

WARNING

The court hearing this matter directs that the following notice be attached to the file:

A non-publication and non-broadcast order in this proceeding has been issued under subsection 486.4(1) of the *Criminal Code*. This subsection and subsection 486.6(1) of the *Criminal Code*, which is concerned with the consequence of failure to comply with an order made under subsection 486.4(1), read as follows:

486.4 Order restricting publication — sexual offences.—(1) Subject to subsection (2), the presiding judge or justice may make an order directing that any information that could identify the complainant or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of

(a) any of the following offences:

- (i) an offence under section 151, 152, 153, 153.1, 155, 159, 160, 162, 163.1, 170, 171, 172, 172.1, 173, 210, 211, 212, 213, 271, 272, 273, 279.01, 279.02, 279.03, 346 or 347,
- (ii) an offence under section 144 (rape), 145 (attempt to commit rape), 149 (indecent assault on female), 156 (indecent assault on male) or 245 (common assault) or subsection 246(1) (assault with intent) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 4, 1983, or
- (iii) an offence under subsection 146(1) (sexual intercourse with a female under 14) or (2) (sexual intercourse with a female between 14 and 16) or section 151 (seduction of a female between 16 and 18), 153 (sexual intercourse with step-daughter), 155 (buggery or bestiality), 157 (gross indecency), 166 (parent or guardian procuring defilement) or 167 (householder permitting defilement) of the *Criminal Code*, chapter C-34 of the Revised Statutes of Canada, 1970, as it read immediately before January 1, 1988; or

(b) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in any of subparagraphs (a)(i) to (iii).

(2) *Mandatory order on application.*— In proceedings in respect of the offences referred to in paragraph (1)(a) or (b), the presiding judge or justice shall

- (a) at the first reasonable opportunity, inform any witness under the age of eighteen years and the complainant of the right to make an application for the order; and
- (b) on application made by the complainant, the prosecutor or any such witness, make the order.

. . .

486.6 Offence.—(1) Every person who fails to comply with an order made under subsection 486.4(1), (2) or (3) or 486.5(1) or (2) is guilty of an offence punishable on summary conviction.

ONTARIO COURT OF JUSTICE
(East Region)

Her Majesty the Queen

v.

J.V. and P.V.

Before Justice David M. Paciocco – Ottawa, ON

Decision

Released July 14, 2015

Mrs. M. Cunningham.....for the Crown

Mr. G. Barnes.....for the Accused, J.V.

Mr. W. Murray.....for the Accused, P.V.

Paciocco J.

I. Introduction

[1] P.V. and J.V. were tried before me on 22 counts alleging the most despicable and odious physical and sexual abuse allegations imaginable. The complainants are their daughters, K.I.V. and K.V., and the various charges together span a 10 year period. K.I.V., now 21, would have been between 4 and almost 16 years of age during the charging period. K.V., now 22, would have been between 5 and almost 17 years of age.

[2] These young women testified to almost daily intercourse with their father, J.V., during that period, and being subjected to other sordid sexual indignities by him. The sexual offence charges against P.V. are based on allegations that she both assisted in the sexual assaults by bringing the girls to their father's bed, and by participating actively, on one occasion, during a sexual assault on each of the two complainants.

[3] The physical abuse charges against J.V. include what can only be described as allegations of a sadistic pattern of gratuitous torture against his daughters. The charges against P.V. include

assisting him in some of these acts, as well as excessive disciplinary force, including in an effort to intimidate K.I.V. and K.V. into silence about the horrors they were allegedly subjected to in their home.

[4] The precipitating event leading to the charges being laid was an attempted suicide, on February 1, 2014, by K.I.V.. K.I.V. almost succeeded. She hung herself from a tree in the back of the family farm property with an electrical cord. She was found unconscious, barely breathing. Initially she was not expected to live. Days later she awoke from a coma to learn that her sister, K.V., had told a hospital social worker that they had been abused by their parents. Ultimately K.I.V. told the hospital worker the same thing. By March 20, 2014, both young women made police statements, leading to this trial.

[5] The factual allegations that K.I.V. and K.V. made are so obviously criminal that there are no issues of substantive law to be resolved. There are evidentiary holdings to be made in deciding this case, but beyond that, this case is about the credibility and reliability of each complainant in light of all of the evidence, and whether in light of the evidence the Crown has proved any of the offences beyond a reasonable doubt.

[6] Before describing and evaluating the evidence in more detail, there are a number of evidentiary issues that require comment, disposition, and clarification.

II. Admissibility Issues

a. The Admissibility of Children's Aid Society records

[7] On June 23, 2015, I released a decision admitting into evidence three packages of records compiled by Children's Aid Societies that were involved, during the relevant period, with the V. family. These records had been obtained by the defence after a third party records application, and admission was sought by counsel for P.V.. I found the records to be admissible pursuant to the common law "business records" exception to the hearsay rule, more formally known as the "declarations in the course of duty" exception.

[8] I ruled that those records are admissible to prove the observations recorded by the record-makers, including the receipt of complaints and the conduct of interviews. This ruling permitted counsel for the V.'s to rely, where relevant, on what the records fail to record but could reasonably be expected to have been recorded, if it were true. It also enabled counsel for the V's to confront the complainants with comments attributed to them that defence counsel considered to be inconsistent with their evidence.

[9] I ruled, however, that I cannot rely on what the record-makers were told by others, as this would involve the proof of "double hearsay." Exceptionally, if the information supplied to the record-makers had its own indicia of reliability, such as where the person providing the record-maker with the information was themselves under a business duty to the organization keeping the record, this second-level hearsay could be relied upon. This part of the ruling did not have to be acted upon in arriving at this decision. The Crown indicated that it was not seeking to rely on any

of the double hearsay, and the defence has not identified any double hearsay information that they wish to have admitted for the truth of its contents.

[10] The Crown has not sought to address the voluntariness issue relating to any comments in the records attributable to P.V. or J.V., and therefore such statements cannot be used by me for any purpose in this trial, and I have disregarded them.

b. The Admissibility of Electronic Records

[11] I have also issued a separate ruling bearing today's date, admitting into evidence various "electronic records." Specifically, the V's did not consent to the admission of three electronic communications that the complainants testified they had with J.V. and P.V.. I admitted these "electronic records," however, after the Crown proved their authenticity and compliance with the "best evidence rule for electronic documents," housed in subsections 31.1 and 31.2 of the *Canada Evidence Act*, R.S.C. 1985, c.C-5, respectively. I was also satisfied on the balance of probabilities that those records contained communications with the accused persons. Comments that are attributable on the balance of probabilities to an accused person put into evidence by the Crown can be used as evidence against that person, or for that person, but not against the other accused person. Comments attributable to the complainants cannot be used to prove the truth of what those statements claim unless those comments satisfy a hearsay exception. Those comments can be used, however, to give context and, in appropriate cases, meaning to the responses made by accused persons.

c. Use of Prior Consistent Statements

[12] During the course of this trial, I permitted evidence to be led about the history of complaints made by the complainants, KI.V. and K.V.. Some of this evidence includes prior statements made by the complainants, consistent with their testimony. This evidence was admitted by me, without defence objection, after it was made clear to me during the third party records application that the accused persons had made a tactical decision to rely on the failure by the complainants to complain, in order to challenge their credibility. I am mindful that I cannot use evidence of any prior consistent statements made by the complainants, either as an indication that their testimony must be true, or as evidence that corroborates what they said in the witness box. Repetition is not proof of the truth, nor does repetition stand as independent confirmatory evidence of what is being claimed. Evidence disclosing the history of complaints made by the complainants can be used by J.V. and P.V., however, to challenge the credibility of testimony by those complainants about what complaints they made. Subject to the abrogation of the recent complaint document in the *Criminal Code*, section 275, the history of complaints is also admissible to invite relevant inferences that the allegations are untrue, or to permit the Crown to rebut any such challenges.

d. Bad Character Evidence

[13] The Children's Aid Society records include information that reflects discredibly on the character of the two accused persons, some of which does not relate to the specific allegations charged. So, too, do the electronic documents, and some of the contextual narration provided by the witnesses. No effort was made by the Crown to have such information admitted in this case

pursuant to the similar fact evidence rule to support substantive inferences. I have therefore cautioned myself that I cannot rely on such evidence to draw inferences against J.V. and P.V..

[14] The Crown has, however, brought an application to have the “count to count” information available as similar fact evidence. In other words, the Crown is asking me to consider evidence relating to each charged act of misconduct by the accused persons when I adjudicate each of the other charged acts of misconduct. Specifically, the Crown contends that evidence relating to the conduct of an accused person on one charge, is useful in proving the *actus reus* of the other charges facing that accused person.

[15] The admissibility of evidence reflecting on the discreditable character of accused persons is brokered through the imprecisely named “similar fact evidence rule.” This rule is intended to prevent the prejudice that is caused by judging individuals based on their general character rather than on probative evidence, and to prevent trials of the specific allegations charged from becoming distracted and confused by evidence relating to the alleged conduct and character of the accused on other occasions. Given these concerns, evidence that the accused has engaged in discreditable or criminal acts or is otherwise of discreditable character is presumptively inadmissible. To overcome that presumptive inadmissibility, the onus is on the Crown to satisfy the trial judge, on the balance of probabilities, that in the context of the particular case the probative value of the evidence in relation to a particular issue outweighs the potential prejudice and thereby justifies its reception. If this rule is applied properly as a strict rule of admissibility, evidence that does no more than invite the general inference that the accused is the kind of person who is capable of committing the offences charged, or who would commit such offences, will not be admitted. Even when evidence disclosing the discreditable character of the accused is admitted to support other proper, specific inferences, it is only to be used for those inferences and not to draw the prohibited general inference described: *R. v. Handy* (2002), 164 C.C.C.(3d) 481 (S.C.C.).

[16] When the Crown attempts to use this rule to prove discreditable or criminal acts of the accused that are not alleged in the charges before a court, the similar fact evidence rule is applied to determine whether that evidence will be heard at all. In this case, however, the Crown has not asked me to rely on uncharged conduct by J.V. and P.V.. As indicated, it is asking that I use evidence admitted to prove each count, in adjudicating the other counts. In multi-count cases where this is the request, the similar fact evidence rule does not determine the admissibility of such evidence. The evidence is already necessarily received so that the Crown can endeavour to prove the count to which that evidence relates. Instead, the similar fact evidence rule governs whether the evidence relating to one count can be relied upon by the trial judge in adjudicating the other counts. It is therefore appropriate, in this case, to postpone further consideration of the similar fact evidence rule until I begin to analyse what to make of the admissible evidence, for it is only at that stage that the similar fact evidence rule contributes to this case.

III. The Evidence

a. Background

[17] The V. family is comprised of the accused persons, the two complainants, K.V. (22) and KI.V. (21), and two siblings born 4 and 5 years after KI.V.. When in the Ottawa area during the period covered by the information, the family lived in a succession of large rural houses. All but possibly one of the homes were owned by J.V.'s parents, who lived with the family. For an undetermined time, a homeless man, L., also lived in the furnace room in the basement of a home in Osgoode, Ontario.

[18] The uncontested evidence before me is that J.V. and P.V. did not work outside the home. They collected public assistance, and operated an online business buying and selling antiques, predominantly toys. The accused persons themselves led evidence in this case that much of their business activity was fraudulent, and that in the later years they enlisted KI.V., who, although not paid, would assist in both legal and fraudulent business transactions. When word got out on the internet that J.V. and P.V. were committing internet fraud, they conducted business through accounts in KI.V.'s name, and when they acquired a home in Prince Edward Island, they put that home in her name as well, because of their poor credit rating.

[19] It is not contested before me that the money that was brought into the V. home was used predominantly on drugs, primarily cocaine, for both J.V. and P.V., who have serious addiction problems. J.V. also abused alcohol. This information has been employed tactically by the defence to help explain why K.V. and KI.V. would bear animosity against their parents, and make what defence counsel contend are false allegations.

[20] It is also agreed that the family was poor, and the children hungry. The parents fought with each other, and they argued with the grandparents. Evidence led by P.V. during cross-examination is that J.V. controlled her, including by frequent physical abuse. Children's Aid Society involvement was frequent. Again, this evidence has been relied upon by the defence to underline the horrid upbringing the girls had, irrespective of the alleged offences, providing the complainants with motivation to now make scurrilous, false allegations against the accused.

b. Evidence Relating to KI.V.

i. KI.V. on Physical Abuse

[21] KI.V. testified that she has no memory of a time when her father did not physically and sexually abuse her. She testified that she was always in the company of her father, who controlled her completely, and called her abusive names. She said that he would vacillate between telling her he loved her, and calling her, most commonly, a "slut," or at times a "whore," or "cow" or "pig."

[22] KI.V. described, essentially, two kinds of physical abuse, "evil fun" and what I will call "disciplinary beatings."

[23] KI.V. explained that "evil fun" was a term her father used for a number of activities that he would force the children to do, which would cause them pain and which she attests that he found amusing. The tamer stuff involved forcing the children to do exercises. KI.V. said she had to do crunches, and stand in the corner and run without stopping. She described how he would force the children to climb trees, she believed in the hope they would fall out. He would make

the children fight aggressively, including punching each other in the face, and kicking each other, and poking each other in the eyes. He would push the children into bee's nests to watch them get stung, which he found amusing. She also described how, on a few occasions, he would make the girls take their shirts off and put a scorpion he had on their stomachs to try to get it to sting them, although she does not believe it ever did.

[24] Although KI.V. did not specify whether these activities were part of the "evil fun," or disciplinary acts, she testified that he also has used pliers to squeeze her fingers, and a vice-grip to squeeze her hands. He would do so hard enough to cause pain and leave red marks, but not forcefully enough to break bones. Similarly, he would bend her fingers back, and on one occasion she recalls, he tapped her on the knee with a claw hammer, and he hit her on the lower legs with a crowbar. When she was asked in cross-examination if he ever hit her with a sledge hammer, she hesitated and said she thinks she was struck lightly in the lower leg with a sledge hammer. Again, when provoked by questions in cross-examination she testified that she thinks there was an occasion where he poked her in the back with a small steak knife, but not hard enough to break the skin, and she said he has stabbed her in the back with a fork, on occasion, causing her skin to bleed.

[25] KI.V. said that she received what I have called "disciplinary beatings" on an almost daily basis. She remembers some specific incidents, including after breaking one of her father's toys, but the most vividly remembered cause of beatings was her father's obsession with her interest in boys. When they got home from school, she testified, he would routinely ask K.V. if KI.V. was looking at boys, and he would ask KI.V. about K.V.. If the report was not favourable, they would be beaten. When he beat her, KI.V. said he would use his fists or his feet, and he would use an extension cord, or tree branch to whip her back and legs. He also used broom handles. And he would bite her knuckles or pinky. These beatings usually happened at home, but on occasion he would take her out in the family van, pull over on a country road, find a stick and beat her.

[26] At times, KI.V. testified, P.V. would assist by holding KI.V. down by sitting on her and trying to keep her quiet when she screamed as her father beat her. She said that she never had any broken bones from this abuse, but would have welts from the whippings, and she would sometimes have scratches on her face or neck, and "blue eyes like bruises." She would wear a sweater or track pants to cover her injuries.

[27] KI.V. testified specifically to one occasion - she is not sure of the grade but thinks she was in O[...] Public School at the time - when K.V. replied to their father's questioning about boys, by telling him that KI.V. had been looking at boys while reading in class. KI.V. said he took her pants down and whipped her with an extension cord, a device he often used, on the legs and back, leaving purplish and black marks.

[28] KI.V. testified that on one occasion she recalled that J.V. pulled K.V.'s pants down and started whipping her with an extension cord, because she gave a boy at school some money to be her friend.

[29] KI.V. testified that when she was in elementary school her father said she was looking at a boy, and started punching and kicking her, and decided to burn her feet. He enlisted P.V. to help. She held KI.V. down on the bed while J.V. took a "child safety" cigarette lighter and held it "down off my toes and my feet." She said that this injured her, causing her feet to swell, and

there was puss. This made it difficult to walk, although she said she walked to the bus and went to school the next day. After a week or so she complained to her parents that her feet were still sore. They showed K.I.V.'s grandparents the injury, telling them that K.I.V. had stepped in boiling water that P.V. spilled. K.I.V. said that she was made to put her feet in salt water and keep her feet elevated, and she missed school while they healed.

[30] K.I.V. described another occasion when she was 15 or 16 years of age when J.V. suspected her of having sex with D. and A. Fy.. He sent P.V. next door to see if the boys were there. After P.V. confirmed they were, she returned and started punching and kicking K.I.V. in the stomach and face. When P.V. stopped, J.V. began to beat her. K.I.V. said that on more than one occasion, J.V. forced the family to go outside and wait in the woods to watch and see if the Fy.'s were coming to have sex with the females in the house.

ii. K.I.V. on Sexual Abuse

[31] K.I.V. said that her father made her cut her hair short and dress in overalls so that she would look like a boy. He prohibited her from wearing a bra. She was never allowed to have a boyfriend. She testified he ultimately took her out of high school because he thought she "was going to have sex with guys on the bleachers and stuff."

[32] K.I.V. said that the sexual abuse was always part of her life. She said that her father told her over and over again that he had sex with her when she was young. She testified that he said it started when he came home drunk one night and she began to touch him. She does not remember this event, but has no memory of a time when she was not sexually abused. She said she never resisted, because she was afraid of him.

[33] K.I.V. said that while she believes that one time she shared a bedroom with her sister, her bed would always be in her father's room. At times she slept on the floor next to his bed, and sometimes in the bed beside him. She would be made to rub his back, and at times, put her leg over him and rock him to sleep.

[34] K.V. testified that she shared sleeping arrangements with her siblings, with the exception of K.I.V., who "slept with our parents." K.V. testified that at one point the "Smurf room," was turned into a bedroom for K.I.V.. K.I.V. testified that the "Smurf room" was a room in the basement of an Osgoode, Ontario home the V. family lived on, which was next to her parents room and which was decorated like a Smurf Village.

[35] K.I.V. described a usual pattern the sexual abuse took. Her mother would come and get her and tell her to go see her father, or take her to his bedroom. This typically happened after she arrived home from school, although it also happened in the evenings. Her grandparents would be gone when this occurred, or "downstairs" and her siblings would be elsewhere. P.V. would then leave. There were times when she was made to have sex with her father at night, and the sex would sometimes last all night, leaving her exhausted. One time she had sex with her father in a field.

