Date: 2025 11 03
Docket: S-1-CR-2022-000-004

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

His Majesty the King

-and-

N.B.

Restriction on Publication: By Court Order, there is a ban on publishing information that may identify the person/persons described in this judgment as the complainant/witness. See the *Criminal Code*, s. 486.4.

Reasons for Decision on the Ferguson Application

Heard at Yellowknife NWT: July 3, 2025, and August 7-8, 2025

Reasons filed: November 3rd 2025

REASONS FOR JUDGMENT OF THE

HONOURABLE JUSTICE M. DAVID GATES

Counsel for the Crown: Angie Paquin
Jared Kelly

Counsel for the Respondent: Eamon O'Keeffe

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REASONS FOR JUDGMENT

BACKGROUND AND OVERVIEW

[1] The Accused, N.B., was charged in a six-count Indictment with sexual offences alleged to have taken place in Tulita and Yellowknife, Northwest Territories, between August 2007 and March 2012:

> Count One:
>
> On or between August 1, 2007, and July 1, 2011, at or near Tulita, did commit a sexual assault on B.Y., contrary to section 271 of the *Criminal Code*.
>
> Count Two:
>
> On or between August 1, 2008, and March 14, 2010, at or near Tulita, Northwest Territories and/or at or near Yellowknife, Northwest Territories, did commit a sexual assault on T.E., contrary to section 271 of the *Criminal Code*.

Count Three:

On or between August 1, 2008, and November 9, 2009, at Tulita, Northwest Territories, being in a position of trust or authority towards T.E., a young person, did for a sexual purpose touch directly or indirectly the body of T.E., with a part of his body, contrary to Section 153(1) of the *Criminal Code*.

Count Four:

On or between February 9, 2011, and November 2, 2011, at Yellowknife, Northwest Territories, being in a position of trust or authority towards G.Y., a young person, and/or being a person with whom G.Y., a young person, is in a relationship of dependency, did for a sexual purpose invite, counsel or incite G.Y. to touch directly or indirectly with a part of his body or with an object, the body of G.Y., contrary to Section 153(1) of the *Criminal Code*.

Count Five:

On or between September 1, 2006, and March 14, 2010, at Yellowknife, Northwest Territories, did commit a sexual assault on N.K., contrary to Section 271 of the *Criminal Code*.

Count Six:

On or between April 21, 2009, and March 14, 2010, at Yellowknife, Northwest Territories, being in a position of trust or authority towards N.K., a young person, did for a sexual purpose, touch directly or indirectly, the body of N.K., a young person, with a part of his body, contrary to Section 153(1) of the *Criminal Code.*

[2] On May 3, 2025, following a three-week trial, the jury returned a verdict of Not Guilty in relation to Count #1 and Guilty in relation to Counts #2, #3, #5, and #6. At the request of the Crown and the agreement of the Defence, I directed a verdict of Not Guilty in relation to Count #4 during the course of the trial.

[3] In relation to Count #2, the Crown invited the jury to find the Accused guilty of sexual assault on either of two bases within the timeframe alleged. First, the Crown relied on T.E.'s evidence that, while sharing a bed in a Yellowknife hotel room during the 2010 Arctic Winter Games basketball trials in 2009, he awoke to find the Accused performing oral sex on him. Second, the Crown points to T.E.'s evidence that the Accused repeatedly kissed him on the lips in a dark bedroom at the Accused's residence in Tulita, conduct which the Crown submitted amounted to sexual assault.

[4] The Accused denied the alleged sexual assault involving oral sex. However, he acknowledged that kissing had occurred in Tulita but described it as a brief peck on the lips, initiated by T.E. during childhood in Meander River. He maintained that such contact was non-sexual. The jury's verdict on Count #2 necessarily entailed a rejection either of the Accused's characterization of the kissing, or his denial of T.E.'s oral sex allegation, or both.

[5] The jury could have convicted on Count #2 if satisfied beyond a reasonable doubt that either the kissing incidents or the alleged act of oral sex had been proven, or, in the alternative, that both had been proven.

[6] With respect to Count #5, N.K. testified to two incidents within the period alleged. The first occurred during the Cager Basketball Tournament in February 2008, in Yellowknife, when N.K. stated that he awoke in a hotel bed in the Fraser Tower Hotel, to find the Accused's right hand inside his pants and underwear, touching his testicles.

[7] The second incident was alleged to have occurred at the Fraser Tower Hotel during the tryouts for the 2009 Canada Summer Games. N.K. testified that he fell asleep on a couch after practice and awoke on his back to see the Accused standing beside him. He stated that he then realized that his hand was in contact with the Accused's exposed testicles, and that the Accused was using his own hand to guide N.K.'s hand to stroke him.

[8] The conviction on Count #5 could have been based on a finding beyond a reasonable doubt that either of the incidents described by N.K. had been proven, or, in the alternative, that both had been proven. The Accused denied both allegations.

[9] The Crown also asked the jury to find the Accused guilty of sexual exploitation in relation to T.E. (Count #3) and N.K., (Count #6). This submission was based on the Agreed Facts, (Exhibit #2), relating to T.E.'s and N.K.'s dates of birth and ages, together with the evidence of alleged unlawful sexual conduct presented under Count #2 (T.E.) and Count #5 (N.K.). There is no dispute between the Crown and the Defence that the Accused stood in a position of trust relative to both T.E. and N.K. at all material times.

[10] With respect to N.K., the Defence accepts that the jury verdicts on both Count #5 and #6 establish that the jury was satisfied beyond a reasonable doubt as to the fondling incident on the hotel couch. The parties agree that, given N.K.'s age of 14 years at the time of the hotel bed incident, a conviction for sexual exploitation was

not legally available. The Defence submits, however, that the incident involving exposure of the Accused's testicles and manipulation of N.K.'s hand, the "couch incident", was not proven beyond a reasonable doubt. The Crown maintains that both incidents have been established.

[11] Given the ambiguity in the jury's verdict, transcripts of the evidence of key witnesses were ordered to assist both counsel and the Court. The matter was adjourned until May 21, 2025, to discuss the procedure to be followed for the Ferguson hearing. At that time, a hearing date of July 3, 2025, was confirmed, and sentencing was scheduled for August 7–8, 2025.

[12] At the July 3 hearing, Defence counsel took the position that the jury's verdict revealed that *only* the kissing incidents involving T.E. had been established, and that *only* the fondling incident on the hotel couch involving N.K. had been proven beyond a reasonable doubt. The Crown, by contrast, maintained that the evidence at trial was sufficient to establish both the kissing and oral sex incidents in relation to T.E., as well as both incidents alleged by N.K. The Court accepted the Defence's position at that time and limited its consideration to the remaining alleged incidents that had not been conceded by the Defence.

[13] The parties further agreed, as previously indicated, that, given N.K.'s age of 14 years at the time of the bedroom incident, a conviction for sexual exploitation was not legally available in relation to that incident. Both the Crown and the Defence were clear that the verdict on the sexual exploitation count reflected the jury's acceptance of the complainant's evidence with respect to the couch incident.

[14] The Ferguson hearing was continued on August 7–8, 2025. Counsel for the Accused also filed written submissions on August 19, 2025, in response to a question raised by the Court in a letter dated August 13, 2025.

[15] On August 28, 2025, after reviewing the relevant portions of the trial transcript and considering the submissions of counsel, the Court advised that it was satisfied beyond a reasonable doubt that the Crown had established (1) the oral sex incident involving the Accused and T.E., and (2) the bed incident involving the Accused touching the testicles of N.K. The Court indicated that written reasons would follow, but that the decision was being communicated in advance to avoid any further delay to the sentencing hearing.

[16] At the outset of the sentencing hearing on September 4, 2025, counsel advanced further arguments regarding the scope of the Court's August 28 ruling.

Defence counsel revised its earlier position and, after re-considering the Crown's earlier submission, agreed that the Court was required to make express findings of fact with respect to all the alleged incidents. It also acknowledged that its earlier concessions were not sufficient to resolve these issues. Following further oral submissions, the Court ruled that the Crown had proved beyond a reasonable doubt that the Accused assaulted T.E. by repeatedly kissing him on the lips in the darkened bedroom of the Accused's residence in Tulita.

[17] The Court further ruled that, in relation to the two counts of sexual exploitation under s. 152(1) of the *Criminal Code*, the Crown had established beyond a reasonable doubt that the Accused was in a position of trust or authority relative to both T.E. (in relation to the kissing and oral sex incidents) and N.K. (in relation to the couch incident). The Court also found that both T.E. and N.K. were "young persons" as defined in the *Criminal Code* at the time of these incidents, and that the Accused's actions in relation to each complainant were for a sexual purpose.

FACTS

Sexual Assault & Sexual Exploitation – T.E. (Count #2 & #3)

[18] T.E. met the Accused when the latter was teaching school in Meander River. The Accused began a relationship with, and later married, T.E.'s aunt, K.B. Although the Accused was not T.E.'s teacher at the time, he coached T.E. in basketball for two years and acted as a mentor and confidant. The Accused accepted a teaching position in Tulita, in 2004, and remained there until moving to Fort Simpson in 2011. T.E. moved to Tulita, in 2008, to live with his aunt, the Accused and their family so that he could complete his schooling.

[19] T.E. testified that he was a young guy at the time he was living in Tulita and not paying attention to details about time. He could not recall the exact duration of his time in Tulita, estimating that he lived there for three or four years. He graduated in 2010 and believed he moved there in late 2006 or early 2007. The Agreed Statement of Fact (Exhibit #2) confirms that he was enrolled at Chief Alberta Wright School during the 2008-09 and 2009-2010 academic years. B.Y., a 15-year-old nephew of K.B., and G.Y., the Accused's 13-year-old stepson, were already living in the household, along with the Accused's two children with K.B. J.C., another adolescent male, arrived later.

[20] In Tulita, the Accused was both T.E.'s teacher and basketball coach. According to T.E., they had a good relationship. He described the household as

"strict" but also acknowledged that they played pranks on one another. Making friends in Tulita was difficult, and T.E. felt like an outsider because of his mixed heritage.

[21] Both T.E. and N.K. described the Accused as a mentor and a source of guidance and support. T.E. testified that the Accused was firm in enforcing rules concerning homework and household chores. He further described him as "strict" and "mean" as a coach. In his evidence, the Accused acknowledged being strict, but denied being mean.

[22] T.E. testified that he went to the 2010 Arctic Winter Games basketball tryouts in Yellowknife in what he believed was late spring or early summer of 2009. He acknowledged that this event occurred a long time ago, and that he could not recall the exact date, but recalled the weather was warm and sunny, and there was no snow. He gave a very detailed description of the hotel and the hotel room in which he stayed, though could not recall its name. He described it as being beside the Independent grocery store, situated on a hill, and near the old Pizza Hut. He further recalled that it was close to the Walmart, Mark's Work Warehouse and the Super 8 Motel, and believed that it was also near the hospital.

[23] Following the tryouts, he remained in Yellowknife with the Accused waiting for their return flight to Tulita. He recalled an instance when the Accused left the hotel room and returned with beer for himself and a Smirnoff alcohol beverage for T.E. They consumed a few drinks together, talked and listened to music. T.E. believed that he consumed approximately 5 cans of the Smirnoff 12-pack. He went to bed while the Accused stayed up. He maintained that they were sharing the one bed in the hotel room.

[24] During the night, T.E. awoke on his back to find the Accused performing oral sex on him. According to T.E., the Accused was holding his penis, during which he felt the Accused's mouth and saliva on it. His shorts and underwear had been pulled down around his ankles, and the Accused was positioned between his legs, bare-chested, and with his mouth over T.E.'s penis. T.E. was sober and awake when he realized what was occurring. This had never happened to him before, and he felt scared, embarrassed, violated and having been taken advantage of. He could not speak or cry for help, and, unsure how to react, he "just let him do it". Subsequently, he feigned waking up, at which point the Accused stopped and moved to his side of the bed. T.E. then got up and went to lie on a couch in another part of the room. Approximately five minutes later, the Accused followed him, urging him to return to bed and reassuring him that everything was OK and that there was nothing wrong. T.E. declined.

[25] T.E. did not go back to sleep for 3 or 4 hours after the assault, as he was uncomfortable and scared. The following day, he went for a walk and drank the rest of the alcohol that the Accused had purchased for him the previous day to try and forget what had happened to him. He had no one to speak to or to call. He believed that the Accused was a person who cared about him and was there to support him. The Accused and T.E. did not speak to each other the following day, a situation that T.E. found awkward. He felt that the Accused was ignoring him. T.E. could not believe that the Accused, a person that he loved and cared about, would do that to him. After the incident, the Accused attempted to minimize his conduct and make T.E. feel guilty, which he interpreted as an effort to conceal what had occurred.

[26] T.E. often spoke with the Accused about personal matters, beginning when they first met in Meander River. He did not have anyone in his family to talk to when he was growing up, and these conversations with the Accused made him feel better. In Tulita, the Accused would frequently take him into the Accused's bedroom and turn out the lights while they were conversing. On approximately 10 occasions following these talks, T.E. would initiate a hug, but the Accused would kiss him on the lips. T.E. described these kisses as unwanted and made him very uncomfortable, but he was too afraid to object, particularly after the Yellowknife incident. These kissing incidents happened both before and after the alleged oral sex incident in the hotel in Yellowknife. In cross-examination, he indicated that the Accused began kissing him on the lips when they both lived in Meander River. He also acknowledged that he would sometimes kiss his mother or aunts on the cheek, but never on the mouth, and that in his family the men shook hands rather than kissing.

[27] The Accused acknowledged that there had been kissing incidents, stating that they were initiated by T.E. when T.E. was younger and living in Meander River. They continued while they were both living in Tulita. The Accused confirmed much of T.E.'s account regarding the timing and location of the kisses, differing only on the duration, purpose and who initiated them. According to the Accused, the kisses consisted of a brief peck on the lips that had no sexual purpose.

[28] T.E. lost all respect for and no longer trusted the Accused after the Yellowknife incident. Upon returning to Tulita, he and the Accused did not speak for two weeks, during which time the Accused ignored him, leaving T.E. feeling isolated and at fault. Because he relied on the Accused for school, basketball and a place to live, T.E. wanted the Accused's attention and support and for the feeling of isolation to go away. He decided to brush off the incident and apologize to the Accused for how he acted in the hotel after the incident. While the relationship returned to a more normal state, they never discussed what had happened in the hotel room in Yellowknife.

[29] The Accused categorically denied T.E.'s account of this incident. He specifically denied performing oral sex on T.E. and denied ever being alone in a hotel room with him. He testified that T.E. travelled to basketball tryouts and tournaments only as part of a larger group. He maintained that he always slept on the pullout couch, when one was available. While conceding that he sometimes shared a bed with his players, he stated that this generally occurred only with family members or the boys who were residing at his home.

[30] The Accused acknowledged being alone with T.E. at the Stanton Suites Hotel during a medical trip to Yellowknife for ankle surgery in September 2009. T.E. accompanied him as his escort. T.E.'s participation was a last-minute decision, as another individual had originally been intended to accompany him. According to the Accused, he spent only one night at the hotel before being admitted to the hospital due to heart complications. He was on crutches both before and after the trip. He denied that any alcohol was purchased or consumed while they were together. He maintained that the suite booked for the September 2009 medical trip had two separate bedrooms, and that he and T.E. each had their own bedroom and bed. He denied ever sharing a bed with T.E. on this trip.

