Citation: *R. v. C.G.*, 2020 YKTC 21

Date: 20200717
Docket: 18-00583
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Ruddy

REGINA

v.

C.G

Publication of information that could identify the complainant or a witness is prohibited pursuant to section 486.4 of the *Criminal Code*.

Appearances:
Paul Battin and
Jane Park — Counsel for the Crown
Lynn MacDiarmid — Counsel for the Defence

REASONS FOR SENTENCE AND RULING ON APPLICATION

[1] RUDDY T.C.J. (Oral): C.G. has entered guilty pleas to two offences of sexual interference contrary to s. 151 of the *Criminal Code*. While counsel have proffered a joint submission with respect to the appropriate length of custodial disposition, at issue is whether C.G. should be designated a long-term offender pursuant to s. 753.1 of the *Criminal Code*, and, if so, the appropriate duration of the requisite long-term supervision order.

Facts

[2] The facts of the offences are set out in an Agreed Statement of Facts. The victims, E.J. and A.J., are the twin nieces of C.G.'s partner, A.M.J. C.G. admits that he touched both girls for a sexual purpose on multiple occasions between 2014, when they were 12 years old, and 2018 when they were 16 years old.

[3] With respect to E.J., C.G. touched her approximately 50 times, usually touching the inside of her leg or chest over the clothing. When she was 12, C.G. leaned E.J. over a bed, face down, and thrust his groin against her buttocks while touching her chest. When she was 14, incidents included C.G. sliding his hand up her shirt, putting his hand down her pants, and putting her hand on his erect penis. When she was 16, incidents included C.G. running his hand up the inside of E.J.'s leg in the back seat of a vehicle driven by E.J.'s aunt, and grabbing E.J.'s buttocks when hugging her goodbye after a family visit.

[4] With respect to A.J., she indicates that C.G. touched her "a lot" over the four-year period. Several of the incidents occurred when A.J.'s aunt left the room. When A.J. was 12 years old, C.G. touched her between her legs over her clothing and her chest over her shirt. When she was 13, C.G. put her hand on his erect penis. When she was 14, C.G. lifted up her shirt and touched her chest underneath her bra. When she was 15, C.G. put her hand on his penis. On one occasion, also when A.J. was 15, C.G. was touching A.J. when she told him to stop. C.G. slapped her across the face. In 2018, C.G. ran his hand up A.J.'s thigh at a movie theatre. She moved away, but he moved closer and stopped only when a theatre employee cleared their throat.

[5] C.G. was arrested on November 27, 2018, and has been in custody since that time.

Background of Offender

[6] C.G. is almost 39 years of age. He was raised in Ft. McPherson and is a member of the Teetl'it Gwich'in First Nation. In a dated Pre-Sentence Report from 2007, C.G. described a happy childhood with emphasis on a traditional lifestyle. C.G. indicates there was no physical or sexual violence in the home, though violence appears to have occurred in his extended family and the broader community. Both of C.G.'s parents were residential school survivors. His father had resulting issues with alcohol abuse that increased dramatically following his parents' separation when C.G. was 12 years of age.

[7] C.G. has a grade 9 education with some upgrading. He advised Dr. Lohrasbe that he was bullied in school, and believes the bullying was racially motivated. C.G. left school in grade 9 to help at home and to find employment. Most of his employment history has been temporary and sporadic in trucking, road construction, and the oil and gas industry. The psychiatric assessment indicates that C.G.'s longest period of continuous employment was nine months.

[8] Dr. Lohrasbe notes that C.G. had his first drink in grade 9 and his usage developed into a pattern of binge drinking in his twenties. Defence counsel advised that C.G. was abusing alcohol over the period during which the offences were committed as he was struggling to deal with a number of deaths. C.G.'s father died homeless, though it is not fully clear to me when. Defence counsel advised C.G. lost his father four years

ago, though C.G. appears to have told Dr. Lohrasbe that his father died seven years ago. In addition to his father's death, defence counsel noted that C.G.'s former partner, and mother of two of his three children, passed away five years ago and his grandfather three years ago. Defence counsel submitted that C.G.'s abuse of alcohol affected both his judgment and memory in relation to the offences committed.

Criminal Record

[9] C.G. comes before the Court with a prior criminal record. Early convictions include breaches of court orders, resisting arrest, common assault, assault causing bodily harm, and impaired driving related offences.

[10] Of particular concern, C.G. has prior convictions for sexual interference contrary to s. 151 of the *Criminal Code* in both 2015 and 2016. In 2015, he was sentenced to a 90-day intermittent sentence and probation for one year for a single incident of touching a 12-year-old girl's legs under the guise of helping her tie her skates. The young victim was also a niece of C.G.'s partner.