[36] K.I.V. said that her mother would also call K.V. to go into the bedroom, and that she knew from her own experience what was about to happen to K.V..

[37] KI.V. described how when she would be called into the room her father would be watching pornography including threesomes and bestiality, and he would make her watch. She would have to touch his penis, and rub it up and down with her hand, and he would want her to “suck his cock,” which she would do. He would penetrate her vagina with his penis, and ejaculate, without a condom. He would say things, such as he wanted to get her pregnant, and he would ask her if she liked his “big cock.” He would insist that she would say she wanted to get pregnant and liked his big penis. He would either get on top of her, or she would be made to get on top. When he was done he would tell her to go and wash and to get her mother.

[38] KI.V. testified that on a couple of occasions he penetrated her anally. When asked during cross-examination if this did not injure her, KI.V. said, “It would cut my butt-hole and that was it... a little cut like a finger.”

[39] KI.V. said that on more than one occasion, perhaps 2 or 3 occasions, he would make her have sex with one of the family dogs. It happened with both Po. and Pi.. She and her father would be watching bestiality pornography, and he would either bring a dog into the room, or have P.V. throw one into the room. He would “start rubbing the dog’s dick and when it was hard he would put the dick in my vagina until it came inside me and then he would get on and come inside me.”

[40] KI.V. provided graphic testimony of one occasion when she was about 10 years of age when her mother, P.V., participated. KI.V. said that she believes her father told P.V. to come in, when she and her father were having sex. Her mother came in and went under the blankets and licked KI.V.’s vagina and sucked her father’s penis while he was having sex with KI.V.. After about 5 minutes KI.V. told them to stop and that she never wanted to do that again, and her mother never touched her sexually after that.

iii. Other Evidence Relating to KI.V.

[41] Other evidence relevant to KI.V.’s allegations was presented, including testimony from S.S., who taught KI.V. in grade 6 at M[...] Public School, from some time in the fall after the school year had started, until some point in the spring, before the school year ended. Ms. S.S. always had neglect-related concerns about KI.V.. On two occasions Ms. S.S. said she noticed injuries on KI.V. that prompted her to call the Children’s Aid Society.

[42] The first occasion was shortly before Christmas. KI.V. had arrived at school before 7:00 a.m. for an 8:50 a.m. start, and was in the school yard. She was very cold, so Ms. S.S. brought KI.V. in. KI.V. had a black eye and what appeared to be finger marks on her neck and chin, “like she had been held tightly.” Ms. S.S. said that KI.V., who was withdrawn, nervous and lethargic by nature, did not want to talk about it and appeared scared, but explained that the black eye occurred when her brother threw a toy at her. Although Ms. S.S. could not recall this, it is not contentious before me that this call prompted school interviews of the V. children by the Children’s Aid Society.

[43] The second occasion was in February. Ms. S.S. was concerned because KI.V., who was always thin and lethargic, was extremely distraught and had bags under her eyes. She was falling asleep at the desk. KI.V. had a large bruise on her arm and a rash on her neck. When confronted

she said that she had been injured playing with a pet. Ms. S.S. said that the rash did not look like scratches, but like yellowish bruising.

[44] Ms. S.S. agreed that she saw KI.V. almost every school day during this period, and never observed other signs of suspected physical abuse. She testified that during this time she was aware of her responsibility to report suspected abuse, and that she would be vigilant in doing so, although she would want to be sure she was right because she was afraid of making accusations.

[45] As indicated, the question of prior complaints was a central defence theme during this case.

[46] With respect to sexual abuse, KI.V. testified that she did not tell anyone that she was being sexually abused until she reported it to the social worker after her suicide attempt. She had never said anything before because her father had told her she would get hurt or go to jail if she told.

[47] KI.V. testified to a recollection when she was really young of telling a teacher, Ms. S., in a portable classroom at O[...] Public School, that her father had beaten her or had been hurting her. She said she told because she did not want to get beat anymore. KI.V. does not recall precisely what she said. She linked this disclosure, however, to the incident in which she was beaten with an electric cord after K.V. told their father that KI.V. had been looking at boys. She believes she showed the teacher the marks on her back and legs, although she was not sure. She recalls the teacher calling her home and asking someone on the other end – KI.V. assumes her parents – if this was true. KI.V. assumes that her parents denied it because Ms. S. told her to put her clothing back on and go outside. No-one intervened to assist KI.V., and when she got home she was beaten by her father, who punched her in the face and kicked her in the gut. There is no reference in the Children's Aid Society records produced during the third party records application to any complainants made by Ms. S., or connected in any way to this episode.

[48] During cross-examination by counsel for P.V., KI.V. was confronted with Children's Aid Society interview notes prepared by K. D., dated June 17, 2003 from O[...] Public School, where KI.V., then 8 years of age, is recorded as having provided Ms. K.D. with information that Ms. K.D. recorded KI.V. making disclosures about excessive discipline by her father, such as spanking to the bottom, sometimes resulting in red marks, and time-outs in the corner administered by both parents. The recorded disclosure described mother yelling and sending her to bed, and father's "face getting red and his eyes going funky" and that "father gets maddest of all," and spanked her when she was 5, causing a bruise on her bottom. She reported that her father hits her mother in the face, sounding like a door slamming, and they yell bad words and throw objects at each other. The report records KI.V. as having disclosed that mother has bruises on her arms, and father chokes her and she can hardly talk, and father tells the children not to tell the grandparents.

[49] Counsel for P.V. confronted KI.V. about why she would be prepared to make such disclosures, if she was so afraid, and why she would disclose this but not disclose the horrendous physical and sexual abuse she claims was going on at the time. After offering some hypothetical possibilities, KI.V. felt unable to answer why, saying she cannot quite remember what she said.

iv. Evidence about KI.V.'s Police Complaint

[50] Although the charge period ends in 2009, KI.V. testified that she was sexually and physically abused in the ways described until a day or two before her February 1, 2014, suicide attempt. This narration was offered to explain how the matter came before the court. The day she hung herself, her father drove home intoxicated, and beat her mother in the bedroom. K.V. testified that in the days leading up to the suicide attempt, KI.V. had discussed killing herself with her (K.V.) and K.V.'s boyfriend T.. KI.V. said that she hung herself because her father had abused her and her mother and sister "for almost my entire lifetime". She said she did not want to suffer anymore.

[51] After she regained consciousness, KI.V. testified that her father was contacting her and bothering her, and she did not want to have anything to do with him. She complained to the hospital and he was prevented from visiting. As part of her effort to break free from her parents, KI.V. did not want the Prince Edward Island property in her name, and was negotiating with her grandfather to sign the property over to him and her father, for \$1000.00. Her grandfather was making the monthly payments on the property. During the month or so she remained in the hospital after coming to, she nonetheless stayed in contact with family members using the hospital computer room. K.V. visited her.

[52] After learning that K.V. had shared allegations of her abuse with a hospital social worker while KI.V. was unconscious, KI.V. testified that she gradually shared her abuse with a social worker at the hospital psychiatric ward. She did not discuss the details, but was encouraged to go to the police. Her sister, K.V. wanted to report their abuse to the police and encouraged KI.V. to do so. KI.V. said that she was afraid to do so, and remained unsure until after she was discharged from the hospital. KI.V. ultimately decided to make the report because she wanted others to know what happened to her, and she wanted her Dad to go to jail for what he did to her.

[53] While she was in the hospital, KI.V. and K.V. had discussed the process that they would follow in going to the police, in detail, including with Victim Witness Assistance workers who were brought in. KI.V. resisted defence attempts to have her admit that she and K.V. shared their stories of abuse before they were reported to the police. KI.V. said, "We did not say anything to that degree." "No, I pretty much knew." Even before KI.V. was in the hospital she said, "I told her I knew he was touching her and she said she knew he was touching me." She could not place a time on when this occurred to her but said, "we probably knew in the beginning."

[54] While still in the hospital, KI.V. had decided that she wanted her father to confirm the abuse, specifically and in writing, and to apologize. She wanted this, both so she could "move on," and to secure a confession from her father in the event that she did go to the police. She therefore opened a line of communication with her parents, which includes the "Google Hangout" chat admitted as exhibits 6(a), 6(b) and 9 in this case.

[55] KI.V. testified that she was not aware that K.V. was trying to get her father to confess in writing around the same time, and that she did not tell K.V. what she was up to. KI.V. testified that she did not know that K.V. was also doing this, until the "beginning of the trial" when K.V. phoned her, and KI.V. told her she was having trouble saving the Google Hangout messages she

had exchanged. She rejected a defence suggestion that this was part of a joint plan to secure a conviction for their father.

c. Evidence relating to K.V.

i. K.V. on Physical Abuse

[56] Like KI.V., K.V. described being forced to engage in “evil fun,” and to being subjected to significant disciplinary force by both parents, and she claims that she was sexually abused by her father multiple times, and on one occasion with the direct assistance of her mother, P.V..

[57] K.V. described the “evil fun” as “messed up games” that she was forced by both of her parents to participate in. These events, she said, are her earliest memories of abuse, from the time she was 5 or 6 years of age. This went on until she was about 16 years of age.

[58] Like KI.V., K.V. described being forced to climb high objects with her sister, having her hands bent back, being thrown into bees’ nests or being forced to provoke bees into stinging them, and “crazy amounts of exercise” such as sit-ups and squats, and being forced to run for hours. K.V. described her father riding behind her on a “four-wheeler” while holding a branch to whack her to make her fun faster.

[59] Like KI.V., K.V. described being forced to fight with her sister and her cousin, S., ripping at each other’s hair, and punching and choking each other. She said her father would stand by with a stick and threaten to beat them if they did not fight. She said that once someone was on the ground, the other combatant would be forced to punch them in the face or smash their head on the ground, a move J.V. called “heikiing” someone.¹

[60] Like KI.V., she also testified to having a scorpion put on their bare stomachs. She said that this happened while her mother held her and her father tried to rile it up to sting the children. K.V. testified that she remembers the scorpion stinging her, and said it really hurt.

[61] K.V. described other “evil fun” activities that KI.V. did not mention. K.V. described being forced to eat and drink creations her parents made out of feces and worms, and being forced to eat animal feces and insects. She claims she has had her father’s feces rubbed in her face and mouth area. When they camped outside, the children would be forced to take off their shirts and prohibited from removing mosquitoes, and they were not permitted to slap the mosquitoes while they slept. K.V. described being forced, when the family lived in Jasper, to put her tongue inside a chicken coop while the chickens her father riled up would bite at and even latch onto her tongue, causing bleeding injuries to her entire mouth area. She described her father provoking her dog, Ally, to bite her, and she remembers her father taking her grandfather’s deer antlers and poking them into her in the stomach, pretending to be a deer, while she slept. She recalls being forced to watch horror movies. She would be forced to sit in hot “boiling” water or ice cold water in the bath tub, and made to stay awake. When she fell asleep he would administer vinegar or hot sauce to her eyes. She was sure this happened more than a dozen times. He would corner her on the stairs and pound her as part of the evil fun.

¹ This is my phonetic spelling.

[62] K.V. said that P.V. would be present during the evil fun, and she too was forced to jump off a high shed with the girls. P.V. did not seem as pleased by the games as J.V., who “enjoyed it quite a lot really from seeing his face,” although P.V. has forced K.V. outside and whipped her numerous times if she did not participate, and held her down so the dog could bite her.

[63] Like K.I.V., K.V. testified that she was constantly subjected to excessive disciplinary force by both of her parents, with tree branches, cords, rocks, BB guns, forks, wrenches. “Pretty much anything,” she said. K.V. said she and K.I.V. were beaten almost every day after school by their father, with cords or his hands, and her mother would assist her father at times by holding them down. She would be kicked by her father, while he wore his brown boots. Like K.I.V., she described sustaining whip marks on her legs from electrical cords. K.V. described being whipped hard enough that her legs bled, and there was blood everywhere, and she had to crawl away, and it hurt to walk the next day.

[64] Like K.I.V., K.V. said she was punched in the face and head many times, and she also described being taken to the bush and being beaten with a tree branch. She, too, said that her father would bite her hands, specifically her thumb and pointer finger, and he would not let go unless she stopped screaming. K.V. said he also bit her feet and she claimed to have been choked by her father, including with a cord on one occasion. Like K.I.V., she said her father also put her hand in a vice clamp. K.V. said he also pinched her hand with a wrench.

[65] In addition, K.V. described her father banging her head on the floor, and on one occasion, against a toilet so hard that the toilet broke. She said he gouged her eyes. In her statement she had described him as gouging her eyes “as hard as he could,” but in her testimony she said, “it is more as hard as I could take. It is more of what I meant.”

[66] Like K.I.V., K.V. described being hit with a sledge hammer. K.V. said it happened in the barn on “J[...] Road.” She said he swung it at her a few times and she was hit on the legs and knees. She said she was unable to walk that well for a while, about a week. When confronted with the statement she had typed in which she described her father as hitting her with the sledge hammer “as hard as he could,” she again said, “Well, as hard as I could take.”

[67] The statement that describes the use of the sledge hammer also described K.V. being punched in the stomach so hard that she was coughing up blood, and how her father hit her over the back with the sledge hammer. It continues, describing how her father took a piece of plywood and hit P.V. in the face when she interceded, and then hit K.V. over the head. “The rest of the day for me is black.” During cross-examination K.V. said that it was true, that she was coughing up blood, and was knocked unconscious, although she corrected the reference to plywood, saying it was a piece of wood you could hold like a baseball bat.

[68] K.V. also testified that after her parents, who had moved to Nova Scotia with K.I.V. for less than a year, returned, things changed between her and K.I.V.. “She hated me and called me a ‘slut.’” K.V. said that K.I.V. would pull K.V.’s hair and beat her, gouge her eyes, and choke her, all at their parent’s command.

[69] She said her father would threaten to kill her, and he would hurt P.V. and then he would tell K.V. about it.

[70] Like KI.V., K.V. linked much of the disciplinary force to her father's concern about the daughter's involvement with boys. She, too, was made to dress like a boy, and she describes her mother being instructed by her father to cut up her feminine looking clothing, and doing so. Like KI.V., K.V. said she, too, was called a "slut" and she was told she would get pregnant or "knocked up" and become a "whore." K.V. said that her father put her hand in the vice clamp while she was interrogated about boys. She, too, said she and KI.V. were asked every day if they were talking to boys, although KI.V. was questioned more intensely about this.

[71] K.V. described an occasion when they lived on "J[...] Road" in North Augusta, Ontario, when she told her father that KI.V. had been looking at boys even though KI.V. had not. K.V. said she made this up because she was afraid she would get beaten for lying if she did not tell on KI.V.. K.V. described how her father and mother dragged KI.V. outside and beat her and threw her on a giant beehive. She said KI.V. was beaten to unconsciousness and thrown into a dog house full of bees. When she woke up, KI.V. was hyperventilating, promising to never do it again.

[72] K.V. described how, once, her parents found out that she had a boy for a friend, and she got beat for it. She was called a "slut" and a "whore."

[73] Like KI.V., K.V. testified to an incident in which KI.V. was accused of having sexual intercourse with the boys next door. K.V. said the accusation was levied by her father against her, and against her mother as well. K.V. said that they were made to stay up all night and went into the fields to spy on the boys next door, and that they would not be allowed to sleep. K.V. said that this went on for about a year.

[74] K.V. testified that when she was around 13, she witnessed her father burning KI.V.'s feet with a lighter, while her mother held KI.V. down, covering her head when she was screaming. K.V. says this occurred when the family was sleeping in the same room, and she held her hand over her sister Ks.V.'s mouth so Ks.V. would not say anything.

[75] K.V. described how she herself had once been burned to discipline her when she was suspected of smoking. She was 13 or 14 at the time. Her father turned on the stove element and grabbed her hair and pushed her face towards it. She touched it with her left hand, while resisting. The burn on her hand ultimately "bubbled a bit," and her ear and the side of her face where scorched. She said her face stayed red for a couple of days. K.V.'s video police statement of March 20, 2014 claims that she was asked about her face by her grandparents and told them the scorched face was sunburned, and she was confronted with this during cross-examination. She said she could not recall that, saying "its very hard to remember." When challenged during cross-examination that she would not be able to write at school with a burned hand, she said she is right handed and she thinks it happened in the summer, when she was not in class.

[76] K.V. testified that she also got beat for having friends. She said that she was beaten after a classmate named "Kr" phoned for her. She had told Kr not to call her or KI.V. because their parents are abusive and would hurt them if they had friends, but Kr called anyway.

[77] K.V. also recounted an incident when she and KI.V. were in high school, she believes in grade 9, and the girls were spied on by their parents who saw them talking to another girl and waving at classmates. K.V. testified that their parents signed the girls out of school and went to

Groverton Road, where K.V. was beaten with a windshield cleaner stick until it broke, and her parents pulled K.I.V. out of the car. P.V. beat K.I.V. with punches, while J.V. punched K.V. until she was getting flashes of light.

[78] At one point during cross-examination, K.V. was asked whether her father had ever cut her. She said he had, but the answer was not pursued. It was followed up in re-examination, and K.V. began to describe an incident in Winchester, Ontario in which she walked into a trailer the family was living in after their house had burned, and witnessed J.V. cutting himself with a knife. She left that episode and then said that when he cut her it was in Greely, Ontario, when he was chasing P.V. with a knife, yelling and screaming, and when she ran after them. She said he took the knife and slashed at her (K.V.'s) right arm and cut her a bit, but did not stab her or anything. "He was just threatening I guess." K.V. then described how, on other occasions, he would use a knife or screwdriver to poke, as quickly as he could, between her fingers as she held her hand against a table or surface. While describing this, K.V. held one hand splayed out flat on the witness' table, and mimicked swift downward stabbing movements with her other hand.

[79] K.V. also described being assaulted by her mother after K.V. disclosed to her mother that father had been touching her or raping her. During her evidence in-chief, K.V. said that this happened a month or so after her father started raping her, and that by then it had happened multiple times. Her father told her mother he was going to the gym, and she and the other children went for a walk with their mother on 2nd Line Road. K.V. said that when she began telling her mother, her mother told the other children to go ahead. K.V. testified that her mother then told her that this was supposed to happen, and that she was not allowed to tell P. (Grandfather) and Granny. K.V. testified that her mother began to punch her and threw her on the ground and "stomped me, it was more of a kick though not a stomp," and pulled her hair, and told her that if she ever told anyone, she was going to get worse.

ii. K.V. on Sexual Abuse

[80] As this final episode described above by K.V. reveals, like K.I.V., K.V. claimed repeated acts of sexual abuse by her father. K.V. said there was too many times to count. She too, described being taken to her father's bed by her mother, every day or every second day, and often being sexually abused more than once a day, usually after school or in the evenings, often when their grandparents were at the casino. She testified that she drew an association between the sexual abuse and her father's drug use. When she knew that her parents were going to get drugs she would try to hide, because either she or K.I.V. would be taken to her father.

