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**NUNAVUT COURT OF JUSTICE**  
La Cour de justice du Nunavut

Citation: ***R. v. DeJaeger, 2015 NUCJ 02***

Date: 20150130  
Docket: 07-02-27; 07-11-6; 07-11-8; 07-11-9; 07-11-34; 07-11-36; 07-11-37; 07-11-40; 07-11-41; 07-11-44; 07-11-54; 07-11-76; 07-11-77; 07-11-106; 07-12-1; 07-12-2; 07-12-28; 14-11-83; 15-11-52; 24-12-20; 07-13-85; 07-13-95.

Registry: Iqaluit

Crown: **Her Majesty the Queen**  
-and-

Accused: **Erik Jose De Jaeger**

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Before: The Honourable Mr. Justice Kilpatrick

Counsel (Crown): Doug Curliss Q.C., Barry Nordin  
Counsel (Accused): Malcolm Kempt

Location Heard: Iqaluit, Nunavut  
Date Heard: January 19th-21st, 2015  
Matters: *Sentencing; Criminal Code s. 156 x23; s. 149 x 22; s.247(2) x 2; s.155 x 12; s.331(1)(a) x 1; s.144 x 6; s.381(1)(a) x 1; s.157 x 2; s.245(1) x 1; s.246.1 x 1.*

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**REASONS FOR JUDGMENT**

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## DISCLAIMER PAGE

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Readers are cautioned that this judgment contains graphic descriptions of sexual activity that some may find disturbing and offensive.

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## I. INTRODUCTION

- [1] Erik DeJaeger was posted to Igloolik to do God's work. He was trained as an Oblate missionary. He was an ordained priest of the Roman Catholic Church. The parishioners of Igloolik expected their priest to be a doer of good deeds. The reality would be very different.
- [2] Between 1978 and 1982, Mr. DeJaeger methodically victimized the vulnerable children and youth of his remote arctic parish. He is now to be sentenced for 32 sex related offences. There are 23 individual victims involved, ten females and thirteen males. All the victims are Inuit. The majority of the victims were between 9 and 13 years of age when these offences occurred.
- [3] This priest was expected to devote his life to God. He was in Igloolik to serve others. He was to teach by example. The conventions of the Roman Catholic Church hold the priest to be a moral exemplar of the Church's teachings. There was an expectation that this priest would emulate the moral standards that were being taught from the pulpit.
- [4] Mr. DeJaeger's many victims came to see this priest in an entirely different light. Instead of moral probity, there was licentiousness and depravity. Instead of honesty and personal integrity, there was duplicity and hypocrisy. Instead of kindness, there was selfish self-gratification and disrespect.
- [5] Mr. DeJaeger knew that his parishioner's religious beliefs would isolate those who disclosed their abuse. Most of this priest's young victims feared that they would not be believed by their parents or their community if they challenged the sanctity of a "man of God". Where allegations of sexual misconduct contradict religious standards and expectations, disbelief is often the result.
- [6] A number of the victims had the courage to speak of their abuse to their parents. They were beaten for telling "lies" about the priest.

- [7] By debasing the sanctity of the priest's holy office, Mr. DeJaeger has brought incalculable harm to the standing of the Roman Catholic Church and of the Oblate Order of which he is a part. He has breached a trust that is implicit in the priest's relationship with his parishioners. He has tarnished the well-earned reputation of those priests who have tirelessly served the Church with devotion and self-sacrifice in the remote regions of Canada.
- [8] Mr. DeJaeger preyed upon the flock that he was tasked to nurture and protect. He was a wolf masquerading as a good shepherd. His life as a priest was a lie. The reputation and authority of this priest's holy office was used to facilitate his predatory activity.
- [9] Mr. DeJaeger's criminal misconduct was a profound betrayal of the many parents in Igloolik who entrusted their children to this priest's pastoral care. This was a betrayal of the principles of the Oblates. This was a betrayal of the Roman Catholic Church and all it stood for as an institution.

## II. FACTUAL SUMMARY OF THE OFFENCES

### **A. Count 5 – JA s. 247(2) Canadian *Criminal Code* [CCC] (unlawful confinement); Count 6 – JA s. 149 CCC (indecent assault/female)**

- [10] JA was asked to go upstairs in the Mission by the priest DeJaeger to retrieve something. She does so. While in a dimly lit bedroom the priest enters and sits on a bed. JA is asked to sit beside him. JA does as she is told. The priest starts to fondle her genitals. JA tries to get away, but is restrained by Mr. DeJaeger. JA is forced to lie face down on the bed. JA's right hand is then taped to a bedrail to prevent her from leaving. JA continues to squirm. Her legs are then taped to the bottom bedrail. The priest gets behind JA on the bed. JA's pants are pulled down. She then experiences severe pain in her rectum. She is unable to say what caused this. JA was told not to talk to others about what happened and then slapped on the side of her face.
- [11] JA was between 8 and 12 years of age when this incident occurred.
- [12] Mr. DeJaeger was convicted of these offences after a trial.

**B. Count 10 – MA s. 156 CCC (indecent assault/male)**

[13] MA is asked to accompany the priest DeJaeger upstairs in the Mission. The priest says that he wants to show MA something. Once upstairs, the priest DeJaeger sits on a couch in a large open area. He invites MA to sit on his lap. MA does as he is told. The priest then inserts his hand inside MA's pants and fondles his genitals for what seemed to be a long time.

[14] MA is told not to tell anyone about what happened. MA is told that if he tells anyone his father might be taken away. He is also told that he could have juice if he promised to keep the secret. He is given juice after the incident by the defendant.

[15] MA was between 8 and 12 years of age when this incident happened.

[16] The defendant was convicted of this offence after trial.

**C. Count 12 – CA s. 156 CCC (indecent assault/male)**

[17] CA is in a room adjacent to the kitchen in the lower floor of the Mission. CA is with two friends and all are engaged in building a cross out of spent bullet casings. The priest is watching the boys while seated on a chair. CA is suddenly grabbed from behind by the priest DeJaeger. CA is put on the priest's lap. While there, the priest fondles CA's penis over his clothes causing it to become partially erect. CA squirms and gets off Mr. DeJaeger. The incident ends.

[18] CA was between 12 and 16 years of age when this incident occurred.

[19] The defendant entered a guilty plea to this offence. The facts alleged by the Crown were disputed by the defendant. A hearing was necessary to determine the basis of the defendant's guilt. The victim was required to testify at this hearing.

**D. Count 13 – LA s. 144 CCC (unlawful sexual intercourse)**

[20] The priest DeJaeger takes LA to a bedroom in the upstairs area of the Mission. There are no other adults or children around. The priest asks LA to get undressed and sit on a bed. LA does as she is told. The priest then tells LA that "he was going to do something bad to her". LA gets scared.



- [21] The priest disrobes and plays with his penis for a while. The penis gets hard. The priest then has LA touch his penis. LA is put on her back on the bed by Mr. DeJaeger. The priest then penetrates LA's vagina with his penis while maintaining a grip on LA's legs. LA cries out when this happens. She then blacks out for some time.
- [22] When LA recovers her memory she is bleeding heavily from her vagina. She is very scared and she is crying. She is picked up by the priest. She is taken to a toilet so she could bleed into the toilet. LA stays there for some time. She then goes to sit on the couch in the living room. The priest puts a plastic garbage bag on the couch where LA is seated to ensure that the couch is not bloodied. There is a lot of blood.
- [23] This incident ends when a Mr. Kunnuk arrives upstairs. LA gets dressed quickly and leaves. She recalls hearing some shouting between Mr. Kunnuk and the priest as she does so. LA is not able to say what was being said or by whom.
- [24] When she gets home, LA tells her mother what the priest has done. LA's mother refuses to believe her child. LA's mother accuses LA of lying about what happened. LA is then beaten for lying.
- [25] LA was between the ages of 6 and 10 years of age when this incident occurred.
- [26] Mr. DeJaeger was convicted of this offence following a trial.

**E. Count 18 – LKC s. 149 CCC (indecent assault/female)**

- [27] LKC is one of a number of older youth who volunteer to do clean-up at the Mission following mass and other church-related activities. LKC is encouraged to do this by her mother who was a devout Roman Catholic and avid church-goer. Clean-up is done after school and in the evening following the evening mass. Following clean-up, the youth would occasionally become involved in a game of hide and seek. The priest DeJaeger would join in. LKC is between 14 and 18 years of age when the first incident occurs.

[28] During one of these games the priest DeJaeger discovers LKC in her hiding-place. The other youth are still hiding. The priest briefly fondles LKC's genitals and breasts over her clothing before running off to search for the others. LKC remembers Mr. DeJaeger panting or breathing heavily as he touches her.

[29] The defendant was convicted of this offence following a trial.

**(i). Count 1 LKC s.144 CCC (unlawful sexual intercourse)**

[30] From time to time, the youth clean-up crew would be asked by the defendant to go and clean the upstairs portion of the Mission. The size of this crew varied. Sometimes there would only be two youth in attendance. On other occasions there would be many more.

[31] On one occasion, the priest asked LKC to go into the attic area of the Mission to retrieve some Christmas ornaments for communion. The other youth remain downstairs. The priest DeJaeger follows LKC into the attic. He leads LKC to the left side. In this area of the attic, hidden by stacked-up boxes, LKC discovers a bed made of multiple blankets and one white pillow.

[32] The priest has LKC lie down on this bed. She is told to lie on her side facing the boxes. The priest then pulls down her pants. LKC's vagina is penetrated from behind by Mr. DeJaeger. The act of sexual intercourse continues for some minutes or seconds. When it is over LKC is cautioned not to speak about what had happened. The priest tells LKC that no one would believe her.

[33] Once LKC gets downstairs in the Mission she experiences a wet discharge from her vagina. This causes her pants to get wet. Shortly after getting home, LKC starts to bleed. LKC tells her mother what had happened. Her mother becomes very angry. Her mother tells LKC that priests are gods. They are healers. They wouldn't do things like that. LKC was then beaten by her mother for telling a lie. LKC says that she grew to hate her mother for not believing her.

[34] The defendant was convicted of this offence following a trial.

**(ii). Count 2 LKC s.144 CCC (unlawful sexual intercourse)**

[35] Sometime later, LKC and her younger sister RK are invited upstairs by the priest. They are led to a couch in the living room area of the Mission. Once there, the priest tells the two girls to touch each other's breasts and vaginas on top of their clothing. They do this as requested. The priest watches. After some time, the priest DeJaeger asks the girls to touch each other under their clothing. The children comply and the priest again watches. The girls are ultimately asked by the priest to get on top of each other and rub their bodies together. They comply. The priest watches.

[36] LKC is then led by the priest DeJaeger into the attic and taken to the hidden bed a second time. This time LKC is lying on her side and facing Mr. DeJaeger. Her pants are pulled down and the priest again has sexual intercourse with her. He then tells LKC to leave. LKC waits downstairs in the Mission for her younger sister to join her. They then leave together.

[37] The defendant was convicted of this offence following a trial.

**(iii). Count 3 LKC s.149 CCC (indecent assault/female)**

[38] There was a third incident involving the defendant and this victim. LKC is downstairs in the Mission. There are a number of other children present. The priest again invites LKC to accompany him upstairs. LKC does what she is told. Once upstairs the priest takes LKC to the couch in the living room. He unzips his pants and asks LKC to play with his penis. LKC does as she is told. Mr. DeJaeger's penis gets hard. There is a terrible odour. As LKC masturbates the priest, a small child is heard coming up the stairs and the incident ends.

[39] The defendant was convicted of this offence following a trial.

**(iv). Count 19 – LKC s. 149 CCC (indecent assault/female)**

[40] The priest DeJaeger joined LKC's family for a spring hunt. He pitched his own tent some distance from the family tents. LKC is then pregnant with her first child. She is 15 years of age. Prayers are said inside her mother's tent. It is daytime. Following the prayers the others go outside the tent to eat. LKC is left alone momentarily with the priest. Mr. DeJaeger approaches LKC and touches her briefly on her groin. His hand then travels upwards to her stomach and then continues on to her breast. This touching occurs on top of the clothing. LKC gave no particular details about how this incident ended.

[41] The defendant was convicted of this offence following a trial.