Sexual Assault and Sexual Exploitation – N.K. (Count #5 & #6)

[31] N.K. was born in April 1993 and grew up in Tulita. He was 32 years of age at the time of the trial and would have been 15 years old in 2009. He graduated from Chief Albert Wright School in 2013. He started playing basketball and hockey when he was 11 or 12, around the time the Accused arrived in Tulita. N.K. was good at basketball and reported that it became his life.

[32] The Accused was N.K.'s basketball coach in Tulita and became his teacher once N.K. entered high school. N.K. looked up to and trusted the Accused and had a good relationship with him until the assaults took place.

[33] According to N.K., he attended the February 2009 Cager Basketball Tournament in Yellowknife with the Accused and other members of the team from Tulita. He shared a hotel room at the Fraser Towers Hotel with the Accused and four other players - N.P., Z.B., S.K., and N.Y. The Accused assigned the sleeping arrangements. N.K. had hoped to share a room with his younger brother, K.K., but was not permitted to do so. N.K. shared a king-size bed in the hotel's one bedroom with the Accused, while the other four slept on a sofa bed and a chair-couch in the living room area. He slept on the left side of the bed, with the Accused on the right, closest to the door. Around midnight, N.K. awoke to find himself lying on his back with the Accused's right hand inside his pants and underwear, touching his testicles.

Although the room was dark, N.K. could see the Accused's face and his hand in his pants. He was certain that it was the Accused.

[34] N.K. got up and went into the other room, too scared and disgusted to say anything. He testified that the Accused came out of the bedroom almost immediately, attempting to persuade him to return to the bedroom. N.K. refused and instead slept on the floor for the rest of the night. The next morning, N.K. told the Accused he was going to charge him. According to N.K., the Accused replied, "Good luck. I'm a councillor – who is going to believe you?" According to N.K., N.P., and S.K. were present in the room at the time and would have heard this exchange. According to N.K. everything changed after this incident. He was scared and became increasingly concerned about what others would think if they learned what had happened.

[35] The Accused gave a different account. He testified that during the 2009 Cager Tournament, he and the boys from Tulita slept in a school, and that during the 2008 Cager Tournament, he slept on the pull-out couch in the living room of the Fraser Tower Hotel suite. His players, including N.K., slept in two beds located in the one-bedroom portion of the suite. He denied ever sharing a bed with N.K., touching him in a sexual manner, or trying to persuade him to return to the bedroom. He further denied that N.K. ever threatened to charge him.

[36] A second incident took place several months later while T.E. was again in Yellowknife with the Tulita basketball team for the Arctic Winter Games tryouts. He was again sharing a suite with the Accused and several other players at the Fraser Towers Hotel. After a practice session, N.K. and the other players planned to go to a movie. He lay down on the couch to take a nap, asking some of his teammates to wake him up before going to the movie. When he awoke, N.K. saw the Accused standing beside him, with N.K.'s hand in contact with the Accused's exposed testicles. The Accused's hand was guiding N.K.'s hand to stroke him. When the Accused realized that N.K. was awake, he hastily left the room, returning a short time later and acting as though nothing had happened. When N.K. asked where the other players were, the Accused told him that they had gone to a movie. N.K. later learned that the other players had planned to wake him up, but the Accused told them to leave N.K. sleeping.

[37] The Accused denied that this alleged event ever took place.

THE LAW

[38] The leading authority on the fact-finding process following a jury verdict is the decision of the Supreme Court in *R v Ferguson*, 2008 SCC 6. At paragraphs 16-18, the Court outlined the appropriate process:

> This poses a difficulty [the appropriateness of the prescribed minimum sentence] in a case such as this, since, unlike a judge sitting alone, who has a duty to give reasons, the jury gives only its ultimate verdict. The sentencing judge therefore must do his or her best to determine the facts necessary for sentencing from the issues before the jury and from the jury's verdict. This may not require the sentencing judge to arrive at a complete theory of the facts; the sentencing judge is required to make only those factual determinations necessary for deciding the appropriate sentence in the case at hand.
>
> Two principles govern the sentencing judge in this endeavour. First, the sentencing judge "is bound by the express and implied factual implications of the jury's verdict": *R v Brown*, [1991] 2 S.C.R. 518 (S.C.C.), p. 523. The sentencing judge "shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty" (*Criminal Code*, s. 724(2)(a)), and must not accept as fact any evidence consistent only with a verdict rejected by the jury: *Brown*; *R v Braun* (1995), 95 C.C.C. (3d) 443 (Man. C.A.).
>
> Second, when the factual implications of the jury's verdict are ambiguous, the sentencing judge should not attempt to follow the logical process of the jury but should come to his or her own independent determination of the relevant facts; *Brown*; *R v Fiqia* (1994), 162 A.R. 117 (Alta. C.A.). In doing so, the sentencing judge "may find any other relevant fact that was disclosed by evidence at the trial to be proven" (s. 724(2)(b)). To rely upon an aggravating fact or previous conviction, the sentencing judge must be convinced of the existence of that fact or conviction beyond a reasonable doubt; to rely upon any other relevant fact, the sentencing judge must be persuaded on a balance of probabilities: (ss. 724(3)(d) and 724(3)(c); see also *R v Gardiner*, [1982] 2 S.C.R. 368 (S.C.C.); *R v Lawrence* (1987) 58 C.R. (3d) 71 (Ont. H.C.). It follows from the purpose of the exercise that the sentencing judge should only find those facts necessary to permit the proper sentence to be imposed in the case at hand. The judge should first ask what the issues on sentencing are, and then find such facts as are necessary to deal with those issues.

[39] The principles set out in ***Ferguson*** have been applied in numerous decisions, including ***R v Durocher***, 2016 NWTSC 49 (reversed on other grounds, 2023 NWTCA 4), and ***R v Hodges***, 2016 NWTSC 69.

THE CHARGES IN THE INDICTMENT

[40] The Accused was convicted of two counts of sexual assault and two counts of sexual exploitation.

[41] Sexual assault is an assault committed in circumstances of a sexual nature that violate the sexual integrity of the victim. While the punishment for sexual assault is set out in s. 271 of the Criminal Code, the offence of assault is defined in s. 265 as follows:

> (1)A person commits an assault when
>
> a) Without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

[42] The essential elements of the crime of sexual assault – elements that the Crown must prove beyond a reasonable doubt- are:

a) That identity has been established, that is that the person before the court is the person named in the Indictment;

b) That the time and place specified in the Indictment have been established;

c) That the Accused intentionally applied force to the complainant(s);

d) That the complainant(s) did not consent, or were unable to consent, to the force that was intentionally applied;

e) That the Accused knew that the complainant(s) did not consent, or were unable to consent, to the force he applied; and

f) That the force applied by the Accused took place in circumstances of a sexual nature.

[43] In this case, the Defence concedes that identity has been established: Agreed Statement of Facts, Exhibit #2.

[44] As more fully set out below, I am satisfied beyond a reasonable doubt that the Accused sexually assaulted T.E. at the Stanton Suites Hotel in September 2009. I am also satisfied beyond a reasonable doubt that the Accused sexually assaulted T.E.

when he kissed him on the lips on repeated occasions in his darkened bedroom at the family residence in Tulita, N.W.T., both before and after the September 2009 incident in Yellowknife. I am further satisfied beyond a reasonable doubt that T.E. resided with the Accused in Tulita from approximately September 2008 until February 2010, that all of the incidents took place within that timeframe; a timeframe that falls within the dates set out in Count #2 of the Indictment. Accordingly, I find that this essential element of the offence of sexual assault, as regards, T.E. has been established.

[45] With respect to N.K., I am satisfied beyond a reasonable doubt, for reasons more fully set out below, that the Accused sexually assaulted N.K. on two separate occasions. The first incident took place in February 2008 in conjunction with the Cager Basketball Tournament in Yellowknife, while the second occurred sometime after April 21, 2009, again in Yellowknife. I am, accordingly, satisfied that the Crown has established that both instances of sexual assault took place within the dates set out in Count #3 of the Indictment.

[46] The Defence takes the position that the real issues to be determined are whether the incidents of sexual assault reported by T.E. and N.K. took place. The Defence concedes that if the events, save for the kissing events, took place as described by T.E. and N.K., there is no issue that the complainants did not, or were unable to, consent to that activity. With respect to the kissing incidents involving T.E., the Defence does not concede that the Crown has established T.E.'s lack of consent.

[47] The Defence also concedes that if the events, save for the kissing events, took place as described by T.E. and N.K., the Accused was aware of their lack of consent to the sexual activity. With respect to the kissing incidents, the Defence does not concede that the Crown has established T.E.'s lack of consent. The Defence takes the further position that the sexual nature of any assault that may have been committed by the Accused in relation to the kissing events has not been established to be of a sexual nature.

[48] Sexual exploitation is defined in s. 153 of the Criminal Code as follows:

> (1) Every person commits an offence who is in a position of trust or authority towards a young person, who is a person with whom the young person is in a relationship of dependency or who is in a relationship with a young person that is exploitive of the young person, and who
>
> (a)For a sexual purpose, touches, directly or indirectly, with a part of his body or with an object, any part of the body of the young person; or

> (b)For a sexual purpose, invites, counsels or incites a young person to touch directly, or indirectly, with a part of the body or with an object, the body of any person, including the body of the person who invites, counsels or incites and the body of the young person.

The term "young person" is defined in s. 153(2) as "a person 16 years of age or more but under the age of eighteen years."

[49] The essential elements of the offence of sexual exploitation are as follows:

a) That the complainant was a "young person" at the time of the alleged offence;

b) That the Accused touched the complainant;

c) That the touching was for a sexual purpose; and

d) That the Accused was in a position of trust towards the complainant and that the complainant was in a relationship of dependency with the Accused.

[50] The Defence concedes that the Accused was in a position of trust towards each of T.E. and N.K. at all material times. The Defence also concedes that if the oral sex incident involving T.E. and the incident involving the fondling of N.K. testicles in the hotel room took place as described by the complainants, then the touching was for a sexual purpose.

[51] The Crown concedes that N.K. was not a young person within the meaning of s. 153(2) at the time of the first alleged incident involving the fondling of N.K.'s testicles while he was asleep at the Fraser Towers Hotel. Given this concession, both parties agree that the Jury's guilty verdict on the s. 153 offence relating to N.K. must relate to the couch incident in which the Accused used N.K.'s hand to fondle his own exposed testicles.

[52] In light of the various admissions and concessions of the Crown and the Defence, I find that the following issues are to be determined in this application:

a) Has the Crown established that either or both the kissing incidents and the oral sex incident involving T.E. have been proven beyond a reasonable doubt?

b) Has the Crown established that T.E. did not consent to the kissing incidents with the Accused; that the Accused was aware of T.E.'s lack of consent; and that the kissing was for a sexual purpose;

c) Has the Crown established that the bedroom incident involving the Accused fondling N.K.'s testicles has been proven beyond a reasonable doubt

POSITION OF THE CROWN

[53] The Crown submits that the Accused held multiple positions of trust and authority over the complainants—as a teacher, coach, counsellor, and guardian—and exploited this role to commit sexual assaults while they were asleep and vulnerable. Both T.E. and N.K. relied on him for guidance, housing, and support, creating a significant power imbalance that shaped both their immediate responses to the assaults and contributed to the delayed disclosure.

[54] With respect to T.E., the Crown accepts that his recollection of dates and peripheral details was imperfect but argues that this is unsurprising given the passage of more than 15 years. The essence of his account —that he awoke to the Accused performing oral sex on him - has remained consistent and unwavering. His willingness to acknowledge mistakes, and his visible discomfort in testifying reinforce his credibility. His statement that "I remember the most worst thing" underscores that, while ordinary adolescent memories may have faded, his recollection of the assault remains vivid. The Crown also relies on the supporting evidence of Shaun Doherty, hotel receipts, and medical records as providing some confirmation of his account.

[55] In relation to N.K., the Crown similarly accepts that his testimony contained errors about dates and travel, but says these are readily explained by his extensive basketball commitments, trauma, and the passage of time. It emphasizes that memory gaps were common to all witnesses, including the Accused, and urges the Court to assess their real impact, if any, on the reliability of this testimony. The central allegation – that he awoke to the Accused touching his testicles has remained consistent. His candid acknowledgement of unfavourable facts and his reluctance as a witness further support his honesty and reliability.

[56] The Crown highlights the similarities across the complainants' evidence as revealing a clear pattern of behaviour. Each described being placed in sleeping arrangements controlled by the Accused, falling asleep in his bed or a shared bed, waking to find him touching their genitals or encouraging them to touch his, and the Accused immediately desisting when confronted. The Crown contends that the

repetition of this pattern across different complainants cannot reasonably be attributed to be coincidence or fabrication.

[57] The Crown submits that the inconsistencies identified by the Defence between the complainants' police statement and their trial testimony are readily explained by the long passage of time, the trauma of the assaults, and the context in which their memories were recalled.

[58] In addition, the Crown relies on the evidence of T.E. and B.Y. regarding other incidents of sexualized behaviour by the Accused – such as the use of alcohol, sexualized humour and games – to demonstrate that the Accused harboured a sexual interest in adolescent boys under his care. This evidence, the Crown submits, provides important context for assessing the credibility of T.E.'s allegations.

[59] Taken together, the Crown argues that the complainants' testimony is credible and reliable, that the incidents establish a pattern of sexual misconduct, and that the Court should reject the Accused's denial and accept the evidence of T.E. and N.K. as truthful and reliable.

[60] The Crown urges the Court to consider the complainants' demeanour, particularly T.E.'s visible discomfort and stress when testifying about the assaults. His testimony that "I remember the most worst thing" underscores that, while he could not recall every detail about his teenage years, his memory of the assault itself was vivid and unwavering. There is no confusion on their part as to what happened to them. The Crown also points to corroborative evidence, including travel records, hotel receipts, and testimony from other witnesses such as Shaun Doherty and Ashley-Marie Brennan, which supports aspects of the complainants' accounts.

[61] The Crown rejects the Defence's claim that the complainants' accounts were shaped by gossip, rumours, or social media, emphasizing that there is no evidence of collusion. While some vague rumours circulated, they lacked detail and did not influence the complainants' testimony. Both complainants denied sharing specifics with each other or others before speaking to the police. Their delayed disclosure, shame, and fear of not being believed are consistent with the dynamics of sexual abuse, particularly given the taboo of male-on-male sexual contact in their communities. The Crown further argues that the complainants had limited contact with one another after the events, and that such contact did not taint or shape their evidence. Allegations of collusion through gossip or rumours are speculative and insignificant when compared to their core accounts.

POSITION OF THE DEFENCE

[62] The Defence advances several arguments in support of its contention that the Crown has failed to prove the Accused's guilt beyond a reasonable doubt.

[63] First, the Defence say that the Accused was a credible and reliable witness, whose evidence was careful, consistent, and trustworthy. While acknowledging that the Accused does not have a perfect memory of events that occurred fifteen or more years ago, the Defence points to the steps he took to refresh his memory by reviewing text messages, emails, photographs, roster reports, and receipts. The Defence further points out that, in instances where his recollection was corrected by documentary evidence, the Accused readily acknowledged his error.

[64] The Defence says that the Accused's memory and testimony can be relied upon, asserting that there is no reason to reject his evidence and that he was not discredited during the Crown's lengthy cross-examination. According to the Defence, the Accused was unwavering in his categorical denials that the alleged events occurred.