[81] As K.I.V. did, K.V. testified that her father would be watching pornography when she was brought in. Unlike K.I.V., however, K.V. would sometimes resist, resulting in violent rapes. She said that invariably she was subjected to intercourse. Typically he would get on top because when he tried to make her go on top she would sometimes run away. Unlike K.I.V., K.V. testified ultimately that there were times when her father wore a condom, a point I will return to below.

[82] During sex, her father would have mood swings, alternatively telling her he loved her and calling her a "slut," or "whore." K.V. testified that he said he was having sex with her because she wanted all the boys, and he wanted to prevent that, and that he would tell her that mother did not love him and it was alright because he wanted to be with her because mother had cheated on

him. K.V. testified that her father expected her to moan and tell him that she loved him, but K.V. would refuse.

[83] K.V. also claims that her father attempted anal sex with her, but only once because, as he partially penetrated her, she was screaming. She said he also tried to force her to have oral sex but she would not co-operate, an episode described in more detail below.

[84] K.V. described the first instance of “rape,” which she said meant sex against her will, occurring in Osgoode, Ontario, when she was maybe 8 years of age. She testified that her mother told her she was going to the store or post-office with K.V.’s grandparents. K.V. testified that her mother told her to go downstairs, where her father was. K.V. said she did so, and was told by her father to lock the door, which she did by jamming a screwdriver into the broken door lock, as she had been taught. Her father was on his bed watching pornography. K.V. told her father she did not want to watch it, but he “pretty much jumped up and dragged me over to his bed and sat pretty much on me.” She said he “physically ripped” her clothes off of her and ripped his clothes off, and tried to put his penis inside her. She was crying and resisting, and he put a pillow over her face, telling her to shut up and calling her a “slut.” He said it was OK because he loved her. She said he put his penis inside her and was beating her, punching her in the stomach as she resisted. She said that her mother returned home and was knocking on the door. She said her father had punched the wind out of her, and told her that if she told about what was going on, he was going to kill her. K.V. said her father dragged her into the “Smurf room,” a room decorated like a Smurf village adjacent to his bedroom, and that she lay down and pretended it never happened.

[85] K.V. also described another incident where her father caught her playing in the “Smurf room,” with one of the Barbie dolls from his online business inventory. He told her to bring it into the bedroom and play with it there, where he was watching pornography. She told him he should not be watching that, and he grabbed her and said “if you want the toy you have to earn it.” K.V. said she threatened to tell her grandparents and her father pretty much beat her almost unconscious by punching her in the head and stomach.

[86] K.V. also gave details about an incident when her mother attempted to force her to perform oral sex on her father. K.V. said she was around 15 or 16 years of age. She remembers her mother dragging her into the bedroom and being told to be with her father. This time her mother did not leave. She stayed and pushed K.V.’s head towards her father’s penis and told K.V. she had to give her father a “blow job.” K.V. said she refused, and threatened to bite her father’s penis off. Her mother held K.V. to the ground while her father beat her. K.V. said she remembers being on the ground on the side of the mattress, being beaten in the stomach. Ultimately, her mother said “no, they are going to hear,” and J.V. punched her mother. He had sex with K.V. while her mother sat beside the computer, kind of like in the fetal position, crying. Later, K.V. said that J.V. said he was sorry, and was never going to have sex with her again. Her mother ultimately took her out of the room and she, too, promised that she would never let it happen again.

[87] Finally, K.V. described having to tend to her father’s intimate and personal grooming. She said she had to sit in with him when he took a bath, and to rub his body with a “scrunchy,” and that she would have to squeeze pimples in his genital area and bottom.

iii. Other Evidence relating to K.V.

[88] K.V. was diagnosed with herpes on October 10, 2001, after being taken to Dr. T.B.'s medical office, complaining of a painful rash, and stomach pain. She was not quite 7 years of age at the time. Dr. T.B. cultured the rash, and the Herpes Simplex Type 1 diagnosis was confirmed two days later. Dr. T.B. said in his testimony that this diagnosis, in children, is highly suspicious of sexual abuse. He said it was around her anal region. He could not recall the precise pattern that the rash showed, but K.V. testified it was in her vaginal, anal region. She described the blistered rash in detail.

[89] K.V. testified that her mother, and she believes her grandparents, took her to the hospital because of the rash. She had initially told her father about it when he was walking up from the basement, but he grabbed her arm tightly and told her to shut up and not say anything. Because of the pain, she nonetheless ultimately disclosed the rash to her mother and grandparents when her father was "out to the gym," and she was taken to the doctor.

[90] Dr. T.B. testified that he advised P.V. of the diagnosis, and that he would have to report it to the Children's Aid Society. His medical notes confirm his intention to do so, in two places. Dr. T.B. is confident he did make the report, but there is no record of such a report in the Children's Aid Society records produced in response to the third party records application. He testified he did not tell young K.V. what he had discovered.

[91] K.V. testified that she overheard her parents discussing the rash, and that she learned that it was caused by sex. She said that her parents told her grandparents that she had "worms." In 2014, when K.V. decided to make a police complaint, she went to Dr. T.B.'s office and secured a copy of the medical records, which she provided to the police.

[92] K.V. said that she did not receive medical treatment for anything else when she was a child. She testified that she has had lots of "concussions" from being struck in the head. She testified to passing out as a teenager in Smiths Falls from a concussion, and being taken to hospital. She said that she still experiences light and noise sensitivity, and occasional vertigo that have been diagnosed as linked to concussions, but no confirming medical records were filed. She testified that the burns she received to her face and hand were treated with ice.

[93] Like K.I.V., K.V. said she had to wear pants to cover her injuries. She said she would not allow others to see them, and if they did, she lied.

[94] K.V. testified that, as a child, she never disclosed the sexual abuse she was experiencing to anyone, because her parents had threatened to kill her if she did, and she was afraid to do so. Her parents also told her that no-one would listen to her, and that if they did, all they would want is money, "and another notch for the belt." Even her grandparents told her that the "cops" were not her friend.

[95] K.V. said there were times when teachers asked her about injuries, but that she brushed them off because she was afraid. She said, however, that her parents had not threatened to kill

her if she disclosed the beatings, so on some occasions she did. She said she disclosed the physical abuse to some teachers, and she tried to tell the Children's Aid Society.

[96] She said that she told a teacher at C[...] Elementary School, a Mr. C., who was her track and field teacher, that she was being hurt by her parents. She said, during cross-examination, that he told the Children's Aid Society. She testified that the Children's Aid Society came and asked about it, and she said she "pretty much lied" because she did not want to get hurt, but that she got beat for it. K.V. was not sure what year this would have happened. There is no record in any of the Children's Aid Society records of any complaint having been made by a Mr. C..

[97] K.V. testified that she also thinks she told two male teachers, who were friends of each other, at M[...] Public School, also an elementary school, that she was being hurt by her parents. The two male teachers were together at the time, and had noticed choke marks on her. K.V. did not say specifically what happened after this report, although she did testify that when she told teachers, the teachers would call home and speak to her parents and nothing would be done by anyone, and she would be beaten for having said anything.

[98] K.V. said she had a specific memory of telling the school principal or vice-principal, Ms. W. or W., at O[...] Township High School, when she graduated from grade "12x." She said she had been beaten the night before. She said she had a bruise on her face at the time. She told the teacher that her parents abused drugs, and hurt her. She said she was over 16 years of age at the time but hoped that the teacher would call the Children's Aid Society because Ks.V. and Js.V. were still young, but nothing was done.

[99] K.V. also testified to a memory of having told a female counsellor at a school about getting hurt at home, when interviewed about her bad grades. She does not recall the details other than that she believed the counsellor was pregnant. No time frame was offered.

[100] When the Crown asked her if she had ever shared a classroom with KI.V., K.V. said she believes they were in Ms. S.' class together in a portable classroom in grade 3 at O[...] Public School. When asked in-chief whether she had ever told Ms. S. what was going on at home she said, "I am not sure." During cross-examination she said she may have told Ms. S., but did not know. She said that she does remember being questioned by the Children's Aid Society at O[...] Public School about witnessing her father "choking out" her mother, and she disclosed that, but she was not sure this disclosure involved Ms. S..

[101] As indicated, K.V. also testified that she tried to tell Children's Aid Society workers, but nothing would happen. She said that most often when interviewed by the Children's Aid Society she would deny abuse, because she did not want to get beat. She said that she has, however, told them she was hit by sticks, and choked, and hit. "They would just go to my parents, so I stopped." There are no records of complaints by K.V. to Children's Aid Society workers in any of the records obtained during the third party records application, that reveal complaints by K.V. of being physically abused by her parents.

[102] Ms. M., a Children's Aid Society worker with the CAS United Counties Stormont, Dundas and Glengarry, testified about responding to the V. home on December 11, 2008. This was after the Children's Aid Society received a complaint from K.V.'s grandfather, relating to

concerns about K.I.V. being forced to wear boys clothing and being isolated in the family, and about the parents' drug use. It was K.V. who had gone to her grandfather, prompting the call.

[103] Ms. M. testified that when she arrived at the V. home there were no adults around, and K.V., who she initially saw coming off the school bus, would not let her in the house. At first, when Ms. M. saw K.I.V., she assumed she was "J.S.V.," K.I.V.'s brother, because K.I.V. looked like a boy and was dressed like a boy.

[104] When P.V. ultimately admitted Ms. M. to the home some time later, Ms. M. asked to speak to the children. P.V. called them in, one at a time, and asked them if they wanted to talk to Ms. M.. None of the children would talk to her. Ultimately, the grandparents came into the room, and Ms. M. said that the grandfather was "passive aggressive," and said that "whatever he had to say he would say in front of P.V. and J.V." In the end, he said nothing. Ms. M. confronted the parents with the complaint, but did not disclose that the grandfather had lodged it, because of Children's Aid Society policy. She did, however, tell the parents that the complainant had received the information from K.V.. When K.V. was called in, she denied that she made a complaint, saying it was a lie.

[105] K.I.V. ultimately told Ms. M. that she dressed as she did because she wanted to. The parents refused to consent to having the children see a behavioral pediatrician, or to speak to a family doctor, or the school. In the end the complaint was not verified because the investigation did not produce enough information to make a decision.

[106] Ms. M. was asked in cross-examination whether she observed any signs of drug abuse by the parents, or physical abuse of the children. She saw no signs of either, but commented that the children were wearing seasonally appropriate clothing.

[107] K.V. described, when she was older, disclosing the sexual abuse to her Aunt T., J.V.'s sister, and to her grandparents. She remembers when she was 16 or so telling her Aunt T., J.V.'s sister, over Facebook, about being sexually abused. They discussed the herpes diagnosis that had occurred when K.V. was a child. When her Aunt T. came to visit while her parents were away in Nova Scotia, they told her grandparents. K.V. said they did not believe it, and nothing was done.

[108] She also testified to telling her grandparents when she was 19 or 20 or 21 that she was being "sexually harassed" and raped. This disclosure occurred in Kenmore. She said she had been hiding at a friend's home, and when she got home she "confessed." K.V. testified that her father was called upstairs and confronted. Both of her parents called her a liar, and nothing was done.

iv. Evidence about K.V.'s Police Complaint

[109] K.V. testified that making the police complaints was one of the hardest things she had ever had to do, because she feared her parents would harm her. She said that she ultimately decided to report the abuse because, while she had a place to stay with her boyfriend at the time, she was really sick after K.I.V. hung herself on February 1, 2014. K.V. decided that it was time to do something. She wanted K.I.V. and her other siblings to have a better life. She acknowledged that it was her idea to go forward to the police, even before K.I.V. was willing to do so, and that it was more her idea than K.I.V.'s to complain.

[110] The exact chronology of K.V.'s complaint is unclear.

[111] She may have spoken about the abuse initially to S.A., a Children's Aid Society worker. She said she met him at her grandparent's house when the police were there in the days following the suicide attempt. The police had been called because her parents had violated an order not to go to the home, where Js.V. and Ks.V. were staying.

[112] In any event, it is clear that, at some point, K.V. believes about 10 days after KI.V.'s suicide attempt, she told a hospital social worker, L.C., about the abuse in the home. This may have happened sooner, as K.V. agreed that KI.V. was still in a coma when this conversation took place. She did not give the social worker details.

[113] Around that time, K.V. went to the police with S.A., and talked to Det. W. about the abuse, but K.V. would not give a formal statement. She said she "completely wanted to" make a formal complaint, but was very scared to do so. She said she told Det. W. she might come back if KI.V. also came forward. She said she wanted the support, but at the time, her main motivation was to do this to help KI.V..

[114] K.V. and KI.V. ultimately each gave their formal videotape police statements on March 20, 2014. Sometime before that, KI.V. told K.V. that she was going to go to the police, and K.V. promised her support.

[115] K.V. explained that the delay in going forward was caused because their parents were in Prince Edwards Island, and she was fearful that if she complained before they were back in Ontario, they would escape, and may take their younger sister Ks.V. with them to Vancouver. By the time her parents returned to Ontario, K.V. had prepared her typed notes, and she and KI.V. had discussed how things would go with Victim Services workers, who arranged for both young women to be placed in a shelter.

[116] While waiting for her parents to return, K.V. resolved to try to get her father to confess in writing. That effort is captured in exhibits 7 and 8, covering from March 5, 2014 to March 8, 2014.

[117] K.V. was cross-examined aggressively by both defence counsel, suggesting that she had colluded with KI.V. to make false allegations against their parents, and that they had discussed the specific allegations before going to the police together.

[118] K.V. testified that while the two young women did discuss going to the police, and the process that would entail, they did not discuss what happened "too much," certainly not in detail. K.V. said they did not have to do so because they had both gone through their experiences together. She said that she never showed KI.V. the typed document outlining her story, nor did they discuss it. K.V. said that document was a private thing. She testified that she and KI.V. discussed their "misery," and the "step by step" process that this would involve, but they "never built a story together."

[119] K.V. testified that KI.V. did show her some of the messages she had exchanged with her parents about the Prince Edward Island house, because she was giving KI.V. advice on what do about the house, but they did not otherwise share their electronic exchanges with their parents.

[120] It was also suggested that the two young women agreed that each would try to secure a written confession from their father. As exhibits 6(a), 6(b) and 9 show KI.V. was trying to achieve the same thing between February 25, 2015 and March 8, 2014, dates overlapping, but much longer, than K.V.'s efforts.

[121] K.V. testified that she may have told KI.V. about trying to get an apology or confession, but she did not think so, and she was insistent that securing a written confession was not a joint idea or plan. She said that this was something she wanted to do, both for closure, and to secure proof against her father because she knew he was going to say she was lying.

IV. Analysis

a. General Principles

[122] To succeed in gaining a conviction, the Crown must prove the specific charge beyond a reasonable doubt. This is a heavy standard, designed to prevent the conviction of innocent persons. It is not enough to convict, for a trial judge to conclude that accused persons are probably guilty. Nor is it necessary that their guilt be proved to an absolute certainty: *R. v. Lichus* (1997), 9 C.R. (5th) 1 (S.C.C.). The standard beyond a reasonable doubt is much closer to a certainty, however, than it is to the balance of probabilities measure: *R. v. Starr* [2000] 2 S.C.R. 144.

[123] In achieving a verdict, I am permitted to believe all, or none, or some, of a witness's testimony: *R. v. Francois* [1994] 2 S.C.R. 827 at para. 14. There must, however, be a rational basis for the decision taken. In coming to that decision, I am to consider both the credibility and reliability of witness testimony, in light of all of the evidence before me. Evidence is credible when a witness is attempting to be truthful. Reliability has to do with the accuracy of the evidence. It is essential to consider reliability separately from credibility since even an honest witness can be mistaken: *R. v. Norman* (1993), 87 C.C.C. (3d) 153 (Ont.C.A.). Errors can occur because there are impediments in the witness's ability to see or understand events, or because the circumstances in which the event was witnessed undermine the ability of the witness to observe and understand events accurately. Errors can occur because of memory problems, or because the witness is not able to communicate their information in an accurate or dependable way.

[124] While there is no fixed framework for assessing testimony, a judge will consider whether there is reason to be concerned about the honesty of the testimony of a witness, or if there are factors that betray problems linked to the witness's opportunity to observe, to remember, and communicate. Data informing these decisions can come from admissible evidence about the witness, and from how plausible their narrative is judged with ordinary human experience, how consistent their testimony is, both internally and externally based on prior statements by the witness, and how the testimony fits with other evidence. To a lesser extent, the demeanour or manner in which the witness testifies can be consulted.

[125] It is therefore important for trial judges to consider and address all significant contradictions and inconsistencies in witness testimony, and to offer a rational basis for the weight or importance that the judge chooses to give the evidence in light of material problems: *R. v. Johnson* [2011] O.J. No. 317 at para. 125 (Ont.S.C.J.), and see the cases cited therein; *R. v.*

M.(A.) 2014 ONCA 769 at paras 13-14. It is also important for the trial judge to search for confirming or contradictory evidence.

[126] I must bear in mind, however, that there are not any formal corroboration requirements that apply in this case, and that “confirmation” sufficient to add confidence in the testimony of a witness can be found in evidence that does not directly implicate the accused in the crime charged, provided that confirming information is capable of supporting a witness’s account: see, *R. v. B.(G.)*, (1990), 77 C.R. (3d) 327 (S.C.C.) respecting child witnesses, and *R. v. Kehler* (2004), 19 C.R. (6th) 49 (S.C.C.) respecting confirmation and dangerous witnesses generally.

[127] I must also caution myself that while I can consider the manner in which a witness offers their testimony, I am not to rely unduly on my subjective impressions of the demeanour of witnesses, since demeanour can be a notoriously unreliable predictor of the accuracy of evidence: *R. v. Johnson, supra* at para. 126. Where it is appropriate to consider the demeanour of a witness, inferences are confined solely to credibility, not reliability, since demeanour is, at best an indicium of the witness’s beliefs about facts, and not a factor confirming the reliability of those facts: *R. v. Rhayel* 2015 ONCA 377 at para. 85. No decision to believe a witness should be based wholly or even substantially on that witness’s demeanour. When demeanour is relied upon, it is helpful to offer cogent reasons as to why this is appropriate: *R. v. M.(O.)*, [2014] O.J. No. 3210 at paras 32-34 (Ont.C.A.).

