Court of Queen's Bench of Alberta

Citation: R v Pritchard, 2021 ABQB 39

Date: 20210114
Docket: 170071583Q3
Registry: Lethbridge

Between:

Her Majesty the Queen

Crown

- and -

Trevor Philip Pritchard

Accused

Restriction on Publication

Identification Ban – See the *Criminal Code*, section 486.4.

By Court Order, information that may identify the victim must not be published, broadcast, or transmitted in any way.

NOTE: This judgment is intended to comply with the identification ban.

Reasons for Decision
of the
Honourable Madam Justice J.C. Kubik

[On January 14, 2021, I delivered an abridged version of this decision orally and filed the full decision with the Clerk of the Court. I reserved the right to edit any transcript of the oral decision for spelling or clerical errors. The oral decision is the official decision of the Court]

I. Introduction

[1] On January 16, 2019, I convicted Trevor Philip Pritchard of the following offences:

- **Count 2:** Sexual Assault contrary to section 271 of the *Criminal Code of Canada* (in relation to victim EB);
- **Count 3:** Communication by means of telecommunications with a person who was, or who the accused believed was, under the age of 16 years, for the purpose of facilitating the commission of an offence under section 151 or 152; or subsection 160(3) or 173(2); or section 271, 272, 273, or 280; with respect to that person, contrary to section 172.1(1)(b) of the *Criminal Code of Canada* (in relation to victims EB and DG);
- **Count 4:** Possession of child pornography, contrary to section 163.1 (4) of the *Criminal Code of Canada*; and
- **Count 5:** Communication by means of telecommunications with a person who was, or who the accused believed was, under the age of 16 years, for the purpose of facilitating the commission of an offence under section 151 or 152; or subsection 160(3) or 173(2); or section 271, 272, 273, or 280; with respect to that person contrary, to section 172.1(1)(b) of the *Criminal Code of Canada* (in relation to various unnamed victims).

[2] Following conviction, the Crown gave notice of its intention to seek a dangerous offender designation pursuant to section 752.01 of the *Criminal Code*. Mr. Pritchard was remanded for assessment, pursuant to section 752.1 of the *Criminal Code.* All notice requirements of the *Criminal Code* have been satisfied. Twenty Crown witnesses testified at the hearing of this matter. The Defence did not call evidence.

[3] The Crown, with the consent of the Attorney General, seeks to have Mr. Pritchard designated a dangerous offender, and argues that an indeterminate sentence is the only fit and just sentence which adequately protects society.

[4] While Mr. Pritchard opposes the dangerous offender designation and proposes a global sentence of eight to nine years' incarceration, in the event he is designated a dangerous offender, he argues that a determinate sentence plus a period of long-term supervision is adequate to protect society.

II. Circumstances of the Offender

i. History of Offending, Incarceration and Release

[5] Mr. Pritchard's record of criminal convictions, and the factual underpinnings of each conviction are as follows:

1. November 25, 2004

Between the 11th day of December 2003 and the 12th day of December 2003, both dates inclusive, at or near Lethbridge, Alberta, did unlawfully commit a sexual assault upon VL, contrary to section 271 of the Criminal Code of Canada.

[6] Mr. Pritchard plead guilty to this offence. He met VL via an MSN internet chatroom. VL's age (13 years) was clearly stated in her profile, and their respective ages (13 years, and 19 years) were discussed in their online communications. The online communications included discussions about school and sex. Arrangements were made for Mr. Pritchard to pick up VL at home and deliver her to the school. Various forms of sexual contact occurred, including: kissing, and vaginal fondling. Further arrangements were made for Mr. Pritchard to pick up VL on December 13, 2003, and he took her to Pavan Park located in Lethbridge, Alberta. Again, various forms of sexual contact occurred, including: sexual touching, fellatio, cunnilingus, and vaginal sexual intercourse.

[7] Mr. Pritchard was sentenced to a suspended sentence with thirty months of probation. On appeal, the sentence was varied to a conditional sentence order of two years less a day.

[8] During the course of the suspended sentence order, Mr. Pritchard was bound by various conditions, including that he report to probation; attend treatment and/or counselling as recommended by his probation officer, including with respect to age appropriate relationships, self-confidence, distress relating to his current criminal issues; and treatment for sexual offenders. Further conditions included that Mr. Pritchard was prohibited from associating with female children under the age of 16-years, unless accompanied by a responsible adult; and prohibited from accessing a computer connected to the internet, unless approved of by his probation officer.

[9] Following the variation of his sentence by the Alberta Court of Appeal, Mr. Pritchard was placed on house arrest for the first year, and a curfew of 8:00 p.m. to 6:00 a.m. was instituted for the second year. The prohibitions and requirements of his original probation order remained in place.

[10] Throughout this period, Mr. Pritchard was supervised by his probation officer, James Chymboryk. Mr. Chymboryk testified at this hearing that Mr. Pritchard was generally compliant with his reporting requirements and attended for counselling, first with Griff Thomas, and later with Rod Chant. Mr. Chymborski did not receive any reports from Mr. Chant during the course of the probationary period. The probation file was closed successfully on June 20, 2007.Mr. Pritchard had no further convictions or violations during the probationary period.

2. September 4, 2008

> On or about the 7th day of November 2007, at or near Lethbridge, Alberta, did unlawfully assault Joel Odorski, with intent to resist lawful arrest, contrary to section 270(1)(b) of the *Criminal Code of Canada.*

[11] Mr. Pritchard plead guilty to this offence. The offence occurred when Constable Odorski attempted to place Mr. Pritchard under arrest and he fled to the basement of his parent's home. A struggle ensued, and Mr. Pritchard kicked, swung at, and attempted to grab Constable Odorski's throat. His resistance was overcome and he was arrested. The facts read in to the court record at the time of plea, indicate that Mr. Pritchard's father, Morley Pritchard, was also uncooperative with the police. Mr. Pritchard, once in the presence of his mother, was significantly more cooperative.

[12] Mr. Pritchard was sentenced to a suspended sentence plus nine months' probation requiring him to report to a probation officer, complete treatment and/or counselling as recommended, and provide proof of completion of such treatment to his probation officer.

[13] Mr. Chymboryk also supervised this period of probation. During the probationary period, Mr. Pritchard was generally compliant with reporting and continued to see Rod Chant for counselling. On June 10, 2009, he was reported to have successfully completed his probation, although he was charged with sexual assault and sexual interference during this period of supervision.

3. September 15, 2009

[14] Mr. Pritchard entered into a 12-month common law peace bond, relating to a charge that reads:

> On or about the 29th day of September 2008, at or near Lethbridge, Alberta, did knowingly utter, convey, or cause Josh Potvin to receive a threat to cause death or bodily harm to David Potvin, contrary to section 264.1(1)(a) of the *Criminal Code of Canada*.

[15] The terms of the peace bond required Mr. Pritchard to keep the peace and be of good behaviour; have no contact with various named individuals; and not attend within 100 meters of a certain location in Lethbridge, Alberta.

4. October 22, 2009

> On or about the 31st day of October 2008, at or near Picture Butte, in the Province of Alberta, did commit a sexual assault on SJ, contrary to section 271 of the Criminal Code of Canada.

[16] Mr. Pritchard plead guilty to this offence. SJ was 13 years of age and Mr. Pritchard was 24 years of age. Mr. Pritchard, 2 other males, and 3 other females had been at Park Lake Provincial Park together on October 31, 2008, and had consumed a significant amount of alcohol. Mr. Pritchard committed penile-vaginal sexual assault upon SJ at a time when she was both unable to consent by virtue of her age and had a blood alcohol level measured at 179 milligrams, and 225 milligrams, per 100 millilitres of blood. When found by police in the gazebo at the park, SJ was dressed only in a tank top. She was covered in vomit and urine. Mr. Pritchard was a DNA match to the sample found in SJ's underwear.

[17] Mr. Pritchard was sentenced to thirty-months imprisonment.

5. March 25, 2010

> Between the 17th day of June 2009 and the 4th day of September 2009, both dates inclusive, at or near Lethbridge, Alberta, did unlawfully commit a sexual assault upon KP, contrary to section 271 of the *Criminal Code of Canada*.

[18] Mr. Pritchard plead guilty to this offence. KP was 13 years of age, and Mr. Pritchard was 24 years of age. KP and Mr. Pritchard met via the social media platform Facebook through mutual friends. They eventually met in person, and sexual contact occurred on 3 occasions. This included Mr. Pritchard touching KP's breasts, KP touching Mr. Pritchard's penis, and 3 occasions of vaginal-penile penetration. KP contracted chlamydia from Mr. Pritchard as a result.