[11] In 2016, C.G. was sentenced to eight months in jail plus two years probation for touching a 12-year-old girl, a friend of CG's niece and of his daughter, on two occasions. The first involved touching her in the genital area over her swimsuit a number of times during a game of tag at the Canada Games Centre pool. The second involved C.G. taking her into a separate room, pulling down her shirt to look at her chest, and reaching out as if to touch, though there was no actual contact, as the young victim was able to leave the room.

Victim Impact

[12] With respect to the offences before me, both A.J. and her mother, K.S., have filed Victim Impact Statements to help me understand how these offences have affected their family.

[13] A.J.'s Victim Impact Statement illustrates that the offences had a profound impact on her sense of self, her confidence, and her trust in others during a critical time in her development. She writes of her fear for both herself and her sister that things may escalate. While she notes, "thankfully they never did", she nonetheless spent four years of her life fearing for both her own and her sister's safety. She has, not surprisingly, experienced both depression and anxiety, and continues to struggle with how she sees herself and those around her.

[14] K.S.'s Victim Impact Statement highlights her concern for her daughters and what has been done to them, her unwarranted self-blame based on her sense of having failed to protect them, and her deep sense of betrayal that her children were not safe in the company of family members she had trusted to protect them. K.S. has also noted that the length of time it has taken these matters to be resolved, particularly the lengthy delay in C.G. accepting responsibility by entering a guilty plea, has left the family in a limbo of uncertainty that has been extremely difficult for all of them.

[15] While it is beyond my power to place this family in the position they would have been in had this never happened, it is my hope that bringing these proceedings to an end today gives them some sense of closure that may bring them some comfort.

[16] It should be noted that K.S. and her husband have been steadfast in support of their daughters, reaching out for counselling and attending every single court appearance at which I have presided. That kind of love and dedication speaks volumes about this family, and bodes well for their long-term recovery.

Joint Submission

[17] In terms of appropriate disposition, counsel are jointly recommending a sentence of 18 months on each of the two counts to be served consecutively for a global sentence of three years in jail, less time that C.G. has already served in pre-trial custody.

[18] When faced with a joint submission on sentence, the role of the Court is somewhat different from a regular sentencing hearing. I am not determining what I believe the appropriate sentence to be, rather I am assessing whether the proposed sentence is appropriate. In so doing, I am bound by the Supreme Court of Canada decision in *R. v. Anthony-Cook*, 2016 SCC 43, in which the Court held that a sentencing judge should not reject a joint submission unless the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

[19] In assessing the joint submission, I am mindful of the purpose and principles of sentencing as set out in the *Criminal Code*.

[20] Section 718 sets out sentencing objectives, with denunciation, deterrence, and rehabilitation being the most commonly applied objectives. In this case, denunciation

and deterrence must be the primary objectives of any sentence imposed per s. 718.01, as the offences involved the abuse of persons under the age of 18, and per s. 718.04, as both victims are female and of Aboriginal descent.

[21] Section 718.2(a) requires me to consider whether a sentence should be increased or decreased based on the existence of aggravating or mitigating factors. In terms of aggravating factors, on the circumstances of this case there are some statutorily aggravating factors including the age of the victims, the impact of the offences on the victims, and the fact that C.G., in committing the offences, abused a position of trust. Additional aggravating factors include the multiplicity of incidents over an extended period of time against two separate young victims, and the fact that C.G. has a criminal record which includes two related convictions with strikingly similar facts against two other young victims. While the abuse of E.J. and A.J. began before C.G. was convicted of either of the two related priors, it is extremely troubling to note that C.G. continued to abuse them while subject to court sanctions and after completion of both of his sentences.

[22] In mitigation, C.G. is entitled to credit for his guilty plea as an acceptance of responsibility and as E.J. and A.J. were, therefore, not required to testify at trial. However, the amount of credit he is entitled to is significantly reduced by the fact the guilty plea was not entered until the eve of trial, and thus cannot be said to be an early acceptance of responsibility.

[23] Other mitigating factors would include the rehabilitative steps C.G. has taken, at least in relation to his substance abuse. In addition, in light of C.G.'s Aboriginal

heritage, s. 718.2(e) requires consideration of all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to the victims.

[24] Finally, I would note that s. 718.3(7)(b) does require that sentences for sexual offences against more than one child must be served consecutively, as is being suggested by counsel.

[25] Consideration of the joint submission within this legal framework does not give rise to any concerns that would, in my view, bring the administration of justice into disrepute or be contrary to the public interest.