[128] When evaluating the testimony of K.I.V. and K.V., I must also bear in mind the principles that apply when an adult witness testifies to events alleged to have occurred when the witness was a child.

[129] When a child is testifying as a child, courts are schooled by appellate authority to judge the credibility and reliability of their evidence, bearing in mind their mental development and understanding at the relevant time. Children do not see the world the same way that adults do, and they may not interpret events as accurately because they are less experienced. People tend to notice what is important to them, and for children things such as time, place and peripheral details are typically unimportant, and therefore less apt to be noticed. To be sure, the standard of proof is not lowered when children testify, and where the evidence proves to be inadequate because of the inherent frailties in child evidence, an acquittal is required. Yet in deciding what to make of the evidence of children, it is critical that judges attempt to understand their evidence in light of the mental development and understanding at the relevant time, and not treat problems explicable on this footing as proof of dishonesty, or even of inaccuracy on core matters: *R. v. W.(R.)*, [1992] 2 S.C.R. 122.

[130] Where, as here, an adult testifies about matters that occurred as a child, a more nuanced approach is required. The credibility of the testimony of that witness:

“...should be assessed according to criteria applicable to her as an adult witness. Yet with regard to her evidence pertaining to events which occurred in childhood, the presence of inconsistencies, particularly as to peripheral matters such as time and location, should be considered in the context of the age of the witness at the time of the events to which she is testifying: *R. v. W.(R.)*, *supra* at para. 26, and see *R. v. M.(A.)*, *supra* at para. 11.”

b. The Motive to Mislead Theories

[131] It is convenient to begin my evaluation of the evidence offered, by examining the theories offered by the defence for why K.I.V. and K.V. would concoct the horrendous allegations offered to this court.

[132] I want to reiterate, however, that the burden of proving the accused to be guilty is on the Crown. There is therefore no obligation on the defence to demonstrate why a witness may have reason to lie. To require the defence to do so would not only reverse the burden of proof inappropriately, it would be a reasoning error to trust a witness because there is no proved motive to lie. While the proved presence or proved absence of a motive to lie is a factor that can be considered, the failure by the defence to expose a viable motive does not mean that no such motive exists: *R. v. M.(O.)*, *supra* at paras 104-109, and see *R.v. L.(L.)* 2009 ONCA 413 at para. 44, cited therein. Indeed, witnesses have been known to lie for no reason at all: *Lloyd v. Powell Duffryn Steam Coal Co.*[1913] 2 K.B. 130 at 138, reversed on other grounds, [1914] A.C. 733 (H.L.). I am entertaining the defence suggestions to determine whether there is sufficient reason to add a motive to lie as a makeweight against the Crown's case, as suggested by the defence.

[133] Counsel for P.V. offered the most sustained and intricate motive-based attack against K.I.V.'s and K.V.'s evidence. He suggested that K.I.V. brought the criminal allegations, believing that the only way she could gain freedom from her controlling parents was to have them locked up, and that a sympathetic K.V. helped K.I.V. to concoct the plan.

[134] I reject the suggestion that the criminal allegations were prompted by a desire to free K.I.V.. This claim is ungrounded in the evidence, and frankly, makes little sense.

[135] There is no doubt that J.V. exercised repugnant control over not only K.I.V. but the entire family, and I have no hesitation in accepting that K.I.V. wanted her freedom, and that her sister wanted this for her. I also accept the admission gained by defence counsel from K.I.V. that she felt she needed her sister's help to achieve freedom. Still, K.V. was able to get her freedom when her boyfriend gave her a place to live, and she would have helped her sister. In K.I.V.'s words, "I wanted a new life but I had other choices. I could have left with my sister." It makes no sense that these young women would have gone to the lengths suggested to get K.I.V.'s freedom.

[136] Moreover, this suggested motivation does not sit well with the complainant's reality. It would have been obvious to the complainants, if they were so minded, that it would be a risky, low percentage gambit, apt to antagonize their father, to concoct a litany of false allegations against him.

[137] Whether J.V. committed the offences alleged or not, it cannot be realistically contested that these young women fear their father. There is ample evidence, even leaving aside the criminal charges against him, that J.V. dominated the home and was verbally abusive. Indeed, at one point in his Google Hangout chat with K.I.V., J.V. acknowledges the fear that at least K.I.V. had of him at the time, saying, "you don't ever have to be afraid of me again," and he refers to himself repeatedly as a "monster": exhibits 6(a), 6(b) and 9. His reaction when he anticipated the risk that K.I.V. might bring a criminal complaint against him makes clear that when these young women went to the police station to make their formal complaint, they had reason to be doing so under the shadow of fear of retaliation. J.V. threatened K.V. in an email message on March 8, 2014, saying "Im calling your bluff do it bitch and ill wait a long time." "hurt me ill hurt u bitch I don't give up": exhibit 7. With reference to K.I.V. he said to K.V., "shes trying to make lies up to

put me in jail if i get hurt ill hurt back i don't want this to happen": March 6, 2014 ex. 8, and he messaged KI.V. directly on March 8 2014 at 2:30 a.m. saying "when I get hurt I hurt back," and 10 minutes later, "hurt me ill hurt back I dont give up."

[138] Not only was the prospect of making criminal allegations against their father a frightening one, I have no doubt that these young women came forward knowing that their allegations may not be believed. They knew that they could bring the criminal allegations and yet not succeed. Indeed, KI.V. testified about her fear of not being believed and how it caused her to hesitate in going to the police, after K.V. suggested doing so. I believe her testimony about this because it makes sense. The theory that these young women would take the risk and concoct criminal allegations against both parents as a way of freeing KI.V. from their father does not.

[139] Nor is there any currency in the theory, offered by counsel for P.V., that KI.V. made criminal allegations against her parents so that she could enjoy her ODSP or disability payment, without having J.V. take the money away for himself. KI.V. could have achieved that without having her father locked up, by moving out of the home and using her ODSP money to enable her to do so.

[140] Counsel for J.V. attempted to raise a different financial motivation on KI.V.'s part. He suggested that she feared that she would lose the house in Prince Edward Island, and that she brought the allegation for her own enrichment. He also suggested that she brought the allegation out of vengeance related to money because her father had spent the money on drugs that KI.V. had helped her father make in their illegal internet business, and when they did break and enter offences together.

[141] These "financial" and "financial revenge" theories are at odds. It is not clear to me how sending her father to jail would enhance KI.V.'s financial position. If she was interested in money, attacking her father would jeopardize the ownership of the home, as the payments were being made by her grandfather who loaned the money to her father. If she wanted to continue with an internet trading business, honestly conducted or not, she could have taken her accounts with her when she moved out, and continued antique trading. She did not need her father for this. He needed her or someone else to be the face of the business, because his dishonest business practices had been exposed.

[142] I am fully persuaded that KI.V. did not involve herself in these criminal allegations for financial gain. While I am mindful that, on the evidence before me, KI.V. did, at one point, negotiate for \$1000 in return for signing the house over, she ultimately chose not to pursue that. She just walked away, signing over a home in her name because she wanted nothing to do with her family, a decision that can be seen progressing in her message exchanges with her father.

[143] Similarly, there is no foundation for the theory attempted by both defence lawyers that KI.V. brought the criminal complaint to facilitate a law suit against the Children's Aid Society, or school board, for not protecting her, or to facilitate a Criminal Injury's Compensation Board application. KI.V. testified that she has never contemplated suing anyone over what happened to her, and that although she was advised of the Compensation Board by victim's services, she has not applied and sees no point in doing so. There is no evidence before me of any financial claims being taken by KI.V..

[144] I am equally persuaded that there is nothing to the suggestion that K.V. concocted these allegations against her parents for money. While she did say that she has thought of suing the Children’s Aid Societies because she believes they failed her, launching a criminal complaint against her parents so that she can sue the Children’s Aid Society is a remote and complicated financial plan. It is so remote and complicated, in fact, as to be incredible, and I do not believe it. K.V. has considered suing the Children’s Aid Society because she believes they failed her. I am convinced she did not bring her allegations to the police so that she could sue them. Nor has she used the far easier route, which is available to her, of applying to the Criminal Injuries Compensation Board. I believe her when she said, “I am really not doing this for the money.”

[145] Finally, defence counsel has suggested that these criminal allegations may have been made out of spite, because of the horrid upbringing the children had, altogether apart from the criminal allegations. Counsel for J.V. and P.V. do not contest that the environment was one of deprivation, neglect, drug abuse and control, and this, they say, gives the young women a revenge motive for making up the allegations.

[146] To be sure, there is clearly deep antipathy on the part of the complainants against their parents. K.I.V. has demonstrated that she wants nothing to do with her parents, and K.V. promised, under oath, that she will never forgive them. As evidence, however, this kind of antipathy has a “chicken and egg” character. It has no forensic use. If the complainant’s were physically and sexually abused as they say, the antipathy is not a motive to lie, but rather a consequence of the truth. Whether that is so should be determined on the evidence, not on speculation that the egg might have arrived before the chicken. Quite simply, this is not a case where the verdict can reasonably be informed by drawing from the animosity the complainants’ have.

[147] There has therefore been no proved motive to mislead that must be added to the scales as a makeweight against the Crown’s case.

[148] At the same time, however, in spite of its submissions to the contrary, this is not a case where the Crown has proved an “absence of motive to mislead” that would enable the Crown to ask the court to believe the complainants because they have no reason to lie. This is not a case, for example, where an allegation occurs suddenly by a complainant against someone they previously had a positive relationship with. As indicated, there is a sorry history between the parties, and enmity on the part of the complainants. While this is not a basis for inferring that the complaints *are* motivated to lie, it is information that prevents an inference that the nature of the relationship between the complainants and accused persons was such that the complainants would have no reason other than the truth to be making such horrid allegations. Ultimately, the motive debate adds little to the outcome.

c. The Similar Fact Evidence

[149] Independently of the “count to count” similar fact evidence issue, I am entitled to consider the eye witness testimony of one complainant about incidents involving the other complainant. For example, the similar fact evidence rule does not prohibit me from relying, when determining whether K.V. was assaulted by her father, on the testimony by K.I.V. that she witnessed K.V. being whipped by him with a cord. Nor does it prevent reliance by me on other first-hand observations made by one complainant that are relevant in resolving allegations

involving another complainant, and which do not disclose discreditable conduct against the accused persons, such as sleeping arrangements or the lay-out of a house.

[150] The “count to count” similar fact evidence issue arises only where the Crown seeks to rely upon inferences derived from the charged discreditable acts of an accused person, when resolving different charged discreditable acts against that person. The rule applies whether the charged discreditable conduct evidence is being offered to prove other criminal allegations involving the same complainant that is allegedly involved in the proposed similar fact evidence, or a different complainant. To provide an example, the Crown must meet the requirements of the similar fact evidence rule if it wishes to rely on a charged discreditable act involving K.I.V., to assist in proving other charged acts, whether those other charged acts involve K.V. as the complainant, or K.I.V. herself as the complainant. Similar fact evidence is presumptively inadmissible for all such purposes, and the burden is on the Crown to establish that the admissibility prerequisites are met, on the balance of probabilities: *R. v. Handy* (2002), 164 C.C.C.(3d) 481 at para 55.

[151] The test for the use of “count to count” similar fact evidence, summarized above, is broadly the same as the test for receiving discreditable evidence about the accused on occasions that are not charged: *R. v. Johnson, supra*, citing *R. v. Moo* 2009 ONCA 645 at para. 97. The base question is whether “in the context of the particular case the probative value of the evidence in relation to a particular issue outweighs its potential prejudice and thereby justifies its reception”: *R. v. Handy, supra* at para 55.

[152] Since “general disposition of the accused does not qualify as an issue in question,” it is incumbent on the Crown to identify a material live issue in the trial to which the controversial evidence relates: *R. v. Handy, supra* at para 71. Here the Crown has invited me to use the evidence from each count, as proof that each accused person implicated in the event alleged in that count, committed the *actus reus* alleged in the other counts against them.

[153] Factors relevant in assessing the probative value of evidence include (1) the strength of the evidence that the similar acts actually occurred; (2) the connection between the accused and the similar act event, and the extent to which the proposed evidence supports the inferences sought to be made; and (3) the extent to which the inferences tend to prove live issues in the proceedings: See *R. v. Mahalingan* (2008), 61 C.R.(6th) 207 at para. 163.

[154] I will leave the strength of the evidence that the similar acts actually occurred aside for the moment. The acts alleged in each of the counts are connected by direct evidence to one or both of the accused, and there are indeed probative inferences in relation to the live issue of whether the accused persons committed the acts alleged that can logically be derived from the similar fact evidence housed in those counts.

[155] Specifically, the similar fact evidence includes the testimony of both complainants about their forced participation in commonly-described “evil fun” activities. Those commonly described activities are unusual, including being required to exercise excessively, to climb heights, being pushed into bees’ nests, forced participation in aggressive fights with other children, and the placement of a scorpion by their father on the stomachs of both complainants.

[156] The allegations of disciplinary assault made by the two complainants also share unique details, including the use of fists, feet, cords and tree limbs as whips, bitten fingers, beatings being tied to suspicion about involvement with boys, and P.V. holding the children down while beatings are administered.

[157] The sexual assault allegations of each complainant describe a pattern in which P.V. would bring the children to their father, who would be in his bedroom watching pornography, and both young women describe sexual intercourse during which the father demanded them to respond in ways he would command, with him primarily on the top, and at times putting the complainants on top.

[158] There are, of course, differences in detail between the allegations offered by the two young women, but those details do not weaken the underlying patterns just described.

[159] Subject to considerations about mutual tainting, which I address below, this evidence is capable, in my view, of supporting the inference, not simply that J.V. is a person capable by his character of committing the offences, but that he has an obsession with the sexuality of his daughters, and a specific penchant for dominating and using each of his daughters, both to gratify a sadistic pleasure in inflicting pain on them, and for his own sexual gratification. If credited, this enhances the case that J.V. committed the acts alleged.

[160] Subject again to considerations about mutual tainting, this evidence also has potential probative value through the unique features the complainants' accounts share, of enhancing the credibility of the allegations that the acts complained of occurred.

[161] Subject to the same reservation, this same evidence is also capable of supporting the inference that P.V. has a tendency to support her husband's physically and sexually abusive conduct towards K.I.V. and K.V., and the evidence is capable of enhancing the credibility of the allegations that P.V. participated in the manner described in the acts alleged.

[162] What then of the strength of the evidence that the similar fact events occurred, the remaining variable in assessing the probative value of this evidence? "When admissibility is bound up with, and dependent upon, probative value, the credibility of the similar fact evidence is a factor that the trial judge exercising his or her gatekeeping function is ... entitled to take into consideration": *R. v. Handy*, *supra* at para. 134.

[163] As counsel for J.V. pointed out, the similar fact acts relied on by the Crown have not been admitted to be true, nor have they been previously proved. The similar fact evidence therefore rests on the testimony of the complainants that these similar fact events occurred.

[164] Counsel for J.V. appeared to go farther, however, than treating credibility as a factor in evaluating probative value. He urged that similar fact evidence is not admissible if there are credibility problems relating to whether the similar fact events occurred. He suggests specifically that K.V.'s evidence is so plagued with credibility problems that it cannot be relied upon in drawing similar fact inferences. It would be circular to rely on her "incredible" evidence to enhance the evidence of K.I.V., and then rely on the evidence of K.I.V., to enhance K.V.'s testimony.

[165] In my view, the credibility/admissibility connection is not that linear. Even when witnesses have been found to be dangerous, requiring a special jury warning, “there is no absolute rule that tainted or suspected witnesses cannot corroborate each other’s evidence, provided the prosecution has disproved collusion”: *R. v. Johnson*, *supra* citing *R. v. Winmill* (1999), 131 C.C.C.(3d) 380 (Ont.C.A.), and other decisions. This is because where independent witnesses include the same unique or distinguishing details in their claims, the credibility of both witnesses is enhanced. Testimony, seen as weak in isolation, can appear much more credible and reliable because of the improbability that the two witnesses would concoct or by error provide similar information. The same can logically hold true for similar fact evidence. Two accounts can each gain probative value through their similarity.

[166] As the passage in *R. v. Johnson* makes clear in the case of dangerous witnesses, mutual corroboration depends upon a finding by the court that the evidence of each witness is independent. The same holds true where mutual corroboration is sought through similar fact evidence, if there is an air of reality to collusion or mutual tainting. The testimony of witnesses in such a case cannot be used as similar fact evidence unless the Crown disproves collusion or tainting, on the balance of probabilities: *R. v. Handy*, *supra* at para. 112, and see *R. v. B.(C.)* (2003), 171 C.C.C.(3d) 159 at para. 40 (Ont.C.A.). Even if the Crown meets that burden, where it has an air of reality, the risk of tainting should still be born in mind in weighing admissible evidence: *R. v. B.(M.)*, [2011] O.J. No. 428 (Ont.C.A.).

[167] The Crown in this case “cut to the quick” on this issue, inviting me not to get distracted over the disagreement between the Crown and the defence about whether there is an “air of reality” to collusion or mutual tainting in this case. She said the “air of reality” issue is moot because the Crown has, in fact, established that no collusion or tainting occurred. I agree. I am satisfied on the balance of probabilities that the complainants did not discuss the details of the allegations they offered in their testimony. I am confident that while the two young women did go to the police at the same time after much discussion about whether and how to do so, they have each given independent versions of what happened to them.

[168] First, these women did not begin making their allegations together. K.V. decided to speak to a social worker, and to a Children’s Aid Society worker when K.I.V. was still in a coma, and K.V. made the decision to come forward before K.I.V. did. To be sure, this does not disprove later intentional or accidental events of cross-contamination, but it does signal that the two did not jointly “cook up” the idea of alleging abuse.

