W A R N I N G

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judge or justice may make an order directing that any information that could identify the victim or a witness shall not be published in any document or broadcast or transmitted in any way, in proceedings in respect of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, 160, 162, 162.1, 163.1, 170, 171, 171.1,172, 172.1, 172.2, 173, 213, 271, 272, 273, 279.01, 279.011, 279.02, 279.03, 280, 281, 286.1, 286.2, 286.3, 346 or 347, or
>
> (ii) any offence under this Act, as it read from time to time before the day on which this subparagraph comes into force, if the conduct alleged would be an offence referred to in subparagraph (i) if it occurred on or after that day; or
>
> (*b*) two or more offences being dealt with in the same proceeding, at least one of which is an offence referred to in paragraph *(a)*.
>
> (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 victim of the right to make an application for the order; and
>
> (*b*) on application made by the victim, the prosecutor or any such witness, make the order.
>
> **. . .**
>
> **486.6 OFFENCE** — (1) Every person who fails to comply with an order made under any of subsections 486.4(1) to (3) or subsection 486.5(1) or (2) is guilty of an offence punishable on summary conviction.

ONTARIO COURT OF JUSTICE

CITATION: *R. v. K.T.,* 2025 ONCJ 234
DATE: 2025 04 16
COURT FILE No.: Pembroke 22-37100396; 23-37101038

B E T W E E N :

HIS MAJESTY THE KING

— AND —

KT

Before Justice J.R. Richardson
Heard on June 17, August 1, August 15, 2024, January 9, 2025
Reasons for Judgment released on April 16, 2025

Richard Morris.....counsel for the Crown
Marnie Munsterman ..... counsel for the accused

RICHARDSON, J.:

Introduction

[1] This is a complex sentencing.

[2] The Court must wade through a myriad of minefields in the following issues:

a) The length of sentence that should be imposed for an untreated, indiscriminate sex offender;

b) How, if at all, the offender's low average and borderline results in some aspects of his intellectual functioning should affect the assessment of whether he has "diminished moral blameworthiness";

c) The collision between the sentencing principle of totality, that is the need to sentence the offender in a way that is not so long that it is unduly harsh and crushing for him, while respecting Parliament's direction to impose minimum sentences for some offences and consecutive sentences in others;

d) The impact of the deplorable and untenable conditions in which the offender has been housed while he awaits sentencing and the degree to which he should receive additional credit for his pre-sentence custody time.

[3] As I have been editing and honing the 51 pages that follow, I have been thinking about the words of former Justice Doherty of the Ontario Court of Appeal in his recent address to the Criminal Lawyers Association, in which he said:

> It seems to me, however, that the many and diverse demands that are now made on the criminal justice system, and the complexity that has overtaken the substantive and procedural law in response to new demands endangers the fair and efficient operation of the criminal justice system. I refer you to the remarks of the Court of Appeal in a case called *King* in 2022[1].
>
> I have previously described the criminal process as akin to a cargo ship, which has been running along the same route for years and years, making its way from port to port. However, now, at each stop, more and more cargo is loaded on the ship, and none is taken off. As the ship continues the journey, it slows and sinks lower and lower into the water until it finally disappears from view.
>
> My fear is that the complexity and—well, primarily the complexity—I'll leave it at that we have developed in the criminal law, is really making it close to unworkable, at times.

[4] My base court is Pembroke. KT is the third offender that I am sending to the penitentiary for sexual offences within the last month. These cases are necessarily demanding, difficult and time consuming.

[5] I took KT's plea on these charges in June 2024. I heard sentencing arguments in August, 2024 and January, 2025 and I reserved judgment until today. Along the way, I have repeatedly insisted on receiving assessments which will assist me in understanding who KT is and in fashioning a sentence for him that is proportional to his moral blameworthiness.

[6] These are assessments that are necessary, not only to me in the process of his sentencing, but also to the correctional service and parole board, who will be called upon to implement a correctional treatment plan for KT and decide on when he is a candidate for release back into the community.

[7] As much as the law with respect to sexual offences in general, and sexual offences against children specifically, focusses primarily on denunciation and deterrence, the imposition of sentence must always have an eye on the fact that, absent a finding that an individual should be subject to a indeterminate sentence, the offender will be released

[1] In *R. v. King,* 2022 ONCA 665 at paragraph 183, Associate Chief Justice Fairburn and Justice Doherty stated at paragraph 183, "We must remain ever mindful of imposing more demands on an already overly burdened and complex criminal justice system. The criminal law is not calling for more complexity. If anything, it is calling out for simplicity and, most importantly, quality justice delivered with efficiency: *R. v. Jordan*, 2016 SCC 27, [2016] 1 S.C.R. 631, at paras. 3, 27, 45."

back into the community and the community is entitled to be kept safe from him when that time comes.

[8] In this case there are aspects of the assessments that are sloppy and incomplete. For example, there is no assessment of KT's risk to reoffend.

[9] It is easy to blame the assessors. But one must also bear in mind that they are overworked. Where I preside, there is a shortage of forensic psychiatrists.

[10] I have also had to balance writing this judgment with the incessant demands of my other cases, only two of which I have discussed above. The complexity of our law makes the process of doing justice to KT arduous and time consuming. The judgment must demonstrate to the parties and to any appellate courts that may be called upon to review it, that I have considered everything, including the proverbial kitchen sink, in fashioning KT's sentence.

[11] Two things bother me the most about this process:

[12] First, I suspect that KT will not understand these reasons for sentence. He will understand the final number, but I have grave doubts as to whether he will understand the process that I have followed in arriving at it.

[13] Fortunately, he has the benefit of a caring and able defence counsel who I know explain it to him and for whom I am extremely grateful.

[14] This, however, is a failing of our system and a symptom of how complex the law has become.

[15] Secondly, while assessments have been conducted, arguments heard and judgment considered, KT has been kept at the Ottawa Carleton Detention Centre, where conditions are deplorable and where he has been unable to receive meaningful treatment for his criminogenic challenges. This too is a failing of our system.

Facts

Information 22-37100396

[16] On June 17, 2024, KT entered pleas to the following offences:

a) Criminally harassing BA, contrary to section 264(2)(b) of the *Criminal Code;*

b) Criminally harassing HBC, contrary to section 264(2)(b) of the *Criminal Code;*

c) Criminally harassing RL, contrary to section 264(2)(b) of the *Criminal Code;*

d) Criminally harassing AC, contrary to section 264(2)(b) of the *Criminal Code*;

e) Indecently communicating with AD, contrary to section 372(2) of the *Criminal Code;*

[17] The Crown proceeded by Indictment.

1. Criminal Harassment Against BA

[18] With respect to the offences against BA, both BA and KT worked at a restaurant in the Town of Petawawa. BA started to receive unwanted photos of a male penis. She believed that the sender was KT. She also received videos of him masturbating. She ignored them. He then sent threatening messages to her. I note that at the time of the offences, BA was an adult.

2. Criminal Harassment Against HBC

[19] With respect to the offences against HBC, both HBC and KT worked at the same restaurant. HBC started to receive unwanted messages asking her to “fuck me”. She also received two videos of him masturbating. She then received a phone call from him. She recognized his voice. He was explicit in his conversations with her. HBC was a youth when she received these communications.

3. Criminal Harassment Against RL

[20] With respect to the offences against RL, both RL and the accused worked at the same restaurant. RL started to receive unwanted messages from the accused. She telephoned him and told him to stop communicating with her. He then attended at her other place of employment uninvited. He sent her videos of him masturbating. In the videos he told RL to “fuck me”. She also received messages from KT where he told her “I want to fuck you.”

4. Criminal Harassment Against AC

[21] With respect to the offences against AC, both AC and KT worked at the same restaurant. KT started communicating with her. Those communications were unwelcome. In one message, she sent a nude photo of herself as a younger female. The photo showed her breasts. KT demanded that she send him more photos and told her if she didn’t, he would disseminate the images of her without her consent. He then sent messages offering to pay her money if she sent him photos of her breasts.

5. Indecent Communications Against AD

[22] AD was the manager at the fast-food restaurant where KT worked. She started receiving messages from an unknown number asking her if she could keep a secret. He told her that she was a “goddess”. He offered her $1000 for sexual favours. She then received a call from the same number and she recognized the voice as that of KT. AD went to KT’s house and told his parents what was happening. Despite this, KT continued to send unwanted messages to AD.

[23] The accused was arrested for these offences on September 20, 2022. He gave a statement to the police where he admitted to repeated communications and sending videos of himself masturbating to BA and HBC as an act of revenge for them “being mean” to him. He admitted to sending unwanted messages to RL because she “broke his heart”.

He admitted to sending unwanted messages to AD because he wanted to cause trouble in her relationship with her husband.

Information 23-37101038

[24] On June 17, 2024, KT also pleaded guilty to the following offences:

a) Making sexually explicit material available to C, a person under the age of 16, contrary to section 171.1(1)(b) of the *Criminal Code;*

b) Exposure to OM, a person under the age of 16, contrary to section 173(2) of the *Criminal Code;*

c) Possession of child pornography contrary to section 163.1(4) of the *Criminal Code;*

d) Communicating with OM, a person under the age of 16 for the purpose of facilitating child pornography, contrary 172.1(1)(b) of the *Criminal Code*;

e) Communicating with an unknown person under the age of 18 for the purpose of facilitating child pornography contrary to section 172.1(1)(a) of the *Criminal Code*;

f) Voyeurism, contrary to section 162(1) of the *Criminal Code;*

g) Exposure to a person under the age of 16 (K), contrary to section 173(2) of the *Criminal Code*;

h) Making sexually explicit material available to a person under the age of 18 (KX), contrary to section 171.1(1)(a) of the *Criminal Code*.

[25] The Crown proceeded by Indictment.

[26] When KT was arrested in relation to the criminal harassment offences, police located a cell phone on his person which was seized incident to arrest. They also obtained a search warrant for his residence and they seized a variety of electronics and devices.

[27] The balance of the facts outlined pertain to what the police discovered on KT's devices and through police follow-up investigation.

1. Making Sexually Explicit Material Available to C, a Person under the age of 16

[28] Using *Snapchat,* KT communicated with C. A screen recording of the conversation was saved to his phone. He asked her to show him her breasts. C told KT that she was 15 years old. KT then sent C a video of himself masturbating. He also sent other videos, all of which are explicit in nature. In the videos she requested that C say his first name. In another video, he told C that he was going to "break her vagina".

2. Exposure to a Person Under the Age of 16 (OM) and Communicating with a Person Under the Age of 16 (OM) for the Purposes of Facilitating Child Pornography (Luring)

[29] Using *Tik Tok,* KT found OM. OM was 15 at the time of the offences and her profile on *Tik Tok* indicated her age. KT told OM that he was a bit older than she was (in reality he was in his early 30s). He asked OM for nude photographs. He also insisted that she watch him masturbate and he exposed his penis to her while doing so. He directed her to say things to him to assist him in masturbating. He sent OM money for participating. Police located images and videos of her genitalia and breasts in their search of KT's devices.

3. Possession of Child Pornography

[30] Police discovered a total of 2,257 images that depict child pornography on KT's devices. The children depicted in the images are male and female between six months and 17 years old. The images depict masturbation, intercourse and bestiality.

[31] Police discovered a total of 3,651 videos that depict child pornography on KT's devices. The children depicted in the images are male and female between six months and 17 years. The images depict vaginal and anal intercourse and solo sexual acts as well as foreign object insertion into the orifices of the victims.

4. Communicating with an Unknown Person Under the Age of 16 for the Purpose of Facilitating Child Pornography (Unknown female) (Luring)

[32] KT spoke with another young person, whose identity is unknown, who is under the age of 16. He asked her to send him photos of her breasts. He promised he would not save any of the photos. He also sent her videos of him masturbating. He told her that he wants to give her so much and he offered to send her money. He directed her to message him while he is masturbating and asked her to watch him. He asked her for photos of her breasts and requested videos where she said, "I want your cock K."

5. Voyeurism (Unknown Male)

[33] Police located a video on one of KT's devices that depicted KT and an unknown male in KT's bedroom. Both males undress and have their genitals exposed to the camera. The unknown male asked KT, "You're not videoing this are you, over there?" and gestured towards KT's cell phone. KT stated, "No, I don't give a fuck about that." KT and the unknown male then performed consensual sexual activity on each other. When they were finished, the unknown male told KT that he wanted to be discrete and mentioned KT's cell phone. KT stated, "No, not at all". He then walked the unknown male out of his room. A short while later he returned, picked up his cell phone and stopped the recording.

6. Exposure to a Person Under the Age of 16 (K)

[34] At the time of these offences, K was 15 years old. KT reached out to K and told her he would pay her for photos of her breasts and body. He sent her multiple video clips of him masturbating. He told her that he would not record her.

