well as those referred to by T.L.P. in support of their respective positions as to the appropriate sentences to be imposed in this case.
- [218] The authorities relied upon by the Crown include: *Worthington*; *R. v. W.J.*, 2016 BCSC 161; *R. v. D.L.W.*, 2014 BCSC 43; *R. v. R.R.M.*, 2009 BCCA 578; *R. v. P.M.V.*, 2010 BCCA 34; *R. v. Miclash*, 2001 BCCA 266; *R. v. B.C.L.*, 2010 BCCA 183; and *R. v. R.E.L.*, 2010 BCCA 493.
- [219] T.L.P. submitted that all of those authorities either were concerned with more violent and objectively more intrusive serious offending or offending that occurred over a longer period of time than is the case with the offences committed by T.L.P. for which he must now be sentenced. In submitting that the lower range of sentences he suggests would more appropriately address his offending the authorities relied upon by T.L.P. include: *R. v. R.S.H.*, 2005 BCSC 927; *R. v. G.L.* 2003 CanLII 57437 (ON CA); *R. v. F.E.H.*, 2015 BCSC 175; *R. v. M.S.M. & J.K.M.*, 2006 BCSC 1938; *R. Vautour*, 2016 BCCA 497; *R. v. Lennax*, 2008 BCSC 1761; and *R. v. G.J.S.*, 2014 BCSC 1105.
- [220] Review of those sentencing authorities demonstrates the appalling myriad of ways in which the offenders in those cases sexually abused their child victims.
- [221] Consideration of the sentences received by individual offenders provides some assistance in determining an appropriate sentence.
- [222] That assistance is, however, limited by factors that may also impact upon the sentencing decisions reached including but not limited to: the different ages of offenders and victims; the personal background circumstances of the offender; proof of previous offending if any; the frequency of the offences committed; the familial relationships between offenders and their victims (including whether the offender was in a position of trust and authority in relation to the victim); and, when the offence was committed as well as by factors such as the existence or non-existence of remorse.

- [223] One of the issues that has in the past in some cases been seen as a significant factor in the determination of an appropriate sentence for sexual offending (and which is to some extent relied upon by T.L.P. in submitting that his offending is less serious than the sentences sought by the Crown would require) is the extent to which an offender's sexual offending may have included penetration or other physically invasive sexual abuse of a victim.
- [224] In my view while such serious invasions of the physical integrity of a child victim should be considered as seriously aggravating factors in sentencing, I am also of the opinion that a lack of physical violation or lesser degrees of physical violation than actual penetration should not serve to reduce what would otherwise be a fit sentence.
- [225] In reaching that conclusion I refer once more to the decisions I considered at para. 67 in ruling that sexual interference under s. 151 and invitation to sexual touching under s. 152 of the Code are serious personal injury offences notwithstanding the absence of immediate physical harm having been inflicted upon a child victim.
- [226] The observations of the Ontario Court of Appeal in D.M. at para. 38 (quoted at para. 67(3) of these reasons) bears repeating in my determination of the appropriate sentences for T.L.P.'s offending against his child victims in this case:

38 Although the case [R. v. Woodward, 2010 ONCA 610] involved one child victim and one incident with no additional violence, this court made it clear that in sentencing, the principles enunciated in D.D. applied. Moldaver J.A. repeated the principles of sentencing arising from D.D. and I will repeat them here (at para. 72):

... The relevant considerations and principles from D.D., at paras. 34-38, are summarized below:

- (1) Our children are our most valued and our most vulnerable assets.
- (2) We as a society owe it to our children to protect them from the harm caused by sexual predators.
- (3) Throughout their formative years, children are very susceptible to being taken advantage of by adult sexual offenders and they make easy prey for such predators.
- (4) Adult sexual predators recognize that children are particularly vulnerable and they exploit this weakness to achieve their selfish ends, heedless of the dire consequences that can and often do follow.
- (5) Three such consequences are now well-recognized: (i) children often suffer immediate physical and psychological harm; (ii) children who have been sexually abused may never be able, as an adult, to form a loving, caring relationship with another adult; (iii) and children who have been sexually abused are prone to become abusers themselves when they reach adulthood.

- (6) Absent exceptional circumstances, in the case of adult predators, the objectives of sentencing commonly referred to as denunciation, general and specific deterrence and the need to separate offenders from society must take precedence over the other recognized objectives of sentencing.