[169] Second, while there are striking similarities in the versions offered by the young women, there are also differences that reflect their personal perspectives and undermine the suggestion that they were speaking from a script. For example, they both described the scorpion. K.I.V. said she did not think it stung her. K.V. said it painfully did, and only K.V. added the detail about P.V. holding her down at the time. Both complainants described “evil fun,” but K.V. included examples not furnished by K.I.V.. They both described being forced to fight. Only K.V. described “heikking” somebody or being forced to punch or bang the head of the child that went down. They both described being bitten in the fingers during assaults, but described different fingers being habitually targeted. They both described an incident where K.I.V. was assaulted for looking at boys when reading in class, but described the assault in starkly different ways. They both described being sexually preyed upon. K.I.V. said she went along with it. K.V. said she resisted. They both described the things their father demanded they say during sex. Those things

differ. KI.V. described being sexually assaulted with dogs. K.V. did not. KI.V. described her mother participating in the sex on one occasion by engaging in sex acts of her own. K.V. had her mother assisting her father so he could receive oral sex, but she never has her mother participating in her own sexual acts. And only K.V. described KI.V. being forced to act as an instrument of assault by her parents.²

[170] Moreover, the evidence of the complainants was not presented as scripted. For example, whereas K.V. situated events according to schools and towns lived in, KI.V. did not and could not. KI.V. did not initiate evidence about her father's use of the term, "evil fun." This had to be prodded from her by the Crown asking if she heard the expression. Nor did KI.V. initiate evidence about being struck by a sledge hammer. This was provoked by cross-examination questioning and she offered that she thought it happened. She did not respond as if this was a cue for a concocted story.

[171] Finally, aggressive cross-examination failed to shake the claim made by each young woman that, while they discussed the "step-by-step" process of moving forward with a complaint, they did not concoct stories or even discuss the details of their allegations. Each complainant was adamant that they did not do so, and I accept that testimony, including that they independently chose to attempt to get their father to admit that he sexually abused them.³

[172] I am therefore satisfied on the balance of probabilities that the similar description of events is not the product of collusion or sharing of stories between the complainants. The probative value of the material inferences is not, therefore, degraded into inadmissibility by credibility concerns. The credibility and reliability of the similar fact evidence events must be weighed as any other evidence must, but the probative value of the similar fact evidence is not *ex facia* undermined by problems with the strength of the evidence that the similar acts actually occurred.

[173] With respect to the countervailing consideration of prejudice that goes into the similar fact evidence admissibility equation, there is no question that the allegations being relied upon as similar fact events are inflammatory. They are shocking and repulsive. When the Crown seeks to prove extraneous, uncharged incidents of misconduct that have this character, the risk of prejudice is high and can defeat admission. In this case, however, two factors play large in reducing the risk of prejudice.

[174] First, this is a trial before a judge alone. The risk of moral prejudice, while not removed entirely, is significantly reduced in a judge alone trial: *R. v. W.(J.)* 2013 ONCA 89 at para57; *R. v. Roks* 2011 ONCA 526 at para 94, and see *R. v. Villeda* [2011] A.J. No. 316 (Alta.C.A.). I am aware that I cannot rely on this evidence to draw general character inferences, or to prejudice the

² To be clear, I am not saying that these differences enhance the credibility of the testimony of the young women. To reason that way would unfairly treat both similarities and differences as enhancing credibility. I am simply saying that the existence of differences of this kind is telling in rebutting the suggestion that their evidence was jointly scripted, or mutually contaminated.

³ The Crown had invited me to make the finding I have, by crediting their explanation that they did not have to discuss what happened because they were there when these events occurred, and knew what was going on with the other. I am not saying that this is inaccurate, but I have not relied on this testimony in rejecting collusion or mutual tainting. It would be circular for me to infer that I can discount collusion when deciding whether these women were sexually and physically abused, because, having been abused together, they did not need to collude, and I have not done so.

accused because of the inflammatory nature of the evidence. I am to be cognizant of, and guard against, these risks.

[175] Second, this is a “count to count” similar fact evidence application. This is not a case where reasoning prejudice is created by the need to explore collateral evidence about misconduct on other occasions that could distract the trier of fact from the issues that need resolution, or that could cause confusion by complicating the factual narrative. Nor is it a case where a decision to admit the discreditable evidence will create a risk of prejudice from information that would not otherwise exist: *R. v. MacCormack* 2009 ONCA 72 at para. 56; *R. v. B.(T.)*, (2009), 95 O.R. (3d) 21 at paras 27-32 (Ont.C.A.). In this case, the information being offered as similar fact evidence is already necessarily being heard because the similar fact evidence incidents are charged incidents, and the Crown is entitled to attempt to lead the evidence to prove the charges to which that evidence directly relates. Simply put, the evidence relied on as similar fact in this case is admissible in its own right, and is going to be heard whether used as similar fact evidence or not.

[176] I am therefore persuaded that the accounts offered by KI.V. and K.V. relating to charged events meet the admission requirements as “count to count” similar fact evidence. The probative value of the evidence outweighs the risk of prejudice it will present. Subject to the weight it will be given, the evidence of allegations in one count involving an accused person, can properly be used in resolving all other counts involving that accused person through the specific inferences I have identified.

d. Testimonial Challenges

i. Generally

[177] It is for the Crown to satisfy me that evidence presented to prove the crimes charged is accurate, beyond a reasonable doubt. It is once again convenient, however, to begin examining the evidence through the lens of the challenges made.

[178] Defence counsel for both J.V. and P.V. urge that both lynch-pin witnesses - KI.V. and K.V. - are incredible and unreliable witnesses whose testimony cannot reasonably be believed. They rely heavily, in K.V.’s case, on admissions K.V. made about lies she has told related to the case. Both Defence counsel emphasize the difference in the accounts offered by these witnesses, and inconsistencies in their testimony, and the manner in which their evidence was presented. KI.V. is painted as a vague witness who avoided providing meaningful details and who changed her answers, and K.V., as a witness who would “pivot,” as required, to avoid inconvenient answers.

[179] Defence counsel also challenge the credibility and reliability of the testimony of the two complainants based on the implausibility of their evidence. Defence counsel charge that the witnesses have provided not only “exaggerated” evidence, but “fantastic” and “impossible” accounts. Not only are the allegations too outlandish to be true, the frequency with which both sexual and physical abuse is alleged is said to be “just too much.” “It cannot be accurate.”

[180] I will consider the challenges I have just rehearsed below, witness by witness. Each defence counsel also makes implausibility arguments that are common to the testimony of the two complainants, which I will address now.

ii. Implausibility based on a Lack of Opportunity

[181] Defence counsel suggest that the abuse described could not have occurred in houses in which the grandparents and, for a time, “L.” lived. This is not, in my view, a telling consideration.

[182] I will begin with the homeless man, “L.” Little significance can be poured into evidence that for an unspecified time, a now deceased homeless man named L. lived in the furnace room of one of the Osgoode farmhouses that the V. family occupied, before he succumbed to cancer. There is no evidence, one way or the other, about what L. knew. There is no evidence about whether, when he was residing with the family, he was competent to hear and understand what was happening, and I have no information about the nature of the relationship he had with the accused persons. I cannot draw useful inferences from this information.

[183] In the case of the grandparents, the evidence before me is that they are addicted gamblers who were often away from the home. Much of the abuse described could have occurred in their absence. Moreover, the living arrangements described make it possible for incidents to occur without the grandparent’s knowledge, even if they were home. I was not given comprehensive descriptions of the layout of the farmhouses, other than that they were large buildings, and that in one Osgoode property, J.V. and P.V. lived in the basement, and that another property was divided and would have required going down one staircase and up another for the grandparents to get to the living area occupied by J.V. and P.V..

[184] Nor do I have a basis for concluding that, if J.V. and P.V. were prepared to engage in the conduct in question, J.V.’s parents would be seen by J.V. and P.V. as presenting a deterrent risk that their abusive conduct would be reported to the authorities.

[185] For example, I accept the evidence before me, extracted by counsel for P.V. during cross-examination of the complainants, that J.V. abused P.V. frequently and forcefully. This testimony was not challenged in any way by J.V.. Yet I have no evidence that this was ever noted by, or reported by the grandparents to the authorities. There is also evidence of habitual drug use by J.V. and P.V., and testimony that this occurred “in the home,” including in front of the children, yet this was not reported.

[186] J.V. is Jf. V’s and his wife, Ka.V.’s son, and it is evident that they are loyal to him. They continued to provide him and his family with accommodation, in spite of the verbal abuse, violence between J.V. and P.V., and drug abuse that was occurring. Indeed, the evidence is that they provided J.V. with money. They would not be the first parents in history to be wilfully blind to what was going on, or who would choose not to seek the intercession of authorities even if fully aware, and given the evidence before me, this appears likely the case with J.V.’s parents. Indeed, the evidence before me, which I accept, is that the grandparents advised K.V. that the police were not their friends.

[187] J.V. is also an imposing man, and it would take fortitude to report him, even if something had been noticed. It is not insignificant that after Jf. V. did raise concerns with the Children's Aid Society about the way KI.V. was being made to dress and was being alienated within the family, that he backed down in the presence of his son, refusing to say anything even when K.V. was forced to deny responsibility for complaining on KI.V.'s behalf.

[188] In my view, Jf.V.'s demonstrated readiness to make more than one report to the Children's Aid Society about the control being exerted over KI.V. does not translate into a basis for concluding that he would report criminal activity, such as the children being beaten, or sexual abuse allegations, reports that would invariably have his son embroiled with the police. Indeed, KI.V. testified that there was an incident when her grandfather confronted her father about having sex with KI.V., perhaps after walking in on them on one occasion, causing a big fight, after which nothing was done. K.V. testified that her grandparents did not report her claims of sexual abuse to the Children's Aid Society, after K.V. told them she had been sexually abused when she was a young adult, at a time when the grandparents were caring for the younger children, Ks.V. and Js.V..

[189] On this evidentiary record, I am not prepared to have doubt about the allegations because the intermittent presence of the grandparents in the house would have been a disincentive.

iii. The Absence of Confirmation in Children's Aid Society Records

[190] Defence counsel also urges that the testimony of both young women is contradicted by the failure of Children's Aid Society records to confirm the abuse alleged. Defence counsel urge that the physical assaults described would have left marks, and given their frequency and the nature of the beatings described, the young women would have presented regularly with injuries at school, and during the frequent Children's Aid Society interviews. They urge that teachers and school personnel would have notified the Children's Aid Societies if they had observed injuries, and yet, with the exception of the reports by S.S. relating to KI.V. described above, there are no reports by teachers relating to apprehended physical abuse.

[191] I will address this general submission now, leaving until later the related specific arguments that KI.V. could not have told Ms. S. about abuse, and that K.V. could not possibly have made the many complaints to teachers and Children's Aid Society authorities that she has claimed, without Children's Aid Society records reflecting these reports.

[192] In my view, the failure of the Children's Aid Society records to contain reference to a history of suspicious physical injuries does not materially undermine the credibility of the complainants' evidence.

[193] To begin, the lack of recorded observations of injuries by Children's Aid Society workers offers little. While various Children's Aid Societies were involved regularly with the V. family, they were involved in face-to-face encounters with the complainants only occasionally.

[194] Moreover, with the exception of the few school visits that happened, P.V. and J.V. had some opportunity to exercise control over how and when the home visits occurred. I am not finding affirmatively that either of them cancelled visits to permit their children's injuries to

heal, but the records do reveal that home visits were scheduled and cancelled. This considerably denudes the failure to observe injuries during such visits of probative value.

[195] Moreover, the evidence of the children does not entail the inference that they always would have evident injuries to their faces, and both KI.V. and K.V. testified that they wore clothing to hide their injuries when they occurred. This makes sense, and, if the complainants were assaulted, this explanation would go a long way to diminishing the “failure to record injury” inferences sought by the defence.

[196] I would also note that Ms. M. was not prepared to support the suggestion that the children did not bear physical injuries when she visited the V. home. She would not agree with the suggestion because the children were wearing “seasonal appropriate clothing,” the clear implication being that the children could well have borne injuries that would not be seen.

[197] Nor can it be inferred that the children would have displayed their injuries to the Children’s Aid Society workers, if they had them. The M. visit evidence makes clear that it cannot be inferred that the children would have co-operated with the Children’s Aid Societies. The children did not want to talk to her. KI.V. testified that she was afraid to tell anyone about being beaten because on the one occasion she did complain no-one offered her protection and she was beaten again for telling. K.V. said, generally, when anyone noticed injuries, it was her practice to lie.

[198] The failure by the records to include periodic complaints by teachers about these farm children presenting at school with injuries, does not, in my view, meaningfully contradict the testimony of the complainants. I am mindful that educators are under a legal obligation to report suspected child abuse but I cannot infer that the V. children did not likely have injuries consistent with the abuse they described on the basis that the Children’s Aid Society records do not contain frequent or even periodic reports by teachers. As indicated, the evidence before me is that the children took steps to hide their injuries when they could, and that at least K.V. lied about her injuries when questioned.

[199] I also agree with the Crown that it is not safe to assume that teachers, noticing injuries on children, will suspect abuse. And while teachers are obliged to report the abuse they do suspect, it is not safe to assume that they routinely do so whenever they observe even a suspicious injury. As Ms. S.S. testified, this is a serious allegation to make, and she did so with trepidation, and only after already developing a concern that KI.V. was not being properly parented. It is not at all inconceivable that a teacher, noticing injuries, could conclude that they have discharged their obligation by asking the children about apparent injuries, or by calling the parents to discuss what happened.

e. The Testimony of KI.V. Analyzed

[200] As indicated, defence counsel for both J.V. and P.V. challenge the credibility of KI.V.. They urge me not to find her to be a truthful witness. While they both agree that she was not exposed during cross-examination, they attribute that to the difficulty of contradicting her accounts, given the vague, generic description of events she offers.

[201] They urge that her claims cannot be true because they are inherently implausible. The implausibility arguments that I have yet to canvas include the impossibility that she was abused physically and sexually with the intensity and regularity she claimed. Defence counsel also urge that a number of the incidents she did describe are unbelievable, including the description of having her feet burned, and her evidence that she would not have been seriously injured by the beatings she described. Other claims, including having a scorpion placed on her stomach, strain credulity.

[202] I am also asked to treat her as an incredible witness given the evidence of previous complaints by her that was canvassed during her testimony, specifically, her “unbelievable” account of complaining to Ms. S., and her readiness to complain to Ms. K.D. of the Children’s Aid Society on June 17, 2003, about being spanked and bruised 3 years before, yet not disclose the litany of abuse she has testified to. The submissions of counsel also appear to invite me to conclude that since K.I.V. did not complain about the physical and sexual abuse before, her current complaints should not be accepted.

[203] Defence counsel for each accused person also maintains that K.V. is not a reliable witness, often providing testimony that was unsure and undefined.

[204] In my view the testimony of K.I.V. was not vague, generic, unsure or undefined. K.I.V. did not, as was suggested, confine herself to a description of the pattern the alleged abuse would take. She furnished specific allegations of events, including the beating after the “S. disclosure”, the beating after K.V. told her parents that she had been looking at a boy when reading at school, the Fy. episode, the foot burning incident, being beaten for breaking one of her father’s toy motorcycles, the graphic episode when P.V. joined her and her father while they were having sex, and the episodes with the dogs.

[205] Second, and more importantly, it is to be expected that, if they occurred, K.I.V. would speak in general terms about the kinds of abuse that would occur during the “evil fun,” or the ways in which she would be beaten, or the pattern that her sexual violation would take. K.I.V.’s evidence is that such events occurred almost daily, for as long as she can remember. It is unreasonable to assume that she should be able to break the continuing string of alleged misconduct down into discrete episodes, adorned with atmospheric detail. K.I.V. was a child when she alleges that these events occurred. She has provided the degree of detail one can reasonably expect.

[206] This is particularly so for the sexual contact she describes. K.I.V.’s evidence is that she participated in sexual relations with her father from as young as she can remember until the days before she hung herself. If she is to be believed, her relationship with her father was more like a dysfunctional husband and wife, than a father and daughter. It is not the least surprising, if this were true, that she would describe patterns of behaviour rather than events.

[207] In my view K.I.V. presented as a consistent witness not because her testimony was vague or general, but because no material inconsistencies were exposed. To be sure, her memory of events was imperfect, and she did not provide definitive answers about whether she had ever complained to the Children’s Aid Society, offering that she did not think so, and later that she may have, before agreeing that she must have after she was made aware of her June 2003 statement to the Children’s Aid Society record. This kind of uncertainty is not surprising with the

passage of time. It cannot be forgotten that KI.V. spoke to the Children's Aid Society on at least half a dozen occasions, at various ages, over the course of more than 10 years. She cannot be expected to hold a fast version of everything she said. KI.V. was a remarkably consistent witness, a characterization that is not harmed by her uncertainty about how long it took her burned feet to heal. If that event occurred, it would not be surprising for her to be unsure of how long she convalesced.

[208] Nor do I find her accounts of the abuse she suffered to be implausible. It is true that the allegations are unimaginable in the sense that right thinking human-beings could not contemplate such abuse. But it is not a safe platform for a judge to disbelieve an allegation, because it exceeds in horror and frequency those more familiar levels of abuse that those of us in the courts are exposed to. It is not inconceivable that a parent could, as alleged against J.V., treat his children as objects to be used in a hedonistic and sadistic existence, and that he would use them daily to suit his unrestrained needs. Nor is it beyond inherent belief that a mother would be prepared, whether out of self-preservation or shared perversion, to assist her husband.

[209] To be clear, I am not offering these ruminations on plausibility as evidence supporting guilt. The point I am making is simply that the allegations made are not to be discounted simply because they describe outlandish behaviour.

[210] Consider the allegations associated with the "evil fun." It is not inherently implausible that the games described by KI.V. could have occurred. It is certainly no more implausible for someone to engage in the activities described, than it would be for someone to dream them up as a brand of false evidence to offer. While it is doubtlessly bizarre for someone to take joy from horrifying their own children, it is not implausible that someone so minded could command their children to fight among themselves, or make them climb high places, or push them into bees' nests, or even place a scorpion on their bare chests to watch them squirm.

[211] Nor do I find the descriptions offered by KI.V. of the disciplinary force used against her to be implausible, either based on what she describes having happened, or because of the lack of injuries she claims.

[212] There is nothing inherently unbelievable in KI.V.'s testimony that her father would hit her with a branch or cord, or with other objects. He would not be the first parent to have done so. Nor is it implausible that a parent could assert physical control over their child by bending or biting her fingers, or squeezing her hand in a vice, and there is nothing unbelievable in the testimony that she was assaulted by her parents with their arms and legs, punching and kicking her.