[26] In addition, counsel have filed a number of cases with similarities in circumstances of offence and offender. In my view, it is not necessary to review those cases in detail for the purposes of this decision. Suffice it to say, the cases filed satisfy me that the proposed sentence falls within the established sentencing range.

[27] In all of the circumstances, I conclude that there is no basis to warrant rejecting the joint submission on sentence. Accordingly, I am satisfied that the sentence for each count should be 18 months to be served consecutively, for a total sentence of three years, less the time that C.G. has already served in pre-trial custody. C.G. has been in custody since November 27, 2018 for a total of 598 actual days served. As time spent in remand does not attract the statutory remission a serving prisoner receives, C.G. is entitled to credit at 1.5 to 1 for a total of 897 days. This would leave a remanet of 198 days still to be served on his three-year sentence. To give effect to the intended sentence, the sentences will be recorded as follows: on the first count to which he has

entered a plea of guilty, a sentence of one day deemed served and his record will reflect credit for 18 months in pre-trial custody; and on the second count, a sentence of 198 days in addition to the remaining 348 days in pre-trial custody.

[28] Given the nature of the offences, several ancillary orders must also be imposed. As the offences are primary designated offences, there will be an order requiring C.G. to provide such samples of his blood as are necessary for DNA testing and banking. C.G. will be required to comply with the provisions of the *Sex Offender Information Registration Act*, S.C. 2004, c. 10, for the remainder of his life. Lastly, given the indictable election, s. 109 requires me to impose a firearms prohibition for a period of 10 years.

Long-term Offender Application

[29] With respect to the long-term offender application, notice was filed by the Crown on May 11, 2020 seeking a long-term offender designation and a long-term supervision order of seven to 10 years.

[30] Initially, the defence opposed the application for the long-term offender designation, taking the position that a probationary term in addition to any time left to be served would be sufficient to address C.G.'s treatment needs and manage any risk he presents in the community. However, based on supplementary information provided by Yukon Community Corrections ("YCC"), and further evidence from Dr. Lohrasbe, defence counsel now concedes the long-term offender designation, but argues that the long-term supervision order should be in the range of three to five years.

[31] Long-term offender applications are governed by s. 753.1 of the *Criminal Code*. To find an offender to be a long-term offender, the Court must be satisfied of three things: the appropriate sentence would be greater than two years; there is a substantial risk the offender will re-offend; and there is a reasonable possibility of eventual control of the risk in the community. As defence has conceded that the evidence supports the long-term offender designation in this case, I will deal with the basis for my finding in a relatively summary fashion, but I have considered at length the evidence before me, particularly the report and testimony of Dr. Lohrasbe.

[32] Dealing with the first pre-condition to a long-term offender finding, a sentence of more than two years, having adopted the joint submission and imposed an effective sentence of three years, this pre-condition is clearly satisfied.

[33] With respect to the second pre-condition, substantial risk of re-offending, s. 753.1(2) indicates that a court shall be satisfied there is a substantial risk of re-offending if the offender has been convicted of, amongst other named offences, an offence contrary to s. 151 and the offender has shown a pattern of repetitive behaviour, of which the offence for which he has been convicted forms a part, demonstrating a likelihood of the offender committing a similar offence in the future thereby causing injury, pain or other evil to another person.

[34] In applying this provision, I have little difficulty concluding that there is a substantial risk that C.G. will re-offend. I reach this conclusion, firstly, based on C.G.'s prior related criminal record, specifically the two prior convictions for offences contrary to s. 151, both of which share remarkable similarities to the offences before me in

relation to the nature of the behaviour and the victims. In assessing risk of re-offense, it is notable that C.G. continued to offend sexually, victimizing E.J. and A.J. even while subject to court sentences for almost identical offences.

[35] Secondly, my finding is based on the risk assessment provided by Dr. Lohrasbe. In his opinion, C.G. is a pedophile. C.G.'s "fundamental and chronic risk factor" is the pedophilia. His risk is exacerbated by alcohol abuse and inadequate self-awareness. Dr. Lohrasbe indicates that C.G. "poses a high risk for further acts of sexual violence so long as he continues to abuse alcohol."

[36] With respect to the third pre-condition, management of risk in the community, this pre-condition is also largely met through the opinion of Dr. Lohrasbe. In assessing risk in his written psychiatric assessment, Dr. Lohrasbe reviews C.G.'s risk factors, strategies for managing his risk in the community, and concludes that C.G. "is a good candidate for treatment and supervision in the community".

[37] Being satisfied that the three pre-conditions are clearly met on the evidence before me, I hereby find C.G. to be a long-term offender pursuant to s. 753.1.