[My emphasis.]

[227] I also note and rely upon the observations of Griffin J. in this Court in *R. v. C.G.D.*, 2009 BCSC 404 in which she stated at para. 51:

[51] While there is a range of sentences imposed for sexual assault, certain common themes are clear from the case law, namely, that the sentencing goals of deterrence and denunciation must be foremost in these cases absent special circumstances. It is now well understood that sexual assault has short-term and frequently long-term effects on the child. The immediate harmful effects are to rob the child of his or her innocence by violating the child's physical being and emotional trust in the safety of the world. But it is also now well understood that often a sexual assault on a child will have a profound long-lasting effect on the child's development, negatively impacting the victim's future relationships and psychological health as an adult. Society condemns sexual assault of children, even more so when the child was violated by a parent, the one person in the world who is supposed to be devoted to protecting and keeping the child safe.

[228] In that case while Griffin J. was concerned with sexual assault of the victim by her stepfather her observations are relevant to T.L.P.'s offending in this case.

[229] Although he did not stand in loco parentis to any of his victims T.L.P. was in a position of trust and authority over each, having been given the responsibility to protect his victims by their own parents. His abuse of that trust and of his child victims by his deliberate grooming of them for his own sexual purposes mandates treatment of that abuse of his position of trust a seriously aggravating factor with respect to all of his offending but especially so in the cases of his offending against his very young nieces J, A and X.

b) The sentences to be imposed upon T.L.P. for his sexual offending against his child victims

[230] After considering all of the authorities referred to by counsel, and the statutory principles of sentencing which must be applied in this case I have determined that the following sentences will appropriately denounce T.L.P.'s offending, deter him and others of like mind from committing similar offences against vulnerable children, and to the extent possible in his case, aid in his rehabilitation so that the period of incarceration and a Long Term Supervision Order I impose can be as effective as possible to attempt to preclude further offending against children by him.

[231] In making the decisions I have made I have recognized that T.L.P. is being sentenced as a first time offender.

[232] I have also taken into account his lack of remorse.

[233] Based upon my consideration of the statutory principles to which I have referred, my consideration of the authorities relied upon by the Crown and by T.L.P., my consideration of the entirety of his offending against each of his victims, and the able submissions of counsel I have determined that the following sentences will appropriately address his sexual offending against each of his child victims.

i) T.L.P.'s offending against C

[234] I sentence T.L.P. to 18 months of imprisonment on Count 8 (sexual interference under s. 151 of the Code) for his offending against C. That offending occurred over a number of months. Although the precise number of incidents of sexual interference that occurred is not clear, given that: the interference occurred on multiple occasions; was committed against a very young and vulnerable child; and, was deliberately intended to cause pain; and given also that it occurred when T.L.P. was in a position of trust I am satisfied that a 12 month sentence as suggested by T.L.P. would not adequately address the applicable principles of sentencing.

[235] I have directed a conditional stay of his conviction for sexual assault of C under s. 271 on Count 7 by application of the Kienapple principle.

ii) T.L.P.'s offending against K

[236] I sentence T.L.P. to the required minimum mandatory sentence of 12 months of imprisonment on each of Counts 14 and 16 (sexual interference under s. 151 of the Code) for his offending against K to be served consecutively.

[237] I decline to order that the two sentences be served concurrently because they were not committed at the same time and because of T.L.P.'s persistence in his offending against K while living in her home.

[238] In my opinion, in those circumstances, Parliament's mandate that the offence of sexual interference requires a minimum sentence of one year would be defeated by an order that the sentence for the two convictions should be served concurrently.

[239] I have directed a conditional stay of his convictions for sexual assault of K under s. 271 on Counts 13 and 15 by application of the Kienapple principle.

iii) T.L.P.'s offending against J

[240] I sentence T.L.P. to four years of imprisonment on Count 11 (sexual interference under s. 151 of the Code) and to four years of imprisonment on Count 12 (invitation to sexual touching under s. 152 of the Code) for his offending against J.

[241] T.L.P.'s escalating sexual offending against J over a period of months while he was a guest in her parent's home and trusted by them to be with J epitomizes the extent to which he was prepared to abuse very young children in secrecy for his sexual purposes.