[213] I understand that the implausibility arguments rest mainly in the kinds of injuries that one would expect from such abuse, coupled with the absence of any evidence or even claim by KI.V. to having sustained broken bones, or disabling injuries. KI.V. was, however, measured in her testimony. She described how her father would use the appliances, or his teeth, to inflict pain, but not hard enough to break bones or to cause serious bleeding. She agreed that the whippings left marks. Yet she described the assaults with the claw hammer as him "tapping her knee," and, in cross-examination, when the spectre of a sledge hammer being used was presented, she offered a tentative memory of being struck "lightly" in the lower leg. As any failed carpenter who has struck themselves with a tool can attest, striking one's self with a hammer is always painful, but

it is not always a maiming event. The suggestion that a parent would force their child to await the receipt of a tempered blow with a hammer, or even a sledge hammer, is outrageous, but it is not beyond credulity, particularly not when taken in the context of the allegations of persistent, physical domination by someone who is alleged to find the experience of pain by his children amusing.

[214] In rejecting the implausibility arguments, I have considered that KI.V. testified that her father was often on drugs, and would at times lose control when beating her. This does not mean, however, that he would at all times be incapable of exercising the restraint she described when he was employing tools to induce pain. KI.V. could well have been punched about the head, kicked, or even whipped by an out of control father without sustaining the kinds of injuries that defence counsel claim would have been inevitable.

[215] Understood in this context, even the allegation by KI.V. that her father once punished her by holding a lighter flame to her feet, as her mother held her down, is not an inherently unbelievable allegation. A flame can be used to cause deep burns, or to scorch, or simply to singe or to cause a painful level of heat. The account by KI.V. of receiving blistered feet after being held to the fire, but being able to walk with pain, until the infection raged to the point where she could no longer stand it, is not beyond belief.

[216] KI.V.'s distressing account of her sexual exploitation does not strain credulity either. It is not inconceivable that a sex-obsessed man could demand daily or almost daily gratification, or engage in sexual activity even more than once a day, and with more than one other person. None of the sexual activity KI.V. described defies belief, not even her account of her mother joining in after her father demanded it or the use of a dog after the inspiration of bestiality pornography. KI.V. said that she did not resist. She did what she was told by someone who asserted complete control over her. It is entirely believable that a victim that compliant under the control of a perverted parent could be made to endure the sexual indignity she described.

[217] With one exception, the challenges brought by defence counsel arising from KI.V.'s history of complaints are no more poignant in creating doubt.

[218] I will begin with KI.V.'s "disclosure" to the Children's Aid Society in June 17, 2003, recorded by Ms. K.D. after a school interview when KI.V. would have been 8 or so years of age. That record shows that KI.V. complained about being physically abused by her father, but only by being spanked, and receiving a bruise three years earlier when she was 5 years of age. It also discloses disturbing accounts of J.V. abusing P.V., including by punching her so that it sounds like a door slamming, and choking her into near unconsciousness in front of the children. Counsel for P.V. argues that this complaint contradicts any suggestion that KI.V. was afraid to disclose physical abuse, and that the nature of the disclosure she does make contradicts her current evidence of the wide scale physical and sexual abuse she said was happening at the time. He urges that if the abuse she now testifies about was happening, KI.V. would not have given the watered down account she offered to the Children's Aid Society.

[219] I am prepared to credit the Children's Aid Society record as accurate. The complaint, even as it was, was a serious matter and would have been recorded with care. In terms of evaluating the significance of the recorded complaint, I will begin with the absence of any reference within it to sexual assault.

[220] In my view, the failure by KI.V. to include mention of being sexually assaulted in that Children's Aid Society interview is of no moment. KI.V. testified that it took her some time to realize that the sexual activity she engaged in with her father was wrong. It is entirely possible that when she reported the physical punishment she received, this young child did not think there was any reason to report the sexual activity. Even if KI.V. did realize at the time that this was wrong, she also testified that she was told by her father not to tell anyone about what they were doing, or she would be hurt. In all of the circumstances, the report she made as an 8 year old about being spanked is of no utility in contradicting her testimony that she was being sexually abused at the time.

[221] There is more, however, to the argument that it would be strange to have KI.V. complain about a spanking and a three year old bruise, but not the beatings she now alleges, if those beating were going on. This curiosity does not apply to the "evil games" evidence, since a child would not likely see this conduct as assaultive, but it does raise issues about why KI.V. would not have disclosed the other disciplinary force she described in her evidence. KI.V. has no recollection of this conversation, so could not assist the Court meaningfully in explaining why only partial disclosure would have been made.

[222] It has occurred to me that just as the testimony of children must be assessed in light of their age and maturity, so too must the analysis of submissions about how logical the actions of children might be. Adult logic does not always apply to the reasoning of a child. Perhaps KI.V. knew that she would be punished if she told about her own abuse, but not her mother's, and therefore she readily offered an unvarnished account of the abuse she witnessed against her mother. Perhaps she reasoned that if she offered only a toned-down version of her father's abuse against her, she could get help without getting him too angry. Of course, I have no basis for coming to a firm conclusion that this is what was going on, as KI.V. is unable to recall this event. The point is simply that the inability to apply adult standards to the logic of children, while not removing entirely the point raised by the defence, creates some uncertainty in my mind about the weight it should be given. Still, I will, consistent with the burden of proof born by the Crown, give the benefit of the doubt to J.V. and P.V.. The failure by KI.V. to disclose the abuse she is now claiming, when she did disclose being spanked, is a factor I must consider in my overall assessment.

[223] The second stream of disclosure testimony relied upon by the defence to discredit KI.V. was her testimony that she disclosed physical abuse to Ms. S., a teacher, again around the age of 8. KI.V. said that she was possibly in grade 3 in a portable in Osgoode, Ontario, at the time. She testifies that she told Ms. S. that her parents hurt her. She believes that she showed Ms. S. the marks on her back and legs from being whipped with a cord. KI.V. testified to a recollection of witnessing Ms. S. calling her home and speaking to someone, and then being told to get dressed and go outside and play. KI.V. said that no-one did anything to follow up, and she was beaten when she got home. KI.V. testified that this experience underscored the futility in telling anyone about what was going on at home.

[224] Defence counsel urges that this account is demonstrably false because there is no mention of a report of abuse by Ms. S. in the Children's Aid Society records, and it is inconceivable that Ms. S. would not have reported this to the authorities, had it happened. This event, they suggest, is a fabrication, and it exposes KI.V. as a dishonest, or at the very least, fatally unreliable witness.

[225] In my view, the S. disclosure account does not bear such importance. First, K.I.V.'s version of events is not unlikely. I am not going to infer that a teacher, having checked with the parents after a report of abuse, would necessarily disregard what she was told by the parents, and call the Children's Aid Society anyway, particularly not given that K.I.V. is unsure of precisely what she told the teacher or whether she in fact displayed injuries.

[226] Second, I cannot put the faith in the accuracy and comprehensiveness of the Children's Aid Society records that defence counsel request. I am not prepared to assume that, absent a single report in the records disclosed, no such report was ever made. Dr. T.B. testified before me under oath, for example, that he made a report to the Children's Aid Society that he had diagnosed K.V. with herpes, which he called highly suspicious of sexual abuse, yet that report does not exist in the disclosed Children's Aid Society records, either. I accept that there is a remote possibility that Dr. T.B. could have failed to carry through on his intention to report his finding, and misremembers reporting, but I doubt it. It is far easier to believe that a teacher chose not to report a child's claim of abuse, after confronting a parent for an explanation, than it is to believe that Dr. T.B. would forget to report the no-doubt distressing findings he made.

[227] The more general challenge to the credibility of K.I.V., based on her failure to disclose her abuse on other opportunities, does not sway me either. I accept K.I.V.'s testimony that she came to believe that there was no point in telling anyone she was being beaten, because no-one would do anything, and she would be hurt if she told. After all, even leaving the S. disclosure evidence aside, the disclosure she made to K.D. did not lead to K.I.V.'s apprehension by the Children's Aid Society. Indeed, even after she was observed after Ms. S.S.'s Children's Aid Society report, in December 2006, with bruises to her face and marks on her neck, nothing was done. Her failure to disclose her physical abuse, other than on the identified occasions, is not evidence that nothing happened.

[228] The failure by K.I.V. to disclose that she was sexually abused until after her suicide attempt does not tell against her testimony, either. Certainly, it would be a legal error, given the abrogation of the doctrine of recent complaint, to disbelieve her peremptorily because she did not complain after the alleged sexual assaults happened. Well beyond that, logic alone explains why she would not have said anything for as long as she did if she was sexually abused. K.I.V. testified that she never told anyone about the sexual abuse because her father threatened her with injury, and told her that she could go to jail. I accept that such threats would resonate with K.I.V.. As indicated, her evidence is that she knew her father to be capable of great violence. She also testified that she did not resist, but participated in the activity. It is entirely believable that she thought that she, too, had done wrong and could go to jail if the sexual activity became known.

[229] Indeed, a comment made by J.V. in his Google Hangout chat with K.I.V. supports the inference that he caused her to believe this. In a March 8, 2014 message, the days after she challenged him with sexually abusing her, he said "maybe K.I.V. you are not so innocent."

[230] A Crown's case, of course, is not built on parrying the challenges made by the defence alone. I have to affirmatively believe the material testimony supportive of guilt, beyond a reasonable doubt. In this case I do. K.I.V. was a credible witness who offered reliable testimony relating to the criminal allegations she made. She was a solid witness, whose account was left largely untouched during cross-examination, and her allegations find material support in the other evidence in the case.

[231] To begin, I am convinced beyond a reasonable doubt that J.V. forced KI.V. to engage in the “evil fun” activities she described, including forcing her to fight with her siblings, pushing her into beehives, and placing a scorpion on her chest against her will. I found KI.V.’s accounts of these activities to be credible, and reliable.

[232] As I have noted above, KI.V. did not offer the term, “evil fun,” as a unifying theme for the activities she was describing. She defined it when the Crown put the term to her as the name her father gave to the frightening activities the children were made to join in, increasing my confidence in what she said.

[233] Even leaving aside the similar fact inferences that could be drawn from the testimony of K.V. that, she too, was made to engage in these activities, K.V. described witnessing KI.V. being forced to participate in such events. I have already found that there has not been collusion by these witnesses on such matters, and it is powerful confirmation that another witness would independently describe KI.V. being subjected to the same bizarre forms of behaviour that KI.V. describes.

[234] Many of these activities involve the application of direct or indirect force to KI.V.’s body, including not only the forced combat between children, but also being thrown into bees nests, and having a scorpion placed on her chest. I am satisfied on the evidence of KI.V., supported by the testimony of K.V. describing this bizarre behaviour in similar terms, that these activities were not consensual. They constitute assaults, in law.

[235] I am also convinced beyond a reasonable doubt that J.V. assaulted KI.V. by applying the force she describes, including with cords, a tree branch, a handle and tools. Once again, I found KI.V.’s accounts of the physical force used by her father to be credible and reliable. Speaking generally, this evidence was not harmed in cross-examination, and there are compelling reasons to believe these accounts, not the least of them being that J.V. admitted, in his electronic messages with KI.V., that he beat her.

[236] I am referring, of course, to the Google Hangout chats, entered, largely redundantly, in exhibits 6(a), 6(b) and 9. On March 6, 2014, at 7:37 p.m., J.V. messaged KI.V., saying “im sorry for controlling you and being mean and hurting your feelings and making you worry and lie and cheat you.” KI.V. responds “what about all the rest? taking me to nova scotia because of Kr? and beating me and then? cutting my hair what about all that?” He responds at 7:38 p.m., “I thought you would like that in my mind I wasnt trying to me mean.” She persists, “apologize or we are finished ever being friends.” J.V. responds, “I do appoluguise” She responds, “you thought I liked being kicked the shit out of?” “really? why father?” and he replied at 7:39 p.m., “Because it was wrong.” She then demanded “would you have liked that if I did that to you?” and at 7:39 p.m., “and i was wrong in the head” “i didn’t hate you. I loved you. The drugs make me a monster.”

[237] I am mindful that this exchange contains a chain of allegations, including some that fall short of assaultive behaviour. Initially, it is not clear what J.V. is apologizing for. By the end of the exchange, however, his ensuing responses are pinned down with a precise demand by KI.V. to know if he thought she liked “being kicked the shit out of.” J.V. did not simply fail to deny that direct allegation, in circumstances where one would reasonably expect a denial were that allegation false. He makes excuses that, in context, can relate only to his having assaulted KI.V..

He is clearly offering that he beat her because drugs made him a monster. To be sure, this passage does not constitute an admission to having committed any of the specific assaults particularized by KI.V.. It is, however, an admission that he committed the offence of assault against her, and this admission enhances the credibility of the specific allegations KI.V. makes.

[238] The allegations of assault involving KI.V. that relate to her father's obsession with KI.V.'s sexuality also find support in the overwhelming evidence confirming that obsession.

[239] To begin with, I have no doubt that J.V. made KI.V. dress like a boy, so she would not be attractive to boys. KI.V. said as much during her testimony, and so did K.V.. The passage from the chat with KI.V. just quoted includes an apparent apology by J.V. for having cut KI.V.'s hair.

[240] This garb was so effective that when Ms. M. went to the V. residence for a Children's Aid Society visit in December of 2008, when KI.V. was a young teenager, she mistook KI.V. for her brother Js.V.. The fact that KI.V. told Ms. M. that she chose to dress like that does not dissuade me. This comment was made by KI.V. in the presence of her parents, after the Children's Aid Society came to the house to investigate this allegation, and the comment was not put to KI.V. in cross-examination.

[241] J.V.'s unhealthy obsession with KI.V.'s sexuality is confirmed by comments that I am persuaded he made in the Google Hangout chats with KI.V.. Indeed, the first exchange in those exhibits, which occurs on February 25, 2014 at 2:29 p.m, while KI.V. is still in the hospital psychiatric ward convalescing from a suicide attempt, begins with J.V. commenting that KI.V. is a "gross fucking pig" because he believes she had sex with a French male that she met, "a slimey french weasel." He then tells her, "i hate you i wish you were dead you always were a pervert." At 1:05 a.m. on February 27, 2014, after accusing her of being interested in her sister's boyfriend T., he said "you even admitted it therefore you're a lying bitch..." At 7:54 a.m., he commented, "i sold everything for you little slut," using a sexualized term he often employed with reference to KI.V.. The messages are redolent with derogatory comments about her sexual interests. He tells her on March 8, 2014 at 2:35 a.m., "... when you allways wanted the men ALWAYS!," and later in the same message "do you really crave the action." And at 3:02 a.m., "you are always souless slut always wanted men," "i want to fucking bury you slut y were always after men."

[242] In this context it is easy to accept that J.V.'s obsession with KI.V.'s sexuality led J.V. to the frequent cross-examination of his daughters about boys, when they would get home from school. Both KI.V. and K.V. described KI.V. being grilled in this way. They each also offered direct testimony of the suspicion cast on KI.V. about having had sex with the Fy. boys, and the family having to go into the woods at night to stand watch so the Fy. boys would not violate KI.V. and the other V. women.

[243] In this setting, KI.V.'s accounts of being beaten for looking at boys, or because J.V. thought she was looking at boys, or because she was suspected of having had sex with the Fy. boys, ring true. Indeed, the Google Hangout chats contain, at 12:48 p.m. on March 12, 2014, a description by J.V. related to these events, which ends in a near admission:

maybe we should tell the truth also about hyndman road where you were spotting because they were taking turns on you and i was beating your mother because of your lies or talk

about blowing S. ordering blue crush or letting B. go up your ass how or how you were doing to Fy.s in the bathroom came home crying wanted a cell phone like Kr or how your good friend K.V. told me you went after boys so i tried to stop you the only way I knew how maybe we should talk about what a piece of shit you are for a change

While not a direct acknowledgement by J.V. that the only way he knew how to try to stop KI.V. from being with men was to beat her, this comment provides important support for the veracity of KI.V.'s testimony, particularly given that the comment demonstrates that one way J.V. knew to deal with perceived sexual licentiousness was revealed when he described beating P.V. when he came to believe she was "blowing S.."

[244] As indicated, I am mindful of the dangers of demeanour evidence, but I was also struck by K.V.'s deep emotional reaction when she testified to the incident in which KI.V. was beaten by J.V. after K.V. told J.V. that KI.V. had been looking at boys while reading at school. It is an obviously perilous enterprise to attempt to determine sincerity based on things that are as culturally or personality driven as eye contact, or a witness's confidence, or their body language. It is even dangerous to be persuaded by emotional reactions that could be staged, such as the timely dabbing of one's eyes, or even crying at what could be strategic opportunities. There is less danger, in my view, in circumspectly taking note of raw, spontaneous, emotional reactions that occur unexpectedly. K.V.'s testimony was often emotional, but her response when she was describing the beating she recalls her sister receiving after K.V. lied about KI.V. looking at boys was a poignant moment. K.V.'s deep remorse and regret was palpable. It would be disingenuous for me to deny that my impression at the time, one that has lingered in the face of all of the evidence I have heard, is that K.V. honestly believes that this event occurred. Her testimony of causing her sister to be assaulted is credible, and its reliability is amply supported by the evidence I have just recounted, including KI.V.'s own account.

[245] I therefore have no doubt that J.V. assaulted KI.V. on the occasions I have described, and frequently, indeed routinely, during her childhood. The only related doubt I do have is caused by the qualified disclosure that KI.V. made to the Children's Aid Society in 2003, when she was approximately 8 years of age. Given that KI.V. complained only about spankings and a bruise at that time, I am unsure whether J.V. was physically assaulting KI.V. in the other ways she described, when she was that young. I am sure that she now remembers it that way, but it may be that the more wretched disciplinary force that I am certain occurred, in fact began later. Given the way the charges are laid, my doubt about when the more serious assaults occurred will not undermine J.V.'s guilt on any of the charges. I will sentence him, however, on the basis that the more serious assaults occurred as KI.V. matured, but that in her early years the assaults on KI.V. consisted of her forced participation in "evil fun" activities, and the excessive spanking that bruised her bottom at age 5, that she confirmed when being cross-examined.

[246] I am also persuaded beyond a reasonable doubt that J.V. sexually assaulted KI.V., in all of the ways she described. Once again, I found her testimony about this to be both credible and reliable.

[247] KI.V.'s account was consistent and imbued with features that make it believable. She did not claim that she could recall being sexually assaulted as a child, but described her father persistently telling her about having sex with her when she was younger after she initiated physical contact with him by touching his penis when he was drunk. This detail, including, as it

does, a rationalization for the behaviour and an attempt to promote her ready involvement rings true to me. Moreover, KI.V. did not provide a detached and sterile narrative of what occurred. She shared her feelings about what was happening in subtle ways, explaining that it was only later that she realized that what was happening was wrong. And KI.V. did not seek to disguise her own active participation in the acts. The compliance she acknowledges assists in explaining how she could be subjected to the range of indignities she described, including the bestiality episodes that were linked to viewing bestiality pornography at the time. Her evidence was given in a measured way. She did not elaborate unless asked. She did not discuss the injury that was caused by the anal intercourse, for example, until asked about it specifically. Simply put, I believe her.