Long-term Supervision Order

[38] This brings me to the remaining, and only contested issue, in this case, namely the duration of the long-term supervision order. Section 753.1(3)(b) indicates that where the Court finds an offender to be a long-term offender, the Court shall order that the offender be subject to a long-term supervision order for a period up to but not longer than 10 years.

[39] As noted, the Crown's notice of application seeks a long-term supervision order of seven to 10 years. However, based on the evidence called at the sentencing hearing, including the supplementary information from YCC and further testimony from Dr. Lohrasbe, Crown submits that any supervision order imposed should be at the higher end of the range sought by the Crown in their written application on the basis a lengthy period of supervision is necessary to ensure public safety.

[40] Defence counsel argues that three to five years is sufficient duration for the long-term supervision order. Her argument in support of this submission is twofold: firstly, imposition of the maximum term of 10 years would be excessive in all of the circumstances, and secondly, there are factors that, in her opinion, mitigate risk such that a lengthy term of supervision is not justified.

[41] Dealing with the first of these two submissions, defence counsel argues that a lengthy supervision order would be excessive for three reasons:

1. As C.G.'s offences did not involve penetrative behaviour they fall on the lower end of the spectrum of seriousness;

2. The maximum should be reserved for the worst offence and the worst offender; and

3. The principles of sentencing require that the Court impose the least restrictive measures required to meet the objectives, particularly in light of C.G.'s Aboriginal heritage per s. 718.2(e).

[42] With respect to the first argument, the seriousness of the offending behaviour, Dr. Lohrasbe spoke at length about the seriousness of C.G.'s behaviour during his initial testimony. He noted that an assessment of seriousness depends on perspective, as severity has many dimensions. If severity is measured in terms of penetration, C.G.'s offences would be at the milder end, but if severity is measured in terms of frequency and number of victims, C.G. would be at the moderate to lower end of severe range.

[43] If one views severity from the perspective of impact on the victim, Dr. Lohrasbe noted in his written psychiatric assessment that there is no correlation between the type of offending behaviour and the impact on the victim. On page 11, he states:

> However, the victim component is extraordinarily difficult to anticipate. Some victims are astonishingly resilient to even very serious assaults and go on with their lives without suffering typical consequences such as anxiety, depression, shame, PTSD, etc. On the other hand, some victims are extremely sensitive to the physical, psychological, spiritual/metaphysical implications of their vulnerability; such victims can have their lives devastated by even 'minor' sexual assaults. Mediating such differences in victim consequences are a host of additional factors such as relationship between victim and offender, age of victim, the victims prior experiences, general stressors and traumas in the victim's life, availability of support and healing resources, physical illnesses – the list is long.
>
> To summarize therefore, the anticipated severity for a future victim of sexual violence is far more difficult than similar considerations for non-sexual violence and cannot be trivialized in this or any case involving non-penetrative sexual violence.

[44] The question of severity was addressed in the recent decision of the Supreme Court of Canada in *R. v. Friesen*, 2020 SCC 9, which provides considerable direction for courts in imposing sentences for sexual offences against children. In particular, the

Court expressly rejects the notion that non-penetrative touching offences should be treated as less serious, noting at para. 144:

> Specifically, we would strongly caution courts against downgrading the wrongfulness of the offence or the harm to the victim where the sexually violent conduct does not involve penetration, fellatio, or cunnilingus, but instead touching or masturbation. There is no basis to assume, as some courts appear to have done, that sexual touching without penetration can be [TRANSLATION] "relatively benign" (see *R. v. Caron Barrette*, 2018 QCCA 516, 46 C.R. (7th) 400, at paras. 93-94). Some decisions also appear to justify a lower sentence by labeling the conduct as merely sexual touching without any analysis of the harm to the victim (see *Caron Barrette*, at paras. 93-94; *Hood*, at para. 150; *R. v. Iron*, 2005 SKCA 84, 269 Sask.R. 51, at para. 12). Implicit in these decisions is the belief that conduct that is unfortunately referred to as "fondling" or [TRANSLATION] "caressing" is inherently less harmful than other forms of sexual violence (see *Hood*, at para. 150; *Caron Barrette*, at para. 93). This is a myth that must be rejected (Benedet, at pp. 299 and 314; Wright, at p. 57). Simply stating that the offence involved sexual touching rather than penetration does not provide any meaningful insight into the harm that the child suffered from the sexual violence.

[45] In light of the *Friesen* decision, it would be improper, in my view, for me to conclude that C.G.'s offences are less serious, and reduce the duration of the long-term supervision order on that basis.