- [242] The oral sex act he committed against J as described in his testimony as well as his teaching of J about masturbation are also all deserving of denunciatory punishment in excess of the relatively low range of the sentences that are appropriate for his less invasive offending against C and K.
- [243] I also have no doubt that but for his arrest following his singular night of offending against A and X, T.L.P. would have continued to abuse J as he had in the past. I reach that conclusion because of the frequency and duration of his abuse of J, and his access to her as her uncle and a member of the same home in which she was residing as well as because of the bonds of secrecy and trust that he had deliberately fostered to enable his continued abuse of her.
- [244] While T.L.P.'s offending against J under s. 152 of the Code was less physically assaultive than his offending against her under s. 151 it is similarly deserving of rebuke because of the length of time and the escalation of sexual offending that his behavior in grooming her to engage in sexual activity with him enabled.
- [245] However, because the two offences were committed for the most part simultaneously against the same victim I am satisfied that the sentences for his offending against J should be served concurrently.
- [246] I have directed a conditional stay of his conviction for sexual assault of J under s. 271 on Count 10 by application of the Kienapple principle.

iv) T.L.P.'s offending against A

- [247] I sentence T.L.P. to 30 months on each of Count 2 (sexual interference under s. 151 of the Code) and Count 3 (invitation to sexual touching under s. 152 of the Code) for his offending against A.
- [248] The significant differences in his offending against A as compared to that against J are that the crimes against A of which he was convicted occurred over a single night and did not involve the instructions on masturbation that T.L.P. engaged in with J.
- [249] T.L.P.'s offending against A involved his use of the techniques that he had developed for and during his abuse of J including the same grooming methodology and the same act of oral sex.
- [250] Again an aggravating factor is that T.L.P. deliberately sought out a time and place when he could commit his sexual abuses of A in secrecy while breaching the trust that had been reposed in him by his sister.

- [251] As with his abuse of J, T.L.P.'s grooming methodology and abuse of his position of trust that constituted the crime of invitation to sexual touching under s. 152 was less physically assaultive of A than his offending under s. 151 of the Code. It is in my view, however, deserving of rebuke by imposition of the same 30 month sentence because of the extent to which his offending under s. 152 enabled him to perpetrate both the crimes of sexual assault and sexual interference against A.
- [252] However, as with the sentencing of T.L.P. for his crimes against J, I am satisfied that because the two offences were committed for the most part simultaneously against the same victim the two sentences for his offending against A should be served concurrently.
- [253] I have directed a conditional stay of his conviction for sexual assault of A under s. 271 on Count 1 by application of the Kienapple principle.
- v) T.L.P.'s offending against X
- [254] I sentence T.L.P. to the required minimum mandatory sentence of 12 months of imprisonment on Count 6 (invitation to sexual touching under s. 152 of the Code) for his offending against X.
- [255] Due to his focussing of his sexual predation upon A rather than X and also due to the fact that X fell asleep during the many hours of his offending against A, X was spared the physical sexual assault and interference that T.L.P. perpetrated upon her older sister. Those circumstances warrant the imposition of the minimum mandatory sentence rather than the longer sentence of imprisonment sought by the Crown.
- [256] Having said that, the invitation to sexual touching for which T.L.P. was convicted under s. 152 involving such a young child that took place not only in the presence of but with the active involvement of her older sister that was fostered and encouraged by T.L.P. satisfies me that the sentence for his offending against X should not be served concurrently with that imposed for his offending against A.
- [257] Although the offences against A and X were committed during the same night and at the same place, the aggravating factor that T.L.P. involved A in his sexual offending against X convinces me that Parliament's mandate that the offence of invitation to sexual touching requires a minimum sentence of one year would be greatly undermined by an order that the sentences for T.L.P.'s offending against these two very young children should be served concurrently.
- c) The sentence to be imposed upon T.L.P. for Possession of Child Pornography
- [258] As previously discussed, during the investigation of T.L.P. for the crimes against K, J, A and X evidence was obtained establishing that he was in possession of child pornography from December 30, 2012 to January 2, 2013.

[259] After the conclusion of the dangerous offender proceedings that are the subject of Quesnel Court Registry file 25328-2 T.L.P. pleaded guilty to possession of child pornography contrary to s. 163.1(4) of the Code on Count 1 of the indictment in Quesnel Registry file 26049-2.