[248] The unhealthy nature of the relationship between J.V. and KI.V. that enabled this sexual abuse to occur is laid bare, in my view, not only by his obsession with KI.V.'s sexuality, described above, but by other comments made by him in the Google Chat exchanges. His comments are alternatively, disturbingly amorous for a father-daughter exchange, and distinctly jealous. I am aware that this exchange occurs after KI.V. makes clear that she does not want to have anything to do with the family, but J.V.'s messages are not those of a father trying to persuade a daughter not to alienate herself from the family. They are the kind of comments one would expect from a lovesick partner who believes they are being jilted.

[249] I will provide some examples. On February 25, 2014, at 3:57 p.m., right after insulting KI.V., J.V. apologizes for flipping out and says, "I miss you soooooo.... Much I fell so alone. And I feel alive when I talk to you." He follows up, "either you love me or you don't... I'll do anything for you." At 9:42 p.m., "don't change your mine on me ill fight ill do anything to be with you hun." At 11:16 p.m., "please give me a chance to help you and prove to you how much i love you and I will change. i hope you are not trying to ditch me and let me down easy that's what i fear the most" "so you wanna dump me?" At 9:30 p.m., "I think you have a new fondness for men." "i hope im wrong." At 9:31 p.m., "why dont you miss me like i miss you KI.V.?" At 10:23 p.m., "and you want truth yes im trying to get you back anyway i can, I love you more than anything in this world even if i have to give you space..." At 10:28 p.m., "you wanna ditch the dreams we had sitting right here so u can have men in your apartment." At 12:41 a.m. on February 27, "this is your life i am your life." At 12:44 a.m., "can't sleep bad dreams of you ditching me..." At 1:05 a.m., "wow you didn't try and tell me ONLY T. WTF leave him alone hes K.V.'s." "you ... care about me... no care about any hell including my nervous breadkdown you did it because pervert T. [sic T.] was whispering to you" At 7:11 a.m., "sorry im just paranoid overtired scared that youyr going to liwe and leave me..." At 7:54 a.m., after asking her about money, "if you spent it on men I think you know the answer..." At 4:22 p.m., "you and going to ram anything down my throat because you want to rent an apartment and fuck men." And again at 4:47 p.m., "you want an apartment to bring men there." At 7:04 p.m., "sorry I had a breakdown now ill get apartment fancy style change our lives." "don't tell anyone." At 8:38 p.m. "I just wanted you to say i want you in my life", "i was frustrated and lonely." At 8:40 p.m., "I just don't want you to ditch me." At 8:46 p.m. "u promised me we could get the fancy apt," "i'm going t be good and I'm going to be good and wait for u." At 8:50 p.m., "u promised me you would not ditch me",... "ur making an excuse to ditch me," "guess i was right after all any excuse right KI.V. you wanna ditch us." March 2, 2014 at 1:05 a.m., "I miss u i had 4 girls on me including the owner of a nutrition store is my new best friend im just not lying she is older but danced with me she twirled to kiss an angel i guess she's beautiful my best friend I want away

from your mother u will always be my best friend...,” March 2, 2014 at 1:34 a.m., “I love you so much no matter where you are or what happens... you will always be my soul i miss you so much hardest thing in my life is letting you go...” At 4:34 p.m., “Come back to me hun no more ugliness sooo sorry I miss you hun need to hear your voice.” On March 8, 2014, between 2:06 a.m. and 2:24 a.m., in a series of long rambling messages, J.V. said, “Ok I do love you and you are only remembering the bad you were my best friend and I cant live like this ill give you want you want and my future life is in your hands ... i miss you.” “I cant live like this or whitour u because I do love you and miss you.” “you are breaking my heart and my soul and id rather be dead,” ‘u think I controlled you I fucking love you.” “i am what you are not human and compassion and you can never stop me from loving you.”

[250] The credibility of KI.V.’s accounts is also enhanced in some measure by the peculiar sleeping arrangements in the V. home. KI.V., the daughter who testified to being a compliant sexual partner to her father, sometimes throughout the night leaving her exhausted the next day, would habitually share a bedroom with her parents. No “innocent” or rational explanation was offered for why this would be so. On the evidence before me, this arrangement persisted in all but perhaps one of the many houses that the family lived in, so it was unlikely simply a function of space. Nor can it be explained based on age. KI.V. was not the youngest child, nor the oldest. Nor can it be explained based on her sex. KI.V. was not the only girl, but Js.V. was the only boy. The most likely explanation again was provided by K.V.’s comment that her father’s relationship with KI.V. was more like a husband and wife, than a father-daughter relationship. I accept the testimony of KI.V. that she would sometimes sleep in her parent’s bed, and I accept her vivid description of having to rock her father to sleep at night by throwing her leg over him. I have no doubt that J.V. treated KI.V. like a wife.

[251] Even without examining the similar fact evidence offered by K.V., I am persuaded beyond all reasonable doubt that J.V. repeatedly sexually assaulted KI.V. throughout the entire charging period, in the manner KI.V. described.

[252] What of the charges involving offences committed by P.V. against KI.V.?

[253] KI.V. did not describe conduct by P.V. forcing KI.V. to participate in the evil fun activities. I do not, therefore, find that these events support an assault conviction against her involving KI.V..

[254] I am, however, convinced beyond a reasonable doubt, that P.V. committed both the physical and sexual assault offences KI.V. described.

[255] Specifically, I find that P.V. punched and kicked KI.V. after she was suspected of having had sex with D. and A. Fy., and that P.V. periodically held KI.V. down when J.V. beat her, including when he held the lighter to KI.V.’s feet.

[256] K.V. described witnessing her mother holding KI.V. down, while her father held a lighter to KI.V.’s feet. I have found that the complainants have not collaborated in their evidence, and find the coincidental inclusion by each of them, of this event, to be confirmatory. K.V.’s evidence adds credence to KI.V.’s account.

[257] I am also convinced that P.V. aided J.V. in numerous episodes of sexual abuse by retrieving KI.V. so that J.V. could sexually assault her, by putting the dog in the room where J.V.

was sexually abusing K.I.V., knowing the dog would be used in the sexual activity, and that on one occasion, at J.V.'s insistence, P.V. participated in sexual activity with K.I.V. by licking her vagina.

[258] I found K.I.V.'s accounts of these events to be credible and reliable, in large measure because of the confidence I have in the testimony of K.I.V.. The testimony of K.I.V. about her mother's role in the sexual assaults finds additional material support, however, in the evidence of K.V.. Specifically, K.V. confirms witnessing her mother coming for K.I.V., and taking K.I.V. to her father. Even leaving aside available similar fact inferences resting in the pattern of sexual assault allegations made by K.V. herself, her testimony to witnessing K.I.V. being taken by her mother to her father's bedroom provides material support of K.I.V.'s account.

[259] It is worth noting that none of the allegations involving P.V. involve her initiating criminal misconduct. In each case she is assisting or participating in the activities with J.V.. K.I.V. described only one active beating administered to her by her mother, which she linked to the disciplinary force used during the Fy. episode, triggered by J.V.'s paranoia about controlling his daughters' sexuality. P.V.'s role in the sexual activity was also described as provoked by J.V., or supportive of him.

[260] In the context of the evidence relating to the relationship between J.V. and P.V., testimony about her assisting her husband rings true. There is no question that J.V. dominated P.V., and disciplined her with physical abuse. I suspect that this enhanced her readiness to participate in his sordid activities. Whether this is so, the "Google Hangout" chats involving P.V. show that, for whatever reason, she is supportive of him. In her comments recorded in exhibits 6(a), 6(b) and 9 on March 8, 2014 at 8:48 a.m. she intercedes on his behalf, trying to persuade K.I.V. that her father is not a bad person. She does not denounce his actions. She supports him.

[261] In all of the circumstances I am persuaded beyond a reasonable doubt that P.V. committed the offences described by K.I.V..

f. The Testimony of K.V. Analyzed

i. Overview

[262] Counsel for both J.V. and P.V. argue that K.V. is an entirely incredible and unreliable witness. They urge me to reject all of her evidence.

[263] While I do find there to be credibility and significant reliability issues surrounding her testimony, I do not agree that her evidence is as worthless as suggested. It cannot be, for as I explain below, much of what she said is confirmed by other, independent proof. Her testimony cannot, therefore, be rejected, bolus, in its entirety, as rank lies, fantasies, or errors. Given many of the reasons offered by defence counsel, I have, however, decided to treat K.V. as a dangerous witness. The decision referred to above in *R. v. M.(O.)*, *supra* furnishes an example of the kind of cautious approach I intend to take with her evidence. I will rely upon her testimony solely where it is supported materially by other evidence, or where there are compelling grounds to accept it.

[264] Ultimately, a cautious, contextual appraisal of her evidence requires me to conclude that, during the charge period, K.V. was repeatedly sexually assaulted by J.V., with the assistance of P.V., who knowingly brought K.V. to J.V.'s bed.

[265] I also have no doubt that J.V. assaulted K.V. repeatedly throughout the charging period, including both through her forced participation by him in “evil fun” activities that involved direct and indirect unwanted physical contact with her person, and by disciplinary beatings and assaults connected to sexual assaults that occurred.

[266] Since there is no confirmation for a number of the specific events she describes, I will not find that these incidents occurred beyond a reasonable doubt.

[267] There being no confirmation of K.V.’s testimony that P.V. forced her to participate in evil games, or otherwise assaulted K.V., I will not be convicting P.V. of non-sexual assault offences involving this complainant either.

[268] I want to make clear that it is my sense that K.V. believes that all of these events, including her mother’s participation in assaults, occurred. Indeed, I am confident K.V. did not come before this court to intentionally offer false testimony for the purpose of incriminating her parents. Her evidence is not being acted upon where it is not confirmed by other proof, or absent other compelling grounds for accepting it, because I cannot trust generally that K.V. has a sufficiently accurate recollection of events to meet the criminal standard of proof.

ii. Analysis

[269] As indicated, K.V.’s evidence was subject to wholesale credibility challenges. Part of the challenge to K.V.’s credibility was based on admissions she made about lying on several matters, including telling her father that K.V. had been looking at boys, when she had not been, telling her parents in their chats that she had forgiven them - when she had not - lying about working at a card store, and telling the police, and initially this Court, that her father wore a condom the “first” and “second” time that he raped her. Because of these admissions, K.V. was met with the argument that she is prepared to lie to suit her own purposes, and therefore is entirely untrustworthy.

[270] To be sure, it always creates doubt about the testimony of a witness when lies are exposed, but the impact that exposing lies has on the overall credibility of a witness must be evaluated sensibly and contextually. Approached contextually and sensibly, these admitted lies do not support the wholesale rejection of K.V.’s testimony.

[271] First, apart from showing that K.V. is capable of lying, none of the admissions she made weaken the Crown allegations. Indeed, the “corrections” K.V. offered, if credited, each presuppose that the base allegations made by K.V. are, in fact, true. K.V. admitted lying about her sister looking at boys, because she feared being beaten by her father if she did not. She admitted lying about forgiving her parents, so that she could lure them into making admissions about their sexual abuse. This is a dishonest tactic, to be sure, but it is one that would be futile if her parents had not sexually assaulted her. She admitted lying about working at a card store so that her controlling father would not harangue her about not working. She also lied about her father using a condom during the “first” and “second” “rapes,” because she prepared her original statement on her boyfriend T.’s computer, and, fearing that he was going to read her statement, she wanted to disguise the fact that she had had unprotected sex with her father. Her concern arose because she believes that unprotected sex with her father was responsible for her being infected with Herpes, which she did not want T. to know about.

[272] Moreover, assuming her explanations to be true, while these lies do show that K.V. is capable of lying in her own self-interest, as suggested by the counsel for the defence, the interest she is protecting in this case involves her self-protection from the crimes and conduct of her parents. She variously lies to protect herself from being beaten, to entrap her parents for their crimes, to free herself from her father's domination, and to ensure that her relationship with T. is not destroyed because of disclosure of the things that happened to her.

[273] In this case, the explanations for K.V.'s admitted lies are compelling, even bearing in mind that she is a dangerous witness. None of these admissions were extracted from her in any meaningful sense. She readily identified the first three "lies" as lies, and even the lie about her father's condom use was not secured by probing cross-examination. She tried for a time to avoid exposing this by claiming that her father could have used condoms but she does not remember, but then veritably broke down unexpectedly and volunteered that she had lied about this, offering a compelling explanation.

[274] Defence counsel also attempted to challenge K.V.'s honesty, by relying on inconsistency between her testimony and her statements, and in some cases, inconsistencies within her testimony. There were, indeed, a disturbing number of areas of concern.

[275] When K.V. testified about the first time she was "raped" by her father before being sent to the "Smurf room," she did not account for where her siblings were at the time. In cross-examination she agreed that in her typed statement she said she believes they were upstairs, yet in her video statement she has them going to the post-office with her mother and grandparents.

[276] K.V. also testified that after this happened, and her mother returned home, she dragged herself into the Smurf room before her mother was let into the basement. In a confusing line of cross-examination, employing select passages from the two statements she had given, it was suggested to K.V. that those statements claim that her mother took her upstairs after this event occurred, and made her eat supper, after which she vomited. She was asked to agree that this account differs from her testimony.

[277] When she was first cross-examined about this, K.V. broke down and said she could not remember. The next day when the issue came up again, she insisted that her mother did bring food downstairs where she was forced to eat before becoming ill. She was then confronted with the phrasing in her video statement, which can be interpreted as saying that her mother "got [her] to get supper," after which she appears to have had a meal with her family, including her grandparents who she specifically references, and then became ill. She agreed to the suggestion that this was different, and she said her memories were confused, but insisted she was raped on that occasion.

[278] When K.V. testified that she was beaten by her mother after telling her mother that her father had been touching and raping her, she said her mother told her that this was supposed to happen, and that she was not allowed to tell her grandparents, or she would get an even worse beating. In her typed statement, K.V. recorded her mother as saying, instead, that her father raped her because she "wanted him to and [she] could have stopped him and that [she] had to leave him alone and if [she] told her grandparents she would beat the living crap out of me again. And father would kill me and her."

[279] K.V. also provided inconsistent descriptions about whether she was “raped” the day her mother beat her for telling. She testified in chief that her father had not done so because he went out. In her video statement, however, she claimed she had been raped the same day as the beating, and she said “I know for sure he put a condom on.” During cross-examination she said she was not sure about the condoms. “I just know he has condoms.”

[280] When K.V. testified about the “last incident” where her mother is alleged to have attempted to force her to have oral sex with her father, she testified that he raped her while her mother sat nearby crying, in a fetal-type position. When she was asked during cross-examination if she had sex with her father on this occasion, she was far less certain. She said she might have been raped, she thinks he did.

[281] I heard testimony about another incident that did not involve an allegation of sexual assault against K.V. that she testified about inconsistently. In their Google Hangout chats, made exhibit 8 in this case, K.V. had confronted P.V. and demanded that her mother apologize for sexually touching the dog, Po., while in a bedroom where the children were supposedly sleeping. When asked in court if she witnessed this incident, K.V. said her mother tried to have intercourse with the dog. Counsel for P.V. then confronted K.V. with this episode during cross-examination, and K.V. testified that P.V. was licking the dog’s penis, trying to arouse the dog, which K.V. found disgusting. She claimed that she ran and told her father, who was asleep and snoring next door. She woke her father who then beat her mother for having done this.

[282] K.V. was then confronted with a description of the same event in her video statement, where she said it was her brother Js.V. who woke father, while she took the dog away from her mother. K.V. could not account for the inconsistency, insisting that she got her father while she believes Ks.V. took the dog away from their mother.

[283] Inconsistencies of this kind unquestionably shake confidence that I can place in the reliability of K.V.’s testimony. I do not believe, however, that these inconsistencies arose because K.V. was intentionally misleading the Court when recounting these events. I am persuaded that the problems I have identified arise from memory difficulties K.V. had, coupled with a demonstrated, unsettling tendency on K.V.’s part to attempt to complete her narratives surrounding those events by figuring out what must have occurred, instead of confining herself to firm information.

[284] This tendency is epitomized by her exchange with counsel for P.V. over whether P.V. was making spaghetti at the time she summoned K.V. into the basement the “first time” she was “raped” by her father. In her video statement K.V. included this detail, but when cross-examined about the infeasibility of this occurring, K.V. responded that she knows her mother was making something for supper and she assumed it was pasta because she made a lot of pasta.

[285] This tendency also likely explains her inability to remain consistent about her sibling’s whereabouts during the “first” rape, her inconsistencies related to what her mother said to her after she complained to her mother, her vacillation about whether she was raped on specific occasions, and who summoned her father after the dog incident. She tried her best to answer, but because she does not have a firm memory of these details, she proved unable to hang onto the answers she had earlier divined.

[286] K.V. was a witness who frequently appeared to be working through narratives while testifying. She often corrected herself as she was proceeding, sometimes within the same answer, and without anyone challenging her first attempt. I have already referred to how she corrected her “stomping” allegation immediately after it was out of her mouth. There are many other illustrations but the most striking example was her response in re-examination when asked if her father had ever “cut” her. She began relaying an incident in Winchester where she testified that she saw her father cutting himself, and then abruptly changed the narrative to an incident in Greely where her father cut her after chasing P.V. with a knife. She described a slash at her own right arm, cutting her a bit without stabbing her, and she pondered “He was just threatening I guess.” Unlike defence counsel, I do not think this was a “meltdown.” I am convinced that K.V. was scanning her memory trying to picture the event.

[287] K.V. frequently protested, when confronted with such difficulties, that while she was making errors, she was trying to tell the truth about events. I accept that, not simply because she said it, but because the nature of the inconsistencies fit that description and her explanation makes sense. K.V. was being asked to narrate a virtual lifetime of allegations. Her protest during cross-examination that, “There is just a lot of memories I have to go through and it is very hard for me,” rings true. Still, her readiness to offer insecure testimony is a bell-weather for caution that I should not rely on her evidence alone, absent confirmation or other compelling reasons to do so.

