Translated from the original French

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| R. c. R.G. | | | | | | | | 2021 QCCQ 9958 |
| COURT OF QUEBEC | | | | | | | | |
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| CANADA | | | | | | | | |
| PROVINCE OF QUEBEC | | | | | | | | |
| DISTRICT OF | | | LONGUEUIL | | | | | |
| LOCALITY OF | | | | LONGUEUIL | | | | |
| “Criminal and Penal Division” | | | | | | | | |
| Nos.: | | 505-01-166958-203 | | | | | | |
|  | | 505-01-167191-200 | | | | | | |
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| DATE: | August 16, 2021 | | | | | | | |
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| PRESIDING: | | | THE HONOURABLE | | | MAGALI LEPAGE, J.C.Q. | | |
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| SENTENCING JUDGMENT | | | | | | | | |
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| Publication Ban  This judgment is protected by an order restricting the publication of any information  that could identify the victim or a witness  (s. 486.4 *Cr. C.*) | | | | | | | | |

**INTRODUCTION**

1. The accused, R.G., is being sentenced today for sexual offences committed against X and Y, two young girls with whom he was acquainted, and for possession of illegal pornography.
2. In October 2020, he pleaded guilty on counts of sexual touching, making pornography available for the purpose of facilitating the commission of a sexual offence, and making illegal pornography. The facts are that the accused took photos of sexual acts forced on the two victims. When he was arrested, he was also in possession of 40,000 illegal images, which are the subject of a separate file, for which he has also pleaded guilty. He has been in custody since his arrest.

**BACKGROUND**

1. The accused and victim Y’s father were friends. He is older than the father and held a privileged place in G’s life, such that he was a part of the daily lives of the father and his daughter, taking on the role of a grandparent vis-à-vis Y. Initially, G. was raising Y, born in 2011, on his own. She has an intellectual disability and learning and language problems. The accused offered to give the father some respite from time to time by looking after the child, who sometimes slept at his home on the weekend. These were the circumstances in which, from 2016 to December 2019, he sexually assaulted, photographed, and showed pornographic images to Y, who was between 5 and 7 years old at the time.
2. G. was informed of this not by his daughter but by the second victim X, who is the child of G.’s new spouse. She revealed that she and Y were victims of the accused. X is the same age as Y and they have been living together since their parents’ union. The accused also looked after X on weekends, initially with Y and later on her own.
3. In January 2020, she strongly objected and refused to let Y go by herself to the accused’s home for the weekend. That is when the abuse was revealed. X was also subjected to the same abuse as Y, over a shorter period.
4. The accused touched their genitals directly on the skin, made them watch pornographic movies and cartoons, and took photos of them in sexually explicit positions.
5. The two victims met with the police and recounted sexual acts involving their private parts. For example, X said that she woke up during the night and found the accused next to her, with her underpants pulled down and her vulva wet. The accused said that he poured water on the child’s vulva and spread the labia to take a photo.
6. Using simple words, Y described sexual acts ([translation] doing lalal on the vulva, doing pee pee in the buttocks, being kissed in the mouth). The accused said that he sat the child on him and rubbed her against his penis. He does not admit to penetration.
7. An analysis of the accused’s electronic devices confirms the girls’ statements. The results of an analysis of the accused’s camera memory card are found in police report S-3.[[1]](#footnote-1) Three (3) sets of photos are identified, including one from September 2016, where Y is seen laying on her side in pyjamas next to a man with an erection pressing his penis against the child’s lips.
8. The second set of photos dates from June 2019. One of the victims is seen nude in the bath or on the sofa, with close-ups of her genitals. She is seen spreading her own labia while holding a penis.
9. The third set shows one of the victims in the bath, then in a bathrobe with her underwear visible.
10. The police met with the accused, who confirmed some of the victims’ statements, i.e., taking the photos, the touching, the possession, and the sharing of pornography with the girls. He denied all other behaviour but acknowledged that he masturbated in front of them.
11. The charges of possessing child pornography are based on the results of a search that uncovered photos of the girls Y and X along with a multitude of other images accessible online involving the sexual exploitation of many other children. Some of the victims in the 40,000 child pornography images seized in the accused’s possession have now been identified. The prosecution filed many videos and statements by the victims and their families to establish the harm related to the sending and possession of illegal material.