**F. Count 24 – JI s. 156 CCC (indecent assault/male)**

[42] JI, together with a number of other children, were invited to sleep over at the Roman Catholic Mission by the priest. The sleepover is upstairs in the priest DeJaeger's bedroom. The children sleep on the floor of the bedroom with bedding provided by the defendant. Food is provided to the children who attend.

[43] At some point during the sleepover, JI is taken to the priest's bed by Mr. DeJaeger. While there he is invited to look at a book. The priest then pulls down JI's pants to his knees, fondles JI's genitals, and attempts to masturbate him. While doing this, Mr. DeJaeger is seated on the bed in front of JI. He is wearing gray underwear. The priest then places JI's hands on Mr. DeJaeger's erect penis and tries to get JI to masturbate him. JI pulls away when this happens.

[44] JI was between 8 and 10 years of age when this incident occurred.

[45] The defendant entered a guilty plea to this offence. The factual basis for the guilty plea was disputed however. A hearing was necessary to determine the facts. The victim is deceased, and did not have to testify on this hearing.

**G. Count 26 – LI s. 156 CCC (indecent assault/male)**

[46] This touching occurred when LI was between 9 and 10 years of age. LI is colouring with other children in the downstairs kitchen area of the Mission. He is suddenly picked up by the priest and placed on the priest's knee. While there, the priest DeJaeger puts his hand inside LI's pants and fondles LI's penis. The duration of the fondling activity is unknown. After getting off the defendant's lap, the priest pinches LI's buttocks. This upsets LI.

[47] The defendant entered a guilty plea to this offence. The factual basis for the plea was disputed. A hearing was necessary to sort out the facts. The victim was required to testify about this allegation.

**H. Count 33 – PI s. 156 CCC (indecent assault/male)**

[48] PI says that he, along with a number of other children, often stayed in the Mission after Sunday services were completed to play. On one occasion he is invited upstairs into the Mission living quarters by the priest DeJaeger along with the others. PI says that he is treated to some dried meat described as elephant jerky by Mr. DeJaeger.

[49] The priest then asks PI to sit on his lap. PI does so. While on the priest's lap, Mr. DeJaeger fondles PI's genitals over his clothing. PI is not sure how long this touching continued, but estimates that it may have lasted at least five minutes. There are other children in the room when this fondling activity takes place. They are engaged in other activities.

[50] The defendant entered a guilty plea to this offence, but disputed the factual basis for the plea. A hearing was necessary to determine the facts. The victim was required to testify as part of this hearing. PI was between 8 and 11 years of age when this event occurred.

**(i). Count 34 – PI s.156 CCC (indecent assault/male)**

[51] PI was again at the Mission playing with a friend LT. LT goes upstairs to see if he could get some treats from the priest. PI tags along hoping to get some juice or cookies. There are a number of children sitting on a couch playing board games on a coffee table. There is some cookies and some juice on the kitchen table. The priest is seated on a chair close to this table. PI is invited to sit on the priest's lap by Mr. DeJaeger who refers to PI by the name "Peacha".

[52] After getting on the priest's lap, PI is again fondled by Mr. DeJaeger. This time however, the priest puts his hands inside PI's pants to fondle PI's genitals. The priest is breathing heavily as he does this. The fondling ends after approximately five minutes. The priest then invites PI to have cookies and juice. PI does so.

[53] The defendant was convicted of this offence following a trial.

**I. Count 35 – DI s. 149 CCC (indecent assault/ female)**

[54] DI is in the Mission kitchen with a number of other children. The priest DeJaeger is seated on a kitchen chair. DI sits on the priest's lap. While in this position the priest fondles DI's vagina with his left hand over her clothing. DI feels very awkward. She is eventually returned to the floor by the Mr. DeJaeger and the incident ends.

[55] DI was between 10 and 12 years of age when this offence was committed.

[56] The defendant was convicted of this offence following a trial.

**J. Count 36 – MI s.149 CCC (indecent assault/female)**

[57] MI was between 6 and 10 years old when this offence occurred.

[58] This incident occurs at a summer fishing camp on the land. The location is unknown. MI's grandparents are at the camp together with a number of children including MI and her older brother RI.

[59] MI is playing outside the family tent when she is invited over to the priest DeJaeger's tent for hot chocolate. The priest is seated inside his tent. He invites MI to sit in his lap while she has her hot chocolate. While there, he fondles MI's genitals under her pants. He digitally penetrates her vagina with his finger three times. MI estimates that this went on for approximately 10 to 15 minutes. MI was hurt by this and scared.

[60] At some point MI hears her older brother RI outside the tent. The incident ends abruptly with the priest cautioning MI not to say a word about what happened to anyone or he would hit her. MI is told to leave by Mr. DeJaeger and she does so. She is crying as she leaves.

[61] MI later discovers blood in her panties.

[62] The defendant was convicted of this offence after trial.

**K. Count 37 – RI s.156 CCC (indecent assault/male)**

[63] RI was between 10 and 13 years of age when this incident occurred. RI is camping on the land at a spot known as Uttuksivik or Maud Bay. It is summertime. RI is with his family. At some point, the priest DeJaeger joins the family and sets up his own tent at some distance from the others.

[64] RI is invited by Mr. DeJaeger into the priest's tent. While there, the priest pulls down RI's pants and while fondling his genitals attempts to masturbate him. When this touching occurs, the priest has very cold hands. RI says that this incident ends when RI pushes the priest away and leaves the tent.

[65] RI says that he was told by the priest DeJaeger that if he told anyone about what he (the defendant) was doing no one would believe him because he was God's helper.

[66] The defendant entered a guilty plea to this offence, but disputed the factual allegations behind the plea. A hearing was necessary to determine the facts. The victim was required to testify about the allegation at this hearing.

**L. Count 43 – LK s. 149 CCC (indecent assault/female)**

[67] LK was between the ages of 5 and 7 years of age when this incident occurred.

[68] LK is at the Mission with a number of other young children. Some of the kids are upstairs. The door leading upstairs is open. LK wants to get the other children downstairs so she could play with them. LK decides to go and get them. LK goes upstairs by herself. She goes to a bedroom. The priest DeJaeger is there along with three or four children.

[69] LK is asked to go and look out the window by the priest. LK is too little to see out, so she has to stand up on a chair. There is a good view from the window. It is a bright day. LK can see right down to the ocean. She sees people going about their business outside.

[70] The priest then approaches LK from behind. He sits on a chair that is put immediately behind the chair on which LK is standing. The priest puts an arm around LK's waist and then slips his other hand inside LK's pants to fondle her vagina with his fingers. At some point he digitally penetrates LK's vagina. This touching goes on for an estimated five minutes. LK is very scared. LK cannot move away because she is being held securely by Mr. DeJaeger.

[71] The incident ends when the priest stands up and approaches another child. LK then leaves the room and heads downstairs.

[72] The defendant was convicted of this offence following a trial.

**M. Count 45 - ZN s.246.1 CCC (sexual assault)**

[73] On the day of the incident, ZN learned through her sister that a priest was coming to Pelly Bay for a visit. ZN went over to the Manse to meet the priest. When she got to the priest's residence she found the door unlocked. She opened the door and walked inside. The priest DeJaeger was there.

[74] The priest approaches ZN by the door and shakes her hand. He gives her a hug. Without a word, he then leads ZN to a different part of the residence. ZN thinks they are going to the kitchen for a friendly chat. Instead, the priest leads her to a bedroom and pushes her down on the bed. ZN tries to get up. She is pushed back down. The priest removes ZN's pants and then gets on top of her. He penetrates ZN with his penis and engages in full sexual intercourse without her consent.

[75] ZN is not able to say how long she is on the bed with the priest DeJaeger. The priest says nothing to ZN during this incident. When the priest finishes, ZN tells him that she wants to go. She gets dressed. Before leaving she is grabbed by Mr. DeJaeger. She is told to tell no one about what has happened. ZN keeps her silence for years. She feels dirty. She believes no one will trust her if she speaks of what happened.

[76] ZN was approximately 33 years of age when this rape occurred.

[77] The defendant was convicted of this offence after trial.



**N. Count 49 – VN s.149 CCC (indecent assault/female)**

[78] VN is at the Mission with a friend. The children are colouring somewhere on the first floor. The priest DeJaeger asks VN to come upstairs with him. VN does so thinking that she is to be given a chore of some kind to do. VN is taken to a bedroom. VN is between 9 and 11 years of age.

[79] Once in the bedroom the priest fondles VN's vagina. He then removes the belt on his pants and drops his pants to his knees. VN had never seen a man's penis before. The priest asks VN to play with his penis. He takes VN's hand and puts it on his penis and shows VN what to do. Every time VN stops playing with his penis, Mr. DeJaeger would pull hard on VN's ear. VN is forced to continue. The priest's penis gets big and hard. The priest ultimately grabs one of VN's hands and puts it near his penis. Some warm white stuff comes out of his penis. The priest tells VN to lick his penis. She refuses to do so. Each time she refuses the priest pulls her ear harder. She eventually does what he asks.

[80] This incident ends with the priest DeJaeger telling VN to go and wash her hands. VN indicates that her hands were "stinky". VN is told not to talk to anybody about what happened. This was to be a secret between them. VN leaves the bedroom and goes downstairs.

[81] When VN gets home she tries to tell her mother what had happened to her. VN did not know that what had happened was sexual abuse, but she did not like what the priest had done to her by pulling her ears. VN's mother gets angry. She says that VN is trying to make trouble. VN is then beaten by her mum for lying about the priest.

[82] The defendant was convicted of this offence after trial.

**O. Count 51 – CN s.156 CCC (indecent assault/male)**

[83] CN is upstairs in the Mission. He is in the priest DeJaeger's bedroom. The priest is seated in a chair. CN is asked to sit in the priest's lap and he does so. While in this position the priest unzips the fly on CN's pants and fondles his penis. When this fondling activity occurs there are no other children in the room with CN. It is not known how long this fondling activity continued. CN was between 8 and 12 years of age when this incident occurred.

[84] The defendant entered a guilty plea to this offence. The facts underlying the guilty plea were disputed however. A hearing was necessary to sort out these facts. The victim was required to testify at this hearing.

**P. Count 53 – GN s.149 CCC (indecent assault/female)**

[85] GN frequently attended the Mission after school for religion classes taught by the Church. A number of children would be present for these classes.

[86] On one occasion after school, GN is sitting on the priest DeJaeger's lap. The priest is showing GN a *National Geographic* magazine that features a bare breasted little girl from Africa. The priest wraps his arms around GN's waist. He references the picture and says to GN that she should "be like that". While doing so he reaches up to fondle GN's breast with a hand. This touching was on top of GN's clothing. The other children are colouring pictures on a coffee table when this happens.

[87] GN was 7 or 8 years of age when this happened.

[88] The defendant was convicted after trial of this offence.

**Q. Count 55 – CP s.155 CCC (buggery/anal intercourse)**

[89] CP was between six and eight when this first incident occurred. It is around Easter time in April. CP and his friends are playing out on the ice. They get cold and go inside the Mission to warm up. The priest DeJaeger is there. He leads CP upstairs to a windowless room that is cold. The other children remain downstairs.

[90] The room is dark. It has no furniture. It seems to be used for storage of some kind.

[91] The priest shows CP his penis. He then takes off CP's pants and underwear. He puts Vaseline on CP's rectum. CP is turned away from the priest and is forced to bend over. The priest is gripping CP around the waist with both hands. CP then feels terrible pain in his rectum and he starts to cry. CP feels the priest DeJaeger's penis penetrate his anus.

[92] After he is finished, the priest forces CP to perform an act of fellatio. The priest's hands are gripping CP's head and hair. Mr. DeJaeger is forcing CP's head to move back and forth on his penis. CP cannot breathe. The priest ultimately ejaculates in CP's mouth. CP describes this as being "yuk". The priest DeJaeger then dresses CP and leads him downstairs to rejoin the other children. Before doing so, however, the priest warns CP not to talk to anybody about what happened. The priest tells CP that if he says anything, he would be lying. CP rejoins the others and pretends to colour. At his first opportunity he leaves the Mission.

[93] The defendant was convicted after trial of this offence.