[19] Mr. Pritchard was sentenced to forty-four months' imprisonment.

[20] During the course of serving his sentences on convictions 4 and 5, Mr. Pritchard was housed at Bowden Institution ("Bowden") and Saskatchewan Penitentiary. Institutional Parole

Officers Matthew Kennedy (Bowden) and Connie Lam (Saskatchewan Penitentiary) testified before me in these proceedings. Their testimony focused largely on Mr. Pritchard's efforts to participate in various sex offender treatment programs.

[21] While at Bowden, Mr. Pritchard enrolled in the High-Intensity Sex Offender Program, but failed to complete the same. He was described as unmotivated. The evidence indicates that he failed to participate meaningfully in the group sessions and did not complete his individual exercises. He was expelled from the program for failing to abide by the terms of the confidentiality agreement governing the program. This resulted from him creating risk for others in the institution when he disclosed to general population prisoners the particulars of offences committed by various sex offender inmates in the program. Additionally, he took his cell-mate's journal and when confronted about it, indicated he had not seen it. A search of his cell uncovered the journal. He was involuntarily transferred to Saskatchewan Penitentiary.

[22] While at Saskatchewan Penitentiary, he was encouraged to move to the Well-Springs Sex Offender Program, which could accommodate prisoners with cognitive deficits and literacy challenges, but declined. Ultimately, he re-enrolled in and completed the High-Intensity Sex Offender Program. Despite completion of the High-Intensity Sex Offender Program, his risk to public safety was determined by probation officer Connie Lam to be high, as he failed to demonstrate insight into his offending, accountability for the offences for which he was convicted, and motivation to change. As a result, he remained incarcerated until his warrant expiry date.

6. November 22, 2013

[23] On November 22, 2013, following his release, and by consent, Mr. Pritchard entered into a two-year section 810.1 *Criminal Code* peace bond, which arose on application by the Lethbridge Police Service, which feared that he would commit an offence under section 151, 152, and 271 of the *Criminal Code of Canada*, against a person under the age of 16 years old.

[24] The section 810.1 peace bond included twenty-four conditions, the most important of which prohibited Mr. Pritchard from having contact with any female person under the age of 16 years, unless in the immediate presence of an adult guardian or the parent of that child who was aware of Mr. Pritchard's criminal history; required that he reside at an approved residence; and prohibited him from possessing any electronic equipment, computer or computer software, or cellular telephone that had the capability of accessing the internet, except for a game console not connected to the internet.

[25] Initially, Mr. Pritchard resided in his mother's residence with daytime supervision assistance being provided by Quest Support Services ("Quest"), a community access program which provides quality supports for individuals with disabilities, including 24-hour live-in supervision. In addition, his compliance with the terms of the section 810.1 peace bond was monitored by Constable Robert Saar of the Lethbridge Regional Police Service High-Risk Offender Unit. Mr. Pritchard breached the section 810.1 peace bond. Constable Saar noted that Mr. Pritchard's father was unsupportive of the involvement of the High-Risk Offender Unit.

7. March 6, 2014

> Between the 8th day of February 2014 and the 12th day of February 2014, both dates inclusive, at or near Lethbridge, Alberta, being a person bound by a

> recognizance under section 810 dated the 22nd day of November, 2013, did unlawfully commit a breach of the said recognizance, to wit: "you shall not possess any electronic equipment, computer or computer software, or cellular telephone that has the capability of accessing the internet, except for a game console not connected to the internet", contrary to section 811 of the *Criminal Code of Canada*.

[26] Mr. Pritchard plead guilty to this offence. The particulars included that while at the residence of his father, he was accessing a dating website known as Plenty of Fish to seek out a relationship.

[27] Mr. Pritchard was sentenced to eighteen months of probation, during which time he was supervised by probation officer Matthew Thomas. His probationary terms required regular reporting, attendance at treatment and/or counselling as recommended, that he not attend at his father's residence, and that he not possess any electronic equipment, computer software, or computer, or cellular phone capable of accessing the internet, except for a gaming console not connected to the internet. Mr. Thomas believed Mr. Pritchard to be a moderate to low-moderate risk and described him as immature and needing assistance with the development of life skills.

[28] As a condition of his probation, Mr. Pritchard was referred to a group therapy program for sexual offenders called Good Lives for Men. This program focuses on building life skills and self-esteem, and teaches offenders to recognize and manage risk factors for reoffending. Whereas the High Intensity Sex Offender Program model (which Mr. Pritchard completed while incarcerated at Saskatchewan Penitentiary) is focused on taking responsibility for offending behaviour, the Good Lives model is premised on offenders recognizing their strengths and building on them in order to change the dynamic factors associated with reoffending. Mr. Pritchard successfully completed this program in March 2015.

[29] During this period of probation, Mr. Pritchard continued to receive supervision services through Quest. Mr. Pritchard was observed to be disinterested in goal setting or behavioral change. Variation of the terms of supervision ultimately allowed Mr. Pritchard to have contact with his father, who was observed by Darla Mohan of Quest to be non-supportive of the supervision of Mr. Pritchard, and opposed to the section 810.1 peace bond.

[30] In December 2015, at the conclusion of the section 810.1 peace bond and eighteen-month probationary period, Mr. Pritchard terminated Quest's services and moved into his father's residence with his girlfriend. In the early fall of 2016, he and his girlfriend moved into a home in Coaldale, Alberta, which was owned by his brother. He was self-employed providing lawn care and snow removal services to approximately six regular customers.

8. February 6, 2019

> Between the 1st day of December 2016 and the 17th day of January 2017, at or near Coaldale, Alberta, did by means of telecommunications, communicate with a person who was, or who the accused believed was, under the age of 16 years, for the purposes of facilitating the offence under section 151 or 152; or subsection 160(3) or 173(2); or section 271, 272, 273, or 280; with respect to that person, contrary to section 172.1(1)(b) of the *Criminal Code of Canada*.
>
> (Luring)

- and -

On or about the 17th day of January 2017, at or near Coaldale, Alberta, did unlawfully commit a sexual assault upon SLD, contrary to section 271 of the *Criminal Code of Canada*.

[31] Mr. Pritchard plead guilty to these offences on April 9, 2018. An Agreed Statement of Facts was filed in the proceedings and indicated that Mr. Pritchard befriended SLD via the social networking platform Facebook where he communicated with SLD under two separate identities: Trevor Pritchard and Phillip Fieldcamper. SLD was 15 years of age, a fact communicated to Mr. Pritchard via Facebook. Mr. Pritchard was 32 years of age, but communicated to SLD that he was 25 years old. On January 17, 2017, Mr. Pritchard offered to take SLD to a job interview, but instead took her to his home in Coaldale, Alberta, where he committed acts of kissing, oral, vaginal and anal sexual assault on SLD. Further, he threatened that if she told anyone about what had happened, and it got to police, he would hunt her down and personally kill her. He told her he had eyes and ears everywhere, including at the Boys and Girls Club she attended.

[32] SLD underwent a sexual assault examination on January 18, 2017. DNA collected from the examination matched Mr. Pritchard.

[33] The Facebook accounts of Trevor Pritchard and Phillip Fieldcamper were secured pursuant to a request under the Mutual Legal Assistance Treaty, and demonstrated the luring of SLD by Mr. Pritchard.

[34] Following his guilty plea, the Crown sought an assessment pursuant to section 752.1 of the Criminal Code and the first such assessment was completed by Dr. Tano on August 13, 2018. While it will be discussed in further detail later in these Reasons, it does provide a detailed risk assessment, using a number of different measures, including actuarial and professional judgment tools. At that time, Mr. Pritchard was found to be a high risk for sexual recidivism.

[35] As Mr. Pritchard had not yet been sentenced when his trial matters came before me in November 2018, he continued to be housed at the Lethbridge Correctional Centre. In October 2018, a search of his cell uncovered various letters and stories, authored by him, containing graphic sexual content.