[260] Without opposition by T.L.P. the Crown has submitted that T.L.P. should be sentenced to one year for that conviction to be served concurrently with the sentences I have imposed for his offending against C, K, J, A and X .

[261] I accordingly sentence T.L.P. to one year for possession of child pornography on Count 1 of the indictment in Quesnel Registry file 26049-2 to be served concurrently with the sentences I now have imposed for his offending against C, K, J, A and X.

d) Application of the totality principle

[262] The total determinate sentence I have now imposed upon T.L.P. under s. 752(4)(b) of the Code is 11 years.

[263] Given the nature of T.L.P.'s offending and the number of victims against whom he offended I am satisfied that the total sentence does not violate the totality principle.

e) Time served after conviction

[264] T.L.P. was convicted on March 6, 2015 for the predicate offences and for his earlier offending against C and has been incarcerated since then.

[265] He is entitled to a credit for the 31.5 months from March 6, 2015 until October 20, 2017 that he has served pending disposition of these dangerous offender proceedings.

[266] I am satisfied that in all of the circumstances he is entitled to 1.5 months of credit for each month of the time he has served, equalling 47.25 months.

[267] I have also determined that the total amount of credit for time served should be rounded to a total of 48 months to be applied against the 11 year sentence I have now ordered leaving a total sentence remaining to be served of seven more years.

[268] After serving the balance of his sentences T.L.P. will then be subject to a ten year Long Term Supervision Order under s. 742(4)(b) of the Code.

f) Ancillary sentencing orders

[269] As a consequence of the findings I have made and the sentences I have imposed T.L.P. will also be subject to the following ancillary sentencing orders:

- 1) A mandatory prohibition order under s. 109 of the Code that he be prohibited from possessing any firearm, crossbow, restricted weapon, ammunition and explosive substance for life.

2) An order in Form 5.03 under s. 487.051(1) of the Code for the taking of samples of bodily substances from him for the purposes of forensic DNA analysis.

3) An order, under s. 490.012 and s. 490.013 of the Code, that T.L.P. comply with the Sex Offender Information Registration Act for life.

[270] I also direct that all reports, testimony and documentary evidence in this proceeding be forwarded to the Correctional Service of Canada in accordance with the provisions of s. 760 of the Code.

9) The necessary Long Term Supervision Order

[271] As I have previously discussed the Crown has submitted and counsel for T.L.P. does not dispute that after T.L.P. has served the determinate sentence I have imposed he must then be subject to a ten year Long Term Supervision Order under s. 742(a)(b) of the Code.

[272] The totality of the evidence at trial and the psychiatric evidence adduced during these sentencing proceedings supports that disposition.

[273] I am convinced that given the high degree of risk that T.L.P. will, if unsupervised re-offend sexually against prepubescent female children, the protection of such children, requires that a Long Term Supervision Order of the maximum allowable length be imposed in this case.

[274] In his expert report (at pages 60 to 63) Dr. Hervé identified management strategies to address T.L.P.'s risk of re-offending while serving his sentence. He also addressed those conditions that he considers will likely be necessary for the effective control of T.L.P. in the community. Mr. MacNeil also made observations and recommendations related to specific sexual offender programming and counselling that he believes will assist in T.L.P.'s treatment while incarcerated and his management while subject to a Long Term Supervision Order.

[275] Those reports and the testimony of both Dr. Hervé and Mr. MacNeil will be part of the materials to be sent to Correctional Service of Canada under s. 760 of the Code and should be considered by the correctional authorities both during T.L.P.'s incarceration and in determining the necessary conditions of the Long Term Supervision Order to be implemented after he has served his sentence.

[276] The terms of the Long Term Supervision Order to be imposed will in large measure be dependent upon: T.L.P.'s participation in sex offender treatment programs while incarcerated; the efficacy of such treatment; the degree to which his risk of re-offending may be reduced; and, evaluation by Correctional Service of Canada of the specific supervisory conditions needed to protect the public against further sexual offending by T.L.P. while subject to that Long Term Supervision Order.