[46] The argument that the maximum sentence, or in this case, the maximum long-term supervision order, should be reserved for the worst offence and the worst offender is an often quoted maxim which has similarly been rejected by the Supreme Court of Canada. In *R. v. L.M.*, 2008 SCC 31, the Court said at para. 18 and 20:

> 18 …The *Criminal Code* provides for a maximum sentence for each offence. However, it seems that the maximum sentence is not always imposed where it could or should be, as judges are influenced by an idea or viewpoint to the effect that maximum sentences should be reserved for the worst cases involving the worst circumstances and the worst criminals. As can be seen in the case at bar, the influence of this notion is such that

> it sometimes leads judges to write horror stories that are always worse than the cases before them. As a result, maximum sentences become almost theoretical…
>
> …
>
> In *R. v. Cheddesingh*, [2004] 1 S.C.R. 433, 2004 SCC 16, the Court acknowledged the exceptional nature of the maximum sentence, but firmly rejected the argument that it must be reserved for the worst crimes committed in the worst circumstances. Instead, all the relevant factors provided for in the *Criminal Code* must be considered on a case-by-case basis, and if the circumstances warrant imposing the maximum sentence, the judge must impose it and must, in so doing, avoid drawing comparisons with hypothetical cases…

[47] Accordingly, the fact that I would not characterize this as a case of the worst possible offence committed by the worst possible offender is not a relevant consideration in determining the appropriate duration of the supervision order.

[48] Conversely, the requirement that the Court impose the least restrictive sanctions and consider an offender's Aboriginal heritage and the history of systemic racism as required by ss. 718.2(d) and (e) are always appropriate considerations in sentencing proceedings. However, the case law suggests that the application of these sentencing principles in long-term offender proceedings differs from how they are applied in imposing a regular sentence.

[49] With respect to the question of least restrictive sanctions, in the *L.M.* decision, the Supreme Court of Canada compared the differing objectives of the dangerous offender and long-term offender designations and made the following comments about the long-term supervision order at para. 42:

> …This measure, which is less restrictive than the indeterminate period of incarceration that applies to dangerous offenders, protects society and is at the same time consistent with [TRANSLATION] "the principles of

> proportionality and moderation in the recourse to sentences involving a deprivation of liberty" (Dadour, at p. 228).

[50] The Court went on to make a distinction between imposing an appropriate sentence and long-term offender proceedings. At para. 46 and 47, they said:

> 46 These two types of decisions can be distinguished on the basis of the objectives and methods, and certain technical aspects, of the sentencing process. The principal objective of a prison sentence is punishment, although the sentence must be determined in accordance with the principles set out in the *Criminal Code*. On the other hand, [page186] the objectives of and rationale for the supervision of an offender in the community are to ensure that the offender does not reoffend and to protect the public during a period of supervised reintegration into society. The British Columbia Court of Appeal mentioned this distinction in a recent judgment:
>
> > The fixed sentence and supervision orders focus on two different goals: the former on punishment for the predicate offence, the latter on prevention of future criminal conduct. In the latter the predicate offence plays a relevant role as an indicator of risk.
> >
> > (*R. v. Blair* (2002), 167 B.C.A.C. 21, 2002 BCCA 205, at para. 37; see *R. v. J.G.E.S.*, [2006] B.C.J. No. 3455 (QL), 2006 BCSC 2004, at paras. 134 and 137, for another example of this.)
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> 47 Furthermore, the sentencing judge will not calculate the length of each of these steps in the same way. A number of factors are considered in determining the length of a prison sentence, including, to name but a few, the gravity of the offence, the degree of responsibility of the offender, the parity principle and the possibility of imposing a less restrictive sanction. In contrast, the length of a period of community supervision is based on an offender's criminal past and on the likelihood that he or she will reoffend, which are addressed in the assessment report.

[51] With respect to the application of s. 718.2(e), the Saskatchewan Court of Appeal held that *Gladue* considerations are applicable to dangerous offender proceedings in

R. v. Moise, 2015 SKCA 39. By extension, *Gladue* factors would clearly apply to long-term offender proceedings as well.

[52] In this case, there is no *Gladue* report and I have limited information about C.G. and his background. However, there are clear *Gladue* factors. His family history includes residential school attendance, substance abuse, bullying, and a disproportionate number of lost family members. There is no indication that C.G. was himself physically or sexually abused, but there is certainly information that helps me to understand the evolution of his substance abuse.

[53] How the *Gladue* information affects the assessment of the appropriate length of the long-term supervision order, however, is somewhat less clear. In the *Moise* decision, the Court opined that *Gladue* factors may have little impact on the issue of moral blameworthiness in dangerous offender and long-term offender proceedings, but that culturally sensitive programming and supports might well impact on rehabilitation and risk to re-offend (see para. 28).