**R. Count 56 – CP s.155 CCC (buggery/anal intercourse); Count 57 – s.155 CCC (bestiality/dog)**

[94] CP and his friend JU have been asked by the priest DeJaeger to come over to the Mission from time to time to feed the priest's dog. JU and CP go over to the Mission together to do this. They enter the furnace room on the main floor of the Mission. The furnace room door is open. The priest is inside with the dog. CP sees the priest naked from the waist down. The dog is tied up. The priest is standing behind the male dog gripping the animal's hind-quarters. The priest DeJaeger is having anal intercourse with the animal and the dog is making noises. CP and JU try to leave, but it is too late. The priest withdraws from the animal. CP sees Mr. DeJaeger's erect penis.

[95] The priest closes the door to the furnace room and locks it. The lock is on the upper portion of the door and the boys cannot reach it. There is no other way out.

[96] The priest then grabs CP. CP resists but he is too little and the priest is too strong. JU is trying to help by pushing against Mr. DeJaeger. CP is picked up and bent over a table. His pants are pulled down, and the priest then penetrates his rectum with his penis. There is a small nail sticking out of the table. This digs into CP's chest causing an injury that would eventually leave a scar. This scar is still visible on CP's chest.

[97] CP is told not to talk to his parents about what happened. He is then struck hard in the ear by Mr. DeJaeger. The door is opened and the two boys leave. CP says that he could not sit down comfortably for two or three days after this event.

[98] The defendant has been convicted after trial of these offences.

**(i). Count 58 – CP s.156 CCC (indecent assault/male)**

[99] A year passes from the events described in count 57. It is now May and CP hears that Father Lechat has returned to Igloolik. Father Lechat is well liked and respected by everyone. CP goes down to the Mission looking for Lechat and runs into the priest DeJaeger. There is no sign of Father Lechat. CP is taken to the CB radio room under the stairs on the main floor by the priest. The priest DeJaeger then pulls his own penis out of his pants and starts to play with it. CP tries to leave, but is pushed back away from the door. He is ultimately forced to perform fellatio upon the priest. CP thinks that Mr. DeJaeger ejaculated again.

[100] The defendant was convicted after trial of this offence.

**S. Count 64 – MUO s. 149 CCC (indecent assault/female)**

[101] It is a Saturday during the winter of 1978. MUO walks over to the Mission to take confession. She is between 18 and 22 years of age. There are children playing outside. The doors to the Mission are locked, but the priest DeJaeger, dressed in civilian clothes, lets MUO in. Together they go to a small room. MUO kneels and starts to pray. The priest is sitting in a chair close to MUO. The priest asks MUO to speak up so he can hear her.

[102] The priest then says that he wants to feel her heart beat. He suddenly puts a hand inside MUO's shirt. MUO stops praying. She is in shock. While fondling her breasts, the priest DeJaeger tells MUO that she smells nice. He asks MUO if she has a boyfriend. He says that he is better than MUO's boyfriend. He starts to kiss MUO's neck. MUO quickly stands up. The priest then starts to fondle MUO's crotch area on top of her clothing. MUO pushes the priest away and then runs out of the Mission by the back door.

[103] The defendant was convicted after trial of this offence.

**T. Count 73 LT s.156 CCC (indecent assault/male)**

[104] LT is in the kitchen area of the Mission. He is seated on the priest DeJaeger's lap at the kitchen table and is eating cream corn. LT remembers the priest saying to him that eating this cream corn was like eating "baby poop". While LT is eating, the priest reaches down and fondles LT's penis and buttocks over his clothing for a few minutes. This makes LT feel "weird". LT is very young (between 7 and 11 years of age). He thinks that all white people are strange. He thinks that maybe this was a normal thing for white people to do.

[105] The defendant was convicted after trial of this offence.

**(i). Count 74 LT s. 155 CCC (buggery/male)**

[106] LT is playing with other children in the main part of the Mission. He gets thirsty, so he goes to the furnace room to get a drink of water. There is a sink in the furnace room with a shelf containing glasses. LT gets a glass to drink from. The lights are dim. There is a musty smell.

[107] The priest DeJaeger suddenly appears in the room. He locks the door behind him. He takes off LT's pants and fondles his penis. LT is eventually turned around and bent over a table. Something wet is applied to his rectum like a cream. LT then experiences a lot of pain in his anus. It feels like "a warm balloon was suddenly inflated inside his ass". LT is unable to say how long this event takes. He was trying to think of other things like a stream or running water to get through the experience. At the time LT did not know what was happening to him.

[108] When LT gets home he is still in pain. He goes to the toilet. LT discharges some blood and a milk-like fluid with his bowel movement.

[109] LT then tries to tell his grandfather what happened at the Mission. His grandfather gets angry at him. LT is slapped hard on his right ear. His grandfather does not believe him. LT is told that a man of God does not do this to people. LT would keep his silence for many years as a result of this treatment.

[110] The defendant was convicted of this offence following a trial.

**U. Count 75 MT s. 156 CCC (indecent assault/male)**

[111] MT is in a small office on the main floor of the Mission. The priest DeJaeger is seated in a chair and reading a children's book to a number of children who are present. MT and two friends are standing close to the priest as he reads from the book. At some point, the priest reaches over and put his hand on MT's right buttock and tries to pull MT closer to where Mr. DeJaeger was seated. MT tries to pull back because he is uncomfortable. He is held fast by the priest and is unable to do so. The priest maintains his hold on MT's bum for some minutes before releasing him. MT and his friends then leave the office area to play games in a larger room with his friends. MT was between 8 and 12 years of age when this incident occurred.

[112] The defendant entered a guilty plea to this offence, but then disputed the factual allegations underlying the allegation. A hearing was necessary to determine the facts. The victim had to give evidence in the course of this hearing.

**V. Count 76 TU s. 156 CCC (indecent assault/male)**

[113] TU is in the Mission with a younger brother and one other individual. All three youth are in the kitchen on the main floor.

[114] The priest DeJaeger is serving the boys tea when he proposes to teach TU some self-defense moves. TU is asked to lunge at the priest. TU does so twice and the priest blocks these moves. As TU moves against the priest a third time, Mr. DeJaeger suddenly grabs TU and turns the move into a dance. This involves the priest grabbing one of TU hands with one hand while the priest's other hand rubs TU's buttocks. This touching went on for an estimated 15 seconds.

[115] TU breaks off this contact and returns to the table where his brother is seated. TU is upset. He tells his brother what had just happened and indicates that he wants to leave. The three youth then leave the Mission. On returning home, TU tells his grandmother what happened. He is told that he should never return to the Mission again without adult supervision.

[116] TU was between 14 and 18 years of age when this incident occurred.

[117] The defendant entered a guilty plea to this offence, but disputed the factual allegations underlying the allegation. A hearing was necessary to sort out the facts. The victim had to testify about the allegation that is the subject of this charge.

**W. Count 1 TA s.156 CCC (indecent assault/male)**

[118] TA is playing outside the Mission with some friends when he sees the priest DeJaeger's dog. He is fascinated by this animal and he goes inside the Mission to get a better look. The priest is there.

[119] There is a piano or organ inside. The children take turns playing on this. The priest is sitting at the organ when he asks TA if he would like to learn. TA says yes and gets on the priest's lap. As he starts to play with the keys, Mr. DeJaeger fondles TA's crotch area over top of his clothing. This makes TA very uncomfortable and he starts to squirm. The priest then moves his leg to bounce TA up and down. TA starts to get an erection. He is asked by the priest what is wrong. The priest tries to move his hand inside TA's pants. TA starts to struggle. TA then blacks out. His next memory is being on the floor playing with marbles. He has no memory of getting off the priest's lap. He has no memory of starting to play with the marbles. TA attributes this blackout to fear.

[120] TA was between 10 and 14 years of age when this incident occurred.

[121] The defendant was convicted after trial on this offence.

**III. VICTIM IMPACT – CHILD SEXUAL ASSAULT**

[122] A child's immaturity and lack of sophistication leaves the child very vulnerable to exploitation by others, particularly adults. The limited strength, size, and physical endurance of the child limits the child's ability to defend against sexual abuse. The child is easy to overwhelm physically. The child is easy to overwhelm emotionally. The younger and smaller the child, the more vulnerable he or she becomes. The moral culpability of an adult who exploits this vulnerability for reasons of personal sexual gratification is extremely high.

- [123] Adolescents are emotionally fragile. For a child victim of sexual abuse, the potential range of impacts can be as broad as they can be severe. The child's sense of self respect, their ability to trust and bond with others, and their sexual identity are all things that are easily damaged. As the sexual violence increases in severity, or where sexual victimization is prolonged or repeated, the psychological damage associated with this form of violence is likely to be enhanced. Sexual violence to an adolescent can be expected to leave a trail of damage and destruction in its wake. This damage can last a lifetime.
- [124] This psychological harm may manifest itself in depression and self-destructive behaviour later in life. It may fuel substance abuse and addiction as the child turns to alcohol and drugs in an effort to dull the pain. This damage may generate intense anger and interpersonal conflict with others. With loss of self-respect, there is an enhanced risk of suicide and self-harm.
- [125] Mistrust of others is usually an enduring legacy of child sexual abuse. Once lost, a child's trust in adults will be difficult to recover. This mistrust may cause the child to withdraw socially from those around them, particularly other adults. The victim's ability to form meaningful intimate relationships with others later in life may be compromised. A close relationship may become much more difficult to achieve.
- [126] Where sexual abuse is perpetrated by a person in authority, the child victim may grow up to distrust and fear all forms of authority. This may have significant repercussions on such a victim later in life. Sexual abuse may even cause collateral damage to the child victim's own familial relationships. This is so, particularly, in circumstances where a parent chooses to disbelieve a child's disclosure and punishes the child victim for telling "lies".
- [127] The child's limited communication skills and comprehension may limit the therapeutic intervention that is available to undo the harm caused by sexual abuse. Psychotherapy and other forms of counselling will become increasingly less effective as the age and sophistication of the victim decreases. The very young may not be positioned to participate in this process due to their limited comprehension and communication skills.



- [128] Remedial processes to assist victims are further complicated for unilingual Inuk children who must participate in the process through an interpreter. The expertise necessary to address sexual victimization of very young Inuit is not available in Inuktitut.
- [129] Many of Nunavut's remote arctic communities lack the therapeutic expertise needed to address the special needs of the child victim of sexual abuse. Effective therapeutic intervention will likely require removal of the child to a distant centre at prodigious public expense. The victim's life and the life of the victim's immediate family will be disrupted by this. The remedial processes may themselves become a source of stress and additional trauma for the young.

#### **IV. CHILD SEXUAL ASSAULT – SENTENCING PRINCIPLES**

- [130] Growing recognition of the tragic human consequences associated with this type of crime has caused a shift in sentencing jurisprudence over the last two decades. This jurisprudence now requires the Court to put special emphasis upon the sentencing principles of denunciation and deterrence when addressing sexual offences against children. This approach was established in common law jurisprudence long before Parliament chose to codify this principle by enacting section 718.01 of the Canadian *Criminal Code*, RSC 1985, c C-46 [*Criminal Code*], in 2005.
- [131] While rehabilitation remains an important goal of sentencing in this case, as in any other, deterrence and denunciation must remain the primary or paramount consideration of the sentencing court. This is necessary to properly reflect both the vulnerability of this class of victim and the very real potential for such offences to cause significant psychological harm to the young.
- [132] The high moral blameworthiness associated with this type of offence lies in an offender's willful assumption of the risk of causing such harm. This moral culpability does not turn on whether harm is actually caused or not. Where actual harm is established, it is a seriously aggravating feature. The absence of harm cannot reduce the offender's moral blameworthiness because the risk of causing harm to a child by these offences is always present.

- [133] Denunciation is necessary to preserve and protect the fundamental social values that are infringed by this type of criminal behaviour. This is so, particularly in circumstances where an offence is committed in circumstances amounting to a breach of trust or an abuse of power by persons in positions of authority.
- [134] Children need the law's protection. The child or adolescent lacks both the physical means and the sophistication needed to adequately protect themselves from predatory adults. A deterrent sentence becomes necessary to protect a vulnerable class of victims from those who are prepared to risk harming others in order to satiate their own selfish sexual desires. This protection is to be achieved, at least in part, through the imposition of exemplary sentences that deter other like-minded individuals from pursuing this same course of action.