[36] On February 6, 2019, Mr. Pritchard was sentenced to 6.5-years' imprisonment, and is currently serving that sentence. In addition to various other ancillary orders, an order under section 161(1) of the *Criminal Code* was granted. That order prohibits Mr. Pritchard for a period of twenty years, from the date of his release from imprisonment, from attending:

i. a public park or a public swimming area where persons under the age of 16 are present, or can reasonably be expected to be present;

ii. a daycare centre;

iii. a school ground;

iv. a playground;

v. a community centre;

vi. seeking, obtaining, or continuing employment, whether or not the employment remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years;

vii. having any contact — including communicating by any means — with a person who is under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate; and

viii. using the internet or other digital network, unless the offender does so in accordance with conditions set by the court, which prohibit use of the internet, or any similar communication service, to access any content that violates the law; direct or indirect access of any social media sites, social network, internet discussion forum, or chat room, or maintenance of a personal profile on any such service (e.g.: Facebook, Twitter, Tinder, Instagram, or any equivalent or similar service).

[37] Mr. Pritchard is currently incarcerated at Bowden Institution. His statutory release date is May 18, 2021 and his warrant expiry date is July 7, 2022. He adjourned his day parole hearing and waived his full parole hearing. Currently he is supervised by institutional parole officer, Gang Mai. Mr. Mai testified at this hearing that Mr. Pritchard's current corrections plan includes re-attending the High Intensity Sex Offender Program, maintaining employment within the institution, and accessing mental health services. At the time of his testimony, Mr. Pritchard was employed at Bowden doing yard work and snow removal. He was also on the wait list for the High Intensity Sex Offender Treatment Program, which had been suspended due to COVID-19 restrictions. As at the date of Mr. Mai's testimony it was the recommendation of Mr. Pritchard's case management team that he not be released on his statutory release date.

9. January 16, 2019

[38] On January 16, 2019, I convicted Trevor Philip Pritchard of the following offences:

- **Count 2:** Sexual Assault contrary to section 271 of the *Criminal Code of Canada* (in relation to victim EB);
- **Count 3:** Communication by means of telecommunications with a person who was, or who the accused believed was, under the age of 16 years, for the purpose of facilitating the commission of an offence under section 151 or 152; or subsection 160(3) or 173(2); or section 271, 272, 273, or 280; with respect to that person, contrary to section 172.1(1)(b) of the *Criminal Code of Canada* (in relation to victims EB and DG);
- **Count 4:** Possession of child pornography, contrary to section 163.1 (4) of the *Criminal Code of Canada*; and
- **Count 5:** Communication by means of telecommunications with a person who was, or who the accused believed was, under the age of 16 years, for the purpose of facilitating the commission of an offence under section 151 or 152; or subsection 160(3) or 173(2); or section 271, 272, 273, or 280; with respect to that person contrary, to section 172.1(1)(b) of the *Criminal Code of Canada* (in relation to various unnamed victims).

[39] Count 2 is the predicate offence underlying the dangerous offender application.

[40] Mr. Pritchard was convicted of these offences following trial. The facts as I found them include that Mr. Pritchard had utilized the social networking platform Facebook to create two separate user profiles: Trevor Pritchard and Phillip Fieldcamper. Using those profiles, Mr. Pritchard lured EB (age 14), and DG (age 14) for the purposes of facilitating the sexual touching or sexual assault of these children. Explicit sexual communications consistent with grooming occurred. The communications culminated in Mr. Pritchard sending the same, graphic sexual invitation to both girls.

[41] Further, I found that Mr. Pritchard sexually assaulted EB. The acts of sexual assault included: kissing, touching of her breasts, groping of her body, vaginal and anal sexual intercourse, and the binding and choking of EB during these sexual assaults.

[42] Mr. Pritchard also utilized the two Facebook profiles to communicate with multiple, unnamed complainants under 16 years of age. The communications were with girls who identified themselves as being under the age of 16 years, and included: sexual role play; sexually explicit chat; discussions of nudity; requests for cuddling, kissing, and sex; requests for pictures, including pornographic images of girls under the age of 16. Grooming communications were evident, and explicit requests to engage in sexual behaviour were made.

[43] Finally, Mr. Pritchard was in possession of multiple images of child pornography across multiple electronic devices which were in his physical possession, at the date of his arrest. The images were also transferred between these devices, and sent to at least two other users of Facebook and Kik Chat, another social media networking platform. The images were created between February 11, 2014 and December 13, 2016, dates during which Mr. Pritchard was largely bound by the section 810.1 peace bond and probation order. Notably, the February 11, 2014 date falls within the offence dates when Mr. Prichard was violating the term of the section 810.1 peace bond by accessing the internet from his father's home.

[44] Upon being remanded for the section 752.1 assessment, Mr. Pritchard was transferred to the Southern Alberta Forensic Psychiatry Centre. While there he attempted to engage with a 19-year-old female co-patient, who later had to be moved to a different unit, in order to stop his continuing attempts at contact.

ii. Evidence Regarding Risk of Re-offending, Treatment and Manageability

[45] As previously noted, Mr. Pritchard was the subject of two section 752.1 assessments. The first was completed in August 2018 after Mr. Pritchard's conviction in relation to the sexual assault of SLD; the second, in June 2019 after his conviction in this matter. Because the second assessment was completed within one year of the first, no new psychological testing was performed, but updated information was gathered and new risk assessments were completed.

[46] Both section 752.1 assessments were prepared by Dr. David Tano, who was qualified by me as an expert in forensic psychiatry to provide opinion evidence as to risk assessments, the treatment and manageability of sexual offenders in the community, and the interpretation of risk assessments as relates to the risk of recidivism of sexual offenders in the community.

[47] His opinion was formulated based on interviews with Mr. Pritchard and collateral sources, including his parents, brother, girlfriend and other friends, the court record, probation and institutional records, psychological testing, and his professional application of risk

assessment models to quantify the risk of sexual recidivism, measure treatment success and make recommendations as to management of Mr. Pritchard's behaviours in the community.

[48] Additionally, he relied on the expert opinion of Nhan Lau, who also testified in the hearing of this matter. Mr. Lau, was qualified as an expert in forensic psychology and provided expert evidence in relation to the use and interpretation of psychological screening tools for cognitive functioning, personality, behaviour, neuropsychological functioning, and risk of recidivism, assessment of the risk of recidivism in sexual offenders, and assessment of the treatment and manageability of sexual offenders in the community.

[49] The section 752.1 assessment completed in relation to this application provides some information to assist in understanding Mr. Pritchard's life history and the static and dynamic factors associated with his history of offending, however, diagnosis with respect to his current state was elusive as a result of Mr. Pritchard's own variable reporting and presentation, including on psychological testing.

[50] In relation to his antecedent history, psychologists and psychiatrists agree that Mr. Pritchard suffered organic brain injury prior to birth, but that injury has not given rise to any cognitive deficits affecting his day to day functioning. While he has low average intelligence, his executive functioning is intact, meaning he has the ability to understand consequences. He completed grade 12 in a modified learning program and went on to achieve a high school diploma while incarcerated. He has worked sporadically, both in and out of the carceral setting, typically in landscaping jobs. At the time of committing his most recent offences he was self-employed providing lawn care and snow removal services to approximately six clients, amounting to about ten hours of work per week. He is currently employed with the yard crew at Bowden Institution. Mr. Pritchard is 36 years old.

[51] Mr. Pritchard's parents divorced in 2006 and their relationship is acrimonious. Each has a different perspective on Mr. Pritchard's offending behaviour and each have played a role in both his success and failure while on release. For a time, his mother was his guardian, pursuant to the Adult Guardianship and Trusteeship Act. During that time, he was receiving Assured Income for the Severely Handicapped and assistance through the Persons with Developmental Disabilities Program. After entering into the section 810.1 peace bond, Mr. Pritchard resided with his mother and then went on to live in a twenty-four-hour supervised setting, operated by Quest. While his mother was his guardian and his behaviour was fully monitored, his life was at its most stable. While he was unhappy with this level of supervision and was unmotivated to take steps to find work and engage in counselling, he did not reoffend. Unfortunately, this state of affairs did not last and Mr. Pritchard came to be under the guardianship of his brother. It is evident on the records before the Court, including interviews with both his brother and his father, conducted during the section 752.1 assessment, that they do not recognize the strong external controls he requires to prevent his reoffending behaviour. In fact, his father provided him with a computer and internet access, contrary to the terms of this section 810.1 peace bond, and immediately following the expiry of that peace bond, facilitated him to live independently with his girlfriend. Within a very short period of time, the index offences occurred.

[52] Mr. Pritchard has had age appropriate sexual relationships and was living with his girlfriend at the time of committing these offences. He does not exhibit pedophilic tendencies, and expresses attraction to adult females and post-pubescent females. He does not exhibit psychopathology.