7. Make Sexually Explicit Material Available to a Person Under the Age of 18 (KX)

[35] During a conversation on social media, KT asked KX to help him masturbate. KX refused. He offered to pay her a $100 Amazon gift card. KX sent him a photo of herself where she obviously appears to be a young teenager. KT told her, “Damn, you are only 13.” KT then asked KX to turn on her camera so she can watch him masturbate. KT then masturbated while she watched. KX was watching with a filter disguising her face. KT instructed KX to turn the filter off.

[36] On consent, the Crown filed Exhibit 1, which was a summary of the allegations along with the particulars of the various social media conversations referred to above.

[37] On consent, the Crown also filed Exhibit 5, which was a report created by Detective Earle of the Ontario Provincial Police Child Exploitation Unit, setting out the categorization of the videos and photos, which I referred to above.

Age of the Offender

[38] KT was born [xxx], 1989. He is now 35 years of age.

Criminal Record of the Offender

[39] KT does not have a criminal record.

The Report Regarding Whether KT Is Not Criminally Responsible

[40] Prior to my involvement, a report was ordered to assess whether KT was “not criminally responsible” such that a defence to the charges might be available under section 16 of the *Criminal Code.*

[41] That report, dated December 20, 2023, was filed on consent as Exhibit 2, at the sentencing.

[42] The report is authored by Dr. Julian Gojer, Acting Clinical Director and Staff Psychiatrist at the Forensic Program of the Royal Ottawa Hospital. Dr. Gojer is well known to this Court as an expert in forensic psychiatry.

[43] KT is the youngest of three children. His father was a member of the Canadian military.

[44] There is a history of alcoholism, bipolar disorder and schizophrenia among grandparents, uncles and cousins.

[45] KT's mother, JT, told Dr. Gojer that she suffered from high blood pressure and hypoglycemia when she was pregnant with KT. She said that his childbirth was difficult but a full-term delivery.

[46] KT developed asthma when he was two. When he was three, one of his lungs collapsed due to a virus and he had to be hospitalized. There were concerns that his oxygen levels had dropped and he had brain damage.

[47] He is said to have been "hyperactive" when he was a child. He had difficulty with stealing at a young age. He had difficulty keeping friends. He had difficulty with bed-wetting until he was six years old.

[48] He was diagnosed with Attention Deficit Disorder and prescribed Ritalin. JT terminated the use of that medication because KT was not eating or sleeping.

[49] JT described him as a difficult but happy go lucky child. He could be annoying.

[50] He never failed any subjects and received grades in the Cs and Ds. He was expelled from High School when he was in Grade 11 after he was found with cannabis. Apparently this was not his first time being found with cannabis. He is two credits short from achieving his high school diploma.

[51] JT stated that he had difficulty concentrating when he was in high school.

[52] He has worked in the restaurant industry since he was 17.

[53] KT identifies as bisexual. He estimated that he has had 12 female partners and three male partners. He told Dr. Gojer that he has difficulty maintaining a relationship because he is moody.

[54] He denied ever being sexually abused. He explained his interest in young females as "curiosity". He stated that he has never had hands on contact with a child.

[55] KT started drinking when he was 16. He drank heavily until he was about 32. He told Dr. Gojer that he would experience "shakes" when he stopped using it. He got to the point that he could not sleep without using alcohol. He had a short stay at Pembroke Hospital and was able to reduce his alcohol consumption. He told Dr. Gojer he had not consumed alcohol for about a year before he was arrested.

[56] He takes Trazodone to assist with sleep.

[57] KT started using cannabis when he was 15. He was a daily smoker until he was arrested. His daily intake was about three grams. He believed that the use of cannabis calmed him down.

[58] KT started using cocaine when he was 29 years old. He initially started using cocaine to help him stay awake when he was working. At the time of his arrest, he was using a gram and a half of cocaine on a daily basis.

[59] JT was aware of problems with KT's drinking. She was also aware that he was using cannabis and cocaine, but she was not aware how much that he was using.

[60] KT has been told that he has symptoms of sleep apnea. He has not been tested for it.

[61] KT told Dr. Gojer he suffers from chronic depression and his mood fluctuates. When he is moody, he talks excessively and is irritable and confrontational. Elevated episodes of mood last for about an hour.

[62] JT told Dr. Gojer that KT's moodiness started when he was about 19. She stated that elevated mood would last a week or two. When his mood was elevated, he had difficulty sleeping. He would talk a lot. His discussions were not focused.

[63] According to JT, episodes of depressed mood would last three to six weeks. He would struggle to get out of bed, neglect his hygiene and wear the same clothes. There was one occasion where he was suicidal. He viewed himself as a failure and a burden to society.

[64] At first, there were periods of "normal" behaviour between the periods of elevated and depressed mood. In the last few years, there were no normal periods and his mood was either high or low.

[65] KT did not endorse hallucinations. He stated that he does suffer from some paranoia. He believes that people talk about him behind his back and conspire against him. He stated that cannabis and cocaine help to calm this down.

[66] He does not suffer from any seizures.

[67] When he was in high school he fell and hit his head and lost consciousness for a few minutes. He has had a number of blackouts where he gets dizzy and faints. He has suffered from panic attacks since he was ten. JT told Dr. Gojer that KT had memory problems after this happened.

[68] JT indicated that KT was hypersexual. She believed that he masturbated many times a day.

[69] Dr. Gojer found KT was able to relate well to the questions that he was asked. He did not detect evidence of depression, anxiety, elevated mood, irritability, delusions, or hallucinations. He did not appear to have difficulty with being distracted or holding his attention.

[70] Dr. Gojer opined that KT was "average" in intelligence and "somewhat insightful into his mental health problems."

[71] Dr. Gojer suggested the following potential mental health problems:

a) Attention Deficit Disorder and associated problems of impulsivity;

b) Potential brain injury due to his fall in high school. Dr. Gojer added, however, that there are no "overt neurological deficits" but "subtle deficits may be present". Neurological testing to identify whether there are deficits was not undertaken. He also opined that "Mr. T could benefit from a full neuropsychological evaluation.";

c) Alcohol Use Disorder (now in remission);

d) Cannabis Use Disorder (now in remission);

e) Cocaine Use Disorder (now in remission);

f) Depression and Hypomania. Dr. Gojer noted that these are symptoms that are often associated with Bi-polar Disorder but stopped short of diagnosing that. Dr. Gojer also explained that hypomania can also increase KT's libido, enhance his sexual desire and contribute to his offending. He also explained that the use of alcohol and drugs "clouds the diagnosis of Bi-polar Disorder." Dr. Gojer suggested that Cyclothymic Disorder is a more fitting diagnosis, but further evaluation was necessary.

[72] Dr. Gojer avoided commenting on whether KT suffered from sexual deviation. He suggested that "pedophilia needs to be evaluated", and "phallometric testing at our laboratory could shed light on any deviant sexual proclivities." He suggested that if this was desirable, this could be conducted as part of an assessment under section 21 of the *Mental Health Act*.

The Section 21 Report

[73] A section 21 report was ordered and the assessment was conducted by Dr. Gojer. This report, dated March 14, 2024, was filed on consent as Exhibit 3 at the sentencing. That report reveals the following:

a) Normal hormonal levels;

b) No issues with cognitive distortions involving children;

c) High arousal to audio testing involving female children;

d) Some arousal to audio testing involving male children;

e) High arousal to adult female stimuli.

[74] Dr. Gojer opined that testing was indicative of pedophilic disorder. His Pedophilia is not exclusive, meaning that "he has an erotic interest in adults and erotic interest in children."

[75] He also repeated his earlier diagnosis of ADHD, Cyclothymic Disorder, Alcohol, Cannabis and Cocaine Use Disorder.

[76] Dr. Gojer stated that he would benefit from prescription mood stabilizers an anti-depressant, and a stimulant for his ADHD. He also stated that KT needs substance use counselling and sex offender counselling.

[77] If sentenced to the reformatory, Dr. Gojer suggested that treatment for KT was available at the St. Lawrence Valley Correctional and Treatment Centre.

[78] I note that Dr. Gojer's report is completely silent with respect to a prognosis of the risk to the community that KT poses. In reports of this nature, there is usually an assessment of the risk posed by the accused using various psychometric actuarial instruments. This is completely missing from this report.

Follow Up Neuropsychological Assessment

[79] After reviewing Dr. Gojer's previous reports, I was concerned that KT had not been subjected to neuropsychological testing and I asked Dr. Gojer to examine KT for that purpose. Dr. Gojer's report on this issue, dated November 29, 2024, was entered on consent as Exhibit 9.

[80] When he met with Dr. Gojer to prepare this report, KT complained of insomnia, back pain and high anxiety. He told Dr. Gojer that he is seeing a psychiatrist in custody. He is finding his medication regime is helping. He spends his time colouring and reading. He asked Dr. Gojer to give him some drawings to colour.

[81] The report also revealed the following:

a) With respect to intellectual functioning, KT scored in the average or low average range.

b) With respect to learning and memory, KT generally scored in the low average to borderline range.

c) With respect to attention and executive functioning, KT's results were mixed.

[82] His reading ability is average and is a Grade 12.9 equivalent. Sentence comprehension is low average with a Grade 8.9 equivalent. Math computation is borderline, Grade 4 equivalent.

[83] Dr. Gojer concluded:

a) KT functions generally at a low average level on cognitive tests;

b) He has no real deficits but he does have weaknesses in his performance;

c) There is a strong probability of neurodevelopmental disorder, specifically ADHD and perhaps a learning disability for mathematics;

d) He seems to be doing better on stimulant medication while in custody;

e) He should undergo psychotherapy to help manage his anxiety and depression.

[84] Dr. Gojer repeated his earlier opinions, including his opinion that if sentenced to reformatory, the treatment KT needs is available at the St. Lawrence Valley Treatment Centre.

Crown Follow Up with Dr. Gojer

[85] Crown counsel followed up by email to Dr. Gojer to ask whether the treatment that KT needs would also be available in the penitentiary. Dr. Gojer replied that "[a]ll treatments are available in both locations." A copy of this email chain was entered into evidence, on consent, as Exhibit 10.

Victim Impact Statement of BA

[86] BA's Victim Impact Statement was filed as Exhibit 6.

[87] BA has now moved to another city and province. She stated that before she moved, she was afraid of walking her dog in her neighbourhood because KT lived in the same area. She was also afraid to go work at the restaurant.

[88] Even now that she has moved, BA expressed fear that KT would go after her family.

[89] She is also afraid that once he is released from custody, he will contact her.

KT's Letter to the Court

[90] A letter from KT was filed as Exhibit 8. In his letter, KT expressed a desire to be sentenced to custody at the St. Lawrence Valley Treatment Centre. He is of the view that he "won't get proper rehabilitation" if he is sentenced "to prison".

[91] He expressed the opinion that his "brain does not operate properly" because of his collapsed lung and oxygen deprivation when he was young. He stated:

> I feel if given the right treatments and help I could become a better part of Society. I know what I've done is not something to speak lightly of but I have seen all my faults on a open platter and lost almost everything because of what I've done.

Submissions of the Crown

[92] Citing the "startling breadth of offences" that KT has committed, the Crown sought a global sentence of eight years less credit for time served.

[93] The Crown reminded me that pursuant to section 718.3(7) of the *Criminal Code,* the Court must impose consecutive sentences for sexual offences committed against children. The Crown also reminded me that sentences for offences contrary to section 163.1 must also be served consecutively to other offences.

[94] The Crown argued that denunciation and deterrence are the primary sentencing objectives in this case.

[95] The Crown submitted that the principle of totality does not apply to render a fit sentence unfit.

[96] The Crown acknowledged the following mitigating factors:

a) KT does not have a criminal record;

b) KT entered a plea of guilt, which saves the resources of a trial and is a sign of contrition and remorse;

c) KT has mental health problems.

[97] The Crown argued that the following factors are aggravating factors:

a) KT used his workplace to target some of the victims of his offences;

b) KT's offences involve abuse of persons under the age of 18 which is statutorily aggravating;

c) There are multiple victims, both unknown and known;

d) The images and videos are extremely degrading;

e) There is a significant quantity of images and videos;

f) KT lacks insight as evidenced by the following:

i) He told police that he committed the offences against some victims out of revenge for them being mean to him.

ii) He committed the offence against one victim, his manager, because he wanted to cause trouble between her and her husband.

iii) His letter to me focused on what he has lost. He has not considered the harm that he has caused his victims.

[98] The Crown argued that although St. Lawrence Valley would be an appropriate place for KT's rehabilitation, such a sentence would be "wholly inappropriate" for the following reasons:

a) KT is not "seriously mentally ill". He does not have diminished moral blameworthiness. He clearly had the intellectual capacity to know what he was doing, and plan and carry out the elements of the offences he committed. This is not a situation where there is a diminished capacity to understand. Crown counsel repeated that this is also made out in the sheer volume and breadth of offences that he has entered pleas to.

b) There is no guarantee that KT would be placed at St. Lawrence Valley, even if the Court were to recommend that KT be placed there.

c) St. Lawrence Valley is a reformatory. KT is deserving of a penitentiary sentence.