[65] The Defence concedes that some of the Accused's behaviour may have been inappropriate and subject to disapproval but maintains that none of it was criminal in nature. His testimony, they argue, demonstrated that he was passionate about basketball, the youth under his supervision, and the community in which they lived.

[66] In assessing the Accused's evidence, the Defence says that he volunteered information that was not favourable to him, including acknowledging that T.E. and B.Y. once observed him masturbating in the bathroom, confirming that he kissed T.E. on the lips on multiple occasions, and admitting to making exceptions to his general no-alcohol rule for the adolescent young men in his care.

[67] For all of these reasons, the Defence submits that the Court should accept the Accused's evidence that none of these alleged events occurred or, in the alternative, that his testimony at least raises a reasonable doubt.

[68] Second, the Defence says that the evidence of each of the complainants, T.E. and N.K., has serious issues regarding reliability, credibility and contamination, or a combination of all three.

[69] The Defence's central position is that T.E.'s evidence is not sufficiently reliable or credible to sustain a conviction. They argue that his testimony is undermined by a series of inconsistencies, both in relation to the time of the alleged

events and the circumstances in which they occurred. The Defence says that the incident of attempted oral sex did not, and could not, have occurred in the circumstances alleged by T.E.

[70] The Defence further submits that T.E.'s evidence is undermined by the broader context in which his disclosure arose. They argue that rumours, conversations with others, and possible discussions with B.Y., N.K., and others created a risk of intentional or unintentional contamination of his memory. In their view, this possibility, combined with the internal inconsistencies in T.E.'s evidence, should leave the Court with a reasonable doubt as to whether the incidents occurred as alleged.

[71] The Defence stresses that N.K. provided shifting accounts to the police in 2021 – placing the alleged bed incident alternatively in 2013, 2011, and 2010 - before settling on 2009 in his trial evidence. The Crown now takes the position that he is mistaken in pinpointing the 2009 Cager Tournament and that the offence actually took place in conjunction with the 2008 Cager Tournament. The Defence acknowledges that memories fade over time but maintains that these variations are too substantial to be explained by the ordinary passage of time, instead striking at the core reliability of N.K.'s account.

[72] The Defence also highlights contradictions between N.K.'s testimony and the evidence of other witnesses, as well as practical realities. For instance, N.K. described sleeping in a king-sized bed with the Accused while other players shared cramped space, yet both Ashley Brennan, one of the chaperones on the trip, and the Accused testified that there were two queen-sized beds in the suite, with the players using those beds and the Accused on the pull-out couch. The Defence argues that N.K.'s account of the sleeping arrangements is illogical and inconsistent with how hotels typically house large groups of players. Likewise, N.K. testified that teammates joked about sharing a bed with the Accused and that he confronted the Accused the next morning in front of S.K. and N.P., yet none of these players corroborated those claims, and the Crown did not call them to testify directly.

[73] The Defence points to N.K.'s ongoing contact with the Accused after the alleged assaults. Despite asserting that he had cut ties and that basketball had been "ruined" for him, the evidence shows that N.K. continued to seek the Accused's support for basketball opportunities, including seeking a reference letter and even staying overnight with him in Fort Simpson after the alleged incidents. The Defence submits that this conduct is inconsistent with the behaviour one would expect if N.K.'s allegations were true, and that it undermines his credibility. They further

point to N.K.'s admission that media coverage may have influenced his memory, suggesting that his recollection may not be his own but reconstructed over time.

[74] The Defence underscores that the Crown bears the burden of proof beyond a reasonable doubt and that gaps in the evidence must weigh in the Accused's favour. They rely on case law affirming that reasonable doubt can arise not only from contradictions and inconsistencies but also from the absence of corroborating testimony where it would reasonable be expected. In this case, the defence says the Crown's failure to call S.K. or N.P. – who were allegedly present during a critical confrontation – undermines the prosecution's case. Taken together, the Defence submits that the frailties, inconsistencies, and lack of corroboration in N.K.'s account create a reasonable doubt, and that the Accused should be acquitted.

THE BURDEN OF PROOF AND THE PRESUMPTION OF INNOCENCE

[75] This is a criminal trial and, as such, I am guided by several fundamental principles. First, the Accused has entered a plea of not guilty to the charges before the Court and is entitled to a trial before a fair and impartial tribunal.

[76] During the trial, the Accused is presumed to be innocent of the charges. There is no obligation on the Accused to testify or call evidence to prove his innocence. Indeed, the Accused is not required to prove anything. The burden of proof rests on the Crown from beginning to end to establish the guilt of the Accused beyond a reasonable doubt.

[77] A reasonable doubt is not a far-fetched or frivolous doubt. It is not a doubt based on sympathy or prejudice. It is a doubt based on reason and common sense. It is a doubt that logically arises from the evidence or the lack of evidence. It is not enough for the Crown to prove likely or probable guilt. Likely or probable guilt is not proof of guilt beyond a reasonable doubt. I remind myself that it is nearly impossible to prove anything with absolute certainty. Absolute certainty is a standard of proof that is impossibly high. In a jury trial, we routinely instruct jurors that after they have determined what evidence they accept in the case, they may only find the accused guilty if they are sure that he or she committed the offence.

[78] In this case, the Jury has convicted the Accused on four counts set out in the Indictment. All of the principles set out above apply in this case. The role of the Court, while not conducting a new trial, is to determine the facts that underlie those convictions. This requires a comprehensive review of the evidence to assess whether the Crown has proven the four incidents of sexual assault occurred as alleged. The

presumption of innocence and the requirement of proof beyond a reasonable doubt continue to apply throughout this process.

[79] In ***R v W(D)*** 1991 1SCR 472, the Supreme Court provided guidance to trial judges in assessing the testimony of an accused person. The so-called ***W(D)*** instruction directs the trier of fact to consider the accused's evidence in the context of all of the other evidence adduced at trial. These directions are equally applicable to judges sitting without a jury. The Supreme Court suggested the following questions when considering the evidence of an accused person:

1. If you believe the accused's evidence that he did not commit the offence charged, you must find him not guilty;

2. If, after a careful consideration of all the evidence, you are unable to decide whom to believe, you must find the accused not guilty because the Crown would have failed to prove the accused's guilt beyond a reasonable doubt;

3. Even if you do not believe the evidence of the accused, if it leaves you with a reasonable doubt about his guilt, you must find him not guilty; and,

4. Even if the accused's evidence does not leave you with a reasonable doubt of his guilt, you may convict him only if the rest of the evidence that you accept proves his guilt beyond a reasonable doubt.

ANALYSIS

a) Other Acts of Sexual Misconduct

[80] I now turn to address the evidence of other acts of sexual misconduct alleged by the Crown. In a pre-trial ruling, I allowed the Crown to introduce this evidence to show that the Accused had a sexual interest in these adolescent boys and that this conduct amounted to grooming. This evidence does not relate directly to the counts before the Court, but it provides important context for assessing the credibility of the witnesses and for determining whether the Accused demonstrated a sexual interest in adolescent boys. This evidence cannot, of itself, ground a conviction, and may only be considered for these limited purposes. I would also note that the evidence of other sexual misconduct is relevant only to the allegations of T.E. It has no bearing on the other complainant, N.K., and I have kept this limitation firmly in mind.

[81] The Defence submits that these incidents reflect innocent, even if misguided, attempts at humour and bonding. The Crown argues that, taken together, they demonstrate grooming behaviour.

[82] When he was 15 or 16 years of age, B.Y. observed the Accused masturbating in the bathroom of the home in Tulita. T.E. separately witnessed the Accused masturbating in this instance, but only after B.Y. had left the bathroom. Both B.Y. and T.E. testified that the Accused told them that he was going to show them how to masturbate and that masturbation was normal. According to B.Y., the Accused then proceeded to demonstrate how to masturbate to the point of ejaculation. The evidence does not clearly establish whether B.Y. encouraged T.E. to observe the situation, or whether the Accused summoned T.E., or whether both occurred. The Accused denied any sexualized intent, stating that the conduct was private and not directed at providing instruction to the boys.

[83] I find the Accused's explanation implausible. The household contained multiple occupants, including children and adolescent males, and privacy was limited. It is highly unlikely that the incident could have occurred without the Accused being aware of the potential for others to observe accidentally. I also note that the Accused claimed that he turned on the shower and forgot to lock the door upon entering the bathroom. I find it very difficult to believe that the Accused would have turned on the shower, letting the water run while he engaged in masturbation. There is other evidence before me that he encouraged the boys to take quick showers, given the home's reliance on water delivery. I also find implausible his assertion that he forgot to lock the door on two separate occasions–upon entering the bathroom and then later after ejecting B.Y. from the room.

[84] I accept the evidence of B.Y. and T.E. regarding the incident. While there are some minor variations in their description of some of the background details, they each observed the continuing incident independently, while no other witnesses were present. Notwithstanding the fact that there is some uncertainty about how T.E. became aware of the incident, the overall account is credible and reliable. Accordingly, I reject the Accused's evidence where it differs from that of B.Y. and T.E. on this incident.

[85] T.E. and B.Y. also described games and other activities organized by the Accused, which occurred with some frequency, generally in the absence of the Accused's wife, K.B. These activities frequently involved inappropriate dares and the removal of clothing. I accept the evidence of T.E. that, on at least one occasion, both he and B.Y. were naked during the course of a game. While B.Y.'s evidence

was to the effect that they were only ever down to their underwear, I prefer the evidence of T.E. on this point. The Accused acknowledged initiating these card games, and that dares involved the removal of clothing on occasion, but he denied that they involved any sexualized element, explaining that they were intended to be lighthearted fun and a way to bond with the boys.

[86] I accept the evidence of T.E. and B.Y. regarding these card games. Their testimony was consistent, detailed and plausible. While the Accused may have intended amusement, the nature of the activities, the frequency with which they occurred, and his own admissions demonstrate that these games contributed to an environment in which sexualized conduct was introduced, even encouraged.

[87] B.Y. and T.E. testified that the Accused provided them with alcohol on multiple occasions before they reached the legal drinking age. B.Y. indicated that the drinking occurred in secret, without the knowledge of K.B. Earlier in these reasons, I addressed T.E.'s confusion with regard to the sequencing of events, including events relating to how old he was when certain events took place. I find that the Accused also provided alcohol to T.E. over and above those instances which the Accused described as opportunities for the boys to learn how to drink responsibly. The Accused denied these allegations, asserting that alcohol was only consumed during family celebrations before T.E. turned 18, and that he maintained a strict no-drinking rule, particularly in relation to his basketball players.

[88] I am satisfied that the Accused did provide alcohol to minors, specifically B.Y. and T.E., as they described. The frequency of the incidents, combined with the secrecy surrounding them, supports the Crown's position that he introduced alcohol into the household in a manner that was totally inconsistent with his role as a teacher, coach and guardian.

[89] T.E. and B.Y. also described sexualized jokes and comments made by the Accused in their presence, which caused discomfort. Both B.Y. and T.E. referred to the Accused making jokes about "big black dicks". These jokes occurred frequently and in different settings within the household and while travelling for basketball events. The Accused acknowledged making off-colour jokes but denied targeting anyone specifically or intending to convey sexual interest. He also referred to the fact that these adolescent boys also frequently made jokes.

[90] I accept that the Accused engaged in sexualized joking in the presence of B.Y. and T.E. The context, frequency, and nature of these comments indicate that he introduced sexualized material into their lives. While his intent may have been to

appear like “one of the boys” or humorous, the conduct nonetheless contributed to an environment in which sexuality was inappropriately present.

[91] T.E. also testified that the Accused would sometimes walk around the house naked. No other witness gave similar evidence, though the Accused acknowledged that he would sometimes walk to the bathroom naked in the middle of the night when everyone else was asleep.

[92] I prefer the evidence of T.E. on this point, as I regard the Accused’s suggestion that this only occurred in those limited circumstances as another instance of minimization.

[93] The Crown submits that, taken together, these incidents demonstrate that the Accused introduced sexualized conduct and alcohol into the relationships with T.E., B.Y. and others, supporting the conclusion that he had a sexual interest in T.E. The Defence argues that each incident can be explained innocently, as part of household life with adolescent boys, and that the Accused’s behaviour reflects attempts to bond and maintain household morale rather than sexual interest.

[94] When viewed cumulatively, the evidence establishes that the Accused repeatedly introduced sexualized behaviour into his relationships with both B.Y. and, more significantly, T.E. While some of the individual acts-such as card games, jokes, or brief nudity could, in isolation be interpreted as attempts to bond or as innocent household behaviour, I am unable to accept the Defence characterization of such acts as innocent horseplay, or “locker room” behaviour. The combination of these behaviours, their frequency, and the circumstances in which they occurred demonstrates grooming and a sexualized interest in T.E. This includes sexualized jokes, card games involving inappropriate dares, incidents involving nudity in the bathroom and walking unclothed in the house, and the provision of alcohol to minors.

[95] These findings provide context for assessing the credibility and reliability of T.E.’s testimony. The subsequent paragraphs will evaluate the trustworthiness of his accounts in light of the totality of the evidence, including the Accused’s denials and any other evidence.

[96] The analysis of the evidence relating to the counts involving T.E. and N.K. must be conducted separately. The evidence to be considered relative to the count involving N.K. does not include this other misconduct evidence. This evidence is relevant only to T.E., and can be considered solely to show that the accused had a

sexual interest in adolescent boys, specifically T.E. and B.Y. Again, this evidence may not be used in making any finding relative to N.K.

[97] Some of the conduct described by T.E. and B.Y. might, in isolation, be capable of innocent explanation. However, when viewed cumulatively, the evidence establishes that the Accused repeatedly introduced sexualized behaviour into his relationship with B.Y., and, particularly, T.E. This included sexualized jokes and card games, and incidents involving nudity or partial nudity in the bathroom or when walking unclothed in the house. These acts, taken together, are not consistent with innocent horseplay, trying to be "one of the boys" or, as suggested by the Defence, locker-room behaviour. Rather, they demonstrate grooming and the expression of sexual interest.

[98] In his testimony, the Accused sought to portray his conduct as benign and harmless. For example, he denied being nude in front of the boys in any deliberate way, but acknowledged that he may have walked unclothed from his bedroom to the bathroom in the middle of the night. He attempted to minimize the significance of these occurrences, but I do not accept that they were as isolated or innocuous as he suggested, particularly given my findings relative to the masturbation incident. Even if accepted at face value, the behaviour was plainly inappropriate in the context of his relationship with these adolescent boys and as the father of young children also occupying the home.

[99] Similarly, his evidence about sexualized jokes and games amounted to an acknowledgement that such conduct occurred, though he insisted it was harmless. His efforts to rationalize or normalize these behaviours undermine, rather than strengthen, his credibility.

[100] Taken together, these admissions confirm that the Accused introduced sexualized behaviour into his interactions with T.E. The evidence coming from B.Y. in this regard is considered only to provide context for assessing the Accused's behaviour towards T.E., and is not being used to make any overall finding relative to B.Y. In my view, this conduct, considered as a whole, cannot be reconciled with the Accused's assertion that he had no sexual interest in T.E.

[101] In sum, the other misconduct evidence establishes a consistent pattern of behaviour by the Accused that cannot reasonably be explained away as accidental or innocent. While not charged as separate offences, these acts are relevant to the assessment of whether the Accused had a sexual interest in adolescent boys, specifically T.E., and they provide essential context for evaluating the credibility and reliability of T.E.'s testimony on the counts before the Court. This evidence may

also be considered in assessing the plausibility of T.E.'s testimony, but it cannot serve as independent proof of the offences charged.

b) The Evidence Relating to Count #2 and #3 – T.E.