[53] As noted previously, the information he provided in preparation of the s. 752.1 report was variable, including in relation to his description of his history of offending and his sexuality. Dr. Tano hypothesized that Mr. Pritchard is hypersexual, and has low self-esteem and that the combination of the two leads him to indiscriminately reach out to pubescent and adult women for companionship, sometimes resulting in him engaging in sexual activity with underage girls.

[54] Mr. Pritchard has engaged in multiple courses of psychological counselling for sexual offenders, including his one-on-one counselling with Griff Thomas and Rod Chant, the High Intensity Sex Offender Program and the Good Lives for Men Program. None of these programs has served to reduce his risk of sexual recidivism and in fact, he has reoffended sexually, on more than one occasion, despite completion of these programs.

[55] Mr. Pritchard externalizes blame for his criminal behaviour. During interviews with social workers, Mr. Lau and Dr. Tano, he related variable versions of each offence, at times denying the conduct occurred at all (despite having plead guilty on numerous occasions), other times blaming the victims for tricking him as to their ages, and at times suggesting that the police had entrapped him by planting evidence. The correctional records also reveal that he has not taken responsibility for his behaviour.

[56] Mr. Pritchard's risk of sexual recidivism has been assessed over the course of his offending history. In 2004, Mr. Pritchard was assessed to be at a moderate to high risk for future sexual reoffending. In 2010 he was assessed to be at a high risk for violent sexual recidivism and a moderate risk for general sexual recidivism. In November 2011 he was found to be at a high risk for sexual recidivism. He has reoffended subsequent to all of these risk assessments.

[57] Mr. Pritchard's risk of sexual recidivism has been assessed again by both Dr. Tano and Mr. Lau. Both utilized the Static99R, an actuarial risk assessment tool and the STABLE 2007 and Risk for Sexual Violence Protocol (RSVP), structured professional judgment tools. In assessing Mr. Pritchard's risk of recidivism, they both note that he presents with a number of risk factors, including social influences who minimize the nature of his offending and need for treatment, relationship instability, emotional identification with children, and general social rejection. In addition, risk arises from his lack of concern for others, his impulsivity, poor problem-solving skills, and negative emotionality, including believing that he is the victim of injustice and externalizing blame for his offending behaviour. Finally, his hypersexuality and use of sexual activity as a coping mechanism creates additional risk for reoffending. Mr. Lau and Dr. Tano concur that Mr. Pritchard is at a high risk to reoffend sexually.

[58] Mr. Lau and Dr. Tano both testified as to treatment for and manageability of Mr. Pritchard's behaviour. They each recommended further treatment to include participation in sex offender treatment programming, participation in employment or vocational training, participation in skill-building opportunities, and cognitive behavioural therapy in relation to daily living, interpersonal communication, healthy relationships and coping skills, and specifically in relation to building self-esteem, self-worth, and social skills. This treatment would address Mr. Pritchard's dynamic risk factors for re-offending and require a significant degree of commitment and insight from him.

[59] In relation to management of his risk of reoffending in the community, Mr. Pritchard requires a highly supervised and structured environment. Dr. Tano referred to this as an "external brain", essentially a structured environment, similar to Quest, to provide constant supervision and regulation of Mr. Pritchard's behaviour. Evidence as to the resources available to provide

this level of supervision in the community was provided by a number of witnesses. In short, such resources do not exist. Quest is unwilling to provide this service and there are no other twenty-four-hour supervised residential facilities to monitor high risk offenders. Constable Saar, who supervised Mr. Pritchard under the s. 810.1 peace bond, testified that Lethbridge Police Service relies heavily on cooperation from collateral sources to monitor high risk offenders who are released under strict supervision. Allan Beasley, who works as a community parole officer in Calgary, Alberta and has worked with a number of offenders bound by long-term supervision orders, testified that twenty-four-hour supervision is not feasible due to an absence of community parole resources. Collateral contacts are critical in ensuring compliance with the numerous restrictive conditions typically imposed on a sexual offender bound by a long-term supervision order. In addition, cooperation, in the form of a positive relationship between parolee and parole officer, and a supportive community are factors in successful reintegration into society.

[60] I accept the expert evidence of Dr. Tano and Mr. Lau as relates to Mr. Pritchard's risk of recidivism, his treatability, and manageability in the community. Both experts provided an objective, unbiased assessment of Mr. Pritchard utilizing accepted psychological testing and risk assessment tools, in conjunction with their professional expertise and judgment.

III. Impact on the Victims

[61] During the course of these proceedings I heard Victim Impact Statements from four of Mr. Pritchard's victims: SJ, SLD, DG, and EB. VL could not be located and KP was unwilling to provide a statement.

Summary of Each Impact

- ***SJ***

  Age at the time of the offence: 13 years old

  Current age: 25 years old

[62] SJ suffered physical injuries including pain and soreness to her vagina and anus. She felt shame and was bullied by her peers when the story of what had happened to her became known. She has low self esteem, trust issues, and has become involved in abusive relationships. She suffers depression, anxiety and panic attacks. She has attempted suicide. She fears for her safety. She turned to alcohol and drugs as a way of coping with her distress. She was addicted to cocaine for 8 years.

- ***SLD***

  Age at the time of the offence: 15 years old

  Current age: 18 years old

[63] SLD had to receive prophylactic treatment for sexually transmitted diseases and Plan B contraceptive in the aftermath of the assault. She suffers breast pain. She has low self esteem and has felt hatred for herself. She suffers depression which is treated with anti-depressant medication. Her relationships with her family and friends have suffered. She was unable to work for several months after the assault. She has a pervasive fear for her safety.

- ***DG***

  Age at the time of the offence: 14 years old

  Current age: 18 years old

[64] DG dropped out of school after these events and has been unable to work. She has difficulty eating and sleeping. Her relationship with her parents has suffered. She was bullied after her peers learned about what had occurred. She suffers anxiety and has difficulty trusting others. She has engaged in self harm behaviours, including cutting. She is receiving mental health counselling. She fears for her safety.

- ***EB***

  Age at the time of the offence: 14 years old

  Current age: 18 years old

[65] EB dropped out of school following these events. She experienced emotional instability, post-traumatic stress disorder, increasing self-harm behaviours, including extensive cutting and attempting suicide. She was kicked out of her family home and found herself living in a teen shelter and ultimately a secure treatment facility. With the assistance of Children and Family Services, she has returned to school, found work and is living on her own. She continues to struggle with anxiety, panic attacks and flashbacks. She has struggled with trust and relationships. She has a pervasive fear for her safety.

[66] Based on ***R v Friesen***, 2020 SCC 9 [***Friesen***], I also conclude that VL and KP suffered psychological trauma as a result of being sexually assaulted by Mr. Pritchard.

IV. Legal Framework

[67] Part XXIV of the *Criminal Code*, "Dangerous Offenders and Long-term Offenders" sets out the legislative framework governing dangerous offender and long-term offender applications, and the sentencing options available on the hearing of such applications.

[68] Pursuant to section 753 of the *Criminal Code* if the Crown satisfies the Court beyond a reasonable doubt, of the prerequisites outlined in section 753, the Court shall designate the offender a dangerous offender. In that circumstance, the Court may then exercise its discretion to determine whether the offender should be subject to an indeterminate sentence of imprisonment, a determinate sentence of imprisonment of two years or more, with a long-term supervision order of up to ten years in the community, or a sentence for the offence for which the offender has been convicted.

[69] If the Crown fails to prove the prerequisites of section 753, the offender will not be deemed to be dangerous, and the Court may proceed to determine whether he should be designated a long-term offender or sentenced in the normal course.

[70] Accordingly, a dangerous offender hearing consists of two stages:

i. The designation stage; and

ii. The sentencing stage.

i. The Designation Stage

a) Statutory Framework and Legal Principles

[71] While section 753(1.1), creates a rebuttable presumption that an offender is dangerous, the Crown, in this case seeks to prove the designation, relying on sections 753(1)(a)(i), 753(1)(a)(ii) and 753(1)(b).

[72] In the case of ss. 753(1)(a)(i) and (ii), those sections require the Crown to prove, beyond a reasonable doubt that:

1. The offence for which Mr. Pritchard was convicted was a serious personal injury offence, as defined in section 752(a); and
2. Mr. Pritchard constitutes a threat to the life, safety or physical or mental well-being of other persons on the basis of evidence establishing:
    a. a pattern of repetitive behaviour showing a failure to restrain his behaviour, and a likelihood of causing death or injury to others, or inflicting severe psychological damage on other persons, through failure in the future to restrain his behaviour; or,
    b. a pattern of persistent aggressive behaviour, showing a substantial degree of indifference, respecting the reasonably foreseeable consequences to other persons of his behaviour.