DELIVERY OF REASONS

[277] As I noted in my sentencing decision in *R. v. Funk*, 2014 BCSC 383 [Funk] at paras. 397 to 399:

[397] In *R. v. Blind*, 2008 BCCA 310, the Court of Appeal criticized the Provincial Court judge who sentenced the offender for only stating the terms of the sentence imposed upon him in open court and filing her reasons for sentencing him, rather than reading them in open court. In doing so, Kirkpatrick J.A. wrote at para. 19:

[19] Before leaving these reasons, I should comment on the fact that contrary to s. 726.2 of the Criminal Code, the sentencing judge, although she stated the terms of the sentence imposed on Mr. Blind to him in open court, did not read her reasons for sentence in his presence. That is obviously contrary to the Code provision and is a practice that cannot be condoned.

[398] Section 726.2 of the Code says:

726.2 When imposing a sentence, a court shall state the terms of the sentence imposed, and the reasons for it, and enter those terms and reasons into the record of the proceedings.

[399] Although I am bound to follow the interpretation placed upon s. 762.2 of the Code by the Court of Appeal, I am also satisfied that if a summary of the reasons for the imposition of a sentence which provides sufficient detail to allow the offender to know why the particular sentence has been imposed is read in open court, it is not also necessary to read in open court the whole of the judgment which underlies those reasons for sentencing.

[278] As was the case in *Funk*, this judgment demonstrates that the reasoning process by which a sentence is arrived at can be complex and include extensive legal and evidentiary analysis.

[279] At the end of this hearing, I reviewed with Crown counsel and counsel for T.L.P. the prospect of delivering a written judgment on sentencing with an oral summary and was advised that both, as well as T.L.P. himself, would prefer that process to the oral delivery of the entirety of this judgment in open court.

[280] I have accordingly decided to deliver the following oral summary of my reasons for reaching the conclusions I have reached on the issues raised and in respect of the sentence I have determined should be imposed upon T.L.P. I will simultaneously file as a part of the record of these proceedings my full written judgment that will also include the oral summary.

SUMMARY

[281] On March 6, 2015 I convicted T.L.P. of 13 counts on a 16 count indictment for sexual offences committed against five very young female victims, all but one of whom were his nieces.

[282] The offences occurred over a period extending from 2001 to 2013. I have used the same initials for each victim that I used in my reasons for conviction.

- [283] The Crown has applied to have T.L.P. declared a dangerous offender under s. 753(1) of the Code and seeks a determinate sentence of from 12 to 16 years followed by a ten year Long Term Supervision Order.
- [284] T.L.P. submits that the Crown has not established the statutory criteria for designation of him as a dangerous offender.
- [285] He does, however, admit that the totality of the circumstances of his offending establish that he should be sentenced as a long term offender under s. 753.1(1) of the Code and accepts that the appropriate length of a Long Term Supervision Order is ten years.
- [286] T.L.P. submits that a global determinate sentence of six years together with that Long Term Supervision Order will appropriately address his offending.
- [287] Concessions and admissions made by T.L.P. have required that he be sentenced as either a dangerous offender or a long term offender.
- [288] The issues I have had to decide are:
- 1) Has the Crown established that T.L.P. is a dangerous offender rather than a long term offender?
 - 2) Are sexual interference contrary to s. 151 and invitation to sexual touching under s. 152 of the Code "serious personal injury offences" under Part XXIV of the Code?
 - 3) Do the principles enunciated in *R. v. Kienapple*, [1975] 1 S.C.R. 729 [Kienapple] apply to some of the sexual offences of which T.L.P. has been convicted to avoid multiple convictions for the same criminal wrongdoing?
 - 4) What is the length of the appropriate determinate sentence for T.L.P.'s offending?
- [289] The most significant difference between a dangerous offender designation for T.L.P.'s offending as urged by the Crown rather than the long term offender designation acknowledged as appropriate by T.L.P. relates primarily to considerations as to whether the evidence established a likelihood that T.L.P. will re-offend sexually as he has in the past as opposed to a "substantial risk" that he will do so.
- [290] In other words, if the likelihood that T.L.P. will re-offend sexually as he has in the past is established by the evidence, the appropriate designation is that T.L.P. is a dangerous offender under s. 753(1). However, if the evidence falls short of establishing a likelihood of re-offending but establishes a significant risk of such re-offending the appropriate designation is that T.L.P. is a long term offender under s. 753.1.
- [291] That difference engages issues of risk assessment and to a limited extent also engages questions of T.L.P.'s amenability to treatment.