[54] In this case, the defence has not advanced any Aboriginal specific programming, services or supports as options which may impact on the questions of risk and rehabilitation that may qualitatively impact on the assessment of risk to the public. As noted by the Manitoba Court of Appeal in *R. v. Osborne*, 2014 MBCA 73, the paramount consideration in dangerous and long-term offender proceedings is the protection of the public and the impact of *Gladue* factors must be considered in that context (see paras. 96-98). When balancing the two principles, “protection of the public must prevail” (para. 97).

[55] There is no doubt that a period of supervision is required, in this case, to ensure protection of the public. The question of how long the period of supervision needs to be turns on an assessment of C.G.'s ability to manage his risk factors appropriately on his own, with personal supports rather than external supervision, at some point in the future.

[56] Dr. Lohrasbe indicates that there are three main risk factors in relation to C.G.

1. C.G. is a pedophile;

2. Abuse of alcohol acts as a disinhibitor greatly increasing C.G.'s risk of re-offending sexually; and

3. C.G. demonstrates a lack of self-awareness and respect for boundaries leading to impulsive behaviour without consideration of consequences.

[57] The first of C.G.'s risk factors, his pedophilia, is his primary risk factor. Pedophilia cannot be fixed or cured. While risk of re-offence is likely to decline with age, pedophilia does not go away. Protection of the public, therefore, requires C.G.'s other two risk factors to be managed appropriately so that he does not act on his pedophilic urges.

[58] In both his written assessment and his testimony, Dr. Lohrasbe asserted that it is preferable to impose as long a supervision order as is possible under s. 753.1, noting "[a] long period of follow up is crucial for ongoing risk reduction and risk management".

He further notes that the success of "risk management in the community will hinge on [C.G.'s] willingness to cooperate with monitoring and supervision".

[59] Defence counsel submits that rehabilitative steps taken by C.G. are indicative of his willingness to manage his risk, and that his plan for release, including possible employment and his supportive spouse, serve to mitigate his risk to the extent that a lengthy supervision order is not required.

[60] Looking first at the issue of alcohol abuse, the evidence does indicate that C.G. recognizes that he has a drinking problem. To his credit, he has taken a number of steps to address his alcohol problem, including completing the Substance Abuse Management Program, attending AA meetings, one to one counselling with Lyall Herrington, and one to one counselling with psychologist Svenja Weber.

[61] C.G. did discontinue his sessions with Mr. Herrington after approximately one year, indicating that he no longer found them to be helpful. I do not find this to be particularly troubling, given that there would have been overlap between the alcohol counselling with Mr. Herrington and his sessions with Ms. Weber with whom he appears to have developed a strong counselling relationship. Her letters indicate that C.G. is engaged and motivated. She further indicates that C.G. has expressed an interest in residential treatment, and she has submitted an application to a treatment centre in Thunder Bay on his behalf.

[62] By and large, the evidence satisfies me that C.G. has taken several positive steps and is motivated to address this risk factor, with two reservations. Firstly, I am concerned that C.G. does not appreciate that effective management of his pedophilic

disorder will require lifelong abstinence. On page 9 of the psychiatric assessment, Dr. Lohrasbe writes:

> [C.G.] also appeared to hesitate when we discussed the principle of absolute and indefinite abstinence from alcohol. He did understand that total abstinence would be necessary to demonstrate that he can assert self-control *"for the next little while"* but seemed reluctant to commit to the idea of abstinence indefinitely. He wondered why he could not return to drinking alcohol *"once in a while"* after a few years of sobriety. This too could become an issue for risk management but perhaps can be effectively addressed during a residential treatment program.

[63] Secondly, I have some concern that C.G. believes that addressing his alcohol abuse is all that is required. In his testimony, Dr. Lohrasbe agreed that C.G. would like to believe that alcohol is the only reason he has committed offences. Indeed, C.G. told Dr. Lohrasbe that most of his offences were committed while intoxicated, though the lack of any indication in the Agreed Statement of Facts that C.G. was intoxicated on any of the occasions when he molested E.J. and A.J. would tend to suggest otherwise.

[64] Furthermore, while C.G. has taken advantage of multiple programs offered at the Whitehorse Correctional Centre ("WCC"), he refused an opportunity to work with the Forensic Complex Care Team to access therapy specific to sexual offending. The reason provided was that he did not want to work with more than one counsellor, but there is no indication in Ms. Weber's letters that her sessions with C.G. are addressing his sexual offending, although Dr. Lohrasbe did indicate that some of the therapeutic interventions would have a positive impact on addressing his sexual offending.

[65] This second concern is interrelated with the question of C.G.'s willingness and ability to address the third risk factor, his lack of self-awareness and insight into his offending behaviour.