**EVIDENCE AT THE HEARING**

1. A pre-sentence report and sexological expert report were filed. From these reports, the Court accepts the following relevant elements:

**- sexological expert report:**

* When questioned on the facts, the accused acknowledged that he committed the alleged acts. He acknowledged that for three years, he touched and kissed Y all over, performed cunnilingus, sat her on him, rubbed his penis against her buttocks, and masturbated in front of the children.[[2]](#footnote-2) He acknowledged that he touched Y’s genitals so that he could take photos of her.[[3]](#footnote-3)
* He minimized, even denied, any sexual interest in the girls.[[4]](#footnote-4)
* He acknowledged that he possessed 40,000 illegal images and regularly used child pornography.[[5]](#footnote-5)
* He minimized, even denied, the sexualisation of these files,[[6]](#footnote-6) that is, the sexual arousal component related to viewing child pornography.[[7]](#footnote-7)
* When asked about this use, the accused said: [translation] “I watched it for two years, on the weekends.It didn’t arouse me. I never masturbated. I watched it to try to understand how parents could let their children do that. I found it interesting, some photos were nice, many of the children were having fun.[[8]](#footnote-8) The accused denied masturbating while viewing illegal images.[[9]](#footnote-9)
* He acknowledged that he took sexual images of the two children.
* He acknowledged that he made them look at child and adult pornography.[[10]](#footnote-10)
* He acknowledged that he had sexual thoughts about Y but not about X.[[11]](#footnote-11)
* He minimizes the consequences of his behaviour on the victims Y and X or on the victims who were sexually abused when the illegal pornography was made.[[12]](#footnote-12)
* The accused’s history reveals no particular issue during his childhood or adolescence.[[13]](#footnote-13)
* The accused is not addicted to drugs or alcohol.
* The final diagnosis describes the accused as dealing with deviant pedophiliac sexual interests, specifically involving prepubescent girls.[[14]](#footnote-14)
* While the risk of reoffending is not high on the standardized scale, the expert believes that there is cause for concern.

**- pre-sentence report (S-6)**

* The accused is 62 years old and has five children from two separate relationships. After being convicted of sexually assaulting one of his daughters, he had little contact with his children and did not participated much in raising them.[[15]](#footnote-15)
* The accused cannot identify what motivated him to commit the acts against the girls he claims to love a lot and whom he considers his grandchildren.[[16]](#footnote-16)
* He said that he is ashamed and full of remorse.
* He has little empathy for the victims.[[17]](#footnote-17)
* The reasons for committing the act are the accused’s dissatisfaction with his own emotional life, the access to the victims, and their vulnerability.[[18]](#footnote-18)

**TESTIMONY**

1. Y’s parents provided the Court with victim impact statements that were read very carefully. The Court accepts that the acts committed propelled the child toward a form of hypersexualized conduct that was expressed through various behaviours towards herself that her mother finds inappropriate. The Court understands that Y already had certain challenges mixing with the other children and that this situation has only exacerbated these issues.
2. The repercussions to X were immediate. Her mother said that the child was always open with her, but that she noticed after she returned from her first visit that the child was withdrawn, her grades were affected, and her behaviour changed.
3. The parents’ respective employments also suffered repercussions. Exhausted by both the disclosure and the repercussions, forced to invest more time and energy to support the girls, they had to stop working or reduce their work hours.
4. The accused’s breach of the relationship of trust also caused the parents to worry about the other adults around their children, which isolated both the parents, who were afraid of men being around the girls, and the girls, who had a harder time getting permission to visit elsewhere.
5. In summary, the consequences to the girls and their family were major.
6. The Court also read the nine written or video-recorded victim impact statements (S-10) of some of the child pornography victims and their families. These videos present victims that the authorities were able to identify over the years. The process used to identify and then record the statements is explained in the affidavit of Monique St-Germain, General Counsel for the Canadian Centre for Child Protection Inc., filed under S-10. It is sufficient to note that all the victims are represented by lawyers with whom Ms. St-Germain is in contact. They certified the identity of the victims and the pseudonyms they used to protect their true identity and their safety. The videos are of American victims so the process was initially implemented in the United States. Ms. St-Germain made the necessary connections so that the evidence was also admissible before the Canadian courts.
7. Without repeating the details of all the testimony, the Court accepts the following relevant elements, including:

* C. is now a young adult and testified on how the sexual abuse and constant dissemination of the images taken of her when she was 8 years old has affected her*.* As an adolescent, she had personal issues with self-esteem, school performance, suicidal thoughts, and severe depression. She still needs therapy. She withdrew from the victim notification program that informed her when images of her were identified in child pornography cases. The constant reminder that images of her were circulating online and regularly viewed was devastating and she felt constantly re-victimized.
* J. is angry, sad, insecure, and disgusted. She knows that images of her are being constantly exchanged and she understands that nothing can be done to control this, that nobody can stop it. She is afraid of being recognized and becoming a target for future assailants, leaving her socially isolated and finding it difficult to interact with those around her. She expects to continue being affected by these difficulties until she is 40 or 50 years old.
* J. is now 18 years old. Photos of her abuse at the hands of her father continue to circulate. It enrages her and she wishes they could be destroyed. She is afraid of being recognized. She has trust issues. She stopped the therapy that was supposed to help her. She only wants to forget, but the photos circulating make it impossible.
* A. is afraid every day of being recognized*.* She suffers because the images are still, and always will be, available. She had problems studying and had to drop out of university. She is withdrawn and avoids situations that make her uneasy, which then makes her feel powerless and in despair. The extent of her humiliation is obvious. She lives in fear of being identified, that someone will *discover her secret*. She feels frozen in time. She feels like she is always leading a double life, one that forces her to lie about what her abuser did to her and one that keeps her silent today, trapped behind a wall of shame. She still suffers every day.
* L. testified on how dismayed she was when she learned that the images of her abuse were and are still circulating online. She is furious with the people who view the images and afraid of being recognized by her friends and family. She has insomnia, episodes of dissociation, problems at school, and is paranoid about the long-term consequences of the perpetual transmission of child pornography. Even though she is now a mother herself, she said that she is afraid and lives in fear of being recognized, that she was recognized and had to withdraw from social media so that ill-intentioned people could not use current photos of her and her children. She has participated in many therapies but the trauma is complex. She says that managing the stress caused by the idea that strangers continue to view images of her childhood abuse [translation] “is like a full-time job”.
* The parents of the various victims also provided videos or statements that the Court viewed or read. Overall, the Court notes how the consequences of the crimes are similar from one family to the next. The same sad themes recur: the re-victimization caused by the uncontrollable circulation of the images, the guilt, the constant fear of being recognized, the heavy burden on the children that prevents them from being available to invest in activities they should want to do or be able to do like other children or adolescents. They are also afraid and worried that strangers will target the children after identifying them and abuse them again. Also recurrent is the need for treatment to help manage the anxiety, trauma, and behavioural problems, as well as therapy for the children and the parents.
* Last, child pornography victims feel powerless and distress faced with the fact that the images continue to circulate. In addition, years later many still suffer from behavioural and mental health issues, isolation, fear, and anger that affect their ability to develop normally.