Defence Submissions

[99] Defence counsel argued that KT should receive:

a) Credit for time served at the usual 1.5:1 ratio;

b) Additional credit for unduly harsh conditions in OCDC, as evidenced by the lock-down report filed as Exhibit 11, pursuant to *R. v. Duncan;*

c) A maximum period of incarceration in the reformatory (two years less one day) with the Court recommending that KT serve his sentence at the St. Lawrence Valley Treatment Centre; and

d) Three years of probation.

[100] Defence counsel submitted that St. Lawrence Valley was specifically designed for individuals suffering from a major mental illness. She noted that this institution also has a wing specifically designed for the treatment of individuals who have committed sexual offences.

[101] She argued that KT's Cyclothymic Disorder is a major mental illness and is simply less prolonged than Bipolar Disorder. She drew the Court's attention to the fact that Dr. Gojer has clearly linked KT's offending behaviour to his mental health difficulties.

[102] She stated that KT's problem controlling his impulsivity is sufficient to bring him within the category of offenders who are entitled to a lesser punishment on the basis of their "diminished moral blameworthiness".

[103] She noted that KT's mental illnesses have been successfully treated while he has been in custody. He has good community support from his parents. She noted that until KT's charges came to light, although it was clear that he was struggling with mental health and addiction, there was no proper diagnosis of mental illness.

[104] Defence counsel also pointed to KT's low average and borderline results in some neuropsychological testing as a result of a likely brain injury suffered from the loss of oxygen in his early years or a head injury in high school.

[105] Defence counsel argued that KT is very amenable to treatment, noting that he has completed the following programs while incarcerated at OCDC:

a) substance abuse;

b) anger management;

c) thoughts to action;

d) managing stress;

e) use of leisure time;

f) understanding feelings;

g) looking for work; and

h) planning for discharge.

[106] Defence counsel submitted that specialized treatment, such as that available at St. Lawrence Valley is the best way to foster the long-term protection of the public.

[107] She disagreed with the Crown's suggestion that KT's justification for the commission of his offences when he was arrested are a complete and accurate picture of who he now is.

[108] She noted that Dr. Gojer opined that KT has insight into the commission of the offences. She also pointed out that the offences themselves, what KT has said about the offences, his willingness to give a statement to the police, his letter to the Court, his cooperation with Dr. Gojer and his completion of treatment while in custody demonstrate that he is not a sophisticated criminal who hides who he is.

Analysis

The Offences and the Criminal Code Sentencing Provisions that Apply

[109] Section 264 of the *Criminal Code* (Criminal Harassment) has a maximum sentence of ten years imprisonment. There is no minimum.

[110] Section 372(2) of the *Criminal Code* (Indecent Communications) has a maximum sentence of two years imprisonment. There is no minimum.

[111] Section 171.1 of the *Criminal Code* (Making Sexually Explicit Material Available to a Child) has a maximum sentence of fourteen years and a minimum sentence of six months.

[112] Section 173(2) of the *Criminal Code* (Exposure to a Person Under 16 for a Sexual Purpose) has a maximum sentence of two years and a minimum sentence of 90 days.

[113] Section 163.1(4) of the *Criminal Code* (Possession of Child Pornography) has a maximum sentence of ten years. The mandatory minimum of one year was struck down by the Court of Appeal in *R. v. John,* 2018 ONCA 702.

[114] Section 172.1(1) of the *Criminal Code* (Luring) carries a maximum sentence of 14 years. The minimum sentence of one year was struck down by the Supreme Court of Canada in *R. v. Bertrand Marchand,* 2023 SCC 26.

[115] Section 162 of the *Criminal Code* (Voyeurism) carries a maximum sentence of five years.

[116] Section 718 of the *Criminal Code* states:

> The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> a) to denounce unlawful conduct in the harm done to victims or to the community that is caused by unlawful conduct;
>
> b) to deter the offender and other persons from committing offences;
>
> c) to separate offenders from society, where necessary;
>
> d) to assist in rehabilitating offenders;
>
> e) to provide reparations for harm done to victims or to the community; and
>
> f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims or to the community.

[117] Section 718.01 sets out the following sentencing objectives when dealing with offences against children:

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

[118] Section 718.1 of the *Criminal Code* establishes the fundamental principle of sentencing: “A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.”

[119] Section 718.2 of the *Criminal Code* sets out “other sentencing principles”:

> A court that imposes a sentence shall also take into consideration the following principles:
>
> **(a)** a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
>
> **(i)** evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,
>
> **(ii)** evidence that the offender, in committing the offence, abused the offender’s intimate partner or a member of the victim or the offender’s family,
>
> **(ii.1)** evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

(ii.2) evidence that the offender involved a person under the age of 18 years in the commission of the offence,

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

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

(iii.2) evidence that the offence was committed against a person who, in the performance of their duties and functions, was providing health services, including personal care services,

(iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,

(v) evidence that the offence was a terrorism offence,

(vi) evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the *Corrections and Conditional Release Act,* and

(vii) evidence that the commission of the offence had the effect of impeding another person from obtaining health services, including personal care services,

shall be deemed to be aggravating circumstances;

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

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

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

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

[120] Section 718.3 of the *Criminal Code* provides that:

718.3 (1) Where an enactment prescribes different degrees or kinds of punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence.

(2) Where an enactment prescribes a punishment in respect of an offence, the punishment to be imposed is, subject to the limitations prescribed in the enactment, in the discretion of the court that convicts a person who commits the offence, but no punishment is a minimum punishment unless it is declared to be a minimum punishment.

….

(4) The court that sentences an accused shall consider directing

(a) that the term of imprisonment that it imposes be served consecutively to a sentence of imprisonment to which the accused is subject at the time of sentencing; and

(b) that the terms of imprisonment that it imposes at the same time for more than one offence be served consecutively, including when

(i) the offences do not arise out of the same event or series of events,

(ii) one of the offences was committed while the accused was on judicial interim release, including pending the determination of an appeal, or

(iii) one of the offences was committed while the accused was fleeing from a peace officer.

….

(7) When a court sentences an accused at the same time for more than one sexual offence committed against a child, the court shall direct

(a) that a sentence of imprisonment it imposes for an offence under section 163.1 be served consecutively to a sentence of imprisonment it imposes for a sexual offence under another section of this Act committed against a child; and

(b) that a sentence of imprisonment it imposes for a sexual offence committed against a child, other than an offence under section 163.1, be served consecutively to a sentence of imprisonment it imposes for a sexual offence committed against another child other than an offence under section 163.1.

[121] Section 719(3) to (3.3) of the *Criminal Code* states:

(3) In determining the sentence to be imposed on a person convicted of an offence, a court may take into account any time spent in custody by the person as a result of the offence but the court shall limit any credit for that time to a maximum of one day for each day spent in custody.

(3.1) Despite subsection (3), if the circumstances justify it, the maximum is one and one half days for each day spent in custody.

(3.2) The court shall give reasons for any credit granted and shall cause those reasons to be stated on the record.

(3.3) The court shall cause to be stated on the record and on the warrant of committal the offence, the amount of time spent in custody, the term of imprisonment that would have been imposed before any credit was granted, the amount of time credited, if any, and the sentence imposed.

Sentencing is an Individualized Process

[122] It is well developed in our law that sentencing is a delicate and highly individualized process. As my colleague Justice March has often said, “No two offenders are alike”. See also *R. v. Parranto,* 2021 SCC 46 and *R. v. Lacasse,* 2015 SCC 64.

The Cardinal Principle of Sentencing is Proportionality

[123] In *R. v. Lacasse, supra*, the Supreme Court of Canada determined that the “cardinal principle” of sentencing law is the principle of proportionality; that is, the more serious the crime and the greater the degree of responsibility, the more severe the sentence will be. This must be balanced against the moral blameworthiness of the offender.

Assessment of General Aggravating and Mitigating Factors Applicable to KT

[124] KT entered a guilty plea. None of the victims have been put through the trauma of testifying in court. This is somewhat mitigating.

[125] The trial of these charges would have taken a considerable period of time in a jurisdiction with a significant backlog.

[126] That said, KT gave a statement admitting to some of his crimes. Other crimes would be proven through the execution of search warrants. Thus, while he is entitled to mitigation for entering a guilty plea, it would seem to me that the Crown would have been successful in proving many of the offences for which he was charged.

[127] KT does not have a criminal record. This is also mitigating.

[128] KT has the ability to maintain employment.

[129] Ordinarily this is a mitigating factor. In this case, however, KT committed many of the offences for which he has been convicted by using his workplace as his victim pool. This essentially neuters any mitigating effect that the ability to maintain employment has and changes a mitigating factor to an aggravating one.

[130] Work is an activity that we all must engage in order to survive. Working women, particularly those in low-paying jobs like restaurant workers, must work in order to provide

for themselves and for their families. Young women must often work in these jobs to earn money to pay for their education.

[131] They are entitled to attend their workplaces free from the spectre of being criminally harassed by a co-worker, particularly criminal harassment of a sexual nature.

[132] I do not know what to make of the various reports with respect to KT's mental acuity or Dr. Gojer's conclusion that there is a high probability of a neurodevelopmental disorder. The interplay between intellectual disability and the commission of crime, particularly sexual crime, surprisingly, is not well understood. A 2022 Swedish study found that offenders with intellectual disability are much more likely to have a sexual crime as an index crime: Edberg, H.; Chen, Q; Andine, P; Larsson, H. and Hirvikoski, T., Crimes and sentences with individuals with intellectual disability in a forensic psychiatric context: a register-based study*: Epidemiology and Psychiatric Sciences* 2022; 31: e2.

[133] I also do not have any information concerning the risk that KT poses. His offending profile would suggest, as I have indicated, that KT is an indiscriminate sex offender. He will offend against women, men and children. He has been diagnosed a pedophile. I find that left untreated, KT would be at a very high risk to reoffend. He needs institutional based treatment.

[134] Fortunately, KT is amenable to treatment, particularly if that treatment is received by placement at St. Lawrence Valley which would require a reformatory sentence. I find he has an earnest desire to address his offending behaviour.

[135] I agree with the Crown that KT does not really express remorse and empathy for his victims. His letter to the Court and his comments in Court demonstrate a keen desire for treatment, but there is little expressed understanding of how profoundly wrong his actions were, and no evidence of concern for the plight of his victims.

[136] I am not an expert in psychiatry, but KT does not strike me as psychopathic. I blame his lack of remorse and insight on the combination of his intellectual disability and his pedophilia. As I have indicated, KT is also genuinely interested in treatment. His cooperation with the Police in giving a statement and with Dr. Gojer strongly suggest that he is not "faking good" in this desire.

Principles of Sentencing in Cases Involving Criminal Harassment

[137] One of the first cases dealing with the sentencing principles to be applied in cases of criminal harassment is *R. v. Wall,* 1995 CanLII 2320, a decision of the Prince Edward Island Supreme Court, where Justice McQuaid stated:

> Section 264 is a relatively new offence having only come into force in 1993. The section was enacted to address conduct which, while falling short of what might constitute other offences, would, nevertheless, be dangerous and would place victims at substantial risk. The section was intended to deal with situations where a person, usually a woman, is the subject of harassing behaviour by a former spouse or male acquaintance. The offender appears to develop an obsession, the woman becomes a target, and a potentially dangerous situation develops, placing

> the victim at risk for her physical and emotional well-being. The very unsettling aspect of dealing with these offences in the criminal justice system is that, undoubtedly, many offenders will be presenting themselves with no criminal record and with the reputation of being both a good family and community person. The other unsettling aspect of these cases is that if the pattern of harassing conduct continues and is not properly dealt with by the sentence imposed, the result could be very serious physical and/or emotional harm to the victim. In passing sentence trial judges must, therefore, be wary of positive pre-sentence reports depicting the offender as a person whose actions, in respect to the offence, are entirely out of character. The fact an offender shows any propensity toward this kind of conduct, regardless of his unblemished past, is cause for great concern and for a very careful and judicious approach to sentencing. Factors such as the absence of a prior criminal record and expressions of remorse, which must necessarily be considered on sentencing, should not be given undue weight in the sentencing of this offence.
>
> The focus of sentences must be to send a message to the offender, and the public, that harassing conduct against innocent and vulnerable victims is not tolerated by society and most importantly, the Court must insure, as best it can, that the conduct of the offender never happens again recognizing that, if it does, a far more serious offence could be committed. The principles of sentencing must be applied with this focus squarely in mind.

[138] *Wall* was cited with approval by our Court of Appeal in 2000 in *R. v. Bates,* 2000 CanLII 5709 (ON CA) where at paragraph 48, Moldaver, J.A. (as he then was) and Feldman, J.A. stated:

> Thus, although were some mitigating factors in the respondent's favour, the principles of general deterrence, denunciation and specific deterrence must take precedence in determining a fit and appropriate sentence in this case, together with concern for the safety and security of the victims.

[139] In *Bates,* the trial judge's decision to impose a suspended sentence was varied by the Court of Appeal to a sentence of 16 months imprisonment and three years probation.