[73] In the case of section 753(1)(b), the Crown must prove, beyond a reasonable doubt that:

1. The offence for which Mr. Pritchard was convicted is a serious personal injury offence, as defined in section 752(b); and
2. Mr. Pritchard, by his conduct in any sexual matter, has shown a failure to control his sexual impulses and a likelihood of causing injury, pain, or other evil to other persons through failure in the future to control his sexual impulses.

[74] In relation to all three sections, the Crown must also prove, beyond a reasonable doubt that Mr. Pritchard constitutes a present threat of future dangerousness and that his behaviour, or pattern of conduct is pathologically intractable.

Sections 753(1)(a)(i) and (ii)

[75] For the purposes of sections 753(1)(a)(i) and (ii), section 752(a) of the *Criminal Code* defines a serious personal injury offence as:

> **serious personal injury offence** means
>
> (a) an indictable offence, other than high treason, treason, first degree murder or second degree murder, involving
>
> (i) the use or attempted use of violence against another person, or
>
> (ii) conduct endangering or likely to endanger the life or safety of another person or inflicting or likely

> to inflict severe psychological damage on another person,
>
> and for which the offender may be sentenced to imprisonment for ten years or more…

[76] The determination of whether an offence is a serious personal injury offence is fact based, and considers the consequences of the offender's actions. If harm has been caused or severe psychological damage has been inflicted, a serious personal injury offence will have been proven: ***R v Steele***, 2014 SCC 61.

[77] In relation to analysing whether the offender engages in a pattern of repetitive or aggressive behaviour, ***R v Neve,*** 1999 ABCA 206 [***Neve***], is instructive. That case sets out the elements of the test under each section, in paras 107 and 108, as follows:

> Under s. 753(a)(i), the elements are the following:
>
> 1. A pattern of repetitive behaviour;
> 2. The predicate offence must form part of that pattern;
> 3. That pattern must show a failure by the offender to restrain his or her behaviour in the past; and
> 4. That pattern must show a likelihood of death, injury or severe psychological damage to other persons through failure to restrain his or her behaviour in the future.
>
> Under s. 753(a)(ii), the required elements are these:
>
> 1. A pattern of persistent aggressive behaviour;
> 2. The predicate offence must form part of that pattern; and
> 3. That pattern must show a substantial degree of indifference by the offender respecting the reasonably foreseeable consequences of his or her behaviour.
>
> [emphasis in original]

[78] Further, ***Neve*** discusses the evidence required to establish a pattern of behaviour, instructing that the Court must examine the offender's historic conduct, and in particular, that which is criminal in nature, involves some degree of violence, and has caused physical or psychological harm. Evidence of the offender's criminal record, and the facts underlying the criminal convictions, as well as psychiatric opinion evidence regarding the criminal conduct are all relevant. Both the predicate offence and the past behaviour must be serious personal injury offences.

[79] A repetitive pattern is one which discloses similar, re-occurring conduct. The pattern must be indicative of a failure by the offender to restrain his behaviour in the past, and demonstrate a likelihood that a failure to restrain his behaviour in the future, will cause death, injury, or severe psychological damage to others. The likelihood of this occurring must be more probable than not, and must be proven by the Crown beyond a reasonable doubt: ***Neve***.

[80] An aggressive pattern of behaviour is demonstrated by persistent, similar conduct of which the predicate offence forms part: ***Neve***.

[81] That aggressive pattern of behaviour must illustrate a substantial degree of indifference on the part of the offender toward the reasonably foreseeable consequences of the behaviour. The meaning of "substantial degree of indifference" has been described as having a conscious but uncaring awareness of harm caused to others, occurring over a long duration and involving frequent acts, with significant consequences: ***R v Bunn***, 2000 SCC 9. The Crown must prove, beyond a reasonable doubt, that the evidence discloses the likelihood (again, more probable than not), that the aggressive behaviour, demonstrated in the past, will continue in the future.

Section 753(1)(b)

[82] For the purposes of section 753(1)(b), section 752(b) of the Criminal Code defines a serious personal injury offence as:

> **serious personal injury offence** means
>
> > (b) an offence or attempt to commit an offence mentioned in section 271 (sexual assault), 272 (sexual assault with a weapon, threats to a third party or causing bodily harm) or 273 (aggravated sexual assault). (*sévices graves à la personne*)

[83] The assessment of whether an offender has failed to control his sexual impulses is fact based: ***R v Oliver***, 1998 ABCA 74 [***Oliver***]. A failure to control sexual impulses, will be premised on the offender's past conduct and the predicate offence, to determine whether, in the future, the offender will likely fail to control those impulses again, resulting in the likelihood of causing injury, pain, or other evil. Again, the burden of proving these likelihoods rests on the Crown, beyond a reasonable doubt.

Present Threat of Future Harm

[84] An analysis of an offender's present threat of future harms requires the Court to examine whether the offender, based on past behaviour, is a present threat to the life, safety, or physical or mental well-being of others (s.753(1)(a)(i) and (ii)) or that he is likely, in the future, to fail to control his sexual impulses and cause injury, pain or evil to other persons (s. 732(1)(b)): ***R v Boutilier***, 2017 SCC 64 [***Boutilier***].

[85] The Crown must prove, beyond a reasonable doubt, that it is likely that the offender, in his present state will commit future violent crimes. This requires the Court to consider both the offender's past pattern of behaviour, his current risk and his amenability to treatment, in order to determine whether future violent acts can be confidently expected: ***R v Lyons***, [1987] 2 SCR 309; ***Neve***; ***Oliver***. The expert evidence as to risk and treatability are relevant to this assessment: ***Boutilier***.

Pathological Intractability

[86] Finally, the Court must be satisfied that the behaviour in question is intractable, either substantially or pathologically: ***Lyons***. An intractable pattern of conduct is one which is stubborn or resistant to treatment or change: ***Neve*** Examples of intractability include:

- Deeply ingrained personality disorders that are resistant to change;
- A lack of available and appropriate treatment facilities;
- A poor outlook for improvement, even where facilities exist;
- An inability to estimate or predict the timeframe for improvement;
- Some, but very little, hope for treatment sometime in the future;
- Treatment that will be long and difficult because an offender has more than one disorder, and a limited capacity to learn;
- The reasons for the behaviour militate against any reasonable prospect of meaningful change;
- Stubborn or difficult to control condition(s) or behaviour(s);
- No possibility (or poor prognosis) of successful treatment prospects; and
- No reasonable possibility of eventual risk of control.

[87] In determining whether a pattern of conduct is pathologically intractable, the Court must consider the offender's treatment prospects, including the availability of treatment: ***Boutilier***. An offender who can be meaningfully rehabilitated should not be designated as dangerous.

b) Analysis

Serious Personal Injury Offence

[88] The Crown has proven beyond a reasonable doubt that the sexual assault of EB meets the definition of a serious personal injury offence, both in relation to sections 753(1)(a)(i) and (ii) and in relation to section 753(1)(b).

[89] First, sexual assault is an inherently violent offence which violates the physical and psychological integrity of its victim. At the trial of this matter, I heard and accepted the evidence of EB that she was bound and choked during acts of penile-vaginal and penile-anal penetration.

[90] Second, the assaults inflicted severe psychological damage on EB. Her victim impact statement described post traumatic stress disorder, anxiety and panic attacks, as well as self-harm behaviours, including cutting and attempted suicide, which have disrupted all aspects of her life, including family relationships, education and employment.

[91] Third, the offence of sexual assault is punishable by a maximum sentence of fourteen years, when the victim is under the age of 16 years.

[92] Finally, for the purposes of section 753(1)(b), sexual assault, pursuant to section 271 of the Criminal Code, is an offence deemed to be a serious personal injury offence.

Section 753(1)(a)(i)

[93] In relation to section 753(1)(a)(i), the evidence of Mr. Pritchard's criminal offending demonstrates that between 2003 and 2017 he sexually assaulted five adolescent females, all between the ages of 13 and 15 years. His first offence in 2004, his third offence in 2010 and his fourth and fifth offences, in 2016 and 2017 demonstrate a pattern of meeting underage girls on

social media platforms, including MSN and Facebook. Those initial social media contacts inevitably lead to in person meetings. There are clear patterns of grooming and luring in the communications and the ultimate sexual contact.