1. The evidence establishes that the harm to the victims is real, serious, and continues over time at the same pace as the images continue to be shared and viewed.
2. The accused testified. He said that his detention conditions are difficult due partly to the pandemic and partly to his health because he has emphysema and asthma. He therefore stays in his cell instead of participating in outings in the yard because he is afraid of the other inmates who do not wear a mask. He claims he is having problems getting his medications, that is, his pumps. He has to stay in his cell when he does not receive the medications at the right time. He ended up catching COVID-19 and had to isolate in his cell for 14 days, which meant two weeks without access to the showers.
3. He has not been allowed to have any visits since being incarcerated.
4. When questioned by his counsel on what he would like to say to the victims, Y and X, the accused could think of nothing. He then read a letter to apologize. He acknowledged abusing the trust and vulnerability of the children and their parents. He said that he has time to think in prison and wants to focus on himself. He said that his acts will [translation] “weigh on his conscience for the rest of his life”. He agreed to seek treatment to control his problem and his urges.

**POSITIONS OF THE PARTIES**

1. Based on the objectives of denunciation and deterrence, the prosecution asks the Court to sentence the accused to consecutive sentences totalling 15 years’ imprisonment. The prosecution also asks the Court for delayed parole in application of s. 743.6 of the *Criminal Code*.
2. The defence submits that 7 years’ imprisonment is a fit sentence and objects to the application of s. 743.6 *Cr. C.*

**THE LAW**

***Criminal Code* principles**

1. Section 718 of the *Criminal Code* (*Cr. C.*) sets out the sentencing purposes and principles:

(a) to denounce unlawful conduct;

(b) to deter the offender and other persons from committing offences;

(c) to separate offenders from society, where necessary;

(d) to assist in rehabilitating offenders;

(e) to provide reparations for harm done to victims or to the community; and

(f) to promote a sense of responsibility in offenders, and particularly acknowledgement of the harm done to victims and to the community.

1. Section 718.1 *Cr. C.* adds that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.
2. Section 718.2 *Cr. C.* states that the sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.
3. The objectives of denunciation, deterrence, separation, rehabilitation, and reparation are not hierarchical and a fit sentence will vary depending on the importance given to any one of them. In *R. v. Nasogaluak*,[[19]](#footnote-19) the Supreme Court of Canada recalled the law applicable to sentencing and the broad discretion of trial judges to craft a sentence that is tailored to the circumstances.
4. Section 718.01 *Cr. C.* states that when the Court imposes a sentence for an offence involving the abuse of a minor, it shall give primary consideration to the objectives of denunciation and deterrence.
5. A fit sentence must be proportionate to the gravity of the offence and the responsibility of the accused. It is the result of a balancing act where the Court grants more or less weight to the various objectives depending on the circumstances. It is an individualized process.

**Possession of child pornography**

1. Authors Parent and Desrosiers describe the range of sentences for child pornography offences as follows:

[translation]

In child pornography matters, shorter sentences of 6 months to 1 year are usually imposed when individuals keep illegal images for strictly private use[[20]](#footnote-20) and there are several mitigating factors. The minimum sentence of 12 months is required *in cases with specific mitigating factors related to the gravity of the offence or the degree of responsibility of the offender*.[[21]](#footnote-21)

1. Intermediate sentences of 12 to 18 months usually have many aggravating and few mitigating factors. The authors observe that sentences longer than the minimum sentence are imposed when the crime is subjectively aggravated by the following factors: contribution to a network, shared files, degrading content of the images, length of time over which the offence was committed, and the victims’ young age.[[22]](#footnote-22)
2. Longer sentences of 18 to over 24 months are generally imposed when the same type of aggravating factors exist in the absence of any mitigating factors combined with the offender’s high degree of responsibility, the presence of similar prior convictions, unresolved sexual issues, major cognitive distortions, and weak insight into the consequences of the offence. [[23]](#footnote-23)

**FILES CONCERNING BOTH VICTIMS: touching and making pornography**

1. Sentences vary greatly in matters of sexual touching. The range for offences at the bottom of the scale is 3 to 12 months’ imprisonment.
2. The Court is aware that these teachings pre-date the most recent developments in the case law.[[24]](#footnote-24)
3. Therefore, the Court must take into account the recent teachings of the Supreme Court in *Friesen*,[[25]](#footnote-25) which confirms that primary consideration must be given to the objectives of denunciation and deterrence and that sentences for such offences are now harsher.
4. Parliament’s decision to prioritize denunciation and deterrence for offences involving child abuse by enacting s. 718.01 *Cr. C.* confirms that courts must impose harsher punishments for sex offences involving children.
5. The Court accepts the following relevant aggravating and mitigating factor:

**AGGRAVATING FACTORS**

* Breach of trust;
* Abuse of authority;
* Section 718.2(a)(ii.1) *Cr. C.*: the offence involves the abuse of a minor;
* The young age of the victims Y and X;
* The number of unidentified victims who are children in the images in the accused’s possession;
* The fragility and extreme vulnerability of the victims Y and X;
* The harm to Y and X, which is difficult to measure but definitely present;
* The extent of the harm to victims of possession of child pornography as established by the prosecution’s case;
* A criminal record for the same type of offence, i.e., sexually assaulting his 8-year-old daughter in 2000;
* Minimizing the delinquent behaviour to the point of denying any deviant interest;
* Distortions which allow the offender to justify his substantial use of pornography, expressed in the following remarks to the sexologist:

[TRANSLATION]

* I’m not addicted to child pornography.
* I didn’t think they were abused because the children in the images I viewed were often smiling.
* I feel like I committed a victimless crime because I had no physical contact.
* Viewing sexual images of children online doesn’t mean that I committed a sex offence.
* The highly deficient ability to empathize emotionally;[[26]](#footnote-26)
* The risk of re-offending;
* The criminal record that includes a similar conviction.

**MITIGATING FACTORS**

* The guilty pleas;
* The fact that the accused was an asset to society in that he held long-term employment until he was incarcerated;[[27]](#footnote-27)
* The openness and willingness required to participate and complete specialized sex offender treatment.[[28]](#footnote-28)

**OTHER RELEVANT FACTORS**

* The period of incarceration in the midst of the pandemic makes the time being served especially difficult. The Court does not plan to calculate any form of credit, but instead wants to include it as part of the elements to be considered when establishing the term of detention required.
* The Court also considers the opinion of the person who prepared the pre-sentence report, who notes that the accused is quite an isolated person. His family is his main social network. He would like to go and live with his sister when he is released from custody, but that environment does not encourage any self-reflection and is not a bulwark against re-offending.[[29]](#footnote-29)

**ANALYSIS**

**CHILD PORNOGRAPHY**

1. The accused was found in possession of over 40,000 illegal images. They were of nude children, ranging from babies to girls between 12 and 13 years old, in suggestive or explicit positions. The images also depicted fellatio, masturbation, and penetration.
2. He was also in possession of many pornographic cartoon videos and comic books. Some of these videos were shown to the victims.
3. Objectively, the number of files is significant. The content is diversified and includes serious acts of sexual offences involving children.
4. The reports paint a surprising portrait, to say the least, of the accused, who by all appearances is addicted to child pornography.
5. The accused’s remarks are rather worrisome when he tries to refute his interest in child pornography by offering unrealistic and baseless justifications to explain his use. It is a clear sign that the accused does not realize the seriousness of the acts committed, which demonstrates an obvious need to be educated and made aware of the problem of child pornography. It is also a manifestation of the distortions diagnosed by the expert. In the end, the Court hopes that the extensive evidence adduced by the prosecution at trial allowed the accused to start reflecting on his participation in a crime that creates real victims who might never recover.
6. Based on all the facts combined with the accused’s remarks, the Court finds that primary consideration must be given to the objectives of denunciation and deterrence when imposing a sentence in this case.
7. The number of files is significant and reveals a major problem. The harm to the victims has been established. The accused refuses to admit that he has a child pornography problem, which likely contributed to his committing the acts against the two victims, or to acknowledge his attraction to the 40,000 images in his possession.
8. The sentence must therefore reflect the many aggravating factors.
9. The Court also considers the period covered by the count, i.e., the offence lasted for five months. At the time of sentencing, therefore, the Court bears in mind that, contrary to other files where the counts cover a very long period of illegal possession, the offence here was committed over a relatively short period.