[140] Notwithstanding it's age, *Bates* continues to be a good law and deterrence and denunciation remain the primary sentencing principles. See *R. v. Nolan,* 2019 ONCA 969 at paragraph 65 and *R. v. Sabir,* 2018 ONCA 912 at paragraphs 45 and 46.

[141] In *R. v. VTH,* 2022 ONSC 5668, Gomery, J. (as she then was) relied upon *Bates* in imposing a sentence of six months consecutive for one count of Criminal Harassment against an offender who received a total sentence of 12 years. The other offences he was sentenced to included Incest, Making Child Pornography, Possession of Child Pornography and Sexual Exploitation.

[142] This decision makes it clear that the offence is deserving of a serious and significant sentence in and of its own right, even in a case where the accused is arguably facing a much more onerous sentence for other offences, including offences against children.

[143] This is logic that is directly applicable to the circumstances of the criminal harassment offences perpetrated by KT.

[144] As Justice Jones pointed out in *R. v. Clarke,* 2024 ONCJ 132 at paragraph 32:

> Criminal harassment has thus long been recognized as a gendered crime. The vast majority of its victims are women. Sentencing courts must communicate to the public that the harassment of women who are simply going about their daily lives by men who feel they can abuse, objectify and/or scare them is inexcusable. Such conduct must be emphatically denounced. Offenders who engage in this behaviour will face significant penalties.

Principles of Sentencing in Cases of Indecent Communications Contrary to Section 372(2)

[145] The basis for both the criminal harassment offence and the indecent communication offence are the same: to protect individuals from unwanted communications.

[146] There are important differences in the elements of the offences, however.

[147] The crime of indecent communications requires the Crown to prove beyond a reasonable doubt that the accused made the communications with intent to alarm or annoy the victim. Criminal harassment, on the other hand, requires the Crown to prove beyond a reasonable doubt that the victim has been harassed and that this harassment caused them to fear for their safety or the safety of anyone known to them: *R. v. Berhe* 2022 ONCA 853 at paragraph 20.

[148] Criminal harassment is the more serious offence. Where the Crown proceeds by Indictment, the maximum sentence is ten years. It also commands a mandatory weapons prohibition. Indecent communications, in contrast, has a maximum sentence of two years. This reflects the fact that criminal harassment focusses on the fear of the victim, whereas indecent communications criminalizes communications which harm the victim by annoying her or alarming her. The degree of harm in the criminal harassment context is more significant than indecent communications.

[149] That said, the primacy of the sentencing principles of denunciation and deterrence in criminal harassment, quoted above in relation to criminal harassment, must also apply to cases of indecent communications because the legally protected interest is largely the same: freedom from unwanted interference in the victim's life.

[150] I also observe that like criminal harassment, indecent communications contrary to section 372 is a gendered crime and therefore mandates a denunciatory sentence.

Application of the Principles of Sentencing in Criminal Harassment and Indecent Communications to KT

[151] The first four charges on Information 22-37100396 involve the offence of Criminal Harassment. The fifth charge involves the offence of Indecent Communications. Each of these five charges involves a different victim.

[152] The cases have the following features:

a) KT and each of his victims worked at the same restaurant;

b) Three of the victims received photos or videos of the accused;

c) Three of the victims were sent videos of KT masturbating;

d) In two of the cases, KT asked the victims to fuck him;

e) One victim received threatening comments from KT. I was not told what those comments entailed;

f) After one victim relented and sent KT photos of herself, KT threatened to disseminate the photos if she did not send him more photos. The same victim was offered money for photos;

g) One victim received an unwelcome visit from KT at her other place of employment;

h) One victim was offered money for sexual favours;

i) One victim went to KT's house and confronted KT's parents about his behaviour. KT was nonetheless undeterred;

j) KT's motive for committing these crimes was retribution for "being mean" to him, "breaking his heart" or getting one victim in trouble with her husband.

[153] Before considering the principles of totality and deduction for pre-sentence custody, I find that the appropriate sentence for KT for these offences is as follows:

a) For each of the criminal harassment counts, 90 days in custody consecutive;

b) For the offence of indecent communications, 30 days in custody consecutive.

Principles of Sentencing in Cases Involving Child Pornography

[154] Those who engage in sexual misconduct against children can expect severe denunciatory and deterrent sentences: *R. v. Friesen,* 2020 SCC 9.

[155] Child pornography cases are extremely serious and are met with sentences that emphasize the sentencing principles of denunciation (*Criminal Code*, s. 718(a)) and general deterrence (*Criminal Code*, s. 718(b)): *R. v. McCaw,* 2023 ONCA 8 at paragraph 19.

[156] In *R. v. Pike,* 2024 ONCA 608*,* Chief Justice Tulloch set out the following six principles with respect to the inherent wrongfulness of child pornography, which he described as a "global cancer" at paragraph 145:

a) Possession of Child Pornography is a violation of the dignity of children.

b) Possession of Child Pornography is an extreme invasion of the child's privacy.

c) People who possess child pornography inflict severe emotional harm on children in the following ways:

   i) Children suffer exploitation and violence through the making of the child pornography.

   ii) This exploitation and violence becomes a "continuing violation" (at paragraph 149) of the child because they learn that unknown perpetrators access and view the recordings.

   iii) Children feel powerless "because they cannot destroy or control the dissemination of child pornography that is posted online". This causes fear that perpetrators will recognise them and target them.

   iv) Children become anxious that individuals are taking pleasure from their victimization or using the recordings to abuse other children.

   v) Children are humiliated; their self-worth is undermined. Recordings portraying the victim as consenting or enjoying their humiliation heighten the humiliation. Child pornography causes harm to children that lasts well into adulthood.

d) People who possess child pornography instigate the production and distribution of child pornography and, thus, the sexual abuse and exploitation of children.

e) Possessing and viewing child pornography can incite perpetrators to commit and facilitate their commission of other sexual offences against children.

f) People who possess child pornography perpetuate pernicious messages that attack children's humanity and equality. Chief Justice Tulloch essentially described child pornography as a hate crime against children.

[157] For these reasons child pornography is a "grave offence". At paragraph 160, Chief Justice Tulloch stated:

> Courts must follow Parliament's direction by placing children and the wrongs and harms that people who possess child pornography inflict on them at the centre of the sentencing process. Courts can give significant weight to the personal circumstances and mitigating factors of people who possess child pornography, and to sentencing objectives such as rehabilitation: *Friesen,* at paras. 91-92, 104. But it is all too easy for those considerations, which focus on the people being

> sentenced, to overshadow the wrongs and harms they inflict because their victims are all to often invisible.

[158] Sentencing judges must reject myths that minimize responsibility for possession of child pornography, including:

a) Possession of child pornography is harmless and victimless;

b) Possession of child pornography is accidental or passive;

c) Possession of child pornography is caused by medical and psychiatric conditions;

d) Possession of child pornography is an isolated occurrence.

[159] The Chief Justice stated at paragraph 161:

> These myths cannot conceal an all-too-obvious reality: People who possess child pornography exploit real child victims callously, deliberately, and repeatedly. Failing to recognize this reality risks "undermin[ing] the credibility of the criminal justice system in the eyes of victims, their families, caregivers, and communities, and the public at large": *Friesen*, at para. 43.

[160] With respect to the mitigating potential of an offender's mental health, the Chief Justice noted at paragraph 164:

> ….while courts can consider mental illnesses that contribute to people's decisions to possess child pornography (*Bertrand Marchand*, at para. 128), they should not assume that psychiatric conditions like pedophilia compel those people to possess child pornography. Both forms of minimization wrongly excuse people who possess child pornography from responsibility for their choices and undermine Parliament's prioritization of deterrence and denunciation: *Friesen*, at para. 132; *U.S. v. Irey*, 612 F.3d 1160 (11th Cir. 2010) (en banc), at pp. 1198-1200, cert. denied, 563 U.S. 917 (2011); *Porte*, at paras. 71-72.

[161] At paragraphs 167 to 173 the Chief Justice set out the following considerations for assessing the sentence that should be imposed in cases of child pornography:

a) The size, level of organization and ratio of videos to still images, having regard to:

   i) The number of real child victims. A court can infer that a large collection contains many victims.

   ii) The degree of organization in the collection. Organization demonstrates that an offender has more interest in the material.

   iii) The ratio of videos to still images. Videos are more aggravating than still images because they are more invasive and a more severe violation of the child's privacy.

b) The seriousness of the collection's nature, including whether there are more physically intrusive activities beyond that inherent in sexual offences. That said judges must not lose sight of the fact that any recording may cause severe emotional harm or demonstrate profoundly harmful sexual exploitation.

c) Whether the collection depicts real children, as opposed to stories, virtual images and videos that do not depict real children.

d) How long the offender has collected pornography, whether there is evidence of collaboration with other offenders, planning, organization, sophistication and participation in the child pornography sub-culture, how often the offender has downloaded or viewed the images.

e) Absence of evidence of production or distribution, absence of depiction of very young children, absence of evidence of payment to acquire child pornography are not mitigating.

f) Good character, employment and stigma are less significant factors. They receive only limited weight.

g) When assessing remorse and insight, I must focus on whether the accused recognizes and expresses remorse for wronging and harming real children, or whether the offender engages in distorted thinking and minimizes or excuses their actions as harmless fantasies.

[162] Chief Justice Tulloch noted that until *Pike,* the Court of Appeal had not set a range of sentence for cases of possession of child pornography. He made it clear that the upper end of the range was about four years in the penitentiary and, in light of the fact that the offence is a hybrid offence, there is no lower end of the range.

[163] He found that in order to give effect to the principles established in *Friesen, supra,* and Parliament's decision to raise the maximum sentence in 2015, it was appropriate to raise the upper end of the range to five years.

Application of the Child Pornography Sentencing Principles to KT

[164] The size of KT's collection is extremely aggravating. Police discovered a total of 5,908 images and videos. 69% of the collection is videos. 31% of the collection is photos. From the size of the collection, I infer that there are a large number of real children in his collection.

[165] The nature of KT's collection is also extremely aggravating.

[166] A representative sample of the images, filed by the Crown as Exhibit 5 indicates that the images depict children of both genders of all ages engaged in intrusive sexual acts including vaginal and anal intercourse, fellatio, and masturbation with ejaculate. Some of the sexual acts involve men. Some of them involve women. Some of them show that the child is in pain. In some of them the child is bound.

[167] None of the images or videos in the representative sample contain virtual images or stories.

[168] I do not have any information with respect to how detailed KT's organization was or how often KT resorted to viewing it, nor do I have any information with respect to whether the police found evidence of collaboration with other offenders, planning, organization, sophistication and participation in the child pornography sub-culture.

[169] From the size of the collection, I can infer that KT must have spent a great deal of time amassing it.

[170] The size and nature of the collection is so massive and disturbing that the sentence must deter and denounce KT in the strongest terms. It must also deter others from committing such a heinous crime.

[171] Having regard to these factors, my assessment of other sentencing factors which are applicable to KT and the range established in *Pike, supra,* I find that the appropriate sentence, before any deduction for totality or pre-sentence custody is four years.

Principles of Sentencing in Cases of Child Luring, Exposure to a Person Under the Age of 16

1. Sentencing Principles for Luring

[172] In *R. v. Bertrand Marchand, supra,* at paragraphs 37 to 45 Justice Martin established the following sentencing principles with respect to child luring:

a) Even where the interactions occur online, the offender's conduct can constitute a form of psychological sexual violence that has the potential to cause serious harm, which is often more pervasive and permanent than physical harm. It is now well established that sexual offences against children cause significant harm. Victims of luring often suffer negative sexual development, substance misuse and depressive symptomology.

b) Online communications allow the offender to "get in the victim's head" and abuse the victim remotely which can lead to serious long term psychological consequences.

c) Victims of luring often feel that they actively participated in their own abuse which increases self-blame, internalization and shame, which in turn, worsens psychological harm.

d) These effects on victims have "harmful ripple effects" on their families, community and society. It can destroy trust in friends, families and social institutions.

e) It may be helpful to differentiate between contact-driven luring and luring which occurs entirely online.

i) Contact-driven luring requires the Court to consider whether the online communication caused psychological harm that is separate and apart from any “hands-on” offence.

ii) Luring which occurs entirely online arises in situations where the offender has no intention to engage in hands on offending.

iii) There is also a hybrid of the two where the aim of the luring is to commit a designated offence which occurs entirely online. In this case, the offender uses technology to build a relationship, assert control and psychologically manipulate young persons. The offender then may also use that technology to carry out sexual acts.

f) Contact-driven luring is not necessarily more or less harmful than luring that leads to sexual abuse which occurs entirely online. The severity of the harm depends on the goals of the offender, the characteristics of the victim and the dynamic between the offender and the victim.

[173] It is open for a sentencing judge to infer the presence of harm, even in situations where no Victim Impact Statement has been filed. Citing *Friesen, supra,* Justice Martin found that the potential for reasonably foreseeable serious harm is present even if there is no actual harm, or to put it more accurately, no evidence of actual harm. See paragraphs 75-76.