[102] The Defence challenges the reliability and credibility of the evidence of T.E. on several grounds. First, it was submitted that T.E. was evasive and often refused to accept that his prior statements to the police may have been more accurate than his trial testimony. The Defence also notes that T.E. requested frequent breaks when confronted with inconsistencies and complained about the tone of the cross-examination. Second, it argues that T.E. presented his evidence in a manner designed to portray himself as a victim and the Accused as a villain. Third, it contends that T.E. was entirely inaccurate in his recollection of the timing of the alleged incident of oral sex, despite describing the Arctic Winter Games ("AWG") as a highly memorable event. Similarly, it pointed to T.E.'s lack of recollection of accompanying the Accused on a medical trip in September 2009, or any other occasion. Fourth, it asserts that T.E.'s account of the alleged sexual assault was marked by numerous inconsistencies. Finally, it argued that T.E.'s evidence evolved in a way that appears to align with the evidence of other complainants.

[103] I do not accept the Defence contention that T.E. was evasive in his testimony. The cross-examination was lengthy, intense and, at times, combative. While the witness occasionally "pushed back" when responding to propositions put to him, I am not persuaded that this amounted to evasiveness. On several occasions, when presented with documents or contradictory evidence, he readily accepted that some of this information refreshed his memory and that his recollection of certain details was mistaken or inaccurate.

[104] The Defence also took issue with T.E.'s requests for breaks during his lengthy cross-examination. They contend that these breaks coincided with instances where he was confronted with the inconsistencies between his police statement and his trial evidence. They further suggest that he returned from one such break with a prepared speech to address these inconsistencies. The Defence challenges his credibility based on what it characterized as his "grandstanding speech".

[105] During the course of his cross-examination, and in the absence of the jury, T.E. indicated that he wanted to say something. He stated: "it's just about my emotions, and it's affecting me, and it's a little getting me off with all these questions, and its very stressful dealing with it right now": Transcript, p. 48, l. 14-17). He went on to say, "And it's a known fact that when someone is upset and going through emotions, it's - - it's very hard to clearly think and to answer questions."

Shortly thereafter, in the presence of the jury and while being cross-examined about the masturbation incident, T.E. stated:

> **T.E.**: I don't appreciate your tone of voice, how you're talking to me, and I - - like, you're purposely trying to upset me and make me say things that aren't true. The fact that it is - - no matter what date or time, the fact that I remember what N.B. did to me, everything, the trauma he caused me, no date, no time, no anything would ever take that away or make me forget.
>
> **The Court**: Mr. E., I'm just going to interject for a moment. Mr. E., we understand that its difficult for you to talk about these things. We really do. And Ms. Lind has an important job to do here, and her job is to make sure that we have a complete understanding of what your evidence is. Okay? And Ms. Lind has appeared in front of me. Her voice is no different now than it is normally. It's just the way she talks, and so I would ask you to take a deep breath and do your best to try and answer the questions that are being asked of you. Okay.
>
> **T.E.:** Yes, but my understanding is she's talking to me like I don't know anything from her tone of voice.
>
> **The Court:** Well, Mr. E., if I was concerned that that was the case, I'm sure that I would intervene, and I would ask Ms. Lind to not speak to you in the way that she's speaking. But, Mr. E., in my view, Ms. Lind is not speaking to you in a way that is inappropriate, and I'm sorry your feel otherwise. So all I'm going to ask you to do is to do your very best to answer her questions. Okay? Mr. E. can you do that?
>
> **T.E.**: I cannot see anything. [Referring to a document relayed electronically to the location of his remote testimony.]
>
> **The Court:** Okay. Mr. E., are you able to continue. I'm simply asking you to do your very best to try and answer Ms. Lind's questions. Can you do that?
>
> **T.E.:** Yes, Sir.
>
> **The Court:** Okay
>
> **T.E.:** I'll be professional about this, Sir.

[106] The Defence describes these remarks as a "speech" that was rehearsed and calculated. I do not accept that characterization. At the outset of his testimony, T.E. told the Crown that he was uncomfortable talking about these events. The comments he subsequently made outside the presence of the jury were spontaneous reflections

on the stress and emotional difficulty he was experiencing in responding to questions. The comments he later made in front of the jury were similarly spontaneous and reflected his frustration with the process. Once reassured, T.E. composed himself, confirmed he could continue, and did so, stating: "I'll be professional about this, Sir." In my view, these statements illustrate the stress and emotional strain T.E. was under throughout his testimony. That context also reinforces my conclusion that any slips of language in his cross-examination, as more fully described below, were inadvertent and insignificant. None of these remarks detracts from his credibility or reliability. In the result, I am unable to accede to the Defence suggestion that this so-called "speech" was scripted or that his requests for breaks were an attempt to avoid responding to questions.

[107] After charges were laid relating to B.Y., C.K. spoke to her husband, T.E., about whether anything had ever happened with the Accused that he might want to discuss. She described him as visibly shocked by the question: he sat back, his eyes widened, he was initially unable to speak, and he avoided eye contact. She said he appeared embarrassed and ashamed. After briefly disclosing what had occurred, T.E. told her he did not want to talk further and immediately left the room. C.K.'s observations corroborate the spontaneous and genuine nature of T.E.'s distress, supporting the conclusion that his reactions during testimony reflected the emotional impact of the events rather than any calculated behaviour.

[108] In assessing credibility, I am mindful that treatment of so-called demeanour evidence must be approached with caution. Nevertheless, a trier of fact may consider the witness's overall presentation, including spontaneous, respectful, or candid expressions, as part of the broader evidentiary context: ***R v G.F.,*** 2021 SCC 20, at para. 81; ***R v Rhayel***, 2015 ONCA 377, at paras 85-87; ***R v C.L.Y.,*** 2008 SCC 2, at para 8.

[109] I would add that T.E. was clearly a reluctant witness. He testified remotely pursuant to the Crown's application under s. 486.2(1) of the *Criminal Code*, to avoid the trauma of having to testify in the Accused's presence. Although he sometimes struggled to recall details related to the sequence of events and aspects of his relationship with the Accused, I found him to be a sincere and honest witness, plainly attempting to recall traumatic events from his early life.

[110] T.E.'s parting comments at the conclusion of his testimony - "[O]kay. Thank-you guys for everything, and I appreciate it, and you guys take care now enjoy your day. Thanks." – strike me as significant. He spontaneously thanked the participants and offered good wishes as he concluded. I interpret this as a spontaneous expression

of relief and politeness, consistent with my impression of him throughout his testimony. It was not the product of calculation, but consistent with a reluctant yet earnest witness. This remark contributes to my overall impression of T.E. as sincere, honest, and cooperative – demonstrating no animus towards the Court or the process, though it is but one small factor in the assessment of his credibility.

[111] Regarding the Defence suggestion that T.E. refused to accept the accuracy of his police statement, some context is necessary. I accept T.E.'s evidence that, although he first disclosed the abuse to his wife, his first detailed account of the alleged sexual assault was provided to the police in 2021. It is not unreasonable that, by 2025, further reflection on these traumatic events would allow him to recall certain details with greater clarity. That retrieving these memories required time and effort does not undermine the plausibility of his account.

[112] The statement provided to the police in April 2021 was not contemporaneous, provided more than ten years after the events. The evidence shows that the incident was traumatic, leaving T.E. feeling uncomfortable and frightened, and that he attempted to suppress the memory. While it is often argued that a contemporaneous account may be more accurate than one given many years later, that reasoning is of limited value when comparing two non-contemporaneous accounts separated by several years. I am not persuaded that an account provided ten years or more after the event is meaningfully different from one given fifteen years later; both necessarily rely on the recall of distant memory.

[113] During cross-examination, T.E. rejected the suggestion that memory inevitably deteriorates over time, stating that "it'll take a bit to remember". For instance, he explained the difference between his police statement and trial testimony regarding the card games instituted by the Accused: "[B]ut I didn't remember at the time [when giving his statement to the police] that B.Y. was naked, and then I remembered I was naked too because I do remember B.Y. covering himself with a cup – a big - - a big cup, like a cup cover over his genitals and everyone" (Transcript, p. 46, l. 20-24).

[114] Significantly, despite occasional difficulty with sequencing, he never claimed to have no memory of what occurred.

[115] It is well recognized that complainants disclose sexual assaults in varying ways. As the Supreme Court observed in ***R v DD***, 2000 SCC 43, at para. 65, courts must avoid "stereotypical notions" about how victims of sexual assault are expected to behave or recount their experiences. Some disclose immediately, some delay for years, and others never disclose at all. In ***R v L.*** (W.K), [1991] 1 S.C.R. 1091, Cory

J. provided the following guidance on the timing of sexual assault complaints, particularly from young complainants. At p.1106-07:

> It must be recognized that the failure of young complainants to complain at the first reasonable opportunity is not unusual in cases of sexual assault. Feelings of shame, fear of family disruption, fear of not being believed, and emotional trauma may all operate to prevent the laying of a complaint. Indeed, the reluctance of children to come forward and complain is well documented. In these circumstances, the failure to complain promptly should not be seized upon as casting doubt upon the credibility of the complainant.

[116] Case law confirms that a piecemeal or evolving disclosure does not undermine credibility: ***R v D.P***., 2017 ONCA 263, at para 30; ***R v A.R.D.***, 2017 ABCA 237, at paras 8, 22, aff'd 2018 SCC 6. Complainants are not expected to provide a perfectly consistent or exhaustive account. As the Alberta Court of Appeal cautioned in ***A.R.D***. (at para 22), the trial judge must avoid assuming that "there is a typical, predictable, or uniform way in which complainants are expected to recount allegations of sexual assault." Minor inconsistencies or omissions – especially on peripheral matters – are to be expected when witnesses are recounting traumatic events after the passage of time: ***R v (G),*** [1990] 2 S.C.R. 30, at p. 57; ***R v F (C.C.),*** [1977] 3 S.C.R. 1183, at para 26. What matters is whether the essential core of the complainant's evidence remains consistent and credible when viewed in light of the whole of the evidence.

[117] The Alberta Court of Appeal also addressed this issue in ***R v Garford***, 2021 ABCA 338, at para 22:

> The point is simply that the mere fact a complainant's reporting, particularly that of a child, is not a verbatim recitation over time or is revealed in a piecemeal fashion, is not in and of itself the conduit to infer negatively on a complainant's credibility: ***R v DP***, 2017 ONCA 263, leave to appeal ref'd, 2017 CanLII 78704 (SCC); ***R v Ramos***, 2020 MBCA 111, aff'd 20121 SCC 15. It is not necessarily an inconsistency. It is not necessarily a fatal blow in the ultimate credibility assessment. Disclosure may well be a progressive exercise. The pain or trauma inherent in most decisions to disclose can be painful for victims. It is therefore not surprising that it may take some complainants more than one occasion to shed this burden and reveal the full picture.

[118] T.E. requested several breaks during his testimony, both during examination-in-chief and cross-examination. He explained: "I need a break. Could I take a break? I'm sorry. I would like to say something as well. I was diagnosed with ADHD, so forgive me for not sitting still and getting up and taking breaks. It just has something to do with my ADHD": Transcript, p. 87- l. 27 – p. 88, l.

[119] In my view, the mere fact that T.E. required breaks during his testimony does not, in itself, undermine his credibility. Court proceedings, and particularly the experience of giving evidence about traumatic events, can be stressful. It is not unusual for witnesses to require pauses, and the transcript reflects that T.E. linked his need for breaks, at least in part, to his ADHD. I would simply add that T.E. also requested breaks, including smoke breaks, during his examination-in-chief.

[120] I do not accept the suggestion that T.E. sought to cast himself as a victim and the Accused as a villain. His evidence about their relationship was balanced. While he described the Accused's misconduct, including the alleged sexual assaults, he also acknowledged the benefits he derived from the relationship. The relationship was complex and nuanced, and understandably difficult for a young T.E. to navigate. On several occasions, he spoke positively about the Accused and all of the help and support he received while living in Tulita. For example, when it was suggested to him in cross-examination that the Accused had "scolded" him following an incident in 2010 – shortly before his high school graduation – when he and N.K. became intoxicated and acted inappropriately towards a sponsor, T.E. described the Accused as disappointed rather than harsh or punitive, in circumstances when he could have easily portrayed him otherwise. As to the further suggestion that T.E. attempted to present himself as a victim, I find no merit. On his evidence, he was in fact the victim of sexual assault and other misconduct by the Accused while living in Tulita, and he referred on several occasions to the trauma caused by those experiences.

[121] The Defence next contends that the Court cannot rely on T.E.'s evidence because he mistakenly linked the alleged sexual assault to the basketball tryouts for the 2010 Arctic Winter Games. According to the Defence, this is a fundamental inaccuracy that puts all of his evidence into question. Both the Crown and Defence agree that he was wrong in making this connection.

[122] During cross-examination, T.E. readily accepted that he was mistaken in linking the alleged sexual assault to the basketball tryouts for the 2010 Arctic Winter Games. Presented with new information, though visibly surprised, T.E. readily accepted that the tryouts occurred in December 2009, not during the summer. He also conceded he was not the only boy from Tulita at the tryouts; the only one selected for the team; and that he was not alone with the Accused at that time. While being challenged on this point, he candidly responded: "I might have gotten everything backwards, but the experience is still the same": Transcript, p. 107, l. 13-14. This underscores that while peripheral details may have been mistaken, he remained consistent on the central allegation.

[123] The Defence argues that the Arctic Winter Games trials were a highly memorable event for T.E., particularly because he made the team, and contends that T.E.'s error in linking the two events undermines his credibility. Implicit in this argument is the suggestion that it would have been impossible for him to mistakenly associate the sexual assault with such a memorable event. I do not accept this reasoning. Even highly significant events can become conflated with other experiences over time, particularly when recalling events from adolescence more than 15 years earlier, amid a demanding schedule of school, sports and travel. This error does not, in my view, cast doubt on T.E.'s overall reliability in recounting the assault itself.

[124] T.E. was recalling events from a busy and complex period of his teenage years, including numerous basketball and hockey tournaments, regional tryouts, and travel across the Northwest Territories, Yukon, Alberta, and beyond. Given the passage of time and the hectic nature of these years, it is unsurprising that he conflated some experiences, yet this does not detract from his credibility or the reliability of his account of the actual assault.

[125] The same reasoning applies to T.E.'s inability to recall accompanying the Accused on a medical trip to Yellowknife in September 2009. The Crown maintains that T.E.'s lack of recollection of the medical trip can be explained in several ways. First, the trip was last-minute, and it occurred very shortly after he arrived in Tulita in the fall of 2009 for his final year of school. He was already late for the school start-up, and he had some catch-up schoolwork to complete. Second, the Crown points to the fact that this was a traumatic event for T.E. Combined with the isolation he experienced from the Accused's lack of communication for several weeks following the event, it is clear that T.E. chose to push the incident aside and pretend that it never took place. His evidence was that he never discussed what happened until he provided a statement to the police in 2021. I accept that he tried to forget the sexual assault and never disclosed it for more than 10 years.

[126] T.E. testified that he apologized to the Accused to end the isolation and move on with his life. The Accused was a central figure in every aspect of T.E.'s life – home, school, basketball. In November and December 2009, he was preparing for regional tryouts, followed by the territorial tryouts. He could not deal with the silent treatment from the Accused and wanted the isolation to end. T.E.'s evidence was that the Accused made him feel like he was the problem. This is consistent with B.Y.'s evidence that the Accused was always right and that the boys were always in the wrong. B.Y. also confirmed the central role that the Accused played in assisting T.E. with his schoolwork.