[94] In the case of VL, the online communications include discussions about school and sex. Once the two met the sexual contact evolved from kissing and fondling, to oral sex and vaginal penetration.

In the case of KP, Mr. Pritchard met her on Facebook and subsequently met her in person on three occasions. The sexual activity progressed from acts of touching to vaginal penetration.

[95] In the cases of SLD and EB, Mr. Pritchard orchestrated an elaborate social media ruse on Facebook, involving the use of his own identity, along with an alias identity, Phillip Fieldcamper. Both girls were looking for work. Mr. Pritchard offered to take them to a job interview and instead took them to his home in Coaldale, and there had sexual contact with them. In the case of SLD, a violent, sexual assault ensued, followed by threats of death if she told anyone; in the case of EB, a progressively evolving friendship with escalating sexual contact occurred over a number of months, and included violent sexual bondage and vaginal and anal penetration.

[96] That same social media ruse gave rise to two other convictions – the luring of DG, age 13, and the luring of multiple, unnamed victims. All used the same pattern of contact, emotional manipulation and requests, by Mr. Pritchard, for various forms of sexual contact or sexually explicit photographs. In a number of cases, Mr. Pritchard forwarded the same graphic, invitation to sexual activity to the victims.

[97] While the sexual assault of SJ did not involve social media contact, it did involve Mr. Pritchard taking advantage of her when she was particularly vulnerable, having become grossly intoxicated by alcohol.

[98] All of the sexual contact can be described as predatory in that it is uniquely focused on young, naïve and often vulnerable girls, and occurs repeatedly. The Facebook records associated with the convictions of SLD and EB evidence near constant, daily contact with multiple underage girls.

[99] Mr. Pritchard's inability to restrain his behaviour is also demonstrated by the fact that a number of offences were committed while Mr. Pritchard was bound by various orders of the court relating to prior criminal charges. At the time he assaulted SJ, he was bound by a probation order arising from his conviction for resisting arrest. He assaulted KP while he was awaiting trial with respect to the charges involving SJ.

[100] After his release from Bowden, Mr. Pritchard was the subject of a two-year section 810.1 peace bond. He breached that peace bond by accessing the internet to seek out female companionship using the dating website "Plenty of Fish". The time period captured by this breach, also reflects the period of time during which he was accessing computer devices for the purposes of a subsequent conviction for possession of child pornography (one of the charges to which this sentencing relates).

[101] Within eight months of the expiry of the peace bond and subsequent probation order, Mr. Pritchard had created Facebook profiles and began seeking contact with a broad range of adolescent females, including SLD, EB, DG and multiple, unnamed victims.

[102] The victim impact statements detail the physical, psychological, and emotional consequences suffered as a result of the acts of sexual assault committed by Mr. Pritchard. They have been significant and life-altering.

[103] The assaults were physically painful and, in some cases, they included both vaginal and anal sexual assault, binding, choking, and the transmission of a sexual disease. Breast, vaginal, and anal injuries were reported. Mr. Pritchard made a death threat to SLD.

[104] As a consequence of their victimization, Mr. Pritchard's victims have engaged in various forms of self-harm, including: cutting, suicide attempts, and drug and/or alcohol addiction. They have suffered trust issues, depression, anxiety, and post-traumatic stress disorder. They have experienced difficulty completing high school, and finding and maintaining employment. EB, at fifteen years of age, found herself estranged from her family, living in a teen shelter, and later a secure treatment facility. All expressed ongoing difficulties in maintaining relationships with friends, family, and intimate partners.

[105] Each victim expressed living with the pervasive fear that Mr. Pritchard will attempt to find them and kill them.

[106] As a result of his sexual predation, Mr. Pritchard's victims suffered a loss of their innocence and the consequences have been long-term. In the case of SJ, she suffered eight years of addiction, including alcohol and cocaine, and is only now piecing her life back together. EB has only recently returned to high school, has started part-time employment, and survives with the support of Children & Family Services. SLD had difficulties continuing school, finding work, and moving on with her life.

[107] I am satisfied, beyond a reasonable doubt, that Mr. Pritchard has engaged in a pattern of repetitive behaviour, which evidences a failure on this part to restrain his behaviour in the past and demonstrates a likelihood of injury or severe psychological damage to others through a failure to restrain his behaviour in the future.

Section 753(1)(a)(ii)

[108] The above evidence is also relevant to the analysis under section 753(1)(a)(ii), in that it demonstrates a pattern of persistent, aggressive behaviour. In coming to this conclusion, I rely on the above evidence of Mr. Pritchard's criminal record and the facts underlying his convictions for the past and predicate sexual assault offences.

[109] Sexual assault, by its very nature, is an aggressive act, but the predatory manner in which Mr. Pritchard seeks out his victims and takes advantage of them is also aggressive, in that it is persistent and calculated.

[110] Mr. Pritchard's pattern of behaviour, and in particular the luring and grooming activities which underlie his contact with adolescent females, involves intentional deceit and emotional manipulation. This is done for the sole purpose of perpetrating sexual offences against his victims, evidencing his indifference to the consequences of his behavior.

[111] In addition, throughout his periods of incarceration and culminating in the section 752.1 report in this matter, Mr. Pritchard has repeatedly denied the conduct in question, blamed his victims or attempted to justify his behaviour, despite having pleaded guilty to four of the five sexual assault offences. While he has completed treatment for sexual offending, the testimony of corrections officials demonstrates his inability to take responsibility, express remorse for his

actions, or feel empathy for his victims This is indicative of indifference with respect to the reasonably foreseeable consequences of his behaviour, most notably, the short and long-term physical and psychological consequences of the assaults.

[112] I am satisfied, beyond a reasonable doubt that Mr. Pritchard has engaged in a pattern of persistent, aggressive behaviour which demonstrates a substantial degree of indifference with respect to the reasonably foreseeable consequences of his behaviour.

Section 753(1)(b)

[113] The evidence outlined above also proves a failure on the part of Mr. Pritchard to control his sexual impulses. He has habitually offended against girls between 13 and 15 years of age, taking advantage of their youth and preying on their vulnerability. Despite many forms of criminal sanction, court ordered conditions, and treatment for sexual offending, Mr. Pritchard's sexual impulses have not been restrained. He has reoffended while on release conditions or while awaiting trial for other sexual offences. His lack of impulse control is evident in the Facebook records, which disclose persistent communications with multiple young women, including EB, DG, and SLD.

[114] I am satisfied, beyond a reasonable doubt, that Mr. Pritchard has failed to control his sexual impulses, and that failure has caused injury, pain, and other evil to his victims, as evidenced by the victim impact statements.

Present Threat of Future Harm

[115] In assessing Mr. Pritchard's present threat of future harm, I have considered his pattern of offending, and his escalating predatory behaviour between 2004 and 2017.

[116] The probation and corrections records demonstrate his lack of remorse, his unwillingness to accept responsibility for his actions and his lack of motivation towards meaningful treatment. Mr. Pritchard has engaged in individual counselling, participated in both the High Intensity Sex Offender Program, and the Good Lives for Men sex offender treatment program. Despite these interventions, he has sexually reoffended on multiple occasions, and the nature of his sexual offending has escalated to involve significantly more violence, including acts of bondage and choking, and threats of death.

[117] His failure to develop insight into his risk factors for reoffending directly affected his ability to achieve early parole or release on his statutory release date, resulting in him serving his March 25, 2010 sentence to his warrant expiry date. Upon release, he was considered at such high risk to reoffend that he was bound by a section 810.1 peace bond for a period of two years thereafter. During that time, he had family support from his mother, financial support for persons with disabilities and extensive support in terms of goal setting and supervision through Quest to help prevent the risk of reoffending. The evidence indicates he resisted these interventions, refused to seek work, set goals for his personal development or abide the terms of his release. He breached his section 810.1 peace bond by accessing the internet and entering a dating website, a clear risk factor for his reoffending. Within months of the section 810.1 peace bond expiring Mr. Pritchard was sexually reoffending.

[118] Finally, I accept the expert risk assessments provided by Mr. Lau and Dr. Tano. The evidence of each is that to date sexual offender treatment programming has not been successful

in reducing Mr. Pritchard's risk of sexual recidivism. Additionally, his dynamic risk factors presently increase that risk. As a result, both concluded that at present Mr. Pritchard is at a high risk for sexual recidivism.

[119] Based on these factors, I am satisfied, beyond a reasonable doubt, that Mr. Pritchard poses a present threat of future harm to adolescent females.