[174] Sentencing judges must also consider whether there is evidence of grooming. Justice Martin defined grooming this way at paragraph 51:

> Grooming is a process which allows the offender to forge a close relationship with a victim to gain trust, compliance and secrecy for the purpose of eventually engaging in sexualization and abuse (*Rayo*, at para. 149). The jurisprudence has yet to identify a universal definition of grooming. Understandably, this is in large part due to the difficulties in determining where the process begins and ends, as well as the variety of behaviours that may be involved depending on the offender, the victim, and the context. Indeed, grooming can involve, but is not limited to “rapport building, incentivization, disinhibition, and security management” (I. A. Elliott, “A Self-Regulation Model of Sexual Grooming” (2017), 18 *Trauma, Violence, & Abuse* 83, at p. 88). It is “a slow and gradual process of active engagement and a desensitization of the child’s inhibitions — with an increasing gain in power and control over the young person” (*Rayo*, at para. 139, quoting M. Ospina, C. Harstall and L. Dennett, *Sexual Exploitation of Children and Youth Over the Internet: A Rapid Review of the Scientific Literature* (2010), at p. 7).

[175] At paragraphs 52 to 63, Justice Martin instructed sentencing judges to bear the following circumstances in mind with respect to grooming:

a) Grooming need not culminate in a sexual act to be harmful.

b) Judges must focus on the character, content and consequences of the messages as well as whether the communication resulted in the psychological manipulation of the child.

c) The presence of grooming may be aggravating with respect to sentence.

d) The absence of grooming is not mitigating.

[176] At paragraphs 72 to 73, Justice Martin set out the following non-exhaustive list of mitigating factors:

a) Whether the offender pleaded guilty;

b) Whether the offender expressed genuine remorse or gained insight into the offence;

c) Whether the offender has undertaken rehabilitative steps such as counselling and treatment;

d) Whether the offender has a prior criminal record;

e) Whether the offender has been honest and cooperative throughout the sentencing process;

f) The offender's age at the time of the offence;

g) Whether the offender had a stable family life;

h) Whether the offender had stable employment;

i) The presence of addiction and mental health concerns and evidence of the offender's progress in overcoming them.

[177] At paragraphs 74 to 87, Justice Martin set out the following aggravating factors to the sentence in the case of luring:

a) The presence of grooming;

b) The character of the communications between the offender and the victim, including whether the duration and frequency of the communications were long-term. It is noted that while a longer period of communications are aggravating, shorter periods are not mitigating. Sending a large volume of messages or sending messages in a frequent or non-relenting way is aggravating;

c) Whether the communications were sexually explicit and objectifying, involved graphic sexual content, made use of manipulative communications such as expressions of love and affection or made use of trickery and lies;

d) Whether the victim was encouraged to share images;

e) Whether the victim was sent explicit images;

f) Whether the offender used a false name, identity or age;

g) Whether the offender used deceitful tactics such as encouraging the victim to erase the communications, discouraging the victim from telling her parents or other family members, encouraging the use of a platform that erases communications to avoid detection, or suggesting a more secure platform;

h) Whether the offender abused a position or relationship of trust, including parent-child, teacher-child and family friend-child or exploited the role of confidante;

i) The exploitation of younger children is aggravating. The exploitation of adolescent children is not mitigating;

j) Whether the victim was particularly vulnerable, such as the case of children in care of the Children's Aid Society;

k) Whether there was a wide gap in ages between the victim and the offender.

[178] In *R. v. MV,* 2023 ONCA 724, Justice Paciocco suggested that the upper range for luring offences should be set at five years. This range was cited with approval by Chief Justice Tulloch in *Pike, supra* and also motivated Chief Justice Tulloch's decision to set the upper range for possession of child pornography at five years.

[179] In *MV,* the Court imposed a four-year sentence (later adjusted to three and a half years to account for totality) for an offender who entered a guilty plea to one count of Luring. Although the plea was entered to one count, the facts involved two victims who were siblings, aged 8 and 10. The offender communicated over the internet with the children for three and a half months. The offender was found in possession of over twenty images and videos of the children urinating, defecating and masturbating. He also sent them 44 images of himself. He did not make any attempt to meet the children. He did, however, share the images with another person.

[180] In *R. v. AV,* 2025 ONCA 6, the Court of Appeal for Ontario upheld a five year sentence for an offender who was charged with Luring and Invitation to Sexual Touching. The child was 11 and 12 at the time of the offences and the offender was 20 to 21. They met on Facebook. She sent him photos and two videos of inserting a hairbrush into her anus. The offender had a prior record for Child Pornography, for which he received a thirty-month penitentiary term.

2. Sentencing principles for Exposure to a Person Under the Age of 16 (section 173(2))

[181] With respect to the offence under section 173(2) (Exposure to a Person Under the Age of 18), in *R. v. Alicandro,* 2009 ONCA 133, Justice Doherty described the gravamen of the offence in this way at paragraph 45:

> Section 173(2), like s. 172.1, was enacted to protect children against sexually exploitive conduct. That object is not advanced by an interpretation which requires that the victim be in the same physical place as the perpetrator. The harm caused by the prohibited conduct and the danger it poses to young persons flows from the conduct and the sexual purpose with which the conduct is done. Neither the harm nor the danger depends upon the victim being in close proximity to the perpetrator. Indeed, it could well be argued that the modern day "flasher" surfing the Internet for vulnerable children poses a more significant risk to children than did his old-fashioned raincoat-clad counterpart standing on some street corner.

[182] In *R. v. Hartle,* [2018] O.J. 7028 (C.J.), Justice Lahaie found that denunciation and deterrence were the primary sentencing considerations for offences contrary to 173(2).

[183] In *R. v. Hobin,* 2021 CanLII 46102 (N.L.P.C.), Judge Gorman surveyed pre- and post-*Friesen* cases dealing with section 173(2) and determined at paragraph 100 that:

> The majority of sentences imposed for breaches of section 173(2) of the *Criminal Code* have been in the range of five to six months of incarceration, despite many of the offenders having no prior convictions. This illustrates that the sentencing judges involved were placing their emphasis on the sentencing principles of deterrence and denunciation.

Application of the Sentencing Principles to KT's Offences of Luring (OM and the Unknown Female) and Exposure to a Person under the Age of 18 (OM)

[184] KT has entered pleas to two counts of Luring.

[185] KT has also entered a plea to one count of Exposure to a Person Under the Age of 18 as it relates to OM, contrary to section 173.

[186] The first luring count and the Exposure count involves OM, a fifteen-year-old girl who he met on *Tik Tok.*

[187] OM was 15 at the time of the offences and her profile on *Tik Tok* indicated her age. I looked at the nature of the communication between KT and OM (Tab 5 of Exhibit 1) and noted the following:

a) He asked her if she was a virgin and she replied, “Yes”.

b) He then told her that he was getting a pizza but would send her money when he got home.

c) He asked her to say, “I want your cock K” once they started their video chat.

d) In another conversation, he offered to “save up for a couple of months” and get a hotel. He offered to “take it slow” and show her how to suck his penis. He offered her $1200 if he could take her virginity.

e) Alternatively, he offered to pay her $500 to come to her place and have her give him “a nice long blowjob”. He stated that he wanted to perform cunnilingus for as

long as she wanted. He told her that she would love what his tongue could do. He told her that it was his “Fantasy to fuck a virgin”.

f) OM agreed to send him a video of her breasts. KT agreed to this but asked her to say “fuck my 14-year-old pussy” and watch him masturbate.

g) Records seized show that KT e-transferred OM $210.

[188] Police located images of OM’s genitalia and breasts on KT’s devices.

[189] KT also exposed his penis to OM, thereby committing the Exposure count.

[190] The second luring count involves an unknown female under the age of 18. I examined the communications between KT and the unknown female (Exhibit 1, Tab 7) and noted the following:

a) KT asked the unknown female if she was a virgin. She replied that she was.

b) KT asked her to send him videos of her “naked”. He told her to “get me hard”.

c) He said that he won’t save any of the videos that she sent him and he asked her to not save any he sends too.

d) She sent him videos.

e) He said, “U make me so horny” and asked her to show him her breasts.

[191] I make the following findings with respect to the presence of the aggravating factors outlined by Justice Martin in *Bertrand Marchand*:

a) The case involving the communications between KT and OM constitutes grooming as that term has been discussed in *Bertrand Marchand.* He offered and paid money. He offered to take her to a hotel and teach her sexual techniques.

b) I do not have much information about how often the conversations between KT and OM or KT and the unknown female took place and over what period of time. From the screenshots I saw, I cannot find that they were frequent or unrelenting.

c) The communications with both OM and the unknown female were sexually explicit and objectifying. They also involved graphic sexual content. KT was obsessed with is victims’ virginity. He sent OM photos of his penis.

d) In both cases, the victims were encouraged to send sexually explicit materials to KT. In the case of OM, it was admitted that photos of her were actually received. In the case of the unknown female, the chat between her and KT makes it clear that photos or videos were sent (as evidenced by a camera icon in the chat), but because the female is unknown, the police were not able to identify her as among the pornography on KT’s phone.

e) KT did not use a false name. He did, however, lie about his age to OM when he told her that he was "a bit older" than she is.

f) The chat with both victims does not contain any evidence that KT told the victims not to tell their parents, erase their communications or use a more secure platform. In both cases, the conversations took place over *Tik Tok,* a platform that is known to this Court to have the ability to delete conversations if the parties have so adjusted their settings. It is a popular application because it has this feature.

g) KT was not in a relationship of trust or a position of authority with either victim.

h) There is no evidence that the children were in a position of vulnerability due to being in state care, of Indigenous dissent, poverty or having a mental disability.

i) When these offences took place, KT was in his early 30s. The victims were under age 18. In other words, he was close to twice their age.

[192] Before accounting for totality and pre-sentence custody, I would impose the following sentences:

a) For the offence of Luring as it relates to OM, two years and six months . I note here that I would have imposed a three year sentence, but for the fact that I am required to impose a sentence of at least six months for the exposure charge and both Justice Martin in *Bertrand Marchand* and Justice Paciocco in *MV* have been careful to instruct sentencing judges to be careful of double counting of aggravating factors.

b) For the offence of Luring as it relates to the unknown female, one year consecutive.

c) For the offence of Exposure to a Person under the age of 18 years as it relates to OM, six months consecutive.

Application of Sentencing Principles to KT's Offence of Exposure to a Person Under the Age of 16 – section 173(2) in relation to K

[193] From my review of the Crown's materials (Exhibit 1, Tab 8), KT's behaviour in relation to K is similar to OM:

a) He asked her to watch him masturbating;

b) He told her that he was "still shocked" that she was 15 years old;

c) He asked her to stick her tongue out when he started masturbating;

d) He told her to talk to him while he was masturbating;

e) He told her that he would not save anything;

f) He offered to pay her $250 if she flashed and said, "I want your cock, K".

[194] Before accounting for totality, I would assess this crime as essentially the same as the offence against OM and impose a sentence of six months consecutive.

Principles of Sentencing for the Crime of Making Sexually Explicit Material Available to a Person Under 16 to Facilitate Commission of an Offence

[195] KT has entered pleas in relation to this offence with respect to two young persons, C, and KX.

[196] The facts with respect to C are set out in paragraph 28. The Crown also filed one conversation between KT and C, which is at Exhibit 1, Tab 4. In the conversation, KT texted C and asked her to show him her breasts to help him get hard. Otherwise the conversation does not assist me.

[197] The facts with respect to KX are set out in paragraph 35. The Crown also filed one conversation between KT and KX which is at Exhibit 1, Tab 9. In the conversation, KT texted KX and asked her to flash him once. KX said she could not do that. KT then asked her what she was comfortable with; he suggested that she send him non-nude pictures and "just watch". He then offered her a $100 Amazon gift card if she watched and snapped him a few non nude photos. He told her that she did not have to show or say anything – "just watch". KX agreed to this.

[198] The offences in section 171.1(1)(b) are similar to section 173(2) in that the *actus reus* involves the accused sending "sexually explicit material" to a person under the age of 16.

[199] However, that is where the similarity ends. Unlike 173(2), which is designed to punish actual exposure of the accused's genital organs to young persons, section 171.1(1)(b) has an added dimension: the accused must send the explicit images for the purpose of facilitating the commission of another offence, including the offences of Sexual Interference, Invitation to Sexual Touching, Bestiality in the Presence of a Child, Exposure to a Person Under the Age of 16 (i.e. the 173(2) offence itself), Sexual Assault, or Abduction.

[200] "Sexually explicit material", as that term is defined in section 171.1(5) has a broad definition. It includes photographs, films, and videos that show a person engaged in sexually explicit activity or material, the dominant characteristic of which, is the depiction of a person's genital organs or anal region, or female breasts. It also includes audio, the dominant characteristic of which is explicit sexual activity with a person.

[201] Most germane here, it also includes written material, the dominant characteristic of which, is the description of sexually explicit activity with a person.