[127] This lapse of memory does not undermine the reliability of his evidence about the alleged assault. Despite this gap in recall, T.E. provided a very detailed description of the hotel, its surroundings, the weather at the time and, most importantly, the sexual assault he says occurred there. It is not surprising that, after more than 15 years, peripheral details such as the purpose of the trip or the name of the hotel might fade, while the central event remains vivid. This pattern accords with ordinary experience of memory over time, particularly when recalling events from youth. Accordingly, I find that T.E.'s inability to recall the details surrounding the medical trip does not detract from the overall reliability of his testimony concerning the alleged assault. I would simply add that this was but one of many trips to Yellowknife and elsewhere for T.E. while living in Tulita.

[128] This approach aligns with the jurisprudence, which recognizes that errors or gaps in peripheral matters, as well as complexities in continuing victim-offender relationships do not necessarily undermine credibility on the central allegation: ***R v W(R),*** [1992] 2 S.C.R. 122; ***R v H.S.B.***, 2008 SCC 52.

[129] T.E.'s evidence regarding his drinking and other personal conduct further illustrates his difficulty in sequencing events and anchoring them in time. At trial, he stated that he did not begin drinking until after his eighteenth birthday in November 2009. Yet he also described drinking with the Accused prior to that date, including during the September 2009 trip to Yellowknife when the alleged sexual assault occurred, and on other occasions when the Accused and his wife were teaching the boys to "drink responsibly". He also admitted to drinking in Meander River during Christmas 2009, after turning eighteen. Upon returning to Tulita, he "confessed" to the Accused about drinking, smoking and trying marihuana. While the legal drinking age in Alberta is 18, the timing suggests that T.E.'s motivation for disclosure stemmed from guilt over violating the team's no-drinking rule, rather than any concern about legality.

[130] Difficulties in recalling exact dates, ages, and sequencing of events were apparent throughout T.E.'s testimony. He became visibly stressed and confused when asked his date of birth and where he was living at the time he turned eighteen. On another occasion, he testified that he was nineteen when he played sexual-themed card games with the Accused and others; yet the rest of the evidence makes it clear that he had already left Tulita well before his nineteenth birthday. These examples demonstrate his frustration and difficulty with mental calculations under the stress of cross-examination. I am satisfied that these discrepancies about the timing of card games, basketball tournaments, or other peripheral events reflect natural challenges in memory rather than intentional misrepresentations. Both the Supreme Court and the Alberta Court of Appeal have recognized that complainants in historic sexual

assault cases may misremember ancillary details without undermining credibility. See ***A.R.D***., at paras 38-39; ***R v R.E.M.,*** 2008 SCC 51, paras 25-26.

[131] Despite these peripheral inconsistencies and occasional confusion, T.E. consistently described the core events of the alleged assault with clarity and conviction: the Yellowknife trip, the hotel setting, the sexual assault itself. Minor differences in his account do not alter the substance of his evidence. His accounts consistently describe fear, resistance, and removal from the situation. This pattern aligns with ordinary experience of memory over time, particularly when recalling events from youth.

[132] The Crown submits that a conviction in this instance rests on T.E.'s detailed description of the sexual assault itself – not on ancillary, contextual matters such as the exact purpose of the trip, the name of the hotel, or the weather. While T.E. did not recall the purpose of the trip, he later explained that he tried to push the incident aside, endured several weeks of silence from the Accused, and even went so far as to apologize to end the isolation and continue with his life. These actions illustrate the power imbalance in the relationship and, as previously indicated, the Accused's central role in every aspect of T.E.'s life, including home, school, and basketball.

[133] I also do not accept the Defence characterization of the Crown's theory as a "pivot". The foundation of T.E.'s evidence is his detailed and unwavering account of the sexual assault itself, which he has consistently maintained. Contextual details he provided about the setting were consistent with the Crown's theory. The credibility of his evidence does not turn on whether he recalled the precise arrangements or the purpose of the trip. It is significant that he did not discuss the details of what happened until he gave a statement to the police more than 10 years later, which I accept is consistent with his attempt to suppress or compartmentalize the memory. Further, he made the deliberate decision to go and apologize to the Accused to end the isolation, cast the matter aside, and allow him to get on with his life. Accordingly, peripheral memory gaps, conflations, and the Defence's suggestion of a "pivot" do not undermine the reliability of T.E.'s testimony regarding the sexual assault.

[134] The Defence further submits that several inconsistencies in T.E.'s account also undermine his credibility. First, in his police statement, T.E. said that he went to bed first, whereas at trial he stated that the Accused went to bed first. The Defence argues that this shift suggests an effort to portray the Accused as calculated, even predatory, in remaining awake until after T.E. had gone to bed. Second, the Defence points to the slight differences in T.E.'s description of his placement on the bed when he awoke to find the Accused performing oral sex, as well as variations in his

account of the physical position of the Accused during and after the alleged sexual assault. Third, the Defence argues that T.E. gave different accounts of his reaction upon waking.

[135] In my view, none of these differences is material and reflects natural variations in recalling traumatic events after many years. The first discrepancy – as to who went to bed first – is minor and has little bearing on the substance of the allegation. In cross-examination, T.E. explained that he was filled with stress and emotion when providing his statement to the police; that he could not really focus; and that he just wanted to "say what I wanted to say, and I wanted to leave the R.C.M.P. station": Transcript, p. 85, l. 1-12. He acknowledged that he should have told the police that he went to bed first. In my view, it is unsurprising that this detail might be recalled differently years later, and it does not affect the essence of his account in any material way.

[136] The second difference, regarding his position on the bed, is also of no real significance. At trial, T.E. testified he was lying flat on his back when he awoke to find the Accused performing oral sex. In his police statement, he was asked to describe where he was sleeping when he went to bed. He stated that he was on the left side of the bed while the Accused was on the right side, and that his back would have been turned towards the Accused. When pressed about his position upon waking, he responded that he was "probably on [his] side like, you know, just like this…and then yeah, and then that's when I woke up…so almost on my back, side back, yeah." Taken as a whole, his evidence reflects some minor uncertainty about whether he was on his back, or side, or somewhere in between. It is not surprising that his attention would have been focused on what was happening to him at the time, not the precise position of his body. What remained consistent was the essential fact that he awoke to the Accused performing oral sex on him.

[137] The Defence also pointed to a further inconsistency regarding the precise position of the Accused during the incident. In his police statement, T.E. described the Accused as being between his legs. In his direct evidence, he said that the Accused's legs were "around his legs", and in cross-examination, he maintained that the Accused's legs "were by my legs": Transcript: p. 38, l. 15-16; p. 87, l. 21. When asked if he recalled whether the Accused was on the left or right side of him, he initially said that he did not know before adding that the Accused was on his right side. In my view, these very minor variations in T.E.'s descriptions of the Accused during the assault do not amount to genuine inconsistencies. They are readily explained by the ordinary frailties of memory, the passage of time, and the difficulty of describing the precise positioning of another person during a traumatic event.

[138] Next, the Defence highlighted differences between T.E.'s trial evidence and his police statements regarding how he extricated himself from the alleged sexual assault and the subsequent verbal exchange with the Accused. In his police statement, T.E. described pushing the Accused away, leaving the bed, and provided a detailed account of moving to the couch, being pursued by the Accused and urged to return to the bed. At trial, he summarized the incident by stating that he rolled onto his side, got up shortly thereafter, and went to the living room, simply noting that the Accused tried to persuade him to return to bed, but he declined.

[139] This alleged inconsistency requires closer consideration. In his police statement, T.E. was questioned several times about this incident. His initial account was as follows:

T.E.	I'm drinking and ah…so I pass out and when I wake up he's…trying to suck my dick.
Question:	Okay
T.E.	And I'm like what the fuck man like…
Question:	Mmm-hmm (affirmative)
T.E.	Like you're making me uncomfortable dude…
Question:	Yeah..yeah absolutely…
T.E.	Like I can't…I can't fight him. I can't do nothing. I'm just a little…little teenager right. Little scrawny kid.
Question:	Yeah
T.E.	And then I tell him you know I don't know what to say, never, this happened to me before.
Question:	Mmm-hmm (Affirmative)
T.E.	And then the next day he's acting like nothing happened.

[140] Later, in the same statement, T.E. expanded on his description:

Question:	Amh…and then can you describe what he was doing when you woke up?
T.E.	He was…he was in between my legs…

Question: Mmm-hmm (Affirmative)

T.E. And he had his mouth on my cock.
Question: Okay

T.E. And I pushed him away…

Question: Okay…

T.E. And I told him, I…I didn't know what to say.

[141] When asked whether the Accused said anything after T.E. pushed him away. T.E. responded:

T.E. No. He just said what's wrong. What..what did I do?

Question: Okay.

T.E. And I told him I…I don't want to sleep in the bed with you…

Question: Yeah…

T.E. I'm uncomfortable.

Question Yeah, uncomfortable.

T.E. Yeah.

Question: Ahm…what happened after you told him that?

T.E. Ah…nothing. He just ah…he started talking to me and I just told him to fuck off.

Question: Yeah.

T.E. And he went to the bed and he never said nothing.

He was later asked again for further clarification.

T.E. And then I'm, like, getting mad. What are you doing? Like, get off. Like, what - - what the fuck is going on? Right. Fuck off, you know?

[142] This last part of the statement was put to T.E. in cross-examination, producing the following exchange:

Question: Okay. So what you had told the police is, in fact, that you did say something?

T.E. No. That was - - that was when I was on the couch. That's when he was trying to harass me going back to the room.

Question: No, let's go back, then. Let's go back to page 4.

T.E. I'm on page 4 now.

Question: Okay. And the part I had said that you should read, you're pretty clear. That's when, you know, he pulled down my pants, sucking, trying to suck my cock, sucking my cock. M-h. And then I'm, like getting mad. What are you doing? Like get off. Like, - - what the fuck is going on?

T.E. Yes

Question: Okay. You're telling him - - you're telling the police that you told him to get off of you?

T.E. Yes.

Question: Okay.

T.E. At that time, yeah.

Question: And so you would agree that what you told the police is different than what you said today?

T.E. Yeah, because I'm going through emotions.

Question: Of course.

T.E. These are emotions, and I don't know, you know - - it's hard to speak about stuff like that, so it might be easy for you to say it - - say it off of paper that you're reading, but for me in my heart and everything else, it's difficult, so that's the difference between you and me.

[143] At trial, T.E. described pretending to be asleep, rolling onto his side, getting up, and moving to the couch, while in his police statement, he referred to pushing the Accused away and, at some point, telling him to "fuck off". Rolling away versus pushing away – both before leaving the bed – describe essentially the same response. In both versions, the core substance remains consistent: the Accused performed oral sex on a sleeping T.E., and T.E. extricated himself when he awoke to discover what was taking place.

[144] Similarly, while the details regarding the verbal exchange differ somewhat, the essential facts remain consistent; the Accused urged T.E. to return, and he refused. The Defence emphasizes that in his police statement, T.E. appeared to say that he pushed the Accused away and immediately told him to "fuck off". However, the statement does not clearly establish when this rejection took place, whether immediately upon waking or later, after he moved to the couch. The more likely interpretation is that this exchange took place later, after T.E. had moved to the couch and the Accused followed him there. That interpretation aligns more closely with T.E.'s trial testimony and the overall sequence of events he described.

[145] As for the third alleged discrepancy, I find that the accounts are consistent in substance and do not amount to a genuine inconsistency. Both describe fear and hesitation upon waking, followed by conduct that ended the assault and a refusal to return to bed. Any difference lies in emphasis and detail. I do not consider any of these differences to be material. Both versions consistently describe fear, resistance, and a refusal to resume proximity with the Accused. Any variations are readily explained by the difficulty of recounting a traumatic event after many years and by the natural variation in how a witness may describe the same interaction on different occasions. These minor discrepancies do not undermine the reliability of T.E.'s core account or his overall credibility.

[146] The Defence also relies on an alleged inconsistency concerning T.E.'s thoughts of suicide. At trial, T.E. described feeling like an outsider in Tulita, noting that as someone who is half-native and half-white, he struggled to make friends and fit in. He further testified that he experienced suicidal thoughts following the alleged hotel assault, as well as the instances of the Accused kissing him on the lips. He explained:

> (…_It would happen when I needed someone to talk to, you know, when I'm - - when I'm not - - you know, when I'm thinking - - I'm overthinking about myself. Yes. Because, believe me, after those things happened, what he did to me, I never felt - - you know, I never felt so uncomfortable with myself, and that's when, you know, the suicide thoughts came in after that, after those incidents.
>
> Because I grew up in a home - - a sober home where - - especially on a community with my mom and dad, and not once has anyone ever mistreated me or done anything like that growing up on a reserve where you hear stories about that. And for the happening to me from a non-First Nation person, it kind of brought back trauma from when my grandfather told me what happened to him at residential school.

[147] In his police statement, T.E. acknowledged suicidal thoughts but did not connect them to the Accused. In his evidence in chief, he referred to difficulties

fitting in while living in Tulita, but made no mention of suicide. It was only in cross-examination that he explicitly linking his suicidal thoughts to his relationship with the Accused, while also noting that these thoughts were connected to both his social isolation and the Accused's conduct.

[148] Under cross-examination, T.E. was presented with his police statement and asked:

Question:	Do you remember when you started struggling with some of those thoughts inside and feeling, like, really low or suicidal?
T.E.	Oh yeah. Yeah. It - - it - - like, it happened to, like, those thoughts and everything came from those - - some of those people around there, right, and, like, some of those kids, how they were to me, like I didn't belong.

He was then further questioned by Defence counsel as follows:

Question:	Okay. That's what you said to the police?
T.E.	Yes
Question:	And so the idea of suicide came up with the police; right? You talk about it obviously?
T.E.	Yes
Question:	But what you told the police is that your suicidal thoughts were because of the kids that were around you?
T.E.	Yes
Question:	Right
T.E.	But I didn't mention anything about Neil…
Question:	Right
T.E.	- - but it was - - was about Neil.
Question:	Okay. Okay. Let's move on from what happened to talk about when and where…

[149] In my view, this does not amount to a material inconsistency. It reflects that T.E. provided further context under cross-examination which had not been captured

in his earlier accounts. He began to explain this difference, but was cut off and not permitted to elaborate. Courts have long recognized that survivors of trauma may disclose such connections gradually and not necessarily in their earliest statements. In these circumstances, this variation does not undermine the credibility of T.E.'s evidence.

[150] The Defence contends that T.E. was combative when presented with evidence said to contradict his assertion that, after the incident, he lost respect for the Accused and severed all contact, remaining in Tulita only to complete high school. The Defence relies on three instances: (i) 2010 Facebook messages exchanged with the Accused shortly after T.E.'s graduation; (ii) T.E.'s invitation to the Accused and his wife (T.E.'s aunt) to his wedding; and (iii) a visit T.E. paid to the Accused at some point after leaving Tulita. The Defence says these instances show that T.E. lied about cutting off contact and losing all respect for the Accused. In my view, this subsequent contact, without more, do not establish dishonesty.