## **V. ANALYSIS**

### **A. Aggravating offence characteristics**

- [135] All offences before the Court involve elements that include both breaches of trust and abuse of a position of authority. Contact with the victims arises as a result of Mr. DeJaeger's status as a priest. The children and adolescents were in this priest's pastoral care. He owed a duty to his young parishioners, their parents, and the Church to protect and nurture the young in his care.
- [136] The priest held a position of authority within his parish. There are many instances of the priest controlling the movement and the activities of his young charges within the Mission. This authority was derived from Mr. DeJaeger's status as a priest. Children are thus directed to go to various locations within the Mission on various errands. Some children are engaged in clean up within the Mission under the supervision and direction of the priest. Others are asked to retrieve items for the priest upstairs. Many young children are asked to sit in the priest's lap. Some children are tasked to assist Mr. DeJaeger with the care of his dog. There is very little evidence to suggest that the children resisted the priest's direction or control. The children's ready compliance with the priest's directions relate to the priest's status as head of the Roman Catholic Mission in Igloolik.

- [137] The instances of adult victimization also relate to Mr. DeJaeger's status as a priest. One young adult is victimized as she says prayers during the administration of the sacrament of confession by the priest. Another goes to see a visiting priest in Pelly Bay and is sexually assaulted inside the priest's residence.
- [138] The breach of trust and abuse of authority by Mr. DeJaeger propel these various offences to a very high level of moral culpability.
- [139] It cannot be said that these many offences are simply opportunistic. There is some evidence of planning and design. There is some evidence of grooming. Offers of food or drink were made from time to time to disadvantaged children. There is some evidence to suggest that the priest participated in child-like games like hide and seek. Arrangements were made by the priest with the parents of adolescents for sleepovers. It strains credulity to believe that these circumstances were not designed to facilitate access to young children. It was these circumstances that set the stage for the priest to victimize his young charges. Two of the rapes occur in the Mission's attic where a makeshift bed was prepared in advance to facilitate these offences.
- [140] There is some evidence on individual counts to suggest that threats of violence or other acts of gratuitous violence were made to either compel compliance or ensure the silence of the victims. When present, this type of behaviour aggravates the seriousness of the underlying sexual offence.
- [141] In many instances, threats were not necessary to convince the victims to hold their silence. The priest's moral and religious authority was usually sufficient to attain this end. There is evidence to suggest that the priest was well aware that his status as a priest would lead his parishioners to disbelieve allegations of abuse. A number of young victims were told that no one would believe them if they spoke of the incidents involving this priest because he was "God's helper". In these circumstances, evidence of the offender urging secrecy upon his young victims is in itself an aggravating factor (see for example *R v BSM*, 2011 ABCA 105, [2011] AJ No 372 (QL), paragraph 13 and the authority referenced therein).
- [142] The offences continued to be committed by the defendant until he was charged in the nineties. He did not stop until authorities intervened.

- [143] As the age of the victims' decreases and the potential for psychological harm increases, the seriousness of the offence is elevated. Many of the victims have sustained serious psychological harm as identified in the *Victim Impact Statements* filed in this proceeding. The seriousness of a sexual offence is elevated where there is evidence of psychological harm.
- [144] There is no evidence to suggest that any of these offences were committed when Mr. DeJaeger's judgment was impaired by alcohol or drugs. Mr. DeJaeger was sober throughout.
- [145] Mr. DeJaeger has a criminal record for similar offences that date from his tenure as a priest in Baker Lake. On April 5, 1990, Mr. DeJaeger entered guilty pleas to eight counts of sexual assault and one count of indecent assault. These offences also involved adolescents. He was sentenced to a term of imprisonment of 5 years. On June 14, 1991, Mr. DeJaeger entered guilty pleas to a further two counts of sexual assault. He was then sentenced to terms of eight months and three months of custody to be served concurrently with the earlier sentence. This criminal record was thus acquired subsequent to this priest's departure from Igloodik.
- [146] The thirty-two offences now proceeding to sentence are the first offences in time for this offender. There is no evidence of any offences being committed by this offender subsequent to his release from prison.
- [147] The Crown urges the Court to consider the multiplicity of offences as an aggravating factor calling for an enhanced penalty. There is support in the jurisprudence for this argument, but only in circumstances where a single count references multiple instances of misconduct over the period of time covered by the count in question.
- [148] In Mr. DeJaeger's case, the Crown has chosen to lay individual charges to cover each and every act of sexual misconduct. If a penalty is assigned for each individual count, the Court cannot impose any additional punishment. The other counts will receive their own penalty. If the penalty for these individual offences is elevated to reflect a multiplicity of offences, the resulting sentence would offend the rule against double punishment.

[149] The Court consequently assigns no weight to this factor. Punishment will be meted out on the basis of the individual counts and the individual counts alone.

### **B. Mitigating offence characteristics**

[150] The Court is unable to identify any mitigating factors related to these offences.

[151] There is no credible evidence to suggest that Mr. DeJaeger was acting under some kind of error of law or honest belief that was capable of rendering the conduct complained of legally innocent. This priest knew at all material times that his behaviour was morally wrong and contrary to the laws of both man and God.

### **C. Mitigating factors related to the offender**

[152] The Defence argues that Mr. DeJaeger's good behaviour since his release from prison on parole in March 1992, should be taken into account in his favour. It is said that this good behaviour over the intervening 22 years speaks to his prospect for rehabilitation.

[153] Little weight can be given to this submission. After completing his five year sentence of imprisonment on the Baker Lake charges, Mr. DeJaeger was charged with a number of sexual offences originating in Igloolik. He was released on bail to appear in court in Igloolik on June 13, 1995, to answer these new allegations.

[154] Rather than face the new charges, Mr. DeJaeger skipped his bail and fled the country. He remained unlawfully at large in Belgium until he was returned to Canada in January 19, 2011. This followed his expulsion from Belgium by the Belgian authorities. Mr. DeJaeger did not return to Canada voluntarily.

[155] Good behaviour subsequent to the commission of a crime can certainly be a mitigating factor, but only in the absence of evasive tactics on the part of an accused. Little or no weight should attach to intervening rehabilitation while an accused is unlawfully at large. To do otherwise would be to reward an accused for jumping bail or evading apprehension (see *R v Miller and Couvreur* (1972), 8 CCC (2d) 97 Man CA, [1972] MJ No 142 (QL); and *R v Thompson*, 1989 ABCA 212, (1989) 50 CCC (3d) 126 Alta CA).

- [156] The argument made in favour of crediting Mr. DeJaeger for his good behaviour ignores the fact that the offender created this period of “good behaviour” by evading his legal and moral obligation to the Court.
- [157] The Defence urges this Court to temper justice with mercy by taking into account Mr. DeJaeger’s age and fragile medical condition. Mr. DeJaeger is now 67 years of age and has developed, or is developing, a number of age related medical concerns.
- [158] While the Court does give Mr. DeJaeger’s present age some consideration in its later application of the totality principle, significant weight cannot be assigned to this circumstance in mitigation of sentence. Once again, this factor (old age) was created by Mr. DeJaeger himself as a direct result of his flight from justice and long self-imposed exile in Belgium. Had Mr. DeJaeger appeared as required in 1995 to answer the new criminal allegations, he would not have been in a position to raise his age and medical condition in mitigation of sentence. To give great weight to this submission in these circumstances would reward Mr. DeJaeger for his attempt to evade justice.
- [159] There is nothing in evidence to suggest that harsh life experiences in Mr. DeJaeger’s formative years may have impaired his ability to make sound judgments. He has received a higher education in a theological college and would have acquired the knowledge and sound analytical skills that are expected of, and required by, a priest of the Oblate order.
- [160] The offences now before the Court for sentence were the first in time to be committed by Mr. DeJaeger. A “first offender” is ordinarily entitled to some credit in mitigation of sentence because they have never offended before and are of “good character” prior to the commission of the offence for which they are to be sentenced.
- [161] It was this “good character” that resulted in Mr. DeJaeger being able to acquire his status of a priest. It was this “good character” that allowed Mr. DeJaeger to acquire the trust of his parishioners. It was this “good character” that enabled Mr. DeJaeger to facilitate and hide his predatory sexual activity while serving as a priest. Mr. DeJaeger’s previous good character can be assigned little weight in the circumstances presented here.

#### **D. Mitigating factors arising after the commission of the offences**

- [162] Mr. DeJaeger did enter guilty pleas to eight of the less serious sexual offences. The facts underlying these pleas were very much in dispute however.
- [163] A guilty plea is ordinarily given considerable weight by the court in mitigation of sentence. This is done in large part to recognize the great benefits associated with relieving complainants of their obligation to testify.
- [164] The trial process requires witnesses to relive their experiences in a public setting. Witnesses are subjected to close examination by lawyers. The reliability or credibility of their evidence is often challenged. Raw emotions are exposed by this. There is great anxiety, humiliation, and anger generated by this truth finding process. Testifying in a trial environment can exacerbate old trauma and create new trauma.
- [165] Trials are ordinarily avoided by an acceptance of responsibility. The benefits associated with seven of the guilty pleas were illusory in this case. In all but one case, the complainants were required to testify about their experiences in order to resolve a factual dispute related to the circumstances of the offence. Less weight in mitigation of sentence can be afforded Mr. DeJaeger as a consequence.
- [166] The Defense did make a number of substantial admissions in an effort to expedite the trial. The defendant is entitled to some credit for having made these concessions.
- [167] The defendant was convicted after trial on twenty-four counts. Mr. DeJaeger is entitled to have the Crown prove the allegations made against him. Taking a matter to trial is not an aggravating factor. But the substantial mitigating benefit associated with a guilty plea and avoidance of a trial cannot be applied in the absence of any formal acceptance of responsibility by an offender.
- [168] Remorse is a mitigating factor, but only where it is accompanied by some genuine acknowledgment of responsibility for a wrong that has been done. A claim of remorse rings hollow when made following a trial and immediately before the imposition of sentence. An expression of remorse is best made before, and not after, a victim is humiliated by a public trial.

- [169] Mr. DeJaeger did participate in sex offender programming provided by *Corrections Canada* as a consequence of his sentence for the Baker Lake charges. The Court can consider this in its assessment of the likelihood of Mr. DeJaeger now reoffending. This programming was completed prior to Mr. DeJaeger's precipitous departure from Canada in 1995.
- [170] The psychiatric assessments made while under sentence for the Baker Lake charges are now very dated. The offences before the Court for sentence were not part of these earlier assessments. Limited weight can be put on these dated psychiatric opinions for this reason.

### **E. Jurisdictional considerations**

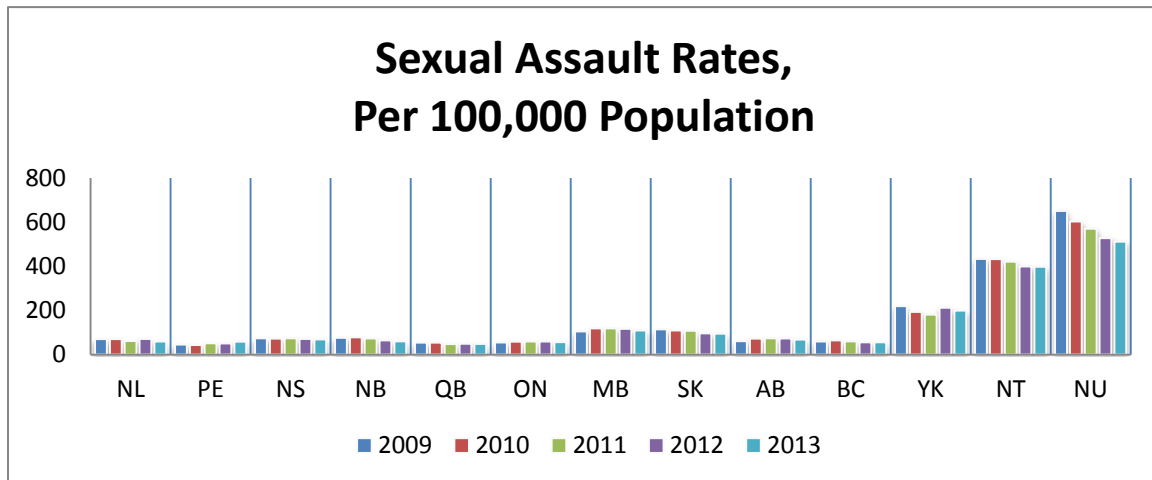
- [171] The prevalence of a particular type of crime is relevant to the need for emphasis on general deterrence as a sentencing principle.
- [172] The commission of sexual offences is a persistent and serious problem in all of Nunavut's communities. Nunavut leads the country in the per capita rate of commission of this type of crime. The information presented below is based on a review of the comparative information collected by Statistics Canada in their Incident-Based Crime Statistics.<sup>1</sup>

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<sup>1</sup> Statistics Canada, *Incident-based crime statistics, by detailed violations*, Table 252-00511, 2, 3, 54 (Ottawa: Statistics Canada, 22 July 2014), online: < <http://www5.statcan.gc.ca/cansim/a26?lang=eng&retrLang=eng&id=2520051&tabMode=dataTable&srchLan=-1&p1=-1&p2=9> >. The information presented in each table below are aggregates of all sexual offences and of sexual violation of children offences.