**SEXUAL TOUCHING FOR BOTH VICTIMS**

1. The accused committed the illegal acts over a long period. He abused the privilege he was given to look after a vulnerable child by sexually abusing her. By definition, all children are vulnerable when abused by adult offenders who take advantage of their position of authority to satisfy sexual desires that are as immoral as they are illegal. What is particular about G., however, is that he chose an even more fragile victim. A child with special needs, who has difficulty expressing herself and has specific intellectual disabilities that would prevent her from reporting him. Trapped by the consequences of her language disorder and intellectual disability, Y was sexually abused for three years by a man introduced to her as a trusted father figure.
2. It took the courage of X, also subjected to illegal conduct over a shorter period, to report the accused. The Court agrees with the prosecution that it is particularly shocking to read that the accused justifies committing the acts against X as a way of freeing himself from his addiction because he knew that she would report him. He therefore established that he would not report himself, even though he knew his conduct was illegal, and he knew that Y could not. In addition to creating a second victim, the accused has no hesitation in shifting the responsibility for ending his abuse onto a 7-year-old girl.
3. The accused manipulated Y’s father and then X’s mother by presenting himself as a trusted person who could help them and give them a break. He breached their trust to gain access to the children, including a particularly vulnerable child.
4. The Court is aware that touching is not one of the most subjectively serious offences, but the objectives of denunciation and deterrence are very present and must be given primary consideration.
5. The Court notes that the accused has little insight into his highly reprehensible behaviour. The expert report outlines his remarks.
6. It should also be noted that some of the accused’s statements show a nascent awareness, such as the fact that he seems aware that children subjected to sexual acts will suffer consequences later on or that they were sexually assaulted when the images were made. He testified somewhat to this effect before the Court.
7. That said, read as a whole, and as summarized in the expert report, the Court is of the view that the accused’s remarks at the hearing contradict those made to the various experts and reveal incomplete awareness. It is clear, even by adding the accused’s testimony at the hearing and the letter he read, that for the time being, he is more worried about the consequences of detention on his health than the effects of the offences committed against the victims. Even though both the sexologist and the criminologist confronted the accused about his sexual deviance for girls, the main objects of his criminal behaviour, he refused to acknowledge his deviancy. This finding is not intended to further punish the accused but primarily to shed light on the fact that the objective of specific denunciation is a sentencing objective that the Court must carefully consider. The obvious deviancy combined with the cognitive distortions and inability to control his emotions[[30]](#footnote-30) were the driving forces behind his criminal conduct and are still present. Rehabilitation will be through major treatment.
8. The accused is highly concerned about the consequences he is dealing with rather than with any empathy or genuine acknowledgement of the harm caused. Combined with a similar prior conviction involving a first child, the Court can only conclude that the initial incarceration was not a deterrent. Based on these findings, the Court concludes that primary consideration must be given to the objective of individual deterrence.
9. After weighing all the facts and considering the accused’s difficult detention conditions since his incarceration as a relevant useful factor to reduce the prison term, the Court concludes that significant consecutive sentences must be imposed.

**CONSECUTIVE SENTENCES**

1. Section 725 of the *Criminal Code* states that the judge must determine a sentence for each offence.
2. Sentences will be concurrent if based on the same facts or if the offences were committed continuously. They will be consecutive if the offences were committed against separate victims, at different times, or if the law states that the sentences must be consecutive. The judge must bear in mind that s. 718.2(c) *Cr. C.* protects against excesses that might result from combined sentences.
3. In *Camacho*,[[31]](#footnote-31) the Court of Appeal recently declared that s. 718.3(7)(b) of the *Criminal Code* is invalid and unconstitutional because it violates s. 12 of the *Charter*. The Court of Appeal reiterated the principle that trial judges must weigh the impact of consecutive sentences generally imposed when the circumstances are appropriate given the cardinal principle of proportionality:

[translation]

[25]        Nor is it contested that judges have discretion to impose concurrent or consecutive sentences. In *Guerrero-Silva*, the Court recalled that [translation] “while the decision to order concurrent or consecutive sentences falls within the judge’s discretion, in principle crimes that are distinct criminal transactions should result in consecutive sentences, subject to the principle of totality of sentences.”