[202] Recently in *R. v. W.W.,* 2025 ONCA 115 at paragraph 36, the Court of Appeal explained the nature of the offence, finding that, "It is an inchoate crime that is essentially focussed upon the intention of the accused as he engaged in reprehensible but not criminal conduct."

[203] At paragraph 38, the Court of Appeal cited with approval, the following extract from *R. v. Alicandro, supra,* at paragraph 20:

> By criminalizing conduct that is preparatory to the commission of the designated offences, Parliament has sought to protect the potential child victims of those designated crimes by allowing the criminal law to intervene before the actual harm caused by the commission, or even the attempted commission, of one of the designated offences occurs.

[204] The Court added:

a) Although it is an inchoate crime, the offence is not "harm-free". This is because the offence targets children "through a grooming process involving the transmission of sexually explicit material…. that readies them for designated offences yet to occur." This "robs them of their childhood entitlement to their sexual innocence."

b) Similar to the offence of Luring, the Crown must prove beyond a reasonable doubt that the accused had a specific intention of facilitating at least one of the enumerated offences.

c) The commission of the enumerated offence need not be objectively possible, the accused need not commit it or have the intention to commit it.

d) "The Crown could prove the *mens rea* by showing that the respondent sent the sexually explicit material with the intention of helping to bring about" an enumerated offence, "or to make" that offence "easier or more probable to commit".

e) One way of doing so is by grooming the young person or reducing their inhibitions. Conduct framed as a "joke" which serves to "normalize the conduct in the child's mind and permit the accused to try and safely test the waters to determine if the child is yet susceptible to the commission of an enumerated offence" is caught by the section.

   See *W.W., supra,* paragraphs 39, 43-46.

[205] In the case before me, the offence against C is the most serious of the two. The communications support facilitation of two offences, exposure and sexual assault. The reference to the breaking of C's vagina is highly aggravating.

[206] The conversation with KX demonstrates the link between the offence, grooming and the commission of the offence of exposure. When KX told KT that she was not willing to "flash" him, he asked her to send him "non nude" photos and "just watch".

[207] There is not a lot of judicial consideration of the appropriate sentence for these offences. In *R. v. Allen,* 2018 ONSC 252, Justice DiTomaso found that the minimum sentence survived constitutional scrutiny. He noted at paragraph 21 that:

> In the forefront of the court's mind during the sentencing deliberations would be general deterrence, specific deterrence and the moral blameworthiness of the offender. The need to separate sexual predators from society for the well-being of children must take precedence over the effects of the conviction on the offender and the offender's prospects for rehabilitation.

[208] In *R. v. Benson,* 2022 ONCJ 370, Justice Green would have imposed an 18 month sentence on an offender who made sexually explicit materials available to a four year old girl. The sentence imposed was a consecutive sentence to a 15 month sentence she would have imposed for breaching his section 161 Order. Citing the principle of totality, Justice Green reduced the sentence imposed to allow the offender to serve his sentence in the reformatory and also receive a period of probation. It is noted that the probationary disposition would not have been available if the accused had been sentenced to a penitentiary term.

Application of the Principles of Sentencing of 171.1(1)(b) Offences To KT

[209] In this case, these offences are not sophisticated.

[210] With respect to the offence against KX, it is difficult to imagine an offence that is less offensive than the facts disclosed here. Prior to consideration of the principles of totality and deduction for pre-sentence custody, I would therefore impose the minimum sentence of six months, which is to be served consecutive to the sentences on the other charges.

[211] As I have pointed out, the offence against C is much more aggravating. Prior to consideration of the principles of totality and deduction for pre-sentence custody, I would therefore impose a sentence of nine months, which is to be served consecutive to the sentences on the other charges.

Principles of Sentencing for the Crime of Voyeurism

[212] Parliament's purpose in enacting the crime of voyeurism is to protect the privacy and sexual integrity of individuals, "particularly from new threats posed by the abuse of evolving technologies.": *R. v. Jarvis,* 2019 SCC 10 at paragraph 48.

[213] In the recent case of *R. v. Riggs,* 2024 ONSC 2862, Justice Goldstein sentenced a 60-year-old offender with some mental health difficulties and no criminal record on four counts of voyeurism (against one victim) to 16 months concurrent on each count. The accused took 106 photos and 49 videos of the complainant, who was his neighbour. The images included photos and video of the complainant in various states of undress with emphasis on her breasts. They were taken in her backyard as well as in her bedroom. There were also images of the complainant having sex with her boyfriend. These were taken in her bedroom. Justice Goldstein stated at paragraph 59:

> I agree with Goodman J.'s point in *Jarvis* at para. 81 that the pervasiveness of smart phones and other electronic devices make it incredibly easy to commit the offence of voyeurism. As an economist might say, the barriers to entry for a stalker or a voyeur are so low as to be virtually non-existent. In this case, the offences

appear to have been committed with a phone and an iPad. General deterrence requires that those who would invade the privacy of others understand that the offence is not cost-free and may well result in a jail sentence.

[214] In *R. v. RR* 2022, ONCJ 407, at paragraph 58, Justice Jones stated:

> Deterrence is an important consideration when sentencing an offender for the crime of voyeurism. A clear message must be sent to the community that those who would violate the sexual integrity and personal dignity of their victims by surreptitiously taking photographs or videos of their bodies will pay a significant price.

[215] At paragraph 69, Justice Jones set out a non-exhaustive list of offence-specific factors that the court should examine in determining where to situate an offender within the range of sentence:

a) The circumstances of the victim at the time of the events – including her age and whether she was in a position of vulnerability;

b) The circumstances of the defendant, including his age and whether he was in a position of trust towards the victim;

c) The degree of invasiveness of the crime including the extent the recordings violated the sexual integrity of the victim;

d) The location of where the crime occurred;

e) The number of images or videos taken;

f) Whether the images or videos taken were ultimately recovered and deleted, and/or whether they were distributed to other persons including into the wider online community such that it may exist forever further harming the victim;

g) The impact on the victim, including psychological harm; and

h) Whether the act of voyeurism was committed in conjunction with or otherwise connected to another criminal offence such as sexual assault.

[216] To this list, I would add two additional factors:

a) The degree to which the offender planned to commit the offence. Cases where offenders take elaborate measures to commit the offence, including the carefully orchestrated use of hidden devices, are more aggravating. Planned offences are more aggravating than offences committed as crimes of opportunity.

b) Whether the victim explicitly made it clear to the offender that she was not consenting to being recorded, and the offender proceeded anyway. This is an aggravating factor. Lack of it is not mitigating.

Application of the Principles of Sentencing of Voyeurism to KT

[217] In the case before me, KT surreptitiously took a video recording of himself having consensual sex with an adult unknown male using his cell phone.

[218] The videos were taken in KT's bedroom.

[219] The victim did not consent to the sex being recorded.

[220] KT was not in a position of trust or authority with respect to the victim.

[221] The crime is very intrusive as it involved KT engaging in explicit sexual activity with the victim.

[222] It appears as though only one video was taken.

[223] There is no evidence that the video was ever distributed to other persons including the wider online community.

[224] The sexual activity between KT and the victim was consensual. The voyeurism was not committed in tandem with another offence, such as sexual assault.

[225] There is no victim impact statement before me. Nonetheless, offences such as this can be extremely psychologically harmful to victims who must live in perpetual fear that the images shared remain forever on the internet.

[226] The images were taken after the victim raised the issue of the presence of KT's camera and made it clear that he was not consenting to recording.

[227] The images were taken by KT using his cell phone. There is no evidence of careful planning or the use of elaborate measures to commit the offence, such as the carefully orchestrated use of hidden devices. This was a crime of opportunity.

[228] In my view the appropriate sentence is 12 months consecutive.

Summing Up – The Statutory Requirement of Imposing Consecutive Sentences for Child Pornography, Luring and Sexual Offences Against Different Children

[229] The provisions of section 718.3(7) require me to impose consecutive sentences for the following offences committed by KT:

a) Making Sexually Explicit Material available to a person under the age of 16, contrary to section 171.1(1)(b) of the *Criminal Code*;

b) Exposure to OM, a person under the age of 16, contrary to section 173(2) of the *Criminal Code;*

c) Possession of child pornography contrary to section 163.1(4) of the *Criminal Code;*

d) Communicating with OM, a person under the age of 16 for the purpose of facilitating child pornography, contrary to section 172.1(1)(b) of the *Criminal Code*;

e) Communicating with an unknown person under the age of 18 for the purpose of facilitating child pornography contrary to section 172.1(1)(a) of the *Criminal Code*;

f) Exposure to a person under the age of 16 (K), contrary to section 173(2) of the *Criminal Code*;

g) Making sexually explicit material available to a person under the age of 18 (KX), contrary to section 171.1(1)(a) of the *Criminal Code*.

[230] In *Bertrand Marchand,* Justice Martin described the consecutive/concurrent dilemma as it applies to the context of sentencing for luring this way at paragraph 95 to 98:

> Generally speaking, “offences that are so closely linked to each other as to constitute a single criminal adventure may, but are not required to, receive concurrent sentences, while all other offences are to receive consecutive sentences” (*Friesen*, at para. 155; see also *Criminal Code*, s. 718.3(4)(b)(i)). Determining whether sentences should be consecutive or concurrent is a fact-specific inquiry to be undertaken in the context of each case (C. C. Ruby, *Sentencing* (10th ed. 2020), at §14.13).
>
> Luring is legislatively linked to listed secondary offences: an offender must communicate for the purpose of facilitating the commission of one such offence. While there will be cases where luring stands alone, it often accompanies the actual commission of a listed secondary offence. But the luring that preceded or produced the offence is in no way subsumed or supplanted within the secondary offence. This is because the offence of luring protects a distinct social interest and causes distinct harms compared to the secondary offences (*Rayo*, at paras. 130 and 134).
>
> Offences constituting “invasions of different legally protected interests” can be sentenced consecutively, even if they form part of the same criminal transaction (*Rayo*, at para. 136, quoting *R. v. Gummer* (1983), 1983 CanLII 5286 (ON CA), 38 C.R. (3d) 46 (Ont. C.A), at p. 49; *R. v. Gillis*, 2009 ONCA 312, 248 O.A.C. 1, at para. 9; *R. v. Morton*, 2021 ABCA 29, at paras. 32-33 (CanLII)). Parliament intentionally targeted conduct that precedes the commission of the enumerated sexual offences and seeks to protect children from the possibility of sexual exploitation facilitated by the internet (*Rayo*, at paras. 138-39; *Reynard*, at paras. 19-20; *Alicandro*, at para. 36; *Legare*, at para. 25). As set out above, luring can cause distinct harms as a result of psychological manipulation. As such, in most cases luring will attract a consecutive sentence (*Rayo*, at paras. 133-43; *R. v. McLean*, 2016 SKCA 93, 484 Sask. R. 137, at paras. 50-53; *Miller*, at paras. 22-23). As noted in *Rayo*, the distinct offence of luring may seem to go unpunished, at least in part, where the luring sentence runs concurrently to the sentences for the related offences (para. 152).

> This is not to say that luring must always be sentenced consecutively. **Unless so mandated by s. 718.3(7)**, sentencing judges retain discretion on this point. However, in exercising their discretion, judges must remain cognizant of the fact that the offence of luring constitutes an invasion of a different legally protected interest. The judge is obliged to explain why the sentence is to be served concurrently with the penalties imposed for other infractions. The reason for imposing a concurrent sentence must be provided. **I also note that judges must be mindful not to double count: where a judge orders that a sentence for luring be served consecutively to any sentence for a secondary offence, the secondary offence cannot act as an aggravating factor in determining the luring sentence.** [Emphasis mine]

Subtotalling the Sentence I would Impose before Considering the Principle of Totality and Before Accounting for Pre-Sentence Custody

[231] In summary, before considering the principle of totality and before accounting for Pre-Sentence Custody, the sentences that I would impose are:

1. Information 22-37100396

a) Criminally harassing BA, contrary to section 264(2)(b) of the *Criminal Code* – 90 days;

b) Criminally harassing HBC, contrary to section 264(2)(b) of the *Criminal Code* – 90 days consecutive*;*

c) Criminally harassing RL, contrary to section 264(2)(b) of the *Criminal Code* – 90 days consecutive*;*

d) Criminally harassing AC, contrary to section 264(2)(b) of the *Criminal Code* – 90 days consecutive;

e) Indecently communicating with AD, contrary to section 372(2) of the *Criminal Code* – 30 days consecutive*;*

[232] Total Sentence is 13 months.