[66] Dr. Lohrasbe explains this risk factor in his report in several passages. On page 3, he states:

> More broadly, I got the strong impression that [C.G.] has difficulty fully integrating the notion of context, boundaries, and limits. Such social and cognitive difficulties in turn limit his self-awareness and self-control and are relevant to the predicate offenses.
>
> [C.G.'s] spontaneous descriptions of events and relationships suggest that he can be naïve and simple minded in his interpretations, expectations, and opinions. He is not a sophisticated or psychologically minded individual and is not used to reflection. Hence it is my view that issues such as understanding and respecting boundaries and accepting the importance of restrictions imposed on him by the justice system will be important foci for therapy.

[67] In discussing the impact of C.G.'s limited self-awareness on risk management, Dr. Lohrasbe notes on page 13:

> All thing considered, [C.G.] is a good candidate for treatment and supervision in the community. Importantly however, [C.G.] needs a lengthy period of supervision in the community. He is a man of limited self-awareness and self-control and it would be hazardous to rely on him to fully internalize any lessons learned during past and future counseling such that he will maintain gains in self-awareness and self-control over the long run. He will need frequent reminders.

[68] As with abstinence, management of this risk factor is of critical importance to the protection of the public. C.G. will either need to develop self-awareness and self-control, or he will require external supervision and prompts.

[69] Dr. Lohrasbe is of the opinion that C.G. is capable of increasing his self-awareness thereby reducing his risk. He notes C.G. was clearly uncomfortable discussing his deviant sexual behaviour, reluctant to admit that he was sexually drawn to children, but that he was able, with Dr. Lohrasbe's encouragement, to make the acknowledgement, although Dr. Lohrasbe describes C.G.'s acceptance as "grudging". This potential was described as a glimmer of hope or a small opening, although Dr. Lohrasbe was clear that C.G. has a long way to go in fully acknowledging his deviant behaviour and the impact of his offences on his victims, and in developing the necessary self-control to ensure he does not re-offend.

[70] C.G. has asserted, through his counsel, that he has gained insight into his sexual offending. Defence counsel argues that this insight should persuade me that C.G. will make the necessary gains in self-control and self-awareness within three to five years.

[71] In my view, C.G.'s assertion that he has gained insight into his pedophilia must be viewed through the lens of the objective evidence in assessing the extent to which he has actually begun to develop self-awareness and exercise self-control, or whether he remains at the "glimmer of hope" stage described by Dr. Lohrasbe.

[72] Three factors persuade me that C.G. has not yet made appreciable progress in this area, sufficient to address the public safety concerns in the foreseeable future.

[73] Firstly, Dr. Lohrasbe's psychiatric assessment was prepared under the mistaken belief that C.G. had not received any prior programming in relation to his sexual offending. Information received from YCC mid-way through these proceedings indicates that C.G. had attended a 20-session sex offender program in 2017.

Documents indicate that C.G.'s participation in the program was minimal. He was defensive, complained about having to attend, and sought ways to avoid the program.

[74] Dr. Lohrasbe was recalled to provide further evidence on how this and other new information impacted on his opinion. Dr. Lohrasbe indicated that with attendance at the prior program, he would have expected C.G. to have a greater ability to articulate his risk factors. When coupled with the fact that C.G. continued to offend while in the program, Dr. Lohrasbe is of the view that C.G. did not develop any insight as a result of the programming or take seriously the fact that he had harmed people. Defence counsel raised some concerns about the quality of the previous program, but Dr. Lohrasbe said that C.G. would still have had exposure to some of the principles and he would have expected greater insight.

[75] Secondly, the additional information received included a second letter from Ms. Weber describing her work with C.G. and an indication that C.G. has continued to be involved in altercations with other inmates and staff at WCC. Dr. Lohrasbe said that he was troubled that C.G. continued to have incidents at WCC. While there is no direct connection to his risk for sexual violence, Dr. Lohrasbe would have hoped that after a year of therapy with Ms. Weber, C.G.'s ability to control his impulses would reflect in his overall behaviour.

[76] Thirdly, Dr. Lohrasbe raised concerns about whether C.G. is taking full responsibility for his actions and the damage he has done to children. Dr. Lohrasbe says that taking responsibility is a hugely important step in therapy. This means taking psychological and moral responsibility not just legal responsibility. If C.G. is not being

confronted in therapy with the consequences of his actions and reflecting on the harm done to his victims, he is not taking moral responsibility and will not make real progress in managing his risk.