1. The same decisions teach that the appropriate method is that the Court must first determine the appropriate sentence for each offence, then determine whether it should be consecutive or concurrent, and finally, measure the total sentence to verify whether it is just and appropriate. If it is not, the Court may reduce it.
2. Even though the defence asks the Court to make the sentence for possession of child pornography concurrent, according to the principle that the offence was committed at the same time as the offences of touching, the Court finds that the evidence does not establish that this was the case. It is impossible to establish which of the two offences acted as the driving force leading to the commission of the other one. The point is not to disproportionately punish the accused, but the fact that he does not acknowledge his pornography problem does not support the conclusion that the images were viewed when the children were with him and at the time he committed the offences of touching. It is known that some images were viewed during these sad periods, but no more is known.
3. The Court must therefore conclude, as the accused acknowledges, that he regularly viewed images and thus that the time frame of possession is broader than the narrower one relating to the two touching victims.
4. In these circumstances, concurrent sentences are not warranted. They must be served consecutively.
5. The Court finds that the sentences must be consecutive for the touching offences against both victims. They must also be consecutive for the offence of making and possession of child pornography. The fourth count will be concurrent.
6. In so concluding, the Court considers that the total sentence is not unreasonable and that adding the punishments results in a just sentence that takes into account all of the facts, the primary objectives of denunciation and deterrence, the high number of aggravating factors (including the harm to the two victims, X and Y, to their parents, and the harm to the child pornography victims), the accused’s high degree of moral blameworthiness, and the teachings in *Friesen*.[[32]](#footnote-32) It also takes into account the mitigating factors, including the accused’s openness to participating in therapy and the difficult detention conditions since his incarceration.
7. The prosecution asks the Court for delayed parole under s. 743.6 of the *Criminal Code*. The Court notes from the Supreme Court’s judgment in *Zinck*[[33]](#footnote-33) that it is an exceptional measure. The prison sentence imposed today is lengthy given the consecutive sentences and satisfies the objectives of general and specific deterrence. The Court cannot conclude that the evidence adduced establishes that the measure is required in the specific circumstances of this matter.

**FOR THESE REASONS, THE COURT:**

**File 505-01-166958-203**

1. **SENTENCES** the accused to 2 years on the first count of touching X, to be served consecutively;
2. **SENTENCES** the accused to 1 year on the fourth count of making illegal material available, to be served concurrently;
3. **SENTENCES** the accused to 4 years on the fifth count of touching Y, to be served consecutively;
4. **SENTENCES** the accused to 1 year on the seventh count of making child pornography, to be served consecutively;
5. For a total of 7 years (or 84 months), less time in remand (542 days + 271 = 831 days rounded to to 27 months), therefore 84 months - 27 months remand, leaving 57 months as of today.

**File 505-01-167191-200**

1. **SENTENCES** the accused to 3 years on the first count of possession of child pornography, to be served consecutively;
2. For a grand total of 10 years (120 months), 93 months as of today.

**Other orders**

**-ORDERS** the accused to register with the sex offender register for life, in accordance with s. 490.012 of the *Criminal Code*.

**ORDERS** the accused to provide samples of bodily substances within 60 days for forensic DNA analysis, in accordance with s. 487.051(1)(a) of the *Criminal Code*.

**-PROHIBITS** the accused from possessing weapons for 10 years under s. 109 of the *Criminal Code*.

**-PROHIBITS** the accused from communicating throughout his detention with the victims X and Y, or the members of their families.

**-PROHIBITS** the accused, for a period of 20 years starting on the date he is released, in accordance with s. 161(1) of the *Criminal Code*:

**(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, schoolground, playground or community centre;

**(b)** seeking, obtaining or continuing any employment, whether or not the employment is remunerated, or becoming or being a volunteer in a capacity, that involves being in a position of trust or authority towards persons under the age of 16 years;

**(c)** having any contact — including communicating by any means — with a person who is under the age of 16 years, unless the offender does so under the supervision of a person whom the court considers appropriate; or

**(d)** using the Internet or other digital network:

* for recreational purposes,
* to access social media, social networks, or discussion forums,
* to access any content that violates existing law,
* unless the offender does so in accordance with conditions set by the Court.