- [292] The limited extent to which treatability is a consideration at the designation stage was affirmed in this Province by the Court of Appeal decision in Boutilier which is binding upon me.
- [293] In reaching the conclusions I have reached in this case I have determined that both sexual interference under s. 151 of the Code and invitation to sexual touching under s. 152 of the Code of which T.L.P. has been convicted are "serious personal injury offences".
- [294] After considering the competing authorities in Ontario and in British Columbia to which I was referred and the very able submissions of counsel concerning the Kienapple issues engaged by the convictions of T.L.P. under s. 271 (sexual assault); s. 151 (sexual interference); and, s. 152 (invitation to sexual touching) of the Code I concluded that:
- 1) When a conviction is entered for both sexual assault under s. 271 and sexual interference under s. 151 in relation to the same event, the sexual interference conviction is the "more serious" conviction so that the sexual assault conviction should be conditionally stayed by application of the Kienapple principle.
 - 2) When a conviction is entered for both sexual interference under s. 151 as well as for invitation to sexual touching under s. 152 for the same event neither conviction should be conditionally stayed under the Kienapple principle.
- [295] After reviewing T.L.P.'s relevant personal history and considering and weighing the expert psychological expert reports and testimony of Dr. Hervé adduced by the Crown and Mr. MacNeil adduced by T.L.P. in the context of T.L.P.'s offending with respect to the predicate offences and his offences against C in 2001 as well as the concessions and admissions made by T.L.P. about his offending that are detailed in my reasons I concluded that T.L.P. must by application of s. 752(1)(b) of the Code be designated as a dangerous offender.
- [296] In reaching that conclusion I found that T.L.P.'s past performance under supervision does not overcome the likelihood that he will in the future fail to control his sexual impulses as he has in his offending against his four nieces that is the subject of the predicate offences as well as in his sexual offending against C in 2001.
- [297] I have accepted the agreement of the Crown and T.L.P. that as a dangerous offender he should be sentenced to a determinate rather than an indeterminate sentence.
- [298] After considering all of the authorities referred to by counsel, and the statutory principles of sentencing which must be applied in this case I have determined that the following sentences will appropriately denounce T.L.P.'s offending, deter him and others of like mind from committing similar offences against vulnerable children, and to the extent possible in his case, aid in his rehabilitation so that the period of incarceration and a Long Term Supervision Order I impose can be as effective as possible to attempt to preclude further offending against children by him.

- [299] In making the decisions I have made I have recognized that T.L.P. is being sentenced as a first time offender.
- [300] I have also taken into account his lack of remorse.
- [301] Based upon my consideration of the statutory principles to which I have referred, my consideration of the authorities relied upon by the Crown and by T.L.P., my consideration of the entirety of his offending against each of his victims, and the able submissions of counsel I have determined that the following sentences will appropriately address his sexual offending against each of his child victims.
- [302] For his offending against C I sentence T.L.P. to eighteen months of imprisonment on Count 8 (sexual interference under s. 151 of the Code). That offending occurred over a number of months. Although the precise number of incidents of sexual interference that occurred is not clear, given that: the interference occurred on multiple occasions; was committed against a very young and vulnerable child; and, was deliberately intended to cause pain; and given also that it occurred when T.L.P. was in a position of trust I am satisfied that a 12 month sentence as suggested by T.L.P. would not adequately address the applicable principles of sentencing.
- [303] I have directed a conditional stay of his conviction for sexual assault of C under s. 271 on Count 7 by application of the Kienapple principle.
- [304] For his offending against K I sentence T.L.P. to the required minimum mandatory sentence of 12 months of imprisonment on each of Counts 14 and 16 (sexual interference under s. 151 of the Code) to be served consecutively.
- [305] I decline to order that the two sentences be served concurrently because they were not committed at the same time and because of T.L.P.'s persistence in his offending against K while living in her home.
- [306] In my opinion, in those circumstances, Parliament's mandate that the offence of sexual interference requires a minimum sentence of one year would be defeated by an order that the sentence for the two convictions should be served concurrently.
- [307] I have directed a conditional stay of his convictions for sexual assault of K under s. 271 on Counts 13 and 15 by application of the Kienapple principle.
- [308] For his offending against J I sentence T.L.P. to four years of imprisonment on Count 11 (sexual interference under s. 151 of the Code) and to four years of imprisonment on Count 12 (invitation to sexual touching under s. 152 of the Code).
- [309] T.L.P.'s escalating sexual offending against J over a period of months while he was a guest in her parent's home and trusted by them to be with J epitomizes the extent to which he was prepared to abuse very young children in secrecy for his sexual purposes.