[173] Produced below are graphs that starkly demonstrate the alarming incidence of sexual violence generally and sexual violence against children in Nunavut that compare Nunavut's crime rates to the rest of the country and the northern territories.

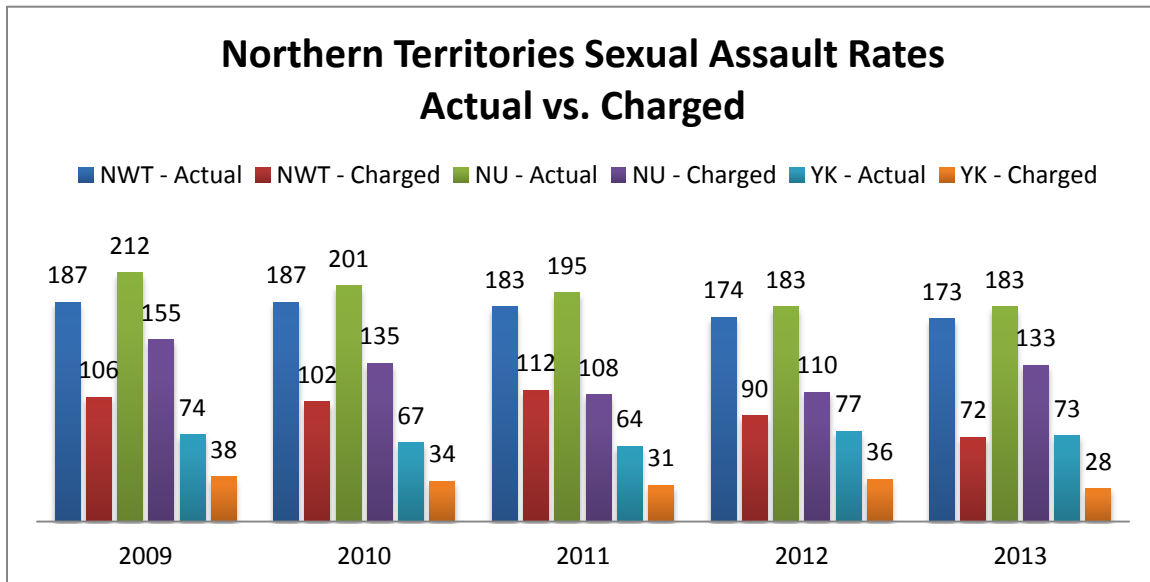


(*Supra*, Footnote 1)

[174] The per capita rate of commission for sexual offences in Nunavut is running at a rate well above the national average<sup>2</sup>.

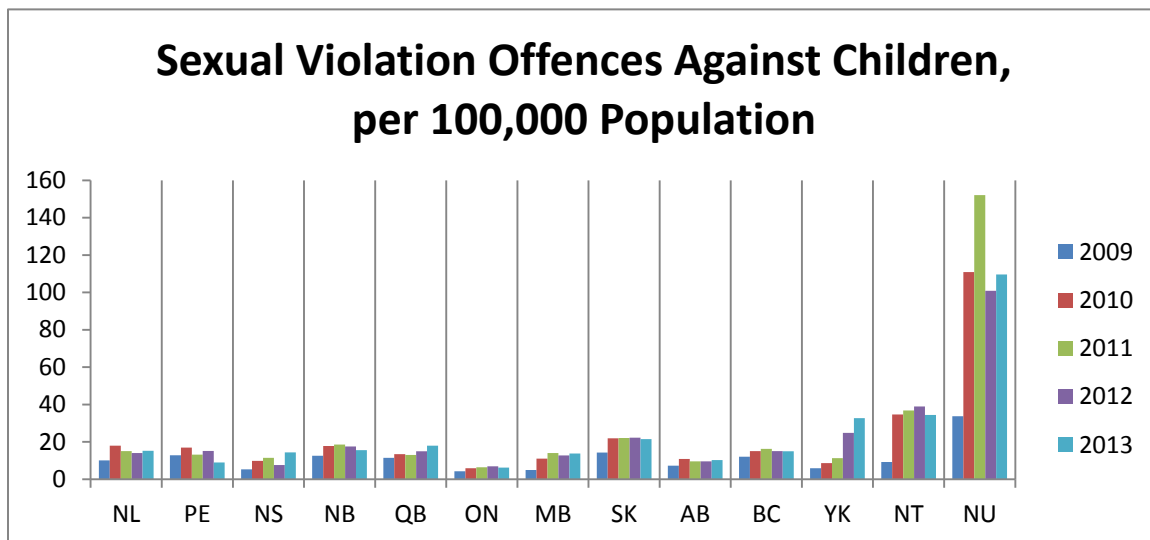
<sup>2</sup> Per capita (or per 100,000 population) statistics are reflective of the number of incidents per 100,000 people. All of the numbers presented are based on this to allow for comparison. For jurisdictions like Nunavut, which has a population of approximately 31,000 people, the rates are calculated by taking the number of incidents across the territory (for example 50) and divided by the total population to get a rate per person (the example working out to 0.0016) and then multiplying that number by 100,000 (working out to 161.29 incidents per 100,000 people). This standard statistical process allows comparisons across both large and small jurisdictions.

[175] Nunavut is also the leader in the incidence of sexual assaults reported and the number of individuals charged for sexual assaults among the northern territories.



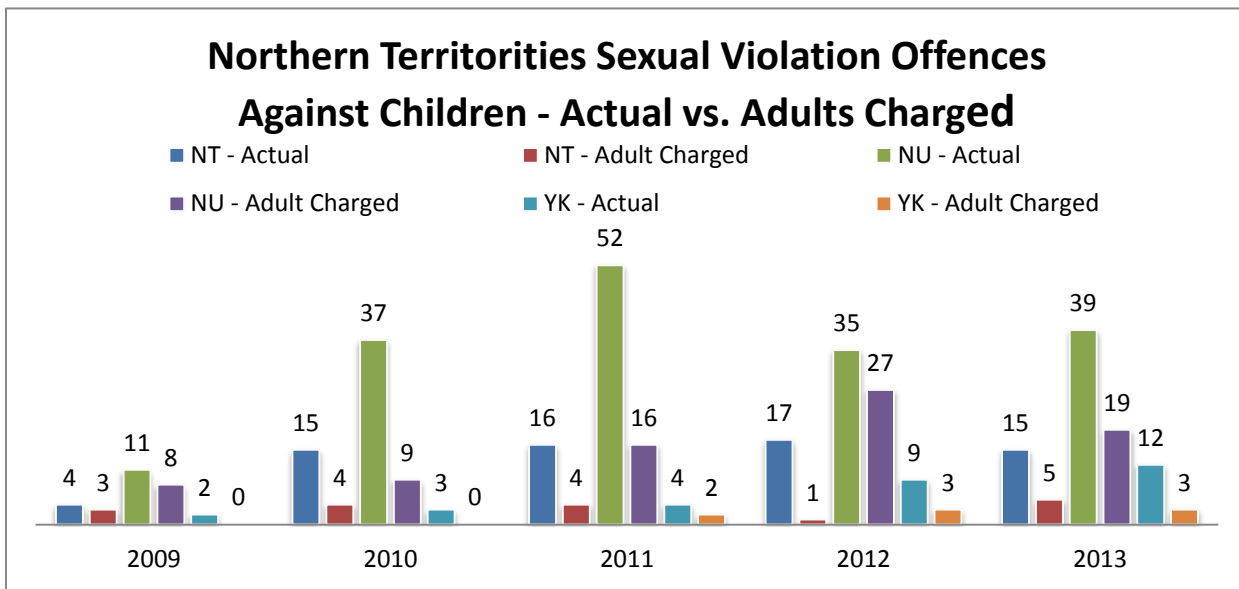
(Supra, Footnote 1)

[176] Children are victimized in Nunavut at a much greater per capita rate in comparison to Canada as a whole.



(Supra, Footnote 1)

[177] Again, Nunavut leads the northern territories in the incidence of sexual violation offences reported and the number of adults charged with such offences.



(*Supra*, Footnote 1)

[178] The high incidence of sexual offences generally and crimes against children in this jurisdiction requires a firm response by a sentencing court. The need to emphasize general deterrence through an exemplary sentence is enhanced under these circumstances.

## VI. COUNT BY COUNT ANALYSIS

[179] The Court now examines all counts individually and assigns a sentence for each. The determination of whether these individual counts should receive consecutive or concurrent terms of imprisonment will follow this analysis. This will be done when the Court applies the totality principle to the end result.

### A. Count 6 (JA) Indecent assault on a female s.149 CCC

[180] The facts related to this offence are set out in paragraphs 10 & 11. This victim was a child between the ages of 8 and 12. The offence involves the removal of the child's clothing, fondling of genitals, and the forced penetration of the child's rectum with some unknown object. Considerable physical pain was caused to the child. Gratuitous violence accompanied this indecent assault. The child was told not to talk about what happened and was forcefully slapped in the head.

[181] This offence is punishable by up to 5 years imprisonment. The offender was convicted after trial. The moral culpability associated with this offence is very high.

[182] A term of imprisonment of four years is appropriate for this offence being committed by this offender under these circumstances.

**A(i). Count 5 (JA) unlawful confinement s.247 (2) CCC**

[183] The factual summary for this offence is set out in paragraph 10 and 11. This offence involves physically taping the child victim to a bed in order to facilitate the commission of the sexual offence referenced in count 6.

[184] Victim impact is referenced by Exhibit S-1. JA struggles with depression. She has difficulty controlling her anger. She finds that she is unable to open up and express her feelings. She is socially withdrawn. She has turned to alcohol and drugs to cope. JA's spouse and children frequently bear the brunt of her anger.

[185] The statutory maximum penalty for this offence is a term of imprisonment for life. The offender was convicted of this offence after trial.

[186] There is an extremely high degree of moral culpability attached to this offence. The likelihood of this offence causing psychological harm to a young victim is substantial. There is some evidence of psychological damage. A separate sentence is called for this offence committed in these circumstances.

[187] A sentence of three years imprisonment would ordinarily be appropriate for this offence committed by this offender in these circumstances.

**B. Count 10 (MA) indecent assault on a male s.156 CCC**

[188] The factual summary for this offence is outlined in paragraph 13 through 15. The offender was convicted after trial. The victim was between 8 and 12 when this offence occurred. The offence involves fondling of genitals under clothing. It consists of a single incident. The victim was told that he would lose his father if he talked about what happened.

[189] Victim impact is referenced in Exhibit S-7. MA says that the incident has affected his spirituality. He no longer attends church. He has a hard time trusting others. This has impacted his marriage. His jealousy and lack of trust in his spouse has caused a marriage breakdown. He is now separated from his spouse. There is some evidence of psychological harm.

[190] A sentence of one year of imprisonment would ordinarily be appropriate for this offence committed by this offender in these circumstances.

**C. Count 12 (CA) indecent assault on a male s.156 CCC**

[191] The factual summary for this offence is set out in paragraphs 17 and 18. The victim was between the ages of 12 and 16 when this offence occurred. A guilty plea was entered, but the victim was required to testify. The offence involves a single incident of fondling on top of clothing. There are no threats of any kind to ensure the victim's silence.

[192] Victim impact is referenced in Exhibit S-6. No real details of impact are given by CA. CA says that he has now put the incident behind him and moved on with his life.