1. **EXEMPTS** the accused from the victim surcharge.

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| Mtre Suzanne Hébert | | |
| For the prosecution | | |
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| Mtre Sophie Gagnon | | |
| For the accused | | |
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|  | | |
| Date of hearing: | April 23, 2021 | |

1. Page 17. [↑](#footnote-ref-1)
2. Sexological expert report of November 19, 2020, at 9. [↑](#footnote-ref-2)
3. Sexological expert report of November 19, 2020, at 10. [↑](#footnote-ref-3)
4. Sexological expert report of November 19, 2020, at 3. [↑](#footnote-ref-4)
5. Sexological expert report of November 19, 2020, at 7. [↑](#footnote-ref-5)
6. Sexological expert report of November 19, 2020, at 7. [↑](#footnote-ref-6)
7. Sexological expert report of November 19, 2020, at 10. [↑](#footnote-ref-7)
8. Sexological expert report of November 19, 2020, at 9. [↑](#footnote-ref-8)
9. Sexological expert report of November 19, 2020, at 11. [↑](#footnote-ref-9)
10. Sexological expert report of November 19, 2020, at 11. [↑](#footnote-ref-10)
11. Sexological expert report of November 19, 2020, at 10. [↑](#footnote-ref-11)
12. Sexological expert report of November 19, 2020, at 10. [↑](#footnote-ref-12)
13. Sexological expert report of November 19, 2020, at 5 *et seq*. [↑](#footnote-ref-13)
14. Sexological expert report of November 19, 2020, at 17. [↑](#footnote-ref-14)
15. Pre-sentence report of November 23, 2020, at 3. [↑](#footnote-ref-15)
16. Pre-sentence report of November 23, 2020, at 4. [↑](#footnote-ref-16)
17. Pre-sentence report of November 23, 2020, at 4. [↑](#footnote-ref-17)
18. Pre-sentence report of November 23, 2020, at 4. [↑](#footnote-ref-18)
19. *R. v*. *Nasogaluak*, [2010] 1 S.C.R. 206 at paras. 43–44. [↑](#footnote-ref-19)
20. Hugues Parent & Julie Desrosiers, *Traité de droit criminel: la peine*, 2d ed., Tome 3 (Montreal: Thémis, 2016) at 745. [↑](#footnote-ref-20)
21. *Traité de droit criminel: la peine, supra* note 20 at 747. [↑](#footnote-ref-21)
22. *Traité de droit criminel: la peine, supra* note 20 at 747–748. [↑](#footnote-ref-22)
23. *Traité de droit criminel: la peine*, *supra* note 20 at 748. [↑](#footnote-ref-23)
24. *R. c*. *Régnier*, 2018 QCCA 306. [↑](#footnote-ref-24)
25. *R. v*. *Friesen*, 2020 SCC 9. [↑](#footnote-ref-25)
26. Sexological expert report of November 19, 2020, at 13. [↑](#footnote-ref-26)
27. Pre-sentence report of November 23, 2020, at 3. [↑](#footnote-ref-27)
28. Psychological expert report of November 19, 2020, at 14. [↑](#footnote-ref-28)
29. Pre-sentence report of November 23, 2020, at 5. [↑](#footnote-ref-29)
30. Pre-sentence report of November 23, 2020, at 4. [↑](#footnote-ref-30)
31. *Vera Camacho c*. *R.*, 2021 QCCA 683 at para. 25. [↑](#footnote-ref-31)
32. *R. v*. *Friesen*, *supra* note 25. [↑](#footnote-ref-32)
33. *R. v*. *Zinck*, 2003 SCC 6, [2003] 1 S.C.R. 41. [↑](#footnote-ref-33)