- [310] The oral sex act he committed against J as described in his testimony as well as his teaching of J about masturbation are also all deserving of denunciatory punishment in excess of the relatively low range of the sentences that are appropriate for his less invasive offending against C and K.
- [311] I also have no doubt that but for his arrest following his singular night of offending against A and X, T.L.P. would have continued to abuse J as he had in the past. I reach that conclusion because of the frequency and duration of his abuse of J, and his access to her as her uncle and a member of the same home in which she was residing as well as because of the bonds of secrecy and trust that he had deliberately fostered to enable his continued abuse of her.
- [312] While T.L.P.'s offending against J under s. 152 of the Code was less physically assaultive than his offending against her under s. 151 it is similarly deserving of rebuke because of the length of time and the escalation of sexual offending that his behavior in grooming her to engage in sexual activity with him enabled.
- [313] However, because the two offences were committed for the most part simultaneously against the same victim I am satisfied that the sentences for his offending against J should be served concurrently.
- [314] I have directed a conditional stay of his conviction for sexual assault of J under s. 271 on Count 10 by application of the Kienapple principle.
- [315] For his offending against A I sentence T.L.P. to 30 months on each of Count 2 (sexual interference under s. 151 of the Code) and Count 3 (invitation to sexual touching under s. 152 of the Code).
- [316] The significant differences in his offending against A as compared to that against J are that the crimes against A of which he was convicted occurred over a single night and did not involve the instructions on masturbation that T.L.P. engaged in with J.
- [317] T.L.P.'s offending against A involved his use of the techniques that he had developed for and during his abuse of J including the same grooming methodology and the same act of oral sex.
- [318] Again an aggravating factor is that T.L.P. deliberately sought out a time and place when he could commit his sexual abuses of A in secrecy while breaching the trust that had been reposed in him by his sister.
- [319] As with his abuse of J, T.L.P.'s grooming methodology and abuse of his position of trust that constituted the crime of invitation to sexual touching under s. 152 was less physically assaultive of A than his offending under s. 151 of the Code. It is in my view, however, deserving of rebuke by imposition of the same 30 month sentence because of the extent to which his offending under s. 152 enabled him to perpetrate both the crimes of sexual assault and sexual interference against A.

- [320] However, as with the sentencing of T.L.P. for his crimes against J, I am satisfied that because the two offences were committed for the most part simultaneously against the same victim the two sentences for his offending against A should be served concurrently.
- [321] I have directed a conditional stay of his conviction for sexual assault of J under s. 271 on Count 1 by application of the Kienapple principle.
- [322] For his offending against X I sentence T.L.P. to the required minimum mandatory sentence of 12 months of imprisonment on Count 6 (invitation to sexual touching under s. 152 of the Code).
- [323] Due to his focussing of his sexual predation upon A rather than X and also due to the fact that X fell asleep during the many hours of his offending against A, X was spared the physical sexual assault and interference that T.L.P. perpetrated upon her older sister. Those circumstances warrant the imposition of the minimum mandatory sentence rather than the longer sentence of imprisonment sought by the Crown.
- [324] Having said that, the invitation to sexual touching for which T.L.P. was convicted under s. 152 involving such a young child that took place not only in the presence of but with the active involvement of her older sister that was fostered and encouraged by T.L.P. satisfies me that the sentence for his offending against X should not be served concurrently with that imposed for his offending against A.
- [325] Although the offences against A and X were committed during the same night and at the same place, the aggravating factor that T.L.P. involved A in his sexual offending against X convinces me that Parliament's mandate that the offence of invitation to sexual touching requires a minimum sentence of one year would be greatly undermined by an order that the sentences for T.L.P.'s offending against these two very young children should be served concurrently.
- [326] During the investigation of T.L.P. for the crimes against K, J, A and X evidence was obtained establishing that he was in possession of child pornography from December 30, 2012 to January 2, 2013.
- [327] After the conclusion of the dangerous offender proceedings that are the subject of Quesnel Court Registry file 25328-2 T.L.P. pleaded guilty to possession of child pornography contrary to s. 163.1(4) of the Code on Count 1 of the indictment in Quesnel Registry file 26049-2.
- [328] Without opposition by T.L.P. the Crown has submitted that T.L.P. should be sentenced to one year for that conviction to be served concurrently with the sentences I have imposed for his offending against C, K, J, A and X.
- [329] I accordingly sentence T.L.P. to one year for possession of child pornography on Count 1 of the indictment in Quesnel Registry file 26049-2 to be served concurrently with the sentences I have imposed for his offending against C, K, J, A and X.