[193] A sentence of six months would ordinarily be appropriate for this offence committed by this offender in these circumstances.

**D. Count 13 (LA) Rape/Unlawful sexual intercourse s.144 CCC**

[194] The factual summary for this offence can be found at paragraphs 20 through to 25. The statutory maximum penalty for this offence is set at life imprisonment. The offender was convicted after a trial.

[195] This victim was between 6 and 10 years of age when this offence occurred. This offence involved the removal of clothing, an order to play with Mr. DeJaeger's genitals, and full vaginal intercourse. Much pain was inflicted on the victim. There was blood loss. The likelihood of psychological and physical harm to the victim was substantial. The moral culpability associated with this offence is extremely high.

[196] Victim impact is referenced by Exhibit S-3. LA dropped out of school at age 13 when she was in Grade six. She developed a serious problem with anger. Her family bore the brunt of this. To this day, she becomes very anxious when anyone, her children and husband included, try to grab at her arms and legs. This always reminds her of this incident with the priest.

[197] This offence committed by this offender in these circumstances would ordinarily call for a sentence of imprisonment of six years.

**E. Count 18 (LKC) indecent assault on a female s.149 CCC**

[198] The factual summary for this offence is found at paragraphs 27 and 28. This victim was between the ages of 14 and 18 when this offence occurred. The offence involved a single incident of fondling the victim's breasts and genitals over clothing during a game of hide and seek. There are no threats accompanying this incident. Mr. DeJaeger was convicted of this offence after trial.

[199] The statutory maximum for this offence is a term of imprisonment of up to five years.

[200] This offence committed by this offender in these circumstances would ordinarily merit a term of imprisonment of six months.

**E(i). Count 19 (LKC) indecent assault on a female s.149 CCC**

[201] The factual summary for this offence is found at paragraph 40. The victim was between the ages of 14 and 18 when this offence occurred. The offence involves a single incident of fondling the victim's breast and genitals on top of her clothing following a prayer service.

[202] The statutory maximum for this offence is 5 years of imprisonment. Mr. DeJaeger was convicted of this offence after trial.

[203] This offence committed by this offender in these circumstances would ordinarily merit a term of imprisonment of six months.

**E(ii). Court file #07-13-95 Count 1 (LKC) Rape/Unlawful sexual intercourse s.144 CCC**

[204] The factual summary for this offence is set out in paragraphs 30 to 33. The victim was between 14 and 18 years of age when this offence was committed. It involves the removal of the victims clothing in the attic area and full sexual intercourse. The makeshift bed in the attic was made in advance of this event. There is some evidence of planning and deliberation. There is blood loss. The victim is told to keep quiet about the incident - no one would believe her.

[205] The statutory maximum for this offence is life imprisonment. Mr. DeJaeger was convicted of this offence after trial. The likelihood of psychological harm flowing from this type of offence is very high.

[206] This offence committed by this offender in these circumstances would ordinarily merit a term of imprisonment of six years.

**E(iii). Court file# 07-13-95 Count 2 (LKC) Rape/Unlawful sexual intercourse s.144 CCC**

[207] The factual summary for this offence is found at paragraphs 35 and 36. The victim was between the ages of 14 and 18 years of age when this offence occurred. The offence involves removal of clothing and an act of full vaginal intercourse. The offence again occurs in the attic area on a makeshift bed. There is some evidence of planning and design. There is no evidence of any overt threats.

[208] The statutory maximum for this offence is life imprisonment. Mr. DeJaeger was convicted of this offence after trial. The moral culpability associated with this offence is once again, very high as is the likelihood of psychological harm to the victim.

[209] This offence committed by this offender in these circumstances would ordinarily merit a term of imprisonment of six years.

**E(iv). Court file#07-13-95 Count 3 (LKC) indecent assault on a female s.149 CCC**

[210] The factual summary for this offence can be found at paragraph 38. The victim was between the ages of 14 and 18 when this offence occurred. The offence involves forced masturbation of the offender. There is no evidence of threats being made to compel LKC's silence.

[211] The statutory maximum for this offence is five years. Mr. DeJaeger was convicted of this offence after trial.

[212] This offence committed by this offender in these circumstances would ordinarily merit a term of imprisonment of 2 years.

**F. Count 24 (JI) indecent assault on a male s.156 CCC**

[213] The factual summary for this offence is outlined at paragraphs 42 and 44. This victim was between 8 and 10 years of age when this offence was committed. The offence involved the removal of clothing, fondling of JI's genitals, and attempted masturbation of JI by the offender. There was an attempt by the offender to compel JI to masturbate him. There is no evidence of threats being made to secure JI's silence.

[214] Victim impact is referenced by Exhibit S-15 that was written for these proceedings by the deceased's common law spouse. Before JI passed away from cancer, he suffered from anger. He developed a substance abuse problem. He was socially isolated and shunned public places. He avoided the church.

[215] The statutory maximum for this offence is ten years of imprisonment. The offender entered a guilty plea to this offence. This victim is deceased and did not have to testify about this incident.

[216] This offence committed by this offender in these circumstances would ordinarily merit a term of imprisonment of eighteen months.

**G. Count 26 (LI) indecent assault on a male s.156 CCC**

[217] The factual summary for this offence may be found at paragraph 46. The victim was between the ages of 9 to 12 years of age. This offence involves a single incident of fondling LI's genitals under clothing and the pinching of LI's buttocks. There is no evidence of threats being made by the offender.

[218] Victim impact on LI is referenced in Exhibit S-16. LI suffers from anger and depression. He has tried to take his own life on a number of occasions.

[219] The statutory maximum for this offence is ten years of imprisonment. A guilty plea was entered to this offence. The victim did have to testify to establish the facts upon which this plea was based.



[220] This offence committed by this offender in these circumstances would ordinarily merit a term of imprisonment for one year.

**H. Count 33 (PI) indecent assault on a male s.156 CCC**

[221] The factual summary for this offence is set out in paragraphs 48 and 50. This victim was between the ages of 8 and 11 when this incident occurred. The offence consists of a single incident of fondling PI's genitals on top of clothing.

[222] The statutory maximum for this offence is a term of imprisonment of ten years. The offender entered a guilty plea to this offence. The victim did have to testify to establish the facts upon which this plea was based.

[223] This offence committed by this offender in these circumstances would ordinarily merit a term of imprisonment of six months.

**H(i). Count 34 (PI) indecent assault on a male s.156 CCC**

[224] The factual summary for this offence is found at paragraphs 51 and 52. This victim was between the ages of 8 and 11 years of age when this offence occurred. This offence consists of a single incident of fondling of PI's genitals under clothing. There is no evidence of threats being made to win PI's silence.

[225] Victim impact is referenced in Exhibit S-14. PI distrusts all authority. His relationship with his mother was damaged when she refused to believe his disclosure of sexual abuse. PI started to rebel at home. From age 10 and onward, he developed a serious substance abuse problem. This included the sniffing of gas and propane and both alcohol and drug dependence. PI says that he resorted to substance abuse in an effort to "numb the pain and shame". PI avoids the church and refuses to permit his own child to be baptized.

[226] The statutory maximum for this offence is a term of imprisonment of ten years. The offender was convicted after trial.

[227] This offence committed by this offender in these circumstances would ordinarily merit a term of imprisonment of one year.

**I. Count 35 (DI) indecent assault on a female s.149 CCC**

- [228] The factual summary for this offence may be found at paragraph 54 and 55. DI was between the ages of 10 and 12 when this offence occurred. The offence consists of a single incident of fondling DI's genitals on top of her clothing. There is no evidence of threats being made by the defendant.
- [229] Victim impact is referenced in Exhibit S-5. DI suffered from recurrent depression. She was never happy and had a very low self-image following this event. She developed a drinking problem in her teens that stayed with her for 10 years. She attempted suicide during one of her drinking binges. She felt ashamed and dirty growing up. DI would sometimes take showers in an effort to wash away this dirty feeling.
- [230] DI saw herself as a victim and had difficulty expressing her feelings. She was unable to trust other adult men. As a mother, she became very overprotective of her son when other men were present. DI is unable to trust persons in authority. She experienced difficulty in her domestic relationship because she found herself unwilling or unable to trust her spouse.
- [231] The statutory maximum prescribed for this offence is a term of imprisonment of five years. The offender was convicted after trial for this offence.
- [232] This offence committed by this offender in these circumstances would ordinarily merit a term of imprisonment of six months.

**J. Count 36 (MI) indecent assault on a female s.149 CCC**

- [233] The factual summary for this offence is found at paragraphs 57 through to 61. MI was between 6 and 10 years of age when this offence occurred. The offence consists of a single incident of the fondling of MI's genitals under her clothing, but includes digital penetration of the victim's vagina. Much pain and fear was caused by this activity. There is some bleeding. A threat to hit MI is used by the offender to secure MI's silence.
- [234] Victim impact is referenced in Exhibit S-17. MI still fears Mr. DeJaeger. She never attends church. MI says her "heart is forever broken". This victim believes that it will never mend.

[235] The statutory maximum for this offence is a term of imprisonment of up to five years. The offender was convicted of this offence after trial.

[236] This offence committed by this offender would ordinarily merit a term of imprisonment of four years.

**K. Count 37 (RI) indecent assault on a male s.156 CCC**

[237] The factual summary for this offence is found at paragraphs 63 to 65. RI was between the ages of 10 and 13 when this offence occurred. This offence consists of a single incident and includes partial removal of RI's clothing, fondling of genitals, and attempted masturbation. RI was told by the offender that no one would believe him if he spoke of what happened because the offender was "God's helper".

[238] Victim impact on RI is referenced in Exhibit S-18 and S-18a. RI continues to struggle with issues related to anger. He continues to suffer from sleep disturbances. He no longer attends church because he has no trust in priests.

[239] The statutory maximum for this offence is a term of imprisonment of up to ten years. A guilty plea was entered, but RI was required to testify to establish the facts underlying this offence.

[240] This offence committed by this offender in these circumstances would ordinarily merit a term of incarceration of two years.

**L. Count 43 (LK) indecent assault on a female s.149 CCC**

[241] The factual summary for this offence may be found at paragraphs 67 through to 71. LK was between the ages of 5 and 7 years of age when this offence occurs. This offence relates to a single incident of fondling of LK's genitals under her clothing and digital penetration of the vagina. There is no evidence related to the use of threats to secure LK's silence.

[242] Victim impact is referenced in Exhibit S-12. The offence has caused LK to become socially withdrawn. She has difficulty expressing her feelings. She avoids other adult males (other than her husband).

[243] The statutory maximum for this offence is a term of imprisonment of up to five years. The offender was convicted of this offence following a trial.

[244] This offence committed by this offender in these circumstances would ordinarily merit a term of incarceration of three years.

**M. Count 45 (ZN) sexual assault on a female s.246.1 CCC**

[245] The factual summary for this offence may be found at paragraphs 73 through to 76. ZN was 33 years of age when this offence occurred. The offence consists of a single incident that includes the partial removal of ZN's clothing and an act of non-consensual sexual intercourse. There are no threats made by the offender to secure ZN's silence. There are no acts of gratuitous violence to secure ZN's submission beyond that associated with the act of intercourse itself.

[246] Victim impact is referenced in Exhibit S-9. Subsequent to this offence, ZN says that she developed a problem with alcohol. She lost her trust in men and priests. She would eventually lose her marriage and leave her children.

[247] The statutory maximum for this offence is a term of imprisonment of up to ten years. The offender was convicted of this offence following a trial.

[248] This offence committed by this offender in these circumstances would ordinarily merit a term of incarceration of four years.

**N. Count 49 (VN) indecent assault on a female s.149 CCC**

[249] The factual summary for this offence may be found at paragraphs 78 through to 81. VN was between nine and eleven years of age when this offence occurs. This offence consists of a single incident of forced fellatio through to ejaculation. There is gratuitous violence to this victim in order to secure her compliance. This violence takes the form of repeated twisting of VN's ear. VN is cautioned by the offender not to speak about the incident. There are no direct threats made.

[250] Victim impact is referenced by Exhibit S-10. VN says that she became a very angry person as a consequence of this offence. She says that just hearing the offender's name would trigger an angry reaction. She developed a drinking problem at an early age in an effort to dull the pain. She has suffered from recurrent depression. VN's anger has impacted her relationship with both her spouse and children. She became abusive towards her loved ones.