[77] There is no documentation that suggests this work is being or has been done. While C.G. has availed himself of numerous programs at WCC, including the Violence Prevention Program, there is no information to suggest any of the programs have covered this issue. There is no mention of it in Ms. Weber's overview of the work she has been doing with C.G., and C.G. turned down the opportunity to access therapy with the Forensic Complex Care Team specific to his sexual offending that I expect would have required him to address his actions and the resulting damage to his victims.

[78] Based on the objective evidence before me, and Dr. Lohrasbe's expert opinion, I can only conclude C.G. has the potential to develop self-awareness, self-control, and greater insight into his offending behaviour, but that he has not yet made real progress in this area.

[79] This leaves the question of whether his plans for release and supportive spouse offer any appreciable mitigation of risk, reducing the need for external supervision. I understand his plan is to reside with his spouse, A.M.J., and that he has a plan for starting a business. In my view, business or employment plans are not yet sufficiently concrete to provide any real mitigation of risk. A.M.J.'s involvement is a more complex question.

[80] Dr. Lohrasbe spoke about the importance of having a spouse actively involved in the plan for managing risk. He indicated that a healthy relationship decreases risk and

an unhealthy relationship increases risk. In fairness to A.M.J., she is not in any way obligated to actively participate in managing C.G.'s risk; however, the fact that C.G. will be residing with her upon release requires me to consider what impact she may have on risk management.

[81] In determining whether A.M.J.'s involvement will have a positive or negative impact on risk management, it must be noted that she did not testify or attend court. The only information I have from her is set out in two letters she has provided.

[82] Dr. Lohrasbe raised some concerns about A.M.J.'s potential impact on risk during his evidence. Firstly, he noted that there is an indication in the report from WCC that A.M.J. participated in breaking the rules when visiting C.G. With respect to A.M.J.'s letters, Dr. Lohrasbe noted an absence of information he would have hoped to see that would help with risk management. For example, did A.M.J. know her nieces were being molested? Did she ever talk to C.G. about the offences and his responsibility? What is her perspective on the offences? Dr. Lohrasbe notes the difficulty of implementing a risk management plan with someone who allowed the offences to happen. While A.M.J. speaks of a need for both she and C.G. to be sober, it is unclear whether she is making a clear commitment to sobriety. If she starts drinking, C.G. is at risk of relapse.

[83] Dr. Lohrasbe stated that if the relationship is based on mutual denial of the significance of the abuse and the need for mutual abstinence, he would be very anxious about how well C.G. can be risk managed in the community.

[84] Clearly, there is a lack of evidence upon which to draw conclusions with any degree of certainty with respect to A.M.J.'s potential impact on risk management. That

being said, based on the little information that is before me, I certainly share Dr. Lohrasbe's concerns about whether her influence will in fact be positive.

[85] Beyond noting that she is aware of the offences and has read the Agreed Statement of Facts, nothing in the letters suggests that A.M.J. fully appreciates the seriousness of C.G.'s sexual offending and the very real risk of him re-offending. She writes at length about the negative impact that C.G.'s incarceration has had on her, but makes no mention suggesting she has an appreciation of the harm done to her nieces.

[86] A.M.J.'s recognition of the need for programming, like C.G.'s, focusses on substance abuse, rather than an appreciation that abstinence alone will not address the full range of C.G.'s risk factors.

[87] Finally, there is nothing in the letters that indicate A.M.J. would be prepared to take an active role in risk management including confronting or challenging C.G. if he exhibits behaviour indicative of an increased risk for re-offence, or monitoring any contact he may have with children. Indeed, history suggests the very opposite. Whether or not A.M.J. was aware that C.G. was molesting her nieces, the fact is she was aware that he was in jail in 2016 and 2017, and yet, she told her brother and K.S. that C.G. was back in his home community. There is no suggestion that A.M.J. was unaware that C.G. was in jail for molesting two young girls, and yet, she did not advise her brother and K.S., and she not only allowed her nieces to continue to visit, but also left them alone with C.G.

[88] The evidence before me regarding the potential role of A.M.J. in risk management raises several questions and concerns, and falls short of persuading me

that she will play an active role in risk management sufficient to mitigate the risk of C.G. re-offending.

[89] In all of the circumstances, I accept the opinion of Dr. Lohrasbe and conclude that C.G. requires a lengthy period of supervision to support him in managing his risk factors in the community and to ensure protection of the public, particularly of vulnerable children. Accordingly, I order that C.G. be subject to a long-term supervision order for a period of 10 years. Should C.G., through active involvement in therapy, make significant gains in managing his risk factors before expiration of the supervision order, such that he no longer presents a substantial risk of reoffending, it is open to him to apply to reduce or terminate the order under s. 753.2.

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RUDDY T.C.J.