[151] The relationship between T.E. and the Accused was complex. The Accused acted as a teacher, guardian and mentor, providing guidance and opportunities, which may explain why contact might continue notwithstanding the infliction of harm. Court have recognized, particularly in situations involving intimate partners or familial abuse, that victims may remain emotionally connected to their abuser out of loyalty, dependency and affection – without negating the fact of abuse: ***R v Lavallee,*** [1990] 1 S.C.R. 582. Similarly, in ***DD***, the Court held (at para 65) that 'there is no inviolable rule on how people who are the victims of trauma like a sexual assault will behave." Appellate authority in both Alberta and the Northwest Territories have also addressed this issue. In ***A.R.D.***, the Alberta Court of Appeal, citing ***DD***, held (at para. 39) that "[T]he lack of avoidant behaviour tells…nothing [about the sexual assault allegation]". Similarly, in ***R v Caesar***, 2015 NWTCA 4, the Northwest Territories Court of Appeal stated at para. 6:

> Assumptions about complainants and their behavior in particular circumstances have plagued the law of sexual assault for generations. The Criminal Code now negates the relevance of many of them. There was a time when it was often assumed that a complainant who had really been sexually assaulted, would report the assault immediately, and would thereafter not associate with the perpetrator. In recent years many of the stereotypes surrounding sexual assault have been set aside, and the public is more aware of the various manifestations of this offence.

[152] Here, T.E.'s continued contact must be examined in this context. His initial defensiveness when confronted with the Facebook messages does not indicate deliberate falsehood. Rather, it reflects the complex emotions often experienced by someone in that position – including shame, embarrassment, and the challenge of

reconciling affection, loyalty and betrayal towards the same individual. Forgetfulness may also have also played a role, but I am not persuaded that it was a primary factor.

[153] Against this backdrop, I conclude that T.E.'s warm or affectionate tone in these Facebook messages and his willingness to see the Accused on occasion following graduation do not diminish his credibility. These actions are consistent with the ambivalence and conflicting emotions commonly found in relationships marked by trust, dependence, and betrayal. The key point is that his account of the assaults themselves has remained consistent in its essential features.

[154] Further support for T.E.'s credibility comes from a Christmas 2008 incident when he drank in contravention of basketball team rules while in Meander River. He voluntarily admitted this to the Accused, who reported the incident to the head of Basketball NWT, and described T.E. as someone with a lot of character and courage and someone possessing integrity. This demonstrates that T.E. was willing to acknowledge his mistakes and that he was candid and conscientious. It also provides additional context for understanding the nuanced relationship between T.E. and the Accused, which encompassed mentorship, trust, and accountability alongside later feelings of betrayal or harm.

[155] The Defence raises a further argument challenging the reliability and credibility of T.E.'s evidence. They rely on two passages in cross-examination in which T.E. appeared to invert the roles in describing the alleged sexual assault, stating that the Accused placed his penis on or around T.E.'s mouth, rather than the otherwise consistent account that the Accused placed T.E.'s penis in his mouth. The Defence also emphasizes T.E.'s statement that it did not matter if he was mistaken about certain details or changed aspects of his story, because this would not alter the trauma caused by the Accused's actions. The Crown's position is that these passages represent minor slips of the tongue under stress and do not affect the credibility or reliability of T.E.'s core evidence.

[156] The relevant portions of the transcript are as follows:

> But the fact is, no matter what I said, the trauma he caused me would - - wouldn't – the statement would never ever take that away. Nobody would ever take that away from what he did to me. The true – the statement, whatever is says, it says, but whatever he did to me, that's the fact that matters, and he did put his penis on my mouth and I do remember that: (Transcript, p. 84, l. 2-9).

Later, he stated:

> That's why we - - you can even go back and talk how you told me about how he had his penis around my mouth, him walking around naked, and I just told you today clearly that those happened, and I did not say I don't remember or anything like that.
>
> Those were clear answers of my trauma letting you know, so you can say he's not guilty, and you can say anything, but the truth will always come back no matter what: (Transcript, p. 111, l).

[157] These passages differ from T.E.'s otherwise consistent allegation that the Accused placed T.E.'s penis in his mouth. I am satisfied that they were slips of the tongue made while T.E. was highly agitated and defensive, and do not represent a substantive change in his account. His police statement, evidence-in-chief, and the remainder of his cross-examination were clear and consistent that the Accused performed oral sex on him. T.E. was never questioned about this aspect of his evidence as neither counsel apparently noticed them at the time. Defence counsel later acknowledged consulting the court reporter after the court had concluded for the day, but only confirmed one of the passages, missing the other entirely. In my view, the fact that these slips were isolated and went largely unnoticed underscores that these minor, isolated misstatements do not undermine the overall consistency of his evidence.

[158] At the end of his cross-examination, T.E. firmly rejected the suggestion that his evidence was fabricated, stating: "My experience is still the same. T.E. is not a liar. I tell the truth. I'm not going to create things like that."

[159] Having considered all of T.E.'s evidence, including minor inconsistencies regarding peripheral details, I accept T.E.'s account of the sexual assault that he says occurred in the Yellowknife hotel room. I find his testimony to be both credible and reliable.

[160] In assessing the evidence regarding the kissing incidents, I find that T.E.'s evidence was consistent, detailed and plausible. He described the incidents as unwanted and uncomfortable, and explained his fear of objecting. I accept his evidence that the kissing occurred as T.E. described. I also find that the kissing incidents formed part of an ongoing pattern of grooming designed to normalize sexualized contact and maintain control over T.E., which continued both before and after the Yellowknife assault.

[161] In summary, I am satisfied that T.E.'s evidence regarding both the sexual assault in the Yellowknife hotel and the repeated kissing incidents is credible and

reliable. The pattern of conduct demonstrates an ongoing grooming process by the Accused, which I accept occurred as T.E. described.

c)The Evidence Relating to Count #5 and #6 – N.K.

[162] The Defence challenges N.K.'s account of the alleged fondling incident at the Fraser Tower Hotel during the 2008 Cager Tournament and submits that his evidence is both unreliable and not credible. It maintains that N.K.'s testimony suffers from serious frailties that raise a reasonable doubt. In particular, the Defence relies on: (a) inconsistencies between N.K.'s various police statements and his testimony at trial regarding when the incident occurred; (b) contradictions concerning team composition, room layout, and sleeping arrangements at the Fraser Tower Hotel; (c) the absence of corroboration from other players regarding the alleged joking about sleeping arrangements or any confrontation with the Accused the following morning; (d) N.K.'s admission that his recollection may have been influenced by media coverage; (e) aspects of his testimony that the Defence characterizes as false or exaggerated, such as his claim that the Accused "ruined basketball" for him and that he ended all contact with the Accused after the incidents. In light of these alleged deficiencies, as well as the Accused's denial, the Defence argues that N.K.'s evidence is "shaky" and cannot support a finding of guilt beyond a reasonable doubt.

[163] The Defence first argued that N.K. gave conflicting evidence as to when the alleged hotel bed incident took place. In his initial two police statements on November 16, 2021 – both taken over the telephone – he gave varying timelines. In the first statement, he tentatively placed the incident at a basketball tournament in 2013, though he made no detailed reference to the assault beyond saying that the Accused "tried doing that to me" in response to questions about T.E. In the second statement, given less than half an hour later, he again referred to 2013, but then shifted, stating that it may have been 2011. In the course of the same interview, he also referred to another incident which he thought may have occurred in 2009. By the end of the second statement, he suggested that the two incidents took place in 2009 and 2011, though repeatedly emphasized that he could not remember the dates with certainty.

[164] The transcript of N.K.'s second police interview illustrates his difficulty situating the incident in time:

Question:	In Yellowknife, okay. So, how old were you in February of 2013?
N.K.	I was 17…just wait. No, it wasn't 2013…2012 I think.

Question: It was in…it was 2011? Okay, so…

N.K. I'm just refreshing my mind now. Okay, I got it now.

Question: …okay

N.K. It's like, yeah it was 20…11

[165] Later, in the same statement, he referred to a second incident which he thought occurred in 2009, but repeatedly qualified his answers by acknowledging that he could not remember "exact" and that while he was "pretty sure", he could not "remember the exact".

[166] In the third statement, given in person in Tulita, on December 15, 2021, N.K. asked to correct his earlier account, saying: "Oh, 2010 instead of 2011. I'm pretty sure it was around 2010". He then confirmed that he was speaking of the second incident.

[167] At trial, N.K. testified that the bed incident occurred at the annual Cager tournament in Yellowknife in 2009. On cross-examination, however, he acknowledged that in his earlier police statement, he had suggested that the incident may have taken place in 2013.

[168] The Defence relies heavily on these shifting recollection of dates, submitting that N.K.'s evidence is "shaky" and unreliable. It argues that the inconsistencies in his account go beyond the kind of blurring of dates that might be expected given the passage of more than a decade. Rather, they reflect material contradictions that undermine the reliability of his testimony and leave the Crown unable to prove its case beyond a reasonable doubt.

[169] In assessing this evidence, I am mindful of the frailties of human memory, particularly when dealing with traumatic events that occurred during adolescence and not disclosed until many years later. N.K.'s early police statements bear the hallmarks of a witness "thinking out loud", actively searching for memories he had intentionally tried to forget and attempting to construct a coherent narrative of events that were traumatic and difficult to recall. Like T.E., N.K. described having tried to put these traumatic incidents out of his mind, and his difficulty in situating them chronologically is consistent with the psychological tendency of victims to want to forget or suppress traumatic experiences. He was also scared and worried about how people would look at him after the Accused told him that no one would believe him.

This fear contributed to his hesitation and emotional distress when recounting the events and provides context for any inconsistencies or gaps in his memory.

[170] The Defence argues that the inconsistencies in N.K.'s various statements materially undermine his reliability. While I accept that his shifting accounts raise legitimate questions, I do not view them as determinative. The core allegation – that the Accused fondled him while he slept in a hotel bed – remained consistent across his statements and testimony. What varied was the dating of the incident. In my view, this variation is better explained by the effect of trauma, the long passage of time, and the ordinary frailties of youthful memory than by any deliberate attempt to mislead.

[171] N.K.'s evidence bears further similarity to that of T.E. Both describe complex and nuanced relationships with the Accused, marked by elements of trust, gratitude, and later feelings of shame and betrayal. Even though N.K. did not live with the Accused, he nevertheless benefited from his support and influence, particularly through basketball, which N.K. described as "his life". This duality – appreciation for the opportunities provided and anguish over the misconduct endured – provides important context for assessing how both young men processed and later recounted their experiences.

[172] I also note that N.K. began his second statement by volunteering a correction to the date that he had provided earlier, reflecting a willingness to be forthright and to do his best to be accurate. His approach is consistent with a witness who is actively attempting to reconstruct memories, rather than one seeking to mislead. I also note there is other evidence in the record – including the testimony of Ashley Marie Brennan, the Fraser Tower Hotel receipt, and the Accused's acknowledgment of his presence with N.K. at the 2008 Cager Tournament – that bears on the timing. I return to that corroborative evidence later in these reasons, but mention it here only to observe that N.K.'s difficulty recalling precise dates cannot be viewed in isolation. While N.K.'s memory of precise dates may have faltered, this corroborative evidence anchors his testimony and provides a reliable framework within which to situate it.

[173] Ashley Marie Brennan was a schoolteacher in Tulita for two academic years from mid-August 2007 until June 2009. In February 2008, she acted as a chaperone for the Tulita boys' basketball team attending the Cager Tournament in Yellowknife. This was the only basketball trip she chaperoned while in Tulita. During her year of teaching, she was involved with the junior team in conjunction with the basketball program overseen by the Accused. Ms. Brennan confirmed that at the Cager Tournament the players were divided into two groups, with four or five boys in each

of the two hotel rooms. She took responsibility for the younger boys, while the Accused oversaw the older boys. N.K. testified that he wanted to stay with his younger brother in Ms. Brennan's room, but the Accused directed otherwise. The Accused also confirmed Ms. Brennan's description of the trip and acknowledged that she was present at the 2008 Cager Tournament.

[174] Against this backdrop, the Defence points to what it characterizes as contradictions concerning the layout and sleeping arrangements at the Fraser Tower Hotel during this trip. In my view, there is no merit to this argument. N.K. testified that he and the Accused shared a king-sized bed in the unit's one bedroom, while the other players used a pull-out couch and what N.K. described as a couch-chair. The Defence says this conflicts with the evidence of Ashley Marie Brennan, the other chaperone on the trip, who gave shifting accounts of the room configuration. At first, she said there were one or two or three bedrooms, then that there were two, and eventually that there were always two, though she could not recall if there were one or two beds in each bedroom. She also described another trip where four girls shared one bed in each of the two bedrooms – meaning eight girls in total, plus a chaperone on the pull-out couch. That account, if anything, demonstrates that the Fraser Tower Hotel did accommodate multiple occupants in crowded and unconventional ways, undermining the Defence suggestion that N.K.'s version was illogical or defied common sense.

[175] Brennan also recalled that there was no hallway in the suites, whereas N.K. remembered there being one. Whether or not there was a hallway, or whether there were one or two beds does not, in my view, go to the core of the allegation. What matters is whether the Accused and N.K. were in the same bedroom and on the same bed when the sexual assault is said to have occurred. On this central point, N.K. testified that they were, while the Accused denied it, saying he slept on the pullout couch. It is noteworthy, in my view, that he conceded that there were times he did sleep in the same bed as his players.

[176] In light of the equivocal and internally inconsistent nature of Ms. Brennan's testimony on this point, I do not find that the Defence has demonstrated a clear inconsistency in N.K.'s account. The real conflict is between N.K.'s version of the events and the Accused's denial, and I prefer N.K.'s evidence on this point.

[177] The third aspect of the alleged inconsistency in N.K.'s evidence advanced by the Defence relates to team composition. This argument was not fully developed beyond a reference to the fact that in his direct examination, N.K. stated that there was only one basketball team in Tulita, while in cross-examination he agreed that there were in fact two teams, an under 15 years team and an under 19 years team.

[178] On the question of team composition, N.K. initially stated that there was only one basketball team in Tulita. During cross-examination, once his memory had been refreshed, he recalled that there were two teams, an under-15 team and an under 19 team. There was some confusion surrounding this issue, partly because evidence indicated that the junior and senior Cager Tournaments took place on successive weekends, and that the senior team was broken into under-15 and under-19 players, though they played together as a single senior team. This distinction was never fully explored. Even if N.K. was initially mistaken, or required his memory to be refreshed, this is a very minor point that does not go to the heart of the allegations and does not affect the reliability of his evidence.

[179] The Defence also challenges N.K.'s credibility on the basis that he falsely testified that the Accused had "ruined basketball" for him; that he ceased playing after the incidents; and that he ended all contact with the Accused. The Defence conducted a thorough, lengthy and rigorous cross-examination of N.K., particularly on these points. By suggesting that N.K. misrepresented these aspects of his evidence, the Defence implicitly challenged his credibility more generally, inviting the Court to view his testimony with caution.

[180] I do not accept the Defence's assertion that N.K. intentionally misrepresented the facts or lied in his testimony. As with T.E., it is important to understand N.K.'s follow-up behaviour in the context of the complex and ambivalent relationship he had with the Accused. Victims of sexual assault, particularly young people who have also received support and mentorship from the predator, often struggle with feelings of gratitude alongside feelings of shame and betrayal. N.K. had described basketball as "his life", and the Accused was the person who opened that world to him. It is therefore unsurprising that, even after the incidents, he continued to seek guidance and assistance from the Accused in connection with milestones such as graduation and athletic opportunities. In those instances when he struggled with detail or sequence, he readily accepted correction or acknowledged that other evidence assisted his memory, further supporting his credibility.