Pathological Intractability

[120] Mr. Pritchard does not suffer from any diagnosed mental disorder, psychiatric condition, or paraphilia which might explain his offending behaviour or be amenable to specific treatment. While he suffered a brain insult while in utero, this has not affected his cognitive functioning, or his higher order executive functioning. Dr. Tano commented on the difficulty in diagnosing Mr. Pritchard as a result of his inconsistent and variable reporting, including in response to psychological testing.

[121] Between 2004 and 2019 Mr. Pritchard has been convicted of five counts of sexual assault, all involving adolescent females. In this same time period (fifteen years), he has spent eleven years incarcerated or living under the terms of strict supervision orders. Neither the deterrent effect of incarceration, nor the surveillance of strict supervision, prevented him from reoffending or changing those dynamic risk factors which are precursors to his offending behaviour.

[122] Supports which should have attenuated Mr. Pritchard's dynamic risk factors, including family support, community support, employment and living in a relationship have not prevented him from reoffending sexually.

[123] Additionally, his post offence conduct, including the graphic sexual writings seized from his jail cell while he was awaiting trial on this matter, as well as his advances towards a young co-patient at the Southern Alberta Forensic Psychiatry Centre, while undergoing the assessment for this hearing, are evidence of his unwillingness or inability to control his behaviour, even in the face of the most serious of criminal sanctions, and while under significant surveillance.

[124] Dr. Tano and Mr. Lau opine that Mr. Pritchard requires further sex offender treatment programming, and assistance in developing a variety of life skills. Without this, his risk of sexual recidivism remains at the highest level. The evidence discloses however, that over the last fifteen years Mr. Pritchard has had the opportunity for extensive sexual offender treatment programming, and multiple community supports. Despite that, he has refused to accept responsibility for his offending behavior and has been unwilling to recognize and reduce his risk factors for sexual recidivism. As a result, even with treatment and support, his behaviour has not been moderated.

[125] I am satisfied, beyond a reasonable doubt that Mr. Pritchard's pattern of behaviour is pathologically intractable.

c) Conclusion on Designation Stage Analysis

[126] The Crown has met its burden of proof, beyond a reasonable doubt, as required by sections 753(1)(a)(i) and (ii) and s. 753(1)(b). Therefore, I designate Mr. Pritchard a dangerous offender.

ii. Sentencing Stage

a) Statutory Framework and Legal Principles

[127] In circumstances where an offender is designated a dangerous offender, the court must exercise its discretion in determining an appropriate sentence. There are three sentencing options available – an indeterminate period of imprisonment; a sentence of two years or more imprisonment, with or without a long-term supervision order for a period of not more than ten years; or a determinate sentence premised on the offences committed.

[128] While there is discretion in the sentencing court, that discretion is tempered by section 753(4.1) of the Criminal Code, which provides:

> **Sentence of indeterminate detention**
>
> **753 (4.1)** The court shall impose a sentence of detention in a penitentiary for an indeterminate period unless it is satisfied by the evidence adduced during the hearing of the application that there is a reasonable expectation that a lesser measure under paragraph (4)(b) or (c) will adequately protect the public against the commission by the offender of murder or a serious personal injury offence.

[129] As a result, the sentencing judge must assess whether a lesser measure, such as a determinate sentence, or a determinate sentence plus a long-term supervision order, will adequately protect the public. Accordingly, the sentencing judge should first determine what a fit and just determinate sentence would be, and assess whether there is a reasonable expectation that such a sentence would adequately protect the public. If not, the sentencing judge should then consider whether a determinate sentence plus a long-term supervision order would provide such protection: ***Boutilier***. In both cases, the Court must consider whether there is a reasonable expectation that a measure less than an indeterminate sentence, will adequately protect the public against the commission of a serious personal injury offence.

[130] A reasonable expectation is more than a mere possibility or hope: ***R v Lawrence,*** 2019 BCCA 291. In ***R v Bragg***, 2015 BCCA 498, "reasonable expectation" was held to mean a confident belief, for good and sufficient reasons, derived from the whole of the evidence.

[131] An indeterminate sentence should only be imposed in circumstances where there is no reasonable expectation that the offender can be controlled in the community. This requires consideration of the community at risk, the nature of the supervision required, and the availability of resources for treatment, and to facilitate the supervision: ***R v L(G)***, 2007 ONCA 548; ***R v Bitternose***, 2013 ABCA 220.

[132] The sentencing provisions set out in sections 718 through 718.2 of the *Criminal Code* continue to be relevant, but within a framework which places protection of the public and community safety at the forefront.

b) Analysis

[133] A fit and just sentence is one which is proportionate to the gravity of the offence and the degree of responsibility of the offender. (s. 718.1) The more serious the crime and its consequences, or the greater the offender's degree of responsibility, the heavier the sentence: ***R v Lacasse***, 2015 SCC 64.

[134] A fit and just sentence measures both aggravating and mitigating factors, and the broader objectives of sentencing including denunciation of unlawful conduct and harms done to the victims and the community, deterrence of both the offender and others, separation of offenders from society when necessary, rehabilitation, reparations, and promotion of a sense of responsibility in offenders, including recognition of the harm caused to the victims: s. 718. Such sentences are also a reflection of societal values and retribution for harms caused.

[135] As this case involves sexual offences committed against children, denunciation and deterrence are paramount considerations. ***Friesen*** is instructive on this point and requires that in sentencing, courts recognize that sexual offences against children are inherently wrong, have the potential to harm children, and in many cases results in actual harm which may not materialize for years into the future. Accordingly, sentences for sexual offences against children should be sufficiently denunciatory to reflect the gravity of these offences and their long-term consequences. While starting point sentences may provide guidance in sentencing, ***Friesen*** notes that "...upper single-digit and double-digit penitentiary terms should be neither unusual nor reserved for rare or exceptional circumstances. A maximum sentence should be imposed whenever the circumstances warrant it."

[136] In determining fit and just sentences for sexual offences against children, the Court provided a non-exhaustive list of factors for consideration, including the risk of reoffending, abuse of a position of trust, the length of the time over which the sexual abuse persisted, the number of incidents of abuse, and the age and vulnerability of the victim. Finally, the Court cautioned against myths and stereotypes relating to harm and consent.

[137] ***Friesen*** has recently been considered by the Alberta Court of Appeal in the context of luring offences: ***R v Lemay***, 2020 ABCA 365 [***Lemay***]. That decision is not only relevant in terms of sentencing ranges for luring offences, but also addresses the issue of offenders who are in a position of trust. As noted in ***R v Audet***, [1996] 2 SCR 171, at para 36, in determining whether a relationship of trust exists, courts:

> ... must take into account the purpose and objective pursued by Parliament of protecting the interests of young persons who, due to the nature of their relationships with certain persons, are in a position of vulnerability and weakness in relation to those persons.
>
> [emphasis in original]

As further stated in ***Lemay***, at para 33:

> Trust relationships can include situations where a person inserts himself as a friend or advisor, (*Innes, Anderson*), insinuates himself in the daily life of young persons (*R v P(HF)*, 1998 ABCA 104 at para 7) or acts as a trusted friend (*R v Robinson*, 1994 ABCA 77 at para 2).

[138] Mr. Pritchard's designation as a dangerous offender requires that protection of the public be an over-arching consideration. Mr. Pritchard poses a risk to a narrow subset of the population – adolescent females, and in particular 13 to 15-year-old girls. That group of individuals is vulnerable for a number of reasons, not the least of which is the simple naivete that comes with age; but as the index offences and Mr. Pritchard's past pattern of offending indicate, he victimizes young women by preying on their individual vulnerabilities – fractured family lives, financial need, low self-esteem, need for belonging, affection and love – and he has used the

cloak of the internet to seek out these girls, befriend then and ultimately sexually offend against them. His tendency to indiscriminately seek out female companionship to assuage his own low self-esteem, is made all the more possible by technology which allows him to remain anonymous or adopt alias identities.

[139] Accordingly, I begin be with an assessment of what the appropriate determinate sentence is for the index offences, which include the sexual assault of EB, the luring of EB and DG, the global luring of multiple, unnamed victims, and possession of child pornography.

[140] The principles articulated in ***Friesen*** are applicable to all of the offences for which Mr. Pritchard is to be sentenced. I am also mindful of the jurisprudence with respect to sentencing for major sexual assaults (***R v Sandercock***, 1985 ABCA 218; ***R v Arcand***, 2010 ABCA 363), including where there is gratuitous violence (***R v Hajar***, 2016 ABCA 222 [***Hajar***]), luring offences (***Lemay; Hajar)*** and possession of child pornography (***R v Andrukonis***, 2012 ABCA 148; ***Hajar***).