2. Information 23-37101038

[233] With respect to this information, the sentence that I would impose prior to consideration of totality is:

a) Making sexually explicit material available to C, a person under the age of 16, contrary to section 171.1(1)(b) of the *Criminal Code* – nine months consecutive*;*

b) Exposure to OM, a person under the age of 16, contrary to section 173(2) of the *Criminal Code* – six months consecutive*;*

c) Possession of child pornography contrary to section 163.1(4) of the *Criminal Code* – 48 months consecutive;

d) Luring (OM) contrary 172.1(1) of the *Criminal Code* – 18 months consecutive;

e) Communicating with an unknown person under the age of 16 for the purpose of facilitating child pornography contrary to section 172.1(1)(a) of the *Criminal Code* – 12 months consecutive;

f) Voyeurism, contrary to section 162(1) of the *Criminal Code* – 12 months consecutive*;*

g) Exposure to a person under the age of 16 (K), contrary to section 173(2) of the *Criminal Code* – six months consecutive;

h) Making sexually explicit material available to a person under the age of 18 (KX), contrary to section 171.1(1)(a) of the *Criminal Code* – six months consecutive.

[234] Total sentence eight years, eight months.

[235] Total sentence across both informations: 9 years, 10 months.

The Principle of Totality

[236] Flowing out of the principle of proportionality is the principle of totality which is specifically enshrined in section 718.2(c) quoted above. In essence, where consecutive sentences are imposed, the combined sentence must not be unduly long or harsh.

[237] Totality is a principle of sentence, the purpose of which is to ensure that the total sentence imposed does not extinguish the rehabilitative potential of the offender: *R. v. Angelis,* 2016 ONCA 675 at paragraph 51.

[238] The application of the principles of totality, proportionality and restraint require me to ensure that any cumulative sentence imposed does not exceed KT's overall culpability. A cumulative sentence which is substantially above the sentence for the most serious of the offences may offend the totality principle. Even where sentences for individual crimes, viewed in isolation are appropriate, collectively they may amount to a longer term of imprisonment than is warranted or which may be crushing: *R. v. Saikaley,* 2017 ONCA 374 at paragraphs 158 to 161.

[239] There are two ways to pay heed to the principle of totality:

a) A sentencing judge may decide a fit sentence for each crime and then consider whether the total sentence should be reduced to account for totality;

b) Alternatively, a sentencing judge may, having regard to the principle of totality, decide the overall fit sentence and then apportion individual sentences to each crime.

[240] Although the latter approach has been preferred in Ontario for many years (see *R. v. Jewell,* 1995 CanLii 1897 (ONCA) and *R. v. Ahmed,* 2017 ONCA 76), it is now clear that either method is acceptable: *R. v. Friesen,* 2020 SCC 9 at paragraph 157; *R. v. Owusu-Sarpong,* 2023 ONCA 336.

[241] As I will discuss below, in a case such as this, where the *Code* requires me to impose consecutive sentences and minimum sentences for some offences, the former approach lends better to the sentencing exercise.

[242] This was also the case in *R. v. Bertrand Marchand, supra,* a child luring case, where Justice Martin held at paragraphs 92 and 93:

> I agree with the sentencing judge's approach in this case and believe it has benefits over the alternative manner of simply setting a global amount for multiple offences. This sequential approach ensures a separate consideration of the fit and appropriate punishment of each offence. Given the separate objectives and distinct criteria for the luring offence, it was appropriate to examine each offence individually [TRANSLATION] "in order to understand properly the weight this offence contributes to the offender's moral blameworthiness" (*Rayo*, at para. 55).
>
> Articulating individual sentences for each offence provides needed clarity and is of great assistance when one of the challenged punishments are varied on appeal or declared to be unconstitutional. Setting an individual sentence for each offence provides transparency and allows a judge to weigh the seriousness of each offence. Clearly identifying individual sentences may also prove to be of great assistance in any subsequent sentencing proceedings should an offender *re*-offend — for example, by providing sentencing judges with a starting point when applying the "jump principle" to repeat convictions for the same offences (*R. v. Borde* (2003), 2003 CanLII 4187 (ON CA), 63 O.R. (3d) 417 (C.A.), at para. 39).

[243] The Crown submitted that a global sentence of eight years was appropriate.

[244] With respect to Information 22-37100396, the Crown proposed a sentence of between 30 and 120 days on each count concurrent.

[245] With respect to Information 23-37101038, the Crown proposed a sentence of six years and three months.

[246] These do not add to eight years.

[247] Notwithstanding the Crown's arithmetical error, in taking a "last look" (which in this case is really a second last look given the issue of pre-sentence custody) I cannot quarrel with the argument that the breadth of the offences committed by KT justify an eight-year global sentence. I find that a longer period of incarceration would crush KT and zap the need to use the period of incarceration for the purpose of rehabilitating him.

[248] Prior to consideration of pre-sentence custody, therefore the sentence that I would impose is as follows:

1. Information 22-37100396

a) Criminally harassing BA, contrary to section 264(2)(b) of the *Criminal Code* – 6 months;

b) Criminally harassing HBC, contrary to section 264(2)(b) of the *Criminal Code* – 90 days concurrent*;*

c) Criminally harassing RL, contrary to section 264(2)(b) of the *Criminal Code* – 90 days concurrent*;*

d) Criminally harassing AC, contrary to section 264(2)(b) of the *Criminal Code* – 90 days concurrent;

e) Indecently communicating with AD, contrary to section 372(2) of the *Criminal Code* – 30 days concurrent*.*

f) TOTAL SENTENCE: 6 months.

2. Information 23-37101038

a) Making sexually explicit material available to C, a person under the age of 16, contrary to section 171.1(1)(b) of the *Criminal Code* – this offence carries a minimum sentence of six months. I reduce the nine-month sentence, that I would have otherwise imposed, to the minimum to reflect the principle of totality. As is statutorily required, this must be served consecutive to KT's other offences.

b) Exposure to OM, a person under the age of 16, contrary to section 173(2) of the *Criminal Code* – this offence carries a minimum sentence of 90 days. I reduce the six-month sentence that I would have otherwise imposed, to the minimum to reflect the principle of totality. As is statutorily required, this must be served consecutive to KT's other sentences.

c) Possession of child pornography contrary to section 163.1(4) of the *Criminal Code.* I reduce the 48-month sentence that I would have otherwise imposed to 36 months consecutive to account for the principle of totality. As is statutorily required, this must be served consecutive to KT's other sentences.

d) Luring (OM) contrary 172.1(1)(b) of the *Criminal Code* – 18 months consecutive. I decline to reduce the sentence imposed to account for totality. As is statutorily required, this must be served consecutive to KT's other sentences.

e) Luring (unknown person) contrary to section 172.1(1)(a) of the *Criminal Code* – 12 months consecutive. I decline to reduce the sentence impose to account for totality. As is statutorily required, this must be served consecutive to KT's other sentences.

f) Voyeurism, contrary to section 162(1) of the *Criminal Code* – 12 months consecutive*.* To account for the principle of totality, I reduce the sentence to six months. I decline to order that the sentence be served concurrently because the offence in question protects a separate legal interest from those

in the other offences. It also makes it clear that KT's offending behaviour crosses age and gender.

g) Exposure to a person under the age of 16 (K), contrary to section 173(2) of the *Criminal Code* – six months consecutive. This crime carries a minimum sentence of 90 days. To account for the principle of totality, I reduce the sentence to the minimum. I am statutorily required to impose a consecutive sentence.

h) Making sexually explicit material available to a person under the age of 18 (KX), contrary to section 171.1(1)(a) of the *Criminal Code* – six months consecutive. This is the minimum sentence. I am statutorily required to impose a consecutive sentence.

[249] TOTAL SENTENCE: 7 years, 6 months.

The Facts with Respect to KT's Pre-Sentence Custody – Lockdown and Overcrowding

1. Lockdown

[250] KT has been in custody at OCDC since September 14, 2023.

[251] I have calculated his time served at 569 actual days.

[252] Defence counsel is also seeking additional credit for harsh conditions in custody.

[253] Almost daily I receive "lockdown reports", such as the report filed by defence counsel in this case, on consent as Exhibit 11. It is authored by Staff Sergeant Scott Munro, who is the Security Manager at OCDC and dated March 26, 2025.

[254] These reports are staggering. Lockdown is no longer an exception. It is now routine.

[255] In KT's case, as I will discuss below, the report also discusses overcrowding. This is the first time I have received a report that openly discusses what offenders have been telling their lawyers, and their lawyers have been telling me, for months: overcrowding is also no longer an exception. It is now also routine.

[256] The letter details that between his date of admission at OCDC on September 14, 2023 and March 26, 2025, KT has been on lockdown as follows:

a) 62 full days;

b) 23 days where he was on lockdown for both the morning and afternoon;

c) 24 days where he was on lockdown for both the afternoon and evening;

d) 43 days where he was on lockdown for the morning;

e) 13 days where he was on lockdown for the afternoon;

f) 183 days where he was on lockdown for the evening.

[257] Thus, of the 569 actual days that KT has spent in pre-sentence custody, for 348 of those, he has been subjected to some sort of lockdown.

[258] Staff Sergeant Munro explained what a lockdown or partial lockdown means, stating:

> A lockdown can be either the entire institution or a partial lockdown which is part of the institution. A lockdown means that a corridor/unit is not unlocked due to staff shortages, maintenance issues or repairs or security concerns. The reason for the lockdown will determine if lockdown will be the entire institution or a partial lockdown. When a corridor/unit is lockdown, all inmates housed in the entire corridor/unit will not be unlocked as a group to have access to the dayroom, the shower, telephones or the yard. If it is safe to do so, we will still do access for inmates one cell at a time so they can have access to the shower and a telephone. When the institution is not lockdown, the access to the yards is only done in the morning and afternoon hours.

[259] Throughout his incarceration, KT has been kept in a “pod”. Staff Sergeant Munro explained:

> Inmates who are housed in the Pod area will always eat their breakfast, lunch and supper in their cells.
>
> When the inmates are out in the dayroom, they will have access to the phones, showers, and television. When inmates are locked from their cells, the television can be seen from the cells.

[260] The only bright spot in all of this is an increase in the number of hours when an inmate will have access to the dayroom.

[261] Between KT’s admission to the institution on September 23, 2023 and September 30, 2024, “unlock times” allowing access to the dayroom were as follows:

a) Two hours in the morning;

b) Two and three quarter hours in the afternoon;

c) An hour and a half in the evening.

[262] On September 30, 2004, “unlock times” were adjusted to allow for:

a) Two hours in the morning;

b) Four hours in the afternoon;

c) Two hours in the evening.

2. Overcrowding

[263] KT's cell is equipped with one bunk bed and it is designed for two inmates. The letter indicates that overcrowding has become a significant concern. By my calculations, from the dates provided by Staff Sergeant Munro, for 456 days of the 569 days he has spent in custody, KT has been subjected to overcrowding conditions where there are three people in a cell designed for two.

[264] This essentially means that one offender must sleep on the floor.

[265] I am grateful that the Ontario Ministry of Solicitor General keeps such detailed records that allows for some transparency with respect to the alarming conditions at the Ottawa Carleton Detention Centre.

[266] These conditions are harsh, deplorable and inhumane. We are now to the point where the Court must be clearer that it will not tolerate subjecting offenders to them.

3. Other Relevant Information Pertaining to OCDC

[267] The OCDC is the main remand centre for individuals with charges in Renfrew County who are held in custody before and sometimes after trial. It has been this way since the misguided decision to close the Pembroke Jail in 2005.

[268] OCDC has been notorious for its poor living conditions for years. Even before the pandemic, there were frequent inquests and media reports which highlighted the deplorable conditions at the institution.

[269] Since the pandemic, the problems have worsened.

[270] The only other fact that I will point out is that it is known to this Court that offenders serving a sentence or on remand for a period in excess of thirty days are routinely transferred out to another institution in order to deal with the problem of overcrowding.

[271] In the case of OCDC, inmates are most often transferred to the Central East Correctional Centre in Lindsay, Ontario, although there have been cases of inmates being transferred to Quinte Detention Centre in Napanee and as far away as the Maplehurst Correctional Centre in Milton. The transfer of such inmates is particularly problematic for the following reasons:

a) The distance makes it more difficult for them to have visits with family, friends and loved ones;

b) The distance makes it more difficult for them to have access to their lawyers;

c) For offenders like KT, there is often a disconnect between the treatment regime in one institution and the treatment regime available in another.

[272] For this reason, this Court is often asked to permit offenders like KT to have more frequent remands in order to frustrate the institutional transfer process to ensure for better access to family and friends, lawyers and better continuity of health care.

[273] I note that in this case, despite all of the dismal information with respect to the conditions under which KT has been housed, there is clear evidence that he is being medicated and his health care is being managed so that he is better able to manage some of his psychiatric conditions.

[274] For this, I commend the health care department at OCDC.

[275] I have no doubt that had he been transferred out, his condition would have destabilized and declined. That is my experience with other offenders.

The Law With Respect to Unduly Harsh Conditions in Pre-Sentence Custody

[276] In *R. v. Summers,* 2014 SCC 26 the Supreme Court made it clear that pretrial custody ought to receive 1.5:1 credit in order to take three factors into consideration:

a) first, the fact that offenders do not receive earned remission for pretrial custody;

b) second, the fact that offenders who are housed in remand centres or detention centres often do not have access to richer rehabilitation programming such as one might find in a correctional centre or penitentiary; and

c) third, detention centres or correctional institutions are often places where there is overcrowding, inmate turn over and labour disputes. All of these factors lead to a situation where pre-sentence custody is actually more onerous.