[181] As discussed above with respect to T.E., I note that the behaviour of victims following sexual assault – including on-going contact with their assailant, conflicted feelings, and seeking guidance or support – has been recognized in the case law as consistent with the complex dynamics of such relationships. N.K.'s continued engagement with the Accused in connection with significant milestones and his response when challenged in cross-examination fall squarely within this understanding. Far from undermining his credibility, these behaviours reflect the difficulty of severing ties with someone who simultaneously provided valuable

support and caused profound harm. In this light, N.K.'s assertions that the Accused had "ruined basketball" for him, or that he cut off contact after the incidents, should be understood less as deliberate falsehoods than as expressions of the conflicted emotions he carried. They reflect the psychological tendency to minimize or deny attachment to an abusive figure – the person who told you that no one would believe you – even when giving painful public testimony. When considered in this context, this evidence remains consistent with the lived reality of victims who attempt to reconcile their positive experiences with the harm inflicted upon them.

[182] This conclusion is reinforced by the Accused's own email to Z.B.'s mother in May 2010, written shortly after the Arctic Winter Games. In that message, the Accused described N.K. as rude, uncooperative, and less interested in sports or listening to his guidance. This correspondence is significant because it reflects the Accused's own recognition that N.K.'s behaviour toward him had changed. Taken together with the evidence of N.K.'s continuing, though sporadic, contact with the Accused, it underscores the reality that N.K. was navigating a state of confusion and ambivalence: still seeking out the Accused for certain forms of support while simultaneously withdrawing from him in other respects.

[183] The Defence advanced arguments regarding the fact that N.P. and S.K., whom N.K. said were present when he confronted the Accused the morning after the alleged bedroom assault, were not called to give evidence. N.K. also testified that the other boys, including N.P., S.K., and possibly another player, teased him the day before about who would share the room or bed with the Accused. There is no evidence from any of these individuals regarding these events.

[184] Exhibit #3, an Agreed Statement of Facts (Investigative Summary), outlines steps taken by the police to obtain statements from S.K. and N.P. Paragraph 13 records efforts commencing September 14, 2021, to obtain a statement from S.K., who initially agreed but later could not be located after subsequently relocating to Yellowknife. Paragraph 24 refers to a statement obtained from N.P. on November 29, 2021, at High Level, with no indication of its contents or the circumstances of its collection.

[185] Exhibit #9, an Agreed Statement of Facts dealing with N.P.'s anticipated evidence, contains general information about basketball trips, sleeping arrangements, and team activities. It makes no mention of the 2008 or 2009 Cager Tournaments or of any conversation N.P. may have heard between N.K. and the Accused. There is also no indication that N.P. was ever questioned about the confrontation described by N.K. or an incident when N.K. was teased about who was going to be sharing a room or bed with the Accused.

[186] The Defence cites several authorities in support of its submission that the absence of evidence from N.P. and S.K. is a factor for the Court's consideration in the assessment of N.K.'s evidence. Juries are routinely instructed that reasonable doubt can arise from the lack of evidence: ***R v Lifchus***, [1977] 3 S.C.R. 320, at para. 39; ***R v E(P.C.),*** 1988 126 C.C.C. (3d) 457 (Alta C.A.). Other cases cited by the Defence - ***R v R.J.,*** 2010 ONSC 6751; ***R v Shaw***, 2024 ONCA 119; ***R v Gordon***, 2002 ONSC 381, confirm that the failure to call witnesses or produce corroborating material can, in some circumstances, be considered in assessing whether the Crown has discharged its burden of proof.

[187] The Defence concedes that no adverse inference against the Crown is sought in this instance. The Crown acknowledges that the absence of evidence from N.P. and S.K. is a factor for consideration in assessing the evidence of N.K., in accordance with the authorities cited.

[188] In summary, I am satisfied that N.K.'s evidence regarding the sexual assault at the Fraser Tower Hotel is credible and reliable. While his recollection of precise dates and certain peripheral details was uncertain, these difficulties are readily explained by the long passage of time, the impact of trauma, and the psychological dynamics of his relationship with the Accused. His account of the central allegation remained consistent, and it is supported by corroborative evidence concerning the 2008 Cager Tournament and the presence of both N.K. and the Accused in the same suite at the hotel. The Defence's challenges concerning room configuration, team composition, and subsequent contact do not, in my view, undermine the substance of his testimony. Rather, N.K.'s continued contact with the Accused alongside his statements about the negative impact of the misconduct is consistent with the complex and conflicted behaviour often observed in the victims of sexual abuse. I therefore accept that the assault occurred as N.K. described.

d) Cross-Count Similar Fact Evidence

[189] At the conclusion of the Crown's case, I granted the Crown's count-over-count similar fact application, permitting the trier of fact to consider the evidence from each count to the other counts. I am satisfied that the offences charged reveal a distinctive pattern of behaviour, such that it would defy coincidence that three complainants would independently lie or be mistaken about the Accused's conduct. Written reasons for granting the application will follow.

[190] The Defence referenced allegations regarding B.Y. in closing arguments before the jury; however, as the Accused was acquitted on that count, those allegations are not relied upon in this analysis of cross-count similar fact evidence.

[191] The probative value of similar fact evidence lies in the improbability of coincidence. As explained in ***R v Handy***, 2002 SCC 56, at para 41, the central question is whether the similarities are sufficiently distinctive to support the inference that the same person committed the acts. This principle was earlier recognized in ***R v Arp***, [1998] 3 S.C.C. 339, at paras 45-47, and ***R v B(C.R.),*** [1990] 1 S.C.R. 717, at pp. 732-33. The value of the evidence may be diminished if the accounts are not truly independent of one another, or if the similarities amount only to genetic features of the offence.

[192] In approaching this evidence, I must be careful not to use it for impermissible purposes. I may not reason that if one complainant is truthful, then the others must also be truthful. Conversely, if I reject one, I may not automatically reject the others. I must not conclude that, simply because all allege similar misconduct, proof of one establishes proof of the others. Nor may I use similar fact evidence to infer bad character or disposition, or to punish the Accused for alleged misconduct beyond the counts under consideration.

[193] Given my finding that the evidence discloses a distinctive pattern of behaviour, I may consider the improbability that three complainants, B.Y., T.E. and N.K., acting independently of one another, would describe such similar conduct unless it actually occurred. In this way, the evidence can assist me in assessing the credibility and reliability of each complainant, in combination with all of the other evidence that I accept, including the nature of the relationship between the Accused and the complainants.

[194] In determining whether a distinctive pattern is established, I have considered both the similarities and the dissimilarities in the accounts of B.Y.,T.E. and N.K.

[195] The similarities include:

a) The Accused stood in a position of trust or authority in relation to both complainants: he was the teacher, coach, guidance counsellor, and acted as a guardian or substitute parent for T.E. and B.Y.;

b) All of these alleged incidents occurred while the complainants were adolescents of similar age, during a relatively short period when all the parties lived in Tulita;

c) Four of the five alleged sexual assaults involved a sleeping complainant;

d) Three of the four alleged sexual assaults occurred in a hotel room in Yellowknife. Two involved basketball events, while the third involved a medical trip. The other two incidents are alleged to have taken place in the Accused's bedroom;

e) All of the alleged incidents involved the Accused touching an adolescent boy, or manipulating an adolescent boy to touch him;

f) In two of the incidents, the Accused encouraged the complainant to return to the bed with him; and

g) After all of the alleged assaults, the Accused acted as if nothing had occurred.

[196] The dissimilarities include:

a) One incident involved kissing on multiple occasions in the Accused's dark bedroom;

b) One incident involved oral sex, while another involved an attempt to perform oral sex, while the others did not; and

c) One of the incidents involved a threat to report the matter to the police, while the other did not.

[197] Weighing these factors, I am satisfied that the similarities significantly outweigh the differences. The alleged acts, viewed together, disclose a pattern of conduct that is sufficiently distinctive to defy coincidence. Accordingly, I may consider the evidence relating to each complainant in assessing the credibility and reliability of the other, while bearing in mind the limitations outlined above. Ultimately, each count must still be proven beyond a reasonable doubt, but in determining whether that standard has been met, I am entitled to consider the evidence from the other count, together with all the other admissible evidence.

[198] I may not, of course, consider the similarities between the count involving B.Y. and the counts involving T.E. and N.K., given the jury's verdict on that count. It is also important to note that the cross-count similar fact evidence does not include the other misconduct evidence specific to T.E.

[199] The cross-count similar fact evidence demonstrates a pattern of behaviour by the Accused that is relevant across the remaining counts in the Indictment. It shows that markedly similar sexual assaults occurred in relation to separate complainants,

making it highly unlikely that the alleged incidents occurred by coincidence or were fabricated.

[200] Although this evidence cannot prove the individual allegations on its own, it provides important context demonstrating that the Accused engaged in a distinctive pattern of sexualized behaviour towards adolescent boys. The similarities between the accounts are sufficiently striking that, despite certain differences, I regard it as highly improbable that the complainants would independently fabricate or be mistaken about such conduct.

[201] On the basis of the similar fact evidence, I find that the evidence of T.E. and N.K., viewed both individually and in combination, is reliable and credible. This finding strengthens the credibility and reliability of each complainant's testimony. I remain cautious not to reason that proof of one allegation establishes proof of another, or that the Accused's conduct on one occasion increases the likelihood of his guilt on another, consistent with the cautions in ***Handy*** at para 31 and ***B(C.R.)*** at p. 732. My use of the similar fact evidence is limited to assessing whether the improbability of coincidence, mistake, or fabrication supports the credibility and reliability of the complainants' accounts; it is not used to prove any count independently or to infer general disposition.

e) Collusion

[202] The Defence submits that the complainants' evidence may have been tainted by collusion, colouring or contamination. They suggest that evidence could have been unintentionally or intentionally influenced by discussions with others, rumours, or exposure to media reports. In particular, they highlight as potentially suspicious the similarity between T.E. and N.K.'s reaction when they awoke to find the Accused sexually assaulting them.

[203] The Crown maintains that there was no collusion or contamination between the complainants. The complainants' accounts, it is submitted, were not influenced by discussions with others or by media reports. While the complainants acknowledged hearing rumours about the Accused's actions with other boys, these rumours were lacking in detail and did not shape their own accounts.

[204] The evidence relating to N.K. on this point is very limited. In cross-examination, he acknowledged that he had heard, either through the media or social media, that the Accused had been charged in relation to B.Y., and that this occurred before he provided his statement to the police. There is no evidence, however, that N.K. had any significant contact with the other complainants in the intervening

years. Further, the Defence's theory of potential collusion, colouring, or contamination was also never put to N.K.

[205] With respect to T.E., the Defence raised concerns about the sequence of events leading up to his disclosure of the alleged sexual assaults. According to C.K., T.E.'s wife, she first heard from T.E.'s aunt that the Accused would get the boys drunk and then take advantage of them. This aunt reportedly obtained this information from K.B., the Accused's wife, who in turn had heard it from B.Y. C.K. testified that she related this information to T.E. when she first questioned him as to whether anything had ever happened to him involving the Accused. This conversation took place before T.E. provided his statement to the police.

[206] The Defence suggests that this sequence raises suspicion, on the basis that T.E.'s eventual account aligned with the scenario initially reported by B.Y. and relayed through a series of intermediaries. In my view, this triple hearsay is of limited reliability, and there is no evidence that this theory was put to T.E. in cross-examination. Even assuming the sequence of events occurred as described, the similarity between B.Y.'s experience and that of T.E. does not, in itself, give rise to suspicion. The similarity is of a general and predictable character rather than reflecting a distinctive or novel approach on the part of the Accused. Supplying alcohol to a victim is hardly an uncommon means of attempting to take advantage of them.

[207] T.E. acknowledged that he may have spoken to B.Y. and G.Y. about the Accused but did not share details about what had happened to him prior to giving his statement to the police. Likewise, he did not hear details from B.Y. regarding his own experience. He also testified that he did not want to harm the Accused's marriage or his relationship with his children, and that he feared potential repercussions if he spoke up. T.E. could not recall whether he spoke to K.B. about the Accused before providing his statement, but he confirmed that he never spoke to N.K. or G.Y. about the matter.

[208] In summary, while the Defence raised the possibility of collusion, colouring, or contamination, the evidence does not support any finding that the complainants' accounts were influenced by discussions with others, media reports, or each other. The similarities identified are generic rather than distinctive, and there is no basis to conclude that the complainants tailored their evidence in response to external information. The complainants' accounts remain independently credible and reliable.

f) The Evidence of the Accused

[209] The Accused denied any sexual misconduct toward either T.E. or N.K. He admitted that he had kissed T.E. on several occasions but described those incidents as affectionate gestures without sexual intent. He maintained that his interactions with the complainants reflected his role as a teacher, coach, and mentor, and rejected any suggestion that his conduct ever had a sexual dimension.

[210] The Defence submitted that the Accused's testimony was forthright and consistent, and that he did not shy away from acknowledging conduct that might be damaging to his own interests, such as the kissing with T.E., or the masturbation incident. The Defence maintained that this transparency reinforced his credibility, in contrast to the complainants, whose accounts were marked by inconsistencies that could not be explained merely by the passage of time. The Crown, on the other hand, argued that the Accused's explanations regarding the alleged sexual assaults were implausible and self-serving, and that his denials could not raise a reasonable doubt in light of the evidence of the complainants.

[211] The Defence contends that the Accused had no experience raising adolescents, given that his own children were toddlers at the time, and that any questionable or immature behaviour towards T.E. arose from attempts to bond with the boys or to act as a "cool uncle", rather than from sexual interest or intent. This claim is, however, directly contradicted by the evidence, which shows that the Accused had extensive experience teaching adolescents in high school and while coaching basketball. On this basis, I find that the Defence explanation does not credibly account for the nature of the conduct, which cannot reasonably be characterized as merely clumsy or misguided.

[212] In addition, the Accused relied on photos, member rosters, emails, and text messages "just to verify my memories were accurate." I am satisfied that he conducted a fairly extensive review of contemporaneous materials that were available to him in preparing for trial. However, on some occasions, he could not recall specific details until prompted by contemporaneous records – for example, his involvement in the Canada Games tryouts, N.K.'s change in attitude after the 2010 Arctic Winter Games, the trip to Edmonton with the Arctic Winter Games team, and the location of the 2008 Arctic Winter Games tryouts. I do not attach a great deal of weight to the fact that the Accused may have forgotten details related to events that took place a long time ago. The passage of time affected the memories of all witnesses, and it would be unfair to apply a different standard to the Accused than to the complainants.

[213] The Crown also argued that the Accused's confidence in his memory of events more than 15 years ago should itself give rise to concern. I do not place significant weight on this submission. While it is true that the Accused occasionally overstated the certainty of his recollection, the mere fact that he claimed to remember some events clearly after many years does not, in itself, undermine his credibility.

[214] The more significant concern is not the Accused's general recall, but the instances where he expressed confidence in his recollection and then shifted his account when confronted with contrary information. This behaviour suggests a tendency to present his evidence in a manner favourable to himself. For example, he initially stated that he did not drink with T.E. the night before his 2009 medical appointment because the appointment was scheduled for the following morning. He later admitted that he could not recall the exact time of the appointment and that it "just felt like it was in the morning." Similarly, he first testified that his wife rarely travelled away from Tulita, but later accepted that she frequently travelled for medical and personal reasons and had been away from the community for extended periods of time when their children were born. In addition, the Accused initially minimized his involvement with non-school-related basketball activities but adjusted his account when confronted with emails and other documents indicating otherwise.