[141] There are no mitigating circumstances in this case. There are multiple aggravating factors including:

- Mr. Pritchard's prior history of convictions for sexual assault. Most recently he was sentenced to 6.5 years' imprisonment for the offences of sexual assault and luring.
- Multiple incidents of major sexual assault were perpetrated against EB, including vaginal and anal sexual assault, and included gratuitous violence of choking and binding.
- The victims of his abuse were all under the age of 18 years.
- While he was not in a traditional relationship of trust to his victims, the manner in which he lured them, used deceit to cultivate his relationships with them, and groomed them towards sexual contact is akin to a trust relationship. His contact with EB, in particular, demonstrated how he used his role as a confidante, friend and person of affection to gain her trust for the purposes of having sexual contact with her.
- The luring offences occurred over a number of months, with multiple victims.
- Mr. Pritchard was in possession of forty images of child pornography and two movies containing child pornography.
- Mr. Pritchard is at a high risk to reoffend based on the assessments of Mr. Lau and Dr. Tano, and shows little insight into his offending behaviour.

[142] The harms to EB and DG are described earlier in this decision and have been significant and life altering. While the victims of the global luring offences and many of the victims of the pornography offences are unknown, these are not victimless crimes. Based on ***Friesen***, I have assumed that these victims have been harmed by the offences committed.

[143] I am satisfied having regard to Mr. Pritchard's history of offending, his risk to reoffend, the aggravating factors listed above, and the ***Friesen*** factors that the appropriate determinate sentence, is as follows:

- **Count 2** (the sexual assault of EB): Nine years' imprisonment;

- **Count 3** (luring of EB and DG): Two years' imprisonment (consecutive to Count 2);
- **Count 4** (possession of child pornography): One year's imprisonment (consecutive to Count 2);
- **Count 5** (the global luring) Four years' imprisonment (concurrent to Count 3 and consecutive to Counts 2 and 4).

That results in a total sentence of fifteen years. On the basis of totality, I am satisfied that the appropriate determinate sentence would be twelve years imprisonment.

[144] Mr. Pritchard is a serving prisoner. The record indicates that all pre-trial credit he might have had as a result of pre-trial detention was off-set against the offences for which he was sentenced on February 6, 2019. For the purposes of this analysis, I have not deducted any days for pre-trial credit from the appropriate determinate sentence.

[145] In considering whether twelve years imprisonment would adequately protect the public, I have considered Mr. Pritchard's current treatability, as well as his past treatment history and his related risk of reoffending. Mr. Pritchard has taken multiple programs for the treatment of sex offenders and received individualized counselling. He persists in denying his offending conduct, blaming his victims or externalizing blame to the police. He has not, to date, accepted responsibility for his behaviour or taken steps to change or manage his dynamic risk factors. Although cross examination of the various witnesses indicated that Mr. Pritchard had employment at Bowden, was registered for the High Intensity Sex Offender Program and was regularly followed by mental health professionals, there is no evidence before me as to his dedication to these programs or his desire to make a positive change in his behaviour. Cross-examination also revealed that he could receive voluntary anti-androgen therapy while incarcerated, which may reduce his sexual impulses, however there is no evidence that Mr. Pritchard is either willing to receive or receiving this treatment. Over the past fifteen years, incarceration has not proven deterrent and the various forms of treatment taken by Mr. Pritchard have not reduced his risk of re-offending. Therefore, I am not satisfied that a determinate sentence of twelve years' imprisonment will adequately protect the public.

[146] As a result, I must consider whether a determinate sentence of twelve years, coupled with a ten-year long-term supervision order will adequately protect the public. The evidence of Mr. Lau and Dr. Tano, as relates to managing Mr. Pritchard's risk in the community is relevant to this assessment.

[147] The most critical recommendations for management of Mr. Pritchard's behaviour in the community include strict supervision and monitoring on a twenty-four-hour, seven day per week basis. Such services do not exist. Quest is not able to provide these services and community-based corrections and police oversight do not offer this level of monitoring. In fact, they rely extensively on collateral sources to report non-compliance. In Mr. Pritchard's case, his collateral sources, including his guardian and his father, do not support this level of intervention and control and have facilitated his access to the internet, which is a significant risk factor to his reoffending.

[148] In cross-examination, Dr. Tano was asked about an organization called "Circles of Support and Accountability" ("COSA"), which provides community support for offenders as they attempt to reintegrate into society. While Dr. Tano supports the efforts of COSA, he noted

that it was not a treatment program and did not provide twenty-four-hour supervision, as required by Mr. Pritchard. Further, Dr. Tano testified that based on the literature put before him, COSA appears to work with individuals at a moderate risk of reoffending, as opposed to high risk individuals, such as Mr. Pritchard.

[149] Without successful treatment to manage his own risk of sexual recidivism, twenty-four-hour supervision of Mr. Pritchard may be required indefinitely. This is not contemplated by the *Criminal Code*. While theoretically, Mr. Pritchard's risk of recidivism should reduce as he ages, such that by age sixty he would be at a moderate risk of reoffending, there is no evidence before me as to his own willingness to engage in treatment, recognize his risk factors and manage them, in order to allow confidence that a determinate sentence plus long-term supervision order could adequately protect the public. Rather, it would require me to speculate on possibilities or rely on hope that he would engage in effective rehabilitation, and that the necessary community resources would be available to provide effective monitoring. As such, on the whole of the evidence, I am not satisfied that a determinate sentence of twelve years' imprisonment plus a long-term supervision order for an additional ten years would suffice to protect the public against the commission of a further serious personal injury offence.

[150] Accordingly, a fit and just sentence in these circumstances is an indeterminate sentence.

c) Conclusion on Sentencing Stage Analysis

[151] As a result, I therefore sentence Mr. Pritchard, as follows:

- **Count 2** (the predicate offence: the sexual assault of EB): An indeterminate sentence of imprisonment;
- **Count 3** (luring of EB and DG): Two years' imprisonment;
- **Count 4** (possession of child pornography): One year's imprisonment; and
- **Count 5** (the global luring) Four years' imprisonment

Counts 3, 4, and 5 will be served concurrent to Count 2.

[152] Finally, Mr. Pritchard will be subject to the following ancillary orders:

- Pursuant to section 487.051 of the Criminal Code, an order, on all counts, that he provide a sample of his DNA for inclusion in the DNA data bank;
- Pursuant to section 490.012 and 490.013(2.1) of the Criminal Code, an order, for life, that he comply with the provisions of the Sex Offender Information Registration Act; and
- Pursuant to section 743.21 of the Criminal Code, an order, during the custodial period of his sentence, prohibiting him from communicating, directly or indirectly, with EB and DG.

[153] In light of Justice Jerke's previous Order of February 6, 2019, there will be no weapons prohibition order. Similarly, having regard to the fact of the indeterminate sentence and Justice Jerke's previous order pursuant to section 161 of the *Criminal Code*, no additional section 161 Order will be made.

[154] An indeterminate sentence need not be a life sentence. Mr. Pritchard will have the opportunity to seek release in accordance with section 761 of the *Criminal Code*, at which point the Parole Board of Canada will determine whether he has taken the necessary steps to reduce his risk of reoffending, such that he can be released and managed in the community. Mr. Pritchard needs to engage in treatment, accept institutional support, and take responsibility for the offences he has committed in order to mitigate his risk factors for reoffending. To that end, I direct that the section 752.1 assessments prepared by Dr. Tano and the psychological assessments prepared by Mr. Lau, along with a copy of these Reasons be provided to Correctional Services Canada.

[155] I direct that pursuant to section 761 of the *Criminal Code,* Mr. Pritchard's indeterminate sentence will commence on the date he was taken into custody, January 17, 2017.

[156] Counsel may prepare the necessary orders respecting the return and/or forfeiture of seized property and disposition of Exhibits following the expiry of the appeal period, and those orders may be forwarded to me for my signature.

Heard on the 3rd day of February, 2020 to the 7th day of February, 2020; and the 22nd day of June, 2020; and the 24th day of August, 2020 to the 26th day of August, 2020; and the 9th day of December, 2020 to the 11th day of December, 2020.

Dated at the City of Lethbridge, Alberta this 14th day of January, 2021.

J.C. Kubik
J.C.Q.B.A.

Appearances:

Donna Spaner & Sarah Goard-Baker
for the Crown

Andre Ouellette
for the Accused