[251] The statutory maximum for this offence is a term of imprisonment of up to 5 years. The offender was convicted of this offence following a trial.

[252] This offence committed by this offender in these circumstances would ordinarily merit a term of incarceration of four years.

**O. Count 51 (CN) indecent assault on a male s.156 CCC**

[253] The factual summary for this offence is found at paragraph 83. CN was between 8 and 12 years of age when this offence occurred. The offence consists of a single incident that involved the partial removal of CN's pants and the fondling of CN's genitals. CN is cautioned by the offender not to speak to others about what he had done. There is no evidence of threats being employed to secure CN's silence.

[254] The statutory maximum for this offence is a term of imprisonment of up to ten years. A guilty plea was entered, but CN was required to testify to establish the facts underlying this offence.

[255] This offence committed by this offender in these circumstances would ordinarily merit a term of incarceration of one year.

**P. Count 53 (GN) indecent assault on a female s.149 CCC**

[256] The factual summary for this offence is found at paragraphs 85 and 87. GN was between 7 and 8 years of age when this offence was committed. The offence consists of a single incident of fondling of GN's breast over top of her clothing while GN is seated on the priest's lap.

[257] Victim impact is referenced by Exhibit S-2. GN says that she was deeply hurt by this offence. She experienced difficulty controlling her anger. At an early age she turned to alcohol to cope with her pain. She now struggles with intimacy and personal relationships. GN finds that she is unable to be a parent. The incident has destroyed her relationship with the church and shaken her belief in God. Her spirituality has been taken from her.

[258] GN says that she doesn't like herself because of what was done to her. She feels ashamed and dirty.

[259] The statutory maximum for this offence is a term of imprisonment of up to five years. The offender was convicted of this offence after a trial.

[260] This offence committed by this offender in these circumstances would ordinarily merit a term of incarceration of six months.

**Q. Count 55 (CP) Buggery on a male s.155 CCC**

[261] The factual summary for this offence may be found at paragraphs 89 through to 92. CP was between 6 and 8 years of age when this offence was committed. The offence consists of a single incident of forced anal intercourse and fellatio through to ejaculation in the child's mouth. Much physical pain was caused to the child by the act of anal intercourse. CP is cautioned by the offender not to talk to others about what he had done. There are no direct threats employed to secure CP's silence.

[262] The statutory maximum for this offence is a term of imprisonment of up to fourteen years. The offender was convicted of this offence after a trial. The likelihood of this offence causing psychological harm to the victim was substantial. The moral culpability associated with this type of crime is very high.

[263] This offence committed by this offender in these circumstances would ordinarily merit a term of incarceration of six years.

**Q(i). Count 56 (CP) buggery of a male s.155 CCC; Count 57 (CP) bestiality/dog s.155 CCC**

[264] The factual summary of this offence may be found at paragraphs 94 through to 97. CP was between 6 and 8 years of age when these offences were committed.

[265] Count 56 relates to a single incident of forced anal intercourse. There is an element of forced confinement associated with this offence. The door to the furnace room was locked by the offender to prevent CP and JU from escaping. CP sustains an injury to his chest from a nail protruding from a table when he was forced against the table during the act of anal intercourse. There is violence used by the offender to secure CP's silence. After being told to not speak of the incident, CP is struck hard on the side of his face by the offender.

- [266] Victim impact with respect to CP is referenced in Exhibit S-11. CP relates that he turned to alcohol and drugs at age 9. He developed a serious problem with anger. He became violent and abusive towards his family. He suffers from depression and suicidal ideation. He dropped out of school at age 9.
- [267] The statutory maximum for this offence is a term of imprisonment of up to fourteen years. The offender was convicted of this offence after a trial.
- [268] This offence committed by this offender in these circumstances would ordinarily merit a term of incarceration of seven years. The risk of this offence causing physical and psychological harm to the victim was substantial.
- [269] In assessing the relative seriousness of this offence, the Court has not taken into account the allegations made with respect to JU. Evidence related to the alleged buggery of JU by this offender was only admissible as part of the narrative and not for a truth purpose. There is no charge related to any act of criminal misconduct with this other child.
- [270] Count 57 is inextricably related to the events outlined in Count 56. CP and JU enter a furnace room at the Mission and interrupt the offender who is then engaged in an act of anal intercourse with his dog.
- [271] The statutory maximum for this offence is a term of imprisonment of up to fourteen years. The offender was convicted of this offence after a trial.
- [272] This offence committed by this offender in these circumstances would ordinarily merit a term of incarceration of one year.

**Q(ii). Count 58 (CP) indecent assault on a male s.156 CCC**

- [273] The factual summary for this offence is found at paragraph 99. CP was between 7 and 9 years of age when this offence was committed. This offence consists of a single act of forced fellatio together with an element of confinement in the Mission's small radio room.
- [274] The statutory maximum for this offence is a term of imprisonment of up to ten years. The offender was convicted of this offence after a trial.

[275] This offence committed by this offender in these circumstances would ordinarily merit a term of incarceration of four years.

**R. Count 64 (MO) indecent assault on a female s.149 CCC**

[276] The factual summary for this offence may be found at paragraphs 101 and 102. MO was between 18 and 22 years of age when this offence was committed. The offence consists of a single act of fondling of breasts under clothing and fondling of genitals on top of clothing. The offence is committed by the offender while he is administering the sacrament of confession.

[277] The statutory maximum for this offence is a term of imprisonment of up to five years. The offender was convicted of this offence after a trial.

[278] This offence committed by this offender in these circumstances would ordinarily merit a term of incarceration of one year.

**S. Count 73 (LT) indecent assault on a male s.156 CCC**

[279] The factual summary for this offence can be found at paragraph 104. LT is between 7 and 11 years of age when this offence is committed. The offence involves the fondling of LT's genitals over top of clothing while LT is seated in the priest's lap. There is no evidence of any threats being made or gratuitous violence.

[280] The statutory maximum for this offence is a term of imprisonment of up to ten years. The offender was convicted of this offence after a trial.

[281] This offence committed by this offender in these circumstances would ordinarily merit a term of incarceration of six months.

**S(i). Count 74 (LT) buggery of a male s.156 CCC**

[282] The factual summary for this offence may be found at paragraphs 106 through 109. LT was between 7 and 11 years of age when this offence was committed. The offence consists of an act of unprotected anal intercourse. There is much physical pain to the child. There is an element of confinement. The offender locks the door to the furnace room to prevent LT from escaping.



- [283] Victim impact is referenced in Exhibits S-4 and S-4A. LT says that the offence has destroyed his trust in all priests and his faith in the church. He rarely attends church except for weddings and funerals of friends or family.
- [284] LT developed a sniffing problem with propane and solvents subsequent to this offence. He almost lost his life as a consequence of inhaling solvents. He became promiscuous as a teen, but found that he could not develop a relationship that would last. He is now withdrawn and socially isolated. He stays home and does not go out as he used to. He believes others are talking about him.
- [285] LT says that he has difficulty controlling his anger. He says that he used to take out his anger on his family. Now he lives alone.
- [286] The statutory maximum for this offence is a term of imprisonment of up to ten years. The offender was convicted of this offence after a trial.
- [287] This offence committed by this offender in these circumstances would ordinarily merit a term of incarceration of six years. The risk of causing both physical and psychological harm to the child by this offence was substantial. The offender's moral culpability is correspondingly very high.

#### **T. Count 75 (MT) indecent assault on a male s.156 CCC**

- [288] The factual summary for this offence can be found at paragraph 111. MT was between 8 and 12 years of age when this offence was committed. The offence consists of touching MT's buttocks on top of his clothing.
- [289] The statutory maximum for this offence is a term of imprisonment of up to ten years. A guilty plea to this offence was entered. MT was required to testify to establish the facts underlying the guilty plea.
- [290] This offence committed by this offender in these circumstances would ordinarily merit a term of incarceration of six months.

**U. Count 76 (TU) indecent assault on a male s.156 CCC**

- [291] The factual summary for this offence is found at paragraphs 113 through to 116. TU was between 14 and 18 years of age when this offence was committed. The offence consists of a momentary fondling of TU's buttocks on top of clothing.
- [292] Victim impact is referenced in Exhibit S-13. TU has developed a violent temper. His anger has directly impacted his relationship with his spouse. He has been sentenced on three occasions for acts of domestic violence. TU's anger eventually results in the domestic relationship coming to an end.
- [293] The statutory maximum for this offence is a term of imprisonment of up to ten years. A guilty plea to this offence was entered. TU was required to testify to establish the facts underlying the guilty plea.
- [294] This offence committed by this offender in these circumstances would ordinarily merit a term of incarceration of three months.

**V. Court file# 07-13-85 (TA) Count 1 indecent assault on a male s.156 CCC**

- [295] The factual summary for this offence is found at paragraphs 118 and 120. The victim was between 10 and 14 years of age when this offence was committed. The offence consists of fondling of TA's genitals on top of clothing while TA is seated in the priest's lap. The offender did attempt to put his hand inside TA's pants, but was unable to do so.
- [296] Victim impact is referenced by Exhibit S-8. TA says that this offence destroyed his faith in religion and priests. It affected his relationship with people who attended church. The ugly memory of this incident continues to plague him. His life is difficult, and his road to recovery long and hard.
- [297] The statutory maximum for this offence is a term of imprisonment of up to ten years. The offender was convicted of this offence after a trial.
- [298] This offence committed by this offender in these circumstances would ordinarily merit a term of incarceration of six months.

## **VII. SENTENCING**

### **A. The application of the totality principle and assignment of concurrent and consecutive terms of imprisonment**

- [299] Criminal offences involving different victims committed at different locations and on different dates should ordinarily attract consecutive terms of imprisonment. Separate criminal acts should receive separate sanctions. Proportionality must be maintained to reflect the gravity and moral culpability associated with individual criminal acts.
- [300] The jurisprudence identifies two exceptions to the general rule outlined above.
- [301] Where multiple offences arise out of the same transaction and contain similar elements, a concurrent sentence may be imposed. When this is done, care must be taken to ensure that the overall end result is proportional to the inherent seriousness of all offences when considered together. Proportionality is maintained by inflating the penalty for the most serious offence to reflect the underlying concurrent sentences that form part of this same transaction.
- [302] The second exception relates to a sentencing court's application of the totality principle.
- [303] The "totality principle" is nothing more than a restatement of a fundamental sentencing principle that requires proportionality in sentencing. The overall sentencing "package" for multiple offences must be proportional to the gravity of the offences and the moral blameworthiness of the offender when considered together. The totality principle thus requires an assessment of whether the combined effect of imposing consecutive sentences for multiple offences will exceed the overall moral culpability of the offender for committing these offences in these particular circumstances.
- [304] Where the combined effect of consecutive sentences becomes disproportionate to the overall gravity of the offences and the offender's moral blameworthiness, a sentencing court may use concurrent sentences of imprisonment to ensure that proportionality is maintained. This can be done even in circumstances where consecutive sentences would otherwise have been employed.

- [305] With one exception, all of the counts for which Mr. DeJaeger has pled guilty or been found guilty involve separate and distinct offences on different victims or are offences involving the same victim committed on different days. Consecutive sentences should ordinarily be applied in these circumstances.
- [306] The exception referenced above relates to Counts 5 and 6, where restraints were applied to a victim to facilitate the commission of an indecent assault. The elements associated with the offence of unlawful confinement are very distinct from those associated with the indecent assault. In this circumstance, a consecutive sentence is still entirely appropriate, notwithstanding that this offence is inextricably linked to the sexual offence.
- [307] If consecutive sentences are imposed for all of the offences before the court, the overall length of the resulting period of imprisonment would result in a combined sentence that is in excess of 75 years of imprisonment. Having given anxious consideration to this offender's present age and circumstances, his overall moral culpability, and the gravity of the various offences committed by him, the Court finds that it is necessary to apply the totality principle in order to maintain proportionality in sentencing in this case.
- [308] The Defense argues, based on other sentencing precedents, that an overall sentence of 12 years of imprisonment would be sufficient to achieve proportionality. In making this submission, the Defense references section 718.2(b) & (c) of the *Criminal Code* that provides:
- ...
- (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...
- [309] Sentencing is a very individualized process. The Court must consider the unique circumstances of the offences before the Court. It must consider and weigh both aggravating and mitigating features of these offences. The Court must consider the unique circumstances of this offender. Into this mix, the Court must also consider jurisdictional factors unique to Nunavut.