[215] Similarly, he could not recall whether he and the basketball team ever stayed in a hotel without a pull-out couch. This sits uneasily alongside his earlier admission that he sometimes slept in the same bed as players, which he qualified as applying only to family members and boys living with the family, but which other evidence shows was not strictly true. While these instances are not striking in isolation, taken together with instances of forgetfulness, this contributes to the impression that his evidence was selective and adjusted when inconvenient and tends to undermine the reliability of his testimony.

[216] The Accused also testified that T.E. and B.Y. tried to make him look like a villain. The Crown notes that T.E. did not hesitate to say good things about the Accused and all the positive things that the Accused had done for him. Similarly, N.K. readily acknowledged that the Accused taught him a great deal and that he owed him a thank you for all of that. Both T.E. and N.K. testified that they looked up to the Accused. I am satisfied that both complainants provided a balanced account, acknowledging the positive influence of the Accused in their lives while not diminishing the significance of the harm caused by his unlawful conduct.

[217] In assessing the Accused's evidence, I apply the principles established in ***W(D)***. His testimony, like that of any witness, must be evaluated for credibility,

reliability, consistency, and plausibility. Evidence may be rejected where it is inherently implausible, internally inconsistent, contradicted by credible evidence, or otherwise incapable of raising a reasonable doubt. Any rejection of the Accused's evidence must be reasoned, fair, and grounded in the evidence rather than speculation, assumptions, or character-based inferences.

[218] The proper application of the decision in ***W(D)***, in a case of a so-called bare denial, presents particular challenges for a trier of fact. As the Alberta Court of Appeal observed in ***R v Garford***, 2021 ABCA 338, at para. 29, "a 'bare denial' simply describes an accused who denies all of the alleged criminal conduct. It may be referred to as a 'strict denial,' a 'flat denial,' or a 'bare denial,' but the underlying concept is the same — the accused's evidence on the central issue of whether the acts occurred is necessarily succinct, given that he denies any wrongdoing."

[219] It is well established that a "bare denial" cannot, in and of itself, provide a basis for disbelieving the accused. As the Court explained in ***Garford*** at para. 30, disbelief cannot flow simply from the fact that an accused offers nothing more than a denial. In ***R v CLS***, 2021 ABCA 147, at para. 42, the Court explained that "an innocent defendant can do no more than deny what he is alleged to have done, particularly because, if the events alleged did not happen, the defendant may have no memory of the period of time under scrutiny." The Court cautioned that treating the mere fact of a denial as a reason for disbelief risks impermissibly reversing the burden of proof. As the Court put it, "if a defendant's simple denial of criminal activity is turned into a reason for disbelieving him, then he inappropriately acquires a burden to provide further evidence that his denial is true."

[220] A trial judge must therefore take care to avoid turning the ***W(D)*** analysis into a simple contest of credibility between the complainant and the accused. The Saskatchewan Court of Appeal emphasized this point in ***R v Van Deventer***, 2021 SKCA 163, at para. 20, observing that a trial judge cannot simply compare the evidence of an accused and a complainant, or another Crown witness, and then choose which version of events to prefer. Correspondingly, a trial judge cannot reject the accused's testimony solely because it is inconsistent with the Crown's case. The same principle was recognized in ***Garford***, at para. 30, and in ***CLS,*** at para. 42.

[221] However, the authorities are equally clear that an accused is not entitled to an acquittal simply because his evidence contains no obvious flaws or inconsistencies. The Ontario Court of Appeal in ***R v J.J.R.D.***, 2006 CanLII 40088 (ONCA), at para. 53, leave to appeal ref'd [2007] S.C.C.A. No. 69, held that a trial judge may reject an accused's denial where, on a reasoned basis, the judge accepts beyond a

reasonable doubt the truth of conflicting evidence. As Doherty J.A. explained, at para. 53:

> An outright rejection of an accused's evidence based on a considered and reasoned acceptance beyond a reasonable doubt of the truth of conflicting credible evidence is as much an explanation for the rejection of an accused's evidence as is a rejection based on a problem identified with the way the accused testified or the substance of the accused's evidence."

[222] The same point was affirmed in ***R v G.C.***, 2021 ONCA 441, and reiterated by the Alberta Court of Appeal in ***Garford***, at para. 32, which held that an accused's denial must be assessed in the context of the whole of the evidence. It would, the Court said, be a "perverse misinterpretation" of ***W(D)*** to suggest that the mere fact that the accused testifies or leads evidence on his own behalf automatically raises a reasonable doubt.

[223] Finally, as the Alberta Court of Appeal emphasized in ***Garford***, at para. 34, ***W(D)*** does not prescribe a fixed formula or dictate the order in which the evidence must be assessed. The guiding principle is substance over form. Particularly in cases involving a bare denial, it may be artificial and unhelpful to assess and weigh the accused's evidence in isolation. What is required is a fair and reasoned consideration of all of the evidence, viewed as a whole, in determining whether the Crown has met its burden of proof beyond a reasonable doubt.

[224] The jurisprudence establishes that a bare denial, standing alone, does not undermine credible testimony. In this case, while the Accused's denials were accompanied by explanations, some documentary evidence, and a narrative about a positive relationship with these adolescent boys, these factors do not automatically render his evidence credible. The assessment requires a careful analysis of his testimony relative to the other relevant evidence.

[225] In assessing the Accused's testimony, I am mindful that prior acts of sexual misconduct by the Accused, as found in relation to T.E., may be relevant not only to show sexual interest but also in evaluating the credibility of his denials. Such evidence cannot be used merely to suggest bad character or propensity; rather, it may be considered where the Accused's explanations or denials minimize, rationalize, or render implausible conduct that is objectively sexual in nature. Where the Accused's account is implausible or contradicted by reliable evidence, his credibility is undermined, and the trier of fact is entitled to consider the loss of credibility when evaluating his denials of the charged offences relating to T.E. This other misconduct evidence provides important context for assessing T.E.'s evidence.

[226] In his testimony, the Accused confirmed that T.E. accompanied him on a September 2009 trip to Yellowknife for ankle surgery. He stated that he was on crutches following the procedure and was also hospitalized for heart issues. The Defence submits that it would be contrary to common sense to book a single-bedroom suite for a patient and his medical escort. Both the Accused and G.Y. testified that they never stayed in a one-bedroom suite on any medical trip to Yellowknife. The Defence relies on the hotel receipt for this trip, which shows a rate of $169, and invites the Court to infer that this higher rate reflected the rental of a two-bedroom suite.

[227] Sixteen receipts in the name of the Accused, produced by the Stanton Suites Hotel and covering the period 2007–2016, were included in Exhibit #5, all paid for by Human Resources. The rates vary: $115 (6 times), $114.29 (2 times), $129 (4 times), $150 (1 time), and $169 (2 times, including the September 2009 trip). None of the receipts specify the type of room rented, though one receipt includes the notation "N.B. and G.Y.). While the Defence argues that a higher rate implies a two-bedroom suite to accommodate a patient and escort, this reasoning does not withstand scrutiny. All these trips were medical in nature. If the Defence's assumption were correct, one would expect all medical trips to be booked at the higher rate; instead, most receipts are for $114–$115, showing that the rate alone provides no reliable indication of room type. Accordingly, the Court cannot draw the inference that the September 2009 trip necessarily involved a two-bedroom suite. This hotel receipt does not, accordingly, provide the corroboration suggested by the Accused.

[228] Although T.E. testified that the Yellowknife trip occurred in December 2009 in conjunction with the Arctic Winter Games trials, other evidence that I accept establishes that it was the September 2009 medical trip. I have already discussed this discrepancy earlier in my reasons. T.E. was, however, correct about the hotel where they stayed and that they were alone for several days. His recollection was that after the trials, he and the Accused stayed alone in Yellowknife for a few days before flying home together.

[229] Even if a two-bedroom suite had been rented, this would not materially assist the Accused, because it has no bearing on the core allegation: that T.E. woke to find the Accused engaging in oral sex in the bed in which he was sleeping. The evidence, notably T.E.'s detailed account, supports the conclusion that they were in a one-bedroom suite with one bed, as alleged. Any discrepancy between T.E.'s recollection of the number of rooms or beds and the Accused's account is not significant; minor

errors in such details, even assuming that such discrepancies are found to exist, are understandable and do not undermine the reliability of T.E.'s testimony.

[230] The Accused acknowledged that he sometimes slept in the same bed as adolescent boys on basketball trips, but qualified this by asserting that it involved only family members or boys living with the household, which would have included T.E. However, evidence from other witnesses, including N.K. and N.P., demonstrate that he also shared a bed with non-family boys. This inconsistency underscores the Accused's minimization and supports the conclusion that, during the September 2009 trip, he shared both a room and a bed with T.E., as alleged.

[231] I reject the evidence of the Accused relating to the oral sex alleged incident based on my acceptance beyond a reasonable doubt of the truth of the evidence of T.E. I find that his evidence is credible and reliable. Further, the Accused's explanation for the Yellowknife trip and the hotel arrangements does not raise a reasonable doubt about T.E.'s evidence regarding the incident.

[232] The Accused testified that the kissing incidents were initiated by T.E. when he was a young boy living in Meander River. At the time, the Accused was teaching school and became involved with T.E.'s extended family due to a romantic attachment to T.E.'s aunt, K.B., whom he later married. He described the kisses as brief pecks on the lips, without sexual intent, and denied any sexual content in his actions. He acknowledged that the kissing continued after T.E. moved to Tulita and did not dispute T.E.'s account regarding the frequency or location of the incidents, including the dark bedroom where they occurred following guidance or mentoring sessions.

[233] Having considered the evidence in its entirety, I do not accept the Accused's account. His portrayal of these incidents as innocent, innocuous pecks, devoid of sexual content or intent, is implausible given the circumstances, including the setting, frequency, and his position of authority and trust. It is difficult to understand why the Accused would repeatedly take an adolescent boy in his care into his bedroom, turn out the lights, and then engage in extended conversations with him, apparently to give advice and comfort and ending in a kiss, if the kisses were as innocent, brief and as non-sexual in purpose as he suggested. This minimization is inconsistent with the evidence of other sexualized behaviour described by T.E. and B.Y., which establishes a pattern of sexualized interactions.

[234] Accordingly, I accept T.E.'s account regarding the kissing incidents. His evidence was detailed, consistent and plausible, and it aligns with the broader pattern

of behaviour described by T.E., which I find credible. The kisses were not isolated, innocuous gestures but part of a repeated pattern of sexualized behaviour directed at T.E. I am satisfied beyond a reasonable doubt that the kissing incidents were for a sexual purpose.

[235] Moreover, having allowed the Crown's count-over-count similar fact application, the consistency between T.E.'s account and N.K.'s evidence strengthens my conclusion. Both describe the Accused initiating sexual conduct when he arranged to be alone with them in private, away from the scrutiny of others. These encounters took place in situations that allowed the Accused to exercise control or catch the complainants by surprise, including when they were asleep or otherwise vulnerable. These parallels support the reliability of T.E.'s account and further undermine the plausibility of the Accused's denials.

[236] In the result, I reject the Accused's denials and explanations regarding the incidents involving T.E. His testimony was marked by minimization and selective acknowledgement of conduct, and it was inconsistent with the credible evidence that I have accepted, specifically T.E.'s account of the kissing incidents, the Yellowknife hotel incident, and the broader circumstances surrounding his relationship with the Accused. T.E.'s evidence is further supported by the other sexual misconduct evidence, which provides context for assessing the credibility and reliability of T.E.'s testimony. I am satisfied beyond a reasonable doubt that the Accused committed the sexual assaults against T.E. as alleged.

[237] I now turn to consider the Accused's evidence in relation to the allegations of N.K.

[238] The jury returned a guilty verdict on the charge of sexual exploitation in relation to N.K., which necessarily establishes that the Accused committed the "couch incident" that occurred after N.K. turned sixteen. My role in these reasons is therefore confined to determining whether the Crown has proven the earlier "bed incident" that occurred during the 2008 Cager Tournament.

[239] N.K. referred to the second incident having taken place at the 2009 Cager Tournament. In his evidence, the Accused explained that in 2009, the entire team was billeted at a school rather than staying at a hotel. In addition, the Accused acknowledged that the team, including N.K., stayed at the Fraser Tower Hotel for the 2008 Cager Tournament. Based on all of the evidence, I am satisfied that the second incident, the "hotel incident," took place during the 2008 Cager Tournament.

As discussed earlier in these reasons, the surrounding evidence supports such a conclusion.

[240] The Accused denied that he and N.K. ever shared a hotel room during the 2008 Cager tournament. Significantly, he denied that he had any sexual contact with N.K., or that N.K. confronted him the following day. These denials are at odds with N.K.'s description of the room, the sleeping arrangements, and his detailed account of a sexual assault, which I find credible.

[241] The Accused acknowledged that he interrupted a family trip to Prince Edward Island one summer so that he could watch N.K. play basketball in Winnipeg. He also described another year when he made a special trip to Dartmouth on his way back to the Northwest Territories from a family summer holiday in Prince Edward Island to watch N.K. play basketball at the Canada Summer Games. While the Accused downplayed the purpose and significance of these trips, they suggest a more than passing interest in N.K. and provides context for evaluating his evidence relative to this complainant.

[242] The cross-count similarities also reinforce the credibility of N.K.'s evidence. Both complainants described the Accused exploiting opportunities when they were alone and vulnerable to initiate sexual contact. Within N.K.'s evidence itself, both alleged incidents share these features, further support their plausibility. These consistencies, including his detailed evidence regarding the location and overall circumstances of these incidents, the sleeping arrangements, and the Accused's opportunistic conduct, strengthen the plausibility of N.K.'s account and undermine the credibility of the Accused's denials.

[243] Having considered the Accused's evidence in relation to N.K., I find it generally coherent but unpersuasive when weighed against N.K.'s credible and detailed account. On a reasoned and considered basis, I accept beyond a reasonable doubt the truth of N.K.'s evidence and, accordingly, reject the evidence of the Accused.

[244] The Accused's categorical denials, considered in the context of the totality of the evidence, including N.K.'s credible and detailed account, do not raise a reasonable doubt.

CONCLUSION

[245] Having carefully considered the evidence in its entirety, I accept the testimony of T.E. and N.K. as detailed, consistent, and reliable. Together with the corroborating and similar-fact evidence, their accounts establish a clear and compelling pattern of sexual exploitation by the Accused. In contrast, I reject the Accused's testimony to the extent that it is inconsistent with the evidence that I have accepted and find that it does not raise a reasonable doubt. I am satisfied beyond a reasonable doubt that the Accused committed the sexual assaults against T.E. (the Yellowknife hotel incident and the repeated kissing incidents) and the sexual assault against N.K. in the Fraser Tower Hotel at the time of the 2008 Cager Basketball Tournament.

M. David Gates
J.S.C.

Dated in Yellowknife, NT this
3rd day of November, 2025

Counsel for the Crown: Angie Paquin
Jared Kelly

Defence Counsel: Eamon O'Keeffe

S-1-CR-2022-000-004

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

His Majesty the King

-and-

N.B.

Restriction on Publication: By Court Order, there is a ban on publishing information that may identify the person/persons described in this judgment as the complainant/witness. See the *Criminal Code*, s. 486.4.

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE M DAVID GATES