[277] In *R. v. Duncan,* 2016 ONCA 754 at paragraph 6 the Court of Appeal found that additional credit is available where the offender serves their pre-sentence custody in particularly harsh circumstances, stating:

> …in the appropriate circumstances, particularly harsh presentence incarceration conditions can provide mitigation apart from and beyond the 1.5 credit referred to in s. 719(3.1). In considering whether any enhanced credit should be given, the court will consider both the conditions of the presentence incarceration and the impact of those conditions on the accused.

[278] In *R. v. Marshall,* 2021 ONCA 344 at paragraph 52, Justice Doherty made it clear that credit for harsh conditions in custody cannot "devour" an otherwise fit sentence. He stated at paragraph 52-53:

> The "*Duncan"* credit is not a deduction from the otherwise appropriate sentence but is one of the factors to be taken into account in determining the appropriate sentence. Particularly punitive pretrial incarceration conditions can be a mitigating factor to be taken into account with other mitigating and aggravating factors in arriving at the appropriate sentence from which the "*Summers"* credit will be deducted. Because the "*Duncan"* credit is one of the mitigating factors to be taken into account, it cannot justify the imposition of a sentence which is inappropriate, having regard to all of the relevant mitigating and aggravating factors.

> Often times, a specific number of days or months are given as "*Duncan"* credit. While this quantification is not necessarily inappropriate, it may skew the calculation of the ultimate sentence. By quantifying the "*Duncan"* credit, only one of the presumably several relevant factors, there is a risk that the "*Duncan"* credit will be improperly treated as a deduction in the same way as the "*Summers"* credit. If treated in that way, the "*Duncan"* credit can take on an unwarranted significance in fixing the ultimate sentence imposed.

[279] Unlike *Summers* credit, *Duncan* credit is not something that is rigidly and mechanically applied the same way in every case. It depends on the individual offender being sentenced, the specific circumstances of their pre-sentence custody, how that pre-sentence custody has affected them and how that credit relates to the overall fitness of their sentence.

[280] Recently in *R. v. Brown,* 2025 ONCA 164 the Court of Appeal reiterated the approach taken in *Marshall.* In *Brown*, the Court of Appeal stated at paragraph 4:

> Put simply, judges must recognize that where an offender has already experienced particularly punitive conditions during their pre-sentence custody, the punishment they receive should be reduced to take this into account, but the degree of mitigation is a matter of discretion in all the circumstances, and not a matter of mathematical precision.

[281] The Court of Appeal in *Brown* did not have the benefit of the Supreme Court of Canada's recent decision in *John Howard Society v. Saskatchewan,* 2025 SCC 6.

[282] In that case, writing for the majority, the Chief Justice commented at paragraph 59 on "disciplinary segregation" and "loss of earned remission" as a form of punishment:

> ….both of these punishments have frequently been understood as **exceptionally severe deprivations of liberty for those already living within a prison.** Unlike most other punishments imposed on inmates, both significantly curtail an inmate's freedom of movement while exacerbating or continuing the inmate's segregation from society. [Emphasis mine].

[283] From what I can see, the nature of the in-custody conditions that the Supreme Court was addressing in *John Howard,* differ little from the conditions that Staff Sergeant Munro described in Exhibit 11.

[284] These conditions were sufficient for the Supreme Court to take the unusual step of reversing previous holdings to find that the onus of proof in the case of institutional misconduct should now be subject to the criminal, as opposed to the civil, standard of proof. This will undoubtedly make it more difficult for the Crown to prove institutional misconduct in a penal setting where misconduct will lead to severe deprivation of liberty.

[285] In my view, the Court must begin to go further to distance itself from unduly harsh, if not inhumane, conditions in our jails. The overcrowding and lockdown conditions necessitated by COVID-19 are long past. In appropriate cases -- such as KT -- the Court

should consider making the amount of mitigation for harsh conditions in pre-sentence custody more obvious in sentencing judgments.

[286] *Marshall* recognises that the imposition of detailed credit for unduly harsh conditions in pre-sentence custody is not wrong. It merely mandates that judges make decisions which make the fitness of the ultimate sentence as the primary consideration.

[287] My respectful view is that more transparency is required from the Court with respect to the effect that unduly harsh conditions in pre-sentence custody has on the calculation of sentence. Sometimes that will not be possible. Sometimes it will be necessary to ignore unduly harsh conditions to render a fit sentence.

[288] This is not one of those cases.

[289] Had KT's pre-sentence incarceration been subject to infrequent lockdown and infrequent overcrowding, I would have had no hesitation in giving the minimum *Summers* credit of 1.5:1 for pre-sentence custody. Infrequent lockdown and infrequent overcrowding have always been a basic aspect of life in a penal setting.

[290] Here, however, the vast majority of the time he has served has been subject to lockdown and overcrowding, the combination of which must have affected every aspect of in-custody life. It is the essence of "hard time."

[291] I therefore calculate KT's presentence custody credit, including *Summers* credit at approximately 2.5:1. In other words, I recognise that high likelihood that rarely a day went by where KT was not subjected to overcrowding or lockdown or both. This also recognises that KT is somewhat better-off having spent his pre-sentence custody at OCDC where he had greater access to family and friends, better access to counsel and better health care.

[292] I note that I have used this calculation as a guideline. *Marshall* and *Brown* make it clear that *Duncan* is discretionary. How much, if any, credit an offender is entitled to will vary from one case to the next depending upon the period in lockdown and/or overcrowded conditions, the cost/benefit analysis, if any, of having the offender housed in an Institution, and the overall fitness of the sentence. 2.5:1 is a convenient ratio in this case. Every case will be different.

[293] I also note that if I start with the premise that the gross sentence after deduction for totality is eight years, the remaining sentence is more than four years.

[294] Following *Marshall,* in my view, the remaining sentence is amply fit. It is still a substantial sentence which pays heed to the primacy of the principles of deterrence and denunciation, separates KT from society and is sufficiently long to ensure that he has access to rigorous programs aimed at his rehabilitation.

[295] With respect to denunciation and deterrence, we also must not ignore that being housed in unduly harsh and difficult conditions is also inherently deterrent and denunciative.

Final Sentence Imposed on Information 22-37100396

[296] I therefore impose sentence as follows:

a) Criminally harassing BA, contrary to section 264(2)(b) of the *Criminal Code* – 72 days served, 180 days credit.

b) Criminally harassing HBC, contrary to section 264(2)(b) of the *Criminal Code* – Suspended Sentence, 1 day probation concurrent.

c) Criminally harassing RL, contrary to section 264(2)(b) of the *Criminal Code* – Suspended sentence, 1 day probation concurrent.

d) Criminally harassing AC, contrary to section 264(2)(b) of the *Criminal Code* – suspended sentence, 1 day probation concurrent.

e) Indecently communicating with AD, contrary to section 372(2) of the *Criminal Code*, suspended sentence, 1 day probation concurrent.

[297] Pursuant to section 743.21 of the *Criminal Code*, I make an order prohibiting KT from having any contact or communication, directly or indirectly, by any physical, electronic or other means with BA, HBC, RL, AC or AD, or any member of their family.

[298] Pursuant to section 487.051 of the *Criminal Code,* I make an order requiring the KT to provide a sample of his DNA in the National DNA Databank. Section 264 is a secondary designated offence. I find given the nature of the offences, it is in the best interests of the administration of justice to make this order.

[299] Pursuant to Section 109 of the *Criminal Code*, I make a firearms prohibition order for a period of ten years.

[300] Given that KT has been in custody for a substantial period of time, and still has a substantial period of time to serve, I find it would constitute an undue hardship for him to pay the Victim Fine Surcharge and I order it waived.

Final Sentence Imposed on Information 23-37101038

[301] With respect to Count 2, Communicating with a Person under the age of 16 to facilitate commission of an offence contrary to section 171.1(1)(b) I impose sentence of 72 days served, 6 months credit.

[302] With respect to Count 3, Exposure to OM, contrary to section 173(2) of the *Criminal Code*, I impose sentence of 36 days served, 90 days credit.

[303] With respect to Count 6, Possession of Child Pornography contrary to section 163.1(4) of the *Criminal Code*, I impose sentence of 389 days served, 970 days credit. This exhausts KT's pre-sentence custody. I impose a further 125 days in custody.

[304] With respect to Count 9, Luring OM contrary to section 172.1(1)(b) of the *Criminal Code,* I impose 18 months (540 days) consecutive.

[305] With respect to Count 14, Luring an Unknown person contrary to section 172.1(1)(a) of the *Criminal Code*, I impose a sentence of 12 months (360 days) consecutive.

[306] With respect to Count 24, Voyeurism, contrary to section 162(1) of the *Criminal Code*, I impose a sentence of six months (180 days) consecutive.

[307] With respect to Count 26, Exposure to K contrary to section 173(2) of the *Criminal Code,* I impose a sentence of 90 days consecutive.

[308] With respect to Count 27, Communicating with a Person Under the Age of 18 to facilitate commission of an offence contrary to section 171.1(1)(a) of the *Criminal Code*, I impose a sentence of six months (180 days) consecutive.

[309] The total sentence from todays date is 1,475 days left to serve.

[310] Pursuant to section 743.21 of the *Criminal Code*, I make an order prohibiting KT from having any contact or communication, directly or indirectly, by any physical, electronic or other means with C, OM, KX, K or any member of their families.

[311] Pursuant to section 487.051, I make an order requiring KT to provide a sample of his DNA for inclusion of the National DNA Databank. Counts 2, 3, 6, 9, 14, 26 and 27 are primary designated offences.

[312] Pursuant to section 109 of the *Criminal Code,* I make a Firearms Prohibition Order for a period of ten years. This runs concurrently with the Order I imposed on the Information 22-37100396.

[313] Pursuant to sections 490.012 and 490.013, I make an Order requiring KT to comply with the *Sex Offender Information Registration Act* for the rest of his life. In making this Order, I am satisfied that KT has been convicted of offences involving two or more designated offences. I am also satisfied that those offences demonstrate, or form part of a pattern of behaviour which shows that KT presents an increased risk of reoffending or committing a further crime of a sexual nature, particularly in relation to females under 18 years of age.

[314] Pursuant to section 161(a.1) I make an Order prohibiting KT from being within 250 meters of any place he knows C, OM, KX, K or any member of their family to live, work, go to school frequent or any place he knows them to be. This Order will be in place for the rest of his life.

[315] Pursuant to section 161(b), I make an Order prohibiting KT from seeking, obtaining or continuing in any employment, whether or not that employment is remunerated, or becoming a volunteer in a capacity, that involves being in a position of trust or authority towards a person under the age of 16 years. This Order will be in place for the rest of his life.

[316] Pursuant to section 161(c), I make an Order prohibiting KT from A Lifetime Order from having contact or communication with any person under the age of 16 unless KT

does so under the supervision of that person's parent or guardian and that person's parent or guardian is aware of KT's offending behaviour except for contact during the course of short commercial transactions or chance encounters in a public place. For greater certainty, it is my intention that this Order will prohibit KT from working in any employment, whether or not that employment is remunerated, or being a volunteer in any capacity that involves working with other employees or volunteers that are under the age of 16 years. This Order will be in place for the rest of his life.

[317] Pursuant to section 161(d), I make an Order prohibiting KT from using the Internet or other digital network, unless he does so in accordance with the following conditions:

a) His use of the Internet or other digital network is supervised by an adult person of at least 21 years of age, who is aware of his offending behaviour;

b) At no time may he use the internet or other digital network for the purpose of communicating with any person under the age of 16 years;

c) At no time may he use the internet or other digital network to access any social media applications; and

d) At no time may he use the internet or other digital network to access any pornographic websites, regardless of whether those sites are legal or not.

[318] The Crown may draft an Order for the forfeiture of the devices seized by Police for destruction as offence related property. The Order should be approved by defence counsel as to form and content before it is forwarded the to Court. I will remain seized in the event that there is disagreement as to the items that are subject to this Order.

[319] Given that KT has been in custody for a significant period of time and is going into custody for just over four years, I find it would constitute an undue hardship for him to pay the Victim Fine Surcharge and I order it waived.

[320] I make a recommendation that the Correctional Service of Canada and/or the Ontario Ministry of the Solicitor General:

a) classify KT as quickly as possible;

b) arrange a full and complete further assessment of KT's intellectual capacity to be conducted by a duly qualified psychiatrist and/or psychologist;

c) arrange a full and complete further assessment of KT's risk in the community to be conducted by a duly qualified psychiatrist and/or psychologist;

d) ensure that copies of his health care records pertaining to his period in custody at OCDC are immediately transmitted to the Correctional Service so that there is as much continuity in KT's health care as possible; and

e) transfer him as quickly as possible to an appropriate institution where he can receive the sexual offending, and psychological and/or psychiatric treatment he desperately needs.

Released: April 16, 2025

Signed: Justice J.R. Richardson