- [310] Many reasons can be advanced to distinguish the sentencing precedents produced by both Crown and Defense. No two cases are alike. Given the number of variables that must be considered, the search for similarity is often a fruitless exercise. While parity in sentencing is a laudable objective, in practical terms it is very difficult to achieve.
- [311] The Crown urges the Court to impose a combined sentence of 25 years of imprisonment to achieve proportionality. While not unknown in Canada, sentences of imprisonment of this magnitude are extremely rare. The handful of cases involving this length of sentence are distinguishable on their facts.
- [312] In the case of *R v KDH*, 2012 ABQB 471, 102 WCB (2d) 621 [*KDH*], the offender pled guilty to 27 serious sexual offences involving his children. He was convicted of one further count of sexual assault following a trial. The crimes were many and the facts associated with these crimes egregious. These offences were seriously aggravated by both a breach of trust and abuse of authority. The offender was found to have little remorse despite the entry of guilty pleas. He had a limited record with no related entries for sexual offences. *KDH* was sentenced to a cumulative total of 18 years of imprisonment following the application of the totality principle.

## **B. The sentence**

- [313] Mr. DeJaeger entered guilty pleas to eight less serious offences. In all but 7 of these counts, the victims still had to testify. Mr. DeJaeger went to trial on 72 counts and has now been convicted of a further 24 counts. While many of the offences in the *KDH* case were extremely serious, the same can be said for a significant number of offences in Mr. DeJaeger's case involving the rape or buggery of adolescents. Many of Mr. DeJaeger's victims struggle with the tragic human consequences of his offending to this day. *KDH*'s crimes were committed in Alberta, not in Nunavut. Nunavut struggles with a much higher per capita rate of commission of sexual offences against children.

- [314] The proposed global sentence of 12 years of imprisonment suggested by the Defence is not proportional to the number and gravity of Mr. DeJaeger's offences or the high moral culpability flowing from the circumstances in which they were committed. Given the present age of the offender, a 25 year sentence would likely result in this offender serving a sentence of imprisonment until death intervened.
- [315] Having anxiously considered the totality principle and the principle of proportionality, the Court has determined that a global term of imprisonment of 19 years is appropriate for this offender committing these many offences in the circumstances presented here.
- [316] An exemplary sentence is needed to reflect not only the high moral blameworthiness associated with the crimes, but to denounce and deter sexual offences against children and adolescents in Nunavut. Based on existing jurisprudence, this 19 year sentence is at the very high end for fixed term sentences of imprisonment in Canada.
- [317] From this notional sentence of 19 years of imprisonment must be deducted a credit for the significant period of pre-trial detention already served by Mr. DeJaeger.

### **C. Credit for pre-trial custody**

- [318] Mr. DeJaeger has been in custody since his removal from Belgium and his return to Canada in January 2011. He has four years of actual detention to his credit. It is common ground between Crown and Defense that this should result in a credit toward his sentence at the rate of two for one.
- [319] This enhanced credit reflects the fact that the amount of time spent in pre-trial detention is not otherwise taken into account by the correctional authorities in their calculation of Mr. DeJaeger's parole eligibility date. Enhanced credit is also awarded to compensate for the harsh conditions associated with pre-trial detention. Detainees are not usually eligible to participate in programming until they are sentenced.
- [320] While credit for pre-trial detention should ordinarily be reduced where an offender breaches court process and skips bail, many of the offences now before the Court for sentence did not exist at the point Mr. DeJaeger fled Canada.

- [321] Much of the in custody pre-trial delay was caused by the Crown as it waited for the *Royal Canadian Mounted Police [RCMP]* investigation in Igloolik and elsewhere to be completed. There were a number of substantial admissions made by Defense in an effort to expedite the trial. In these circumstances, it is appropriate, notwithstanding the bail breach, to apply pre-trial credit at the usual rate of two for one.
- [322] In the end result, Mr. DeJaeger will be afforded a credit of 8 years for his pre-trial detention. This results in a net sentence of 11 years imprisonment remaining to be served. Mr. DeJaeger will be 78 years of age at warrant expiry. Any medical concerns can be addressed by *Corrections Canada*.
- [323] No restrictions have been put on Mr. DeJaeger`s eligibility for parole. The Court leaves the decision with respect to Mr. DeJaeger`s release on parole entirely to the discretion of the *National Parole Board*. Any change in Mr. DeJaeger`s medical circumstances will likely be considered by the *National Parole Board*.
- [324] The chart that follows shows how the Court arrives at the 11 year sentence using a combination of consecutive and concurrent terms of imprisonment.

<b>Count Number</b>	<b>Charging Section</b>	<b>Sentence</b>	<b>Conc or Consec</b>	<b>Remand Credit</b>	<b>Remainder to Serve</b>
Count 6 (JA)	s.149 CCC	4 Years	Consec	1.5 Year	2.5 Years (Consec)
Count 5 (JA)	s. 247(2) CCC	3Years	Consec	1.5 Year	1.5 Years (Consec)
Count 10 (MA)	s. 156 CCC	1 Year	Conc	-	1 Year (Conc)
Count 12 (CA)	s. 156 CCC	6 Months	Conc	-	6 months(Conc)
Count 13 (LA)	s. 144 CCC	6 Years	Conc	-	6 Years (Conc)
Count 18 (LKC)	s. 149 CCC	6 Months	Consec	3 Months	3 Months (Consec)
Count 19 (LKC)	s. 149 CCC	6 Months	Conc	-	6 Months (Conc)
Count 1 (LKC)	s. 144 CCC	6 Years	Conc	-	6 Years (Conc)
Count 2 (LKC)	s. 144 CCC	6 Years	Conc	-	6 Years (Conc)
Count 3 (LKC)	s. 149 CCC	2 Years	Conc	-	2 Years (Conc)
Count 24 (JI)	s. 156 CCC	18 Months	Conc	-	18 Months (Conc)
Count 26 (LI)	s. 156 CCC	1 Year	Conc	-	1 Year(Conc)
Count 33 (PI)	s. 156 CCC	6 Months	Conc	-	6 Months (Conc)
Count 34 (PI)	s. 156 CCC	1 Year	Conc	-	1 Year (Conc)
Count 35 (DI)	s. 149 CCC	6 Months	Conc	-	6 Months (Conc)
Count 36 (MI)	s. 149 CCC	4 Years	Conc	-	4 Years (Conc)
Count 37 (RI)	s. 156 CCC	2 Years	Conc	-	2 Years (Conc)
Count 43 (LK)	s. 149 CCC	3 Years	Conc	-	3 years (Conc)
Count 45 (ZN)	s. 246.1 CCC	4 Years	Conc	-	4 Years (Conc)



<b>Count Number</b>	<b>Charging Section</b>	<b>Sentence</b>	<b>Conc or Consec</b>	<b>Remand Credit</b>	<b>Remainder to Serve</b>
Count 49 (VN)	s. 149 CCC	4 Years	Conc	-	4 Years (Conc)
Count 51 (CN)	s. 156 CCC	1 Year	Conc	-	1 Year (Conc)
Count 53 (GN)	s. 149 CCC	6 Months	Conc	-	6 Months (Conc)
Count 55 (CP)	s. 155 CCC	6 Years	Conc	-	6 Years (Conc)
Count 56 (CP)	s.155 CCC	7 Years	Consec	2.5 years	4.5 Years (Consec)
Count 57 (CP) (Dog)	s. 155 CCC	1 Year	Conc	-	1 Year (Conc)
Count 58 (CP)	s. 156 CCC	4 Years	Consec	2 Years	2 Years (Consec)
Count 64 (MO)	s. 149 CCC	1 Year	Conc	-	1 Year (Conc)
Count 73 (LT)	s. 156 CCC	6 Months	Conc	-	6 Months (Conc)
Count 74 (LT)	s. 156 CCC	6 Years	Conc	-	6 Years (Conc)
Count 75 (MT)	s. 156 CCC	6 Months	Consec	3 Months	3 Months (Consec)
Count 76 (TU)	s. 156 CCC	3 Months	Conc	-	3 Months (Conc)
Count 1 (TA)	s. 156 CCC	6 Months	Conc	-	6 Month (Conc)
<b>Total Global Sentence</b>				79 Years, 3 Months	
<b>Total Global Sentence, adjusted for totality</b>				19 Years	
<b>Total Global Sentence, adjusted for remand Credit</b>				11 Years	

## VIII. CONCLUSION

### A. Ancillary orders

- [325] A number of the offences for which Mr. DeJaeger stands convicted are primary designated offences for the purpose of the section 487.04 of the *Criminal Code*. In accordance with the provisions of section 487.051 of the *Criminal Code*, Mr. DeJaeger is ordered to provide a sample of his DNA for registration in the national DNA databank.
- [326] Mr. DeJaeger is ordered to register and report as required under the *Sex Offender Information Registration Act*, SC 2004, c 10. This order is for life.
- [327] Mr. DeJaeger is prohibited from owning, possessing or using a firearm, ammunition, or explosive substance for 10 years pursuant to section 109 of the *Criminal Code*. Mr. DeJaeger is further prohibited from owning, possessing, or using any restricted firearm, ammunition, or items including a cross-bow for life. This order is mandatory upon conviction for an indictable offence carrying a penalty of 10 years imprisonment or more. Any such items now in his possession, together with any firearm licenses or FAC, must be surrendered forthwith to the nearest RCMP detachment. Any such items are forfeited to the Attorney General for such disposition as may be directed.
- [328] Pursuant to section 161 of the *Criminal Code*, Mr. DeJaeger is prohibited from:
- a. Attending a public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, school ground, playground, or community centre;
  - b. Seeking or obtaining any employment, whether or not the employment is remunerated or becoming a volunteer in a capacity that involves being in a position of trust or authority towards persons under the age of 16 years;
  - c. Using a computer system for the purpose of communicating with a person under the age of 16 years.

[329] This order of prohibition under section 161 of the *Criminal Code* is for life.

## **B. Concluding Remarks**

### **(i).The Court`s remarks on the supports available at sentencing**

[330] Victim support during the trial and subsequent sentencing hearing has been provided by a number of organizations.

[331] *Mental Health Services, Government of Nunavut*, made five counselors available at the Courthouse. *Community Justice, Government of Nunavut* provided two victim support coordinators. These victim support coordinators were instrumental in facilitating the involvement of the *Ilisaqsivik Society [Society]* from Clyde River, Nunavut.

[332] This *Society* is a non-profit community-based Inuit organization that is dedicated to promoting community wellness. The Society sent four counselors to Iqaluit who provided support in both English and Inuktitut to victims and community members. The cost of sending three of the four counselors was borne by the Society.

[333] This support was invaluable. It made the burden a little lighter for those attending court.

[334] The Court thanks each and every organization for this assistance. A heart sent thank-you is extended to those involved for their time and effort in helping those affected.

### **(ii).The Court`s address to the victims**

[335] This Court is powerless to undo the past. No sentence can ever compensate you for what has been taken. No sentence can ever compensate you for the pain and anguish that you have suffered. No sentence can ever return the quality of life that has been missing these past many years. For many of you, no sentence will ever be long enough, or hard enough.

[336] Your anger must be put aside. Your trust in others must be restored. You must learn to rely on the good around you, in your family, in your neighbors, and in your community. Despite what has happened to you, there is still much good in people. It is all around you. You will find that by sharing your burden with others, the burden will eventually become easier to carry.

[337] The time has now come for you to move on with your lives.

[338] The Court wishes you well in the long healing journey that lies ahead.

**(iii). The Court's address to the accused**

[339] Your selfishness has devastated a generation of young Roman Catholic parishioners in Igloolik. Many lives have been irrevocably altered by your dark legacy. For many victims, the commission of your offence has marked the end of living and the beginning of their survival.

[340] You must now atone for the many wrongs that you have inflicted on others.

[341] This sentence is only the beginning of that atonement.

Dated at the City of Iqaluit this 30th day of January, 2015

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Justice R. Kilpatrick  
Senior Judge  
Nunavut Court of Justice