- [330] The total determinate sentence I have now imposed upon T.L.P. under s. 752(4)(b) of the Code is 11 years.
- [331] Given the nature of T.L.P.'s offending and the number of victims against whom he offended I am satisfied that the total sentence does not violate the totality principle.
- [332] T.L.P. was convicted on March 6, 2015 for the predicate offences and for his earlier offending against C and has been incarcerated since then.
- [333] He is entitled to a credit for the 31.5 months from March 6, 2015 until October 20, 2017 that he has served pending disposition of these dangerous offender proceedings.
- [334] I am satisfied that in all of the circumstances T.L.P. is entitled to 1.5 months of credit for each month of the time he has served, equalling 47.25 months.
- [335] I have also determined that the total amount of credit for time served should be rounded to a total of 48 months to be applied against the 11 year sentence I have now ordered leaving a total sentence remaining to be served of seven more years.
- [336] After serving the balance of his sentences T.L.P. will then be subject to a ten year Long Term Supervision Order under s. 742(4)(b) of the Code.
- [337] As a consequence of the findings I have made and the sentences I have imposed T.L.P. will also be subject to the following ancillary sentencing orders:
- 1) A mandatory prohibition order under s. 109 of the Code that he be prohibited from possessing any firearm, crossbow, restricted weapon, ammunition and explosive substance for life.
 - 2) An order in Form 5.03 under s. 487.051(1) of the Code for the taking of samples of bodily substances from him for the purposes of forensic DNA analysis.
 - 3) An order, under s. 490.012 and s. 490.013 of the Code, that T.L.P. comply with the Sex Offender Information Registration Act for life.
- [338] I also direct that all reports, testimony and documentary evidence in this proceeding be forwarded to the Correctional Service of Canada in accordance with the provisions of s. 760 of the Code.
- [339] The Crown submitted and counsel for T.L.P. did not dispute that after T.L.P. has served the determinate sentence I have imposed he must then be subject to a ten year Long Term Supervision Order under s. 742(a)(b) of the Code.
- [340] The totality of the evidence at trial and the psychiatric evidence adduced during these sentencing proceedings supports that disposition.

- [341] I am convinced that given the high degree of risk that T.L.P. will, if unsupervised re-offend sexually against prepubescent female children, the protection of such children, requires that a Long Term Supervision Order of the maximum allowable length be imposed in this case.
- [342] In his expert report (at pages 60 to 63) Dr. Hervé identified management strategies to address T.L.P.'s risk of re-offending while serving his sentence. He also addressed those conditions that he considers will likely be necessary for the effective control of T.L.P. in the community. Mr. MacNeil also made observations and recommendations related to specific sexual offender programming and counselling that he believes will assist in T.L.P.'s treatment while incarcerated and his management while subject to a Long Term Supervision Order.
- [343] Those reports and the testimony of both Dr. Hervé and Mr. MacNeil will be part of the materials to be sent to Correctional Service of Canada under s. 760 of the Code and should be considered by the correctional authorities both during T.L.P.'s incarceration and in determining the necessary conditions of the Long Term Supervision Order to be implemented after he has served his sentence.
- [344] The terms of the Long Term Supervision Order to be imposed will in large measure be dependent upon: T.L.P.'s participation in sex offender treatment programs while incarcerated; the efficacy of such treatment; the degree to which his risk of re-offending may be reduced; and, evaluation by Correctional Service of Canada of the specific supervisory conditions needed to protect the public against further sexual offending by T.L.P. while subject to that Long Term Supervision Order.

"The Honourable Mr. Justice Davies"

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Prepared on 28 October 2026 · Esheria