[288] My concern about relying on K.V.’s testimony, on its face, is also based on what I believe to be the inherently exaggerated evidence K.V. gave relating to some incidents. Whereas K.I.V. offers a vague recollection of her father striking her softly on the leg with a sledge hammer, K.V. initially recounted being struck in the legs and back by her father with a sledgehammer, “as hard as he could,” a description she toned down to “as hard as I could take,” when challenged with how incredible her account was. Whereas K.I.V. described being whipped with a cord after K.V. told their parents that K.I.V. was looking at boys at school while reading, K.V. has K.I.V. being beaten unconscious and thrown in a dog house full of bees. While K.I.V. describes having a scorpion put on their stomachs during the “evil fun,” K.V. has it painfully stinging her. While K.I.V. recalls having her feet being held to a flame, K.V. recalls touching a hot element directly with her hand when her face was being pushed against it. And while K.I.V. speaks of horrible beatings, K.V. has her father beating her head against the toilet so hard that it breaks, and striking her over the head with a 2 x 4.

[289] I also have concerns about the reliability of K.V.’s testimony about who she told about the abuse she was experiencing. Although it is entirely possible that K.V. made all of the disclosures she claimed about being hurt by her parents, there is reason to doubt that she accurately recounted her history of complaints. Unlike K.I.V., who described only one unconfirmed complaint to a teacher, K.V. offered evidence about repeated complaints to teachers, and at least one Children’s Aid Society case worker. It is improbable that none of these many complaints would have found their way into Children’s Aid Society records, leaving me to doubt that she reported her abuse in the fashion she testified to.

[290] In spite of the unrealistic nature of some of her evidence, and my concern about the accuracy of her reports about disclosure, I do not believe that K.V. was intentionally lying about any of this. Instead, because of the confirming evidence that does exist, I am confident that K.V. was abused, and that she was attempting to relive a lifetime of horrors experienced through the

distorted eyes of a terrified child. She believes these events happened as she recalls, and she believes that she complained either more than she did, or with greater specificity than she did.

[291] In any event, for all of the reasons given, including her demonstrated ability to lie, her inability to maintain consistency on matters of detail, the unrealistic narrative she has offered, and her undependable recollection of her history of complaints, K.V. is a dangerous witness. Her testimony, standing alone, is simply not dependable. What, then, should I make of her evidence in the context of the case as a whole? I will begin with the sexual assault allegations.

[292] I am persuaded, beyond a reasonable doubt, because of supporting evidence, that K.V. was sexually assaulted by J.V., with the assistance of P.V..

[293] I will begin by noting that, notwithstanding that K.V. is generally a dangerous witness, her testimony about being sexually violated by her father is compelling. I was struck, for example, by K.V.'s description of her sexual relationship. She did not describe "telling on" her father, or "disclosing" the sexual abuse. She spoke of "confessing." That she was prepared to implicate herself in this way, by accepting undeserved blame, adds to the credibility of her account. In this regard, her "victim-blaming" testimony that she did not consider it to be "rape" if she agreed as a child to have sex with her father is important.

[294] K.V. is clearly guilt-ridden over her role in what occurred. She emphasized for much of her testimony how she resisted and how she fought back, and it was only in the last throes of her cross-examination, and with obvious reluctance, that she said that the sexual contact did not start out as "rape." She reluctantly admitted: "It started out with him touching me and I did not say anything and I guess I kind of liked it." She then elaborated that he did not always beat her when he raped her because "it did not start out as rape because I did not say no after seeing porno with him and he started touching me. I didn't know how to feel and before this I just did it with him and he did have sex with me and this [violent episode] happened later." K.V.'s account of being sexually violated by her father was not simply a narrative of events. It was imbued with important information about how this made her feel.

[295] As enticing as her evidence is on these points, I would not have acted on it alone, given her problems as a witness. Central to my decision to credit this account is the confirmation that existed. This includes that the pattern of sexual abuse recounted by K.V., namely her mother coming to get her and bringing her to her father's bed, her father watching pornography, and her mother remaining outside of the room while J.V. had sexual intercourse with her, often after school, and with her on the bottom and him attempting on occasion to try to put her on top, is strikingly similar to the pattern recounted by K.I.V..

[296] This pattern does not lose its probative value because K.V. mused about her father wearing condoms on occasion, or offers only one attempt by her father to force her to have oral sex that she can remember, or because K.V.'s account does not include episodes with dogs, or participation of P.V. in her own sexual activity. On the evidence presented, K.V. was far more likely to resist than K.I.V., and this helps explain why she was not co-opted in all of the ways that K.I.V. was. The important pattern that maintains, enhances the strength of the inference that the acts complained of by K.V. occurred.

[297] Electronic communications involving K.V. also provide meaningful support for her allegations of sexual violation. First, in exhibit 8, the “Hangout with J. reb” messages, at p.7, J.V. offers a series of self-denigrating but vague apologies including “i wish i never did those things and i was normal and i never used drugs,” “i hate myself,” “i wish i could take it back,” “im sorry i did those things K.V..” K.V. confronts him by agreeing that “like even the things you did to me were really not good.” He replies after a related exchange, “i am only seeing what a monster i am now and i cant face it im sorry so KI.V. I did not mean to hurt her.” He then says a few lines later “i wanted someone to love me because your mom didn’t.” This last comment, taken in context, is evidence, in my view, of J.V.’s distorted conception of the kind of love that should exist between a parent and child, and it comes very close to confirming the sexual abuse allegations K.V. was making.

[298] In the course of an exchange in exhibit 8 on p.10, between K.V. and P.V., P.V. is attempting to use K.V. to get a message to KI.V. about her father being sorry for hurting her. K.V. challenges her mother “what about you?” P.V. replies, “yes me too.” She then continues, “that’s without question but i did the drugs with him and some times i would make him get them thats what the drugs can do to a person it makes them sexual so that we could just be with each other.” “he hated me because i hurt him and he need the drugs to be with me we don’t have sex with out drugs anymore.” K.V. then replied “then why did father want to be with us instead? why were you fine with him doing that with us? Why didn’t you just stop the drugs. it made you do all that to me?” P.V. did not respond with a denial. Instead she said “yes it does dop that but it is just a lie to make you think you need it.” P.V. then expresses the wish that she could take it all back. I am aware that, subsequently, once K.V. began to accuse P.V. of touching the dog and letting father touch her and KI.V. like wives, P.V. accused K.V. of lying. Still, I am convinced that for a time she let her guard down, and the exchange I have quoted is an admission by P.V., tenable as proof against her, that she was alright with the girls being with father instead of her, and she blamed the drugs.

[299] K.V.’s allegations about being sexually abused find support, as well, in the herpes diagnosis that she received when she was 8 years of age. I am mindful that a herpes diagnosis, even in the anal and genital region of an 8 year old child, is not definite of sexual abuse. It is, however, highly suspicious of sexual abuse. This diagnosis is not useless because herpes can be transmitted non-sexually. In all of the circumstances, this diagnosis is circumstantial evidence that strengthens K.V.’s allegations.

[300] Finally, as was true with KI.V.’s complaints about sexual violation, K.V.’s testimony about being sexually abused repeatedly by her father is supported contextually by his jealous and obsessive attitude he displayed about her sexuality as a young child. Like KI.V., K.V. testified that she too, was made to dress like a boy, not allowed to have a boyfriend, and, she too, was grilled about her interest in boys after returning home from school. Like KI.V., she also testified that she was called a “whore” and “slut” by her father, and she testified to being assaulted by him because of his suspicion that she had been with boys.

[301] In all of the circumstances, I am satisfied beyond a reasonable doubt that K.V. was sexually assaulted by J.V. repeatedly during the charging period, and that P.V. aided and abetted J.V. by bringing K.V. to her father, knowing that he was going to sexually violate her.

[302] Before leaving the sexual assault charges there, I want to record that, in coming to this decision, I have taken into account two other areas where I apprehend that K.V. may have purposefully provided relevant false testimony. Specifically, as disclosed above, for a time she characterized all of the sexual abuse as forced on her, yet in the end said that this was not so. She also offered inconsistent testimony about when the sexual abuse ended. I will address these issues in turn.

[303] Both K.V.'s police statements and her initial testimony described only forced sexual abuse. She described a violent rape by her father, she believes around the age of 8 or so, when she was living in Osgoode, Ontario, as the "first time." She then described a "second" event occurring sometime later, after which she told her mother what was happening. Late in her cross-examination, K.V. was confronted with inconsistent statements she made about multiple incidents falling between the "first" and "second" events. K.V. said that she had been misunderstood. She said that when she referred to the "first incident," she was referring to the first time she was forced to have intercourse against her will. She said that the sex did not start off with her father beating her. It began with her father touching her after showing her pornography, and her not saying anything. She explained, "I guess I kind of liked it and I did not know." She also said that he did have sex with her after this began, before the violent rape incident she described.

[304] For the reasons explained, I am persuaded that she was indeed sexually violated by her father. I am also satisfied beyond a reasonable doubt that not all of the sexual abuse was forceful. The pattern of conduct supported by the similar fact evidence of K.I.V. supports K.V.'s claim to her father sexually assaulting her at such a young age that she would have been too naïve to recognize that his conduct was wrong. I am also persuaded, for the reasons described below, that K.V. was subject to serious physical assault from her father, and it makes sense that she would not always have resisted, even after that point in time. K.V. therefore testified falsely when she attempted to cast all of the sexual assaults as forcible.

[305] This lie did not create a reasonable doubt in my mind about whether K.V. was sexually assaulted at all, not only because of the powerful case that she was sexually assaulted repeatedly, but because her lie can be easily understood in terms that are consistent with J.V.'s guilt. I am persuaded that initially, it was simply too difficult for K.V. to admit publicly that at times she did not resist her father, and even participated willingly as a young child. I have already commented on the guilt that K.V. carries about what happened, and about her limited understanding of what rape entails. It was also evident to me that when K.V. ultimately described sexual contact with her father that was not forceful, and volunteered that she "kind of liked it," she appeared mortified when doing so. K.V. did attempt to mislead this court for a time, but she did so because she feels guilt that she should not feel. Her "lie" is not one that undermines K.V.'s evidence.

[306] As for the inconsistency about when the sexual abuse ended, when first asked how long her father had been raping her, K.V. replied, "pretty much my whole life before I left my house, my grandparent's house in Kenmore, about 19 or so maybe 18." She said she left in the winter of 2013, when she was that age. She also testified that the rapes were not as frequent by the time she was 16, or 17 or 18. She said that her parents did not want her to get pregnant, as she told them she was having her period, which slowed the frequency of the rapes. Yet later in her examination-in-chief, consistent with her initial police statements, she testified that the last time she had sex with her father, from what she could remember, was when she was 15 or 16, when

her mother dragged her into the bedroom and tried to force her to have oral sex with him. Later, in cross-examination, however, she said that this forced attempt at oral sex incident would not have been the last time, “now that I think of it.” She said that what she meant when she said it was the “last time,” was that after this incident ended, her parents promised her that this would be the last time. In her police statement, however, when telling the police that the forced attempt at oral sex was the last time she was raped, she also explained that while her father did not rape her after that, her father continued to sexually harass her by grabbing her behind and making rude comments. That specific information casts doubt on K.V.’s explanation that she did not mean to communicate that the forced attempt at oral sex was the last time she was raped. Indeed, she also told the police that the sex stopped when she first met T., in grade 10.

[307] I am confident, based on the pattern of sexual abuse described by KI.V., that K.V.’s sexual violation did not end when she was 15 or 16. So long as she was in the house, there is no reason why it would. I suspect that K.V.’s inconsistent testimony about when the sexual assaults ended may well be explicable on the same footing as the “condom” lie. K.V. prepared the statement claiming that the sex ended around the time she met T., at the age of 16, on T.’s computer. She testified that she feared that T. would see the statement. It is doubtful that she would want T. reading that the sexual contact between her and her father lasted until she left the house around 19, long after she was seeing T.. Whether my suspicions are correct or not, if this is indeed a lie rather than honest confusion on K.V.’s part, it is not a lie that shakes my confidence that she was sexually assaulted, given the confirming evidence that exists.

[308] In addition to being convinced that K.V. was sexually assaulted, I am also satisfied, beyond a reasonable doubt, that J.V. assaulted K.V. repeatedly during the charging period. Ultimately, the heart of K.V.’s evidence about being assaulted by him does not stand alone.

[309] Whether K.V.’s tongue was ever forced into a chicken cage or not, K.V. was made to participate by J.V. in the assaultive “evil fun” activities. I am persuaded of this beyond a reasonable doubt because of the overlap in the testimony of KI.V. and K.V.. Where their descriptions coincide, I am persuaded that these events occurred, both by the force of KI.V.’s direct evidence about K.V.’s involvement, and the unlikelihood that the two of them would have coincidentally conjured up the same bizarre accounts. Specifically, I find beyond a reasonable doubt that K.V., like KI.V., was made to fight with other children to the point of injuring one another, that they were thrown into bees’ nests, and that a scorpion was put on their chests, all acts that make out the offence of assault.

[310] I am also convinced, beyond a reasonable doubt, that J.V. assaulted K.V. regularly during the charging period, including by punching and kicking her, whipping her with cords and tree branches, and having her fingers bitten or bent back, just as KI.V. was.

[311] I am satisfied a number of these assaults related to J.V.’s obsession with his daughter’s sexuality. I have described that obsession above, and need not repeat it here. This contextual information serves not only the credibility and reliability of the sexual assault allegations, but also the claims made by K.V. that she, too, was assaulted by J.V. because of her perceived interest in boys.

[312] Indeed, KI.V. offered eye witness testimony to witnessing J.V. pulling K.V.’s pants down, and whipping her with an extension cord after she gave money to a boy at school to be her

friend. This account, which I believe beyond a reasonable doubt, is reminiscent of K.V.'s own testimony that she was assaulted after her father discovered she was friends with a boy at school.

[313] J.V.'s propensity to assault K.V. adds credibility and reliability to her general claim that he used physical force to sexually assault her when she did not comply, an aggravating factor in the sexual assault findings I have made.

[314] Beyond this, given the infirmities in her evidence, I will not act on K.V.'s specific allegations about particular incidents alleged against either J.V. or P.V.. I am not prepared, for example, to find beyond a reasonable doubt that the specific incident described in the Osgoode, Ontario basement where she crawled into the "Smurf room", happened as described. Nor am I prepared to find that J.V. and P.V. attempted to force K.V. to perform oral sex on J.V. when she was around 16 years of age. Nor am I ready to conclude that P.V. assaulted K.V. on a walk, after K.V. disclosed that she was being sexually abused in the early days, before P.V. assumed her role as sexual liaison escort, or that P.V. and J.V. pulled K.V. and K.I.V. from school and beat them on the road for interacting with other children. None of these particular events are supported by other evidence, nor are these specific incidents proved by the similar fact evidence available to me.

[315] With respect to the non-sexual assault charges alleged against P.V. against K.V., the allegation that P.V. forced K.V. to participate in the "evil fun" activities stands on K.V.'s testimony alone. K.I.V. did not implicate P.V. in any of the "evil fun" activities. Moreover, there is no supporting evidence for any of the specific allegations made by K.V. that her mother assaulted her physically, with the exception of the similar fact detail that P.V. held K.I.V. down when J.V. assaulted her. This is not enough, in my view, to rely on K.V.'s testimony about her mother's assaultive conduct towards her. While I believe P.V. probably did assault K.V. as she claimed, I am not satisfied beyond a reasonable doubt that she did. P.V. will not, therefore be convicted of non-sexual assaults against K.V..

V. Conclusion

[316] Based on the findings I have made, I am finding J.V. guilty of the offences alleged in counts 1, 2, 3, 5, 6, 12, 13, 15, 16, 19, 20.

[317] I am finding J.V. not guilty of count 4 because the evidence relating to K.V. does not enable a specific finding, beyond a reasonable doubt, that the "Smurf room" incident occurred as described, and that is the only event testified to by K.V. where a demand for oral sex was engaged.

[318] I am finding J.V. not guilty of count 14 since I do not have evidence before me that a herpes transmission "wounded, maimed, disfigured or endangered the life" of K.V., and there is no specific sexual assault event that has been proven beyond a reasonable doubt where this consequence occurred.

[319] I am finding J.V. not guilty of counts 17 and 18, alleging anal intercourse contrary to subsection 159(1), in light of the decision in *R. v. M.(C.)* (1995), 98 C.C.C.(3d) 481 (Ont. C.A.) that this provision is of no force or effect, as contrary to section 15 of the *Charter*.

[320] I am finding P.V. guilty of count 1 based both on her acts of aiding and abetting J.V. during sexual assaults he committed against KI.V., and on my finding that P.V. participated on one occasion in an act of sexual assault against KI.V..

[321] I am finding P.V. guilty of count 2 based both on her acts of aiding and abetting J.V. during sexual assaults he committed against K.V..

[322] I am finding P.V. guilty of count 3, for having aided J.V. by placing a dog in the room with J.V. and KI.V., while KI.V. was being sexually assaulted by J.V., knowing or being wilfully blind that the dog would be used by J.V. in sexually violating KI.V..

[323] I am finding P.V. not guilty of count 4 because no act of counselling by P.V. to have K.V. touch J.V.'s penis with her mouth, has been proved beyond a reasonable doubt.

[324] I am finding P.V. not guilty of count 5, there being no specific evidence that she counseled KI.V. to touch J.V.'s penis with KI.V.'s vagina.

[325] I am finding P.V. guilty, on the evidence, of the lighter assault alleged in Count 6, and the sexual interference charge in count 7 involving P.V.'s tongue, each against KI.V..

[326] In coming to these decisions relating to P.V., I considered whether there is an air of reality to the defence that she committed these awful crimes under duress. I did so even though this defence was not raised by defence counsel, given my findings that she was not infrequently assaulted by J.V. and her offences were committed to assist him. When considered, there is not even an air of reality to such a defence, on any of the charges, on the evidence before me. The defence of duress requires, among other things, that there be a reasonable doubt about whether there was an express or implied threat of bodily harm that could be carried out if the accused does not commit the offence, there must be close temporal connection between the threat and the offence, that the accused person believes reasonably that there is no safe avenue of escape, and that the crime be a proportionate response to the threat: *R. v. Ryan* [2013] S.C.J. No. 3 at para. 55. There is no air of reality to any of this. Indeed, the last element alone, proportionality, would have devastated any effort by P.V. to have attempted this defence. It is inconceivable that the threat of being beaten by J.V. could in any way excuse the horrible betrayal of her children that P.V.'s conduct contributed to.

Dated this 14th day of July, 2015

Justice David M. Paciocco