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<b>CANADIAN SENTENCING DIGEST</b> <b>QUANTUM SERVICE</b> Nadin-Davis & Sproule Release No. 10, September 2023
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This release brings you a wealth of new case law digests covering a wide range of offences, with an emphasis on updates to Chapter 4 (Offences Against the Criminal Code). The following are of particular interest and importance:

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### Case Law Highlights

- **Sexual Offences — Luring a Child—** The accused, aged 37, pleaded guilty to 39 sexual offences in relation to 8 victims between the ages of 12 and 15, including luring and voyeurism, and to possessing and accessing child pornography. The offences took place over a two year period between 2019 and 2021. The accused engaged in ongoing online sexual abuse, victimization, and exploitation of the eight victims. The accused also sought to control, degrade, humiliate, and de-humanize them. He used profane, degrading and violent language and directed the children to film themselves performing various sexual acts, while he took screenshots. He sent them pornographic videos and images of himself in states of sexual arousal. The police found the accused's extensive collection of child pornography beyond the child pornography he had created with the eight victims. This additional pornography included children as young as 3 and 4 years old, the content as being at the extremity of depravity. The victim impact statements detailed the long-lasting effects of the offences on the young victims, and their families. The accused was a first offender. He lived with his parents, was romantically unattached and had no children. He was born in Sri Lanka and his family came to Canada when he was approximately 11 years of age. He did well in high school but did not complete his university degree. He never had a job. He developed an isolated life by playing online poker up to 10 hours a day in an attempt to support himself. The forensic psychiatric assessment report concluded that the accused suffered primarily from a paraphilic disorder or disorders, the expression of which was facilitated by online access to children. He was assessed at an above average but not high risk of sexual recidivism. Sex offender treatment programming was recommended. The aggravating factors included the number of victims; the degrading and dehumanizing way in which the accused interacted with them; and his pornography collection. The mitigating factors included that the accused expressed remorse and pleaded guilty. A proportionate sentence, according to the judge, must denounce the accused's conduct in the strongest terms, and society must be protected from him for a significant length of time. The sentence must also deter others tempted to engage in similar behaviour and clearly communicate that society will not tolerate such conduct, with such offences resulting in lengthy jail terms. The accused's failure to appreciate or acknowledge the sexual basis of his offences was an aggravating factor making his rehabilitation more challenging and increasing his moral blameworthiness. Recent developments in the jurisprudence recognized the specific risks to children posed by the internet because of the widespread accessibility and opportunities to sexually exploit children. Porter J. stated that courts must impose sentences that are commensurate with the gravity of sexual offences against children. It is not enough for courts to simply say that sexual offences against children are serious. The gravity of the totality of the offences in this case was very high. In *R. v. Friesen* the S.C.C. instructed that sentences for sexual offences against children must increase. The totality principle must not be applied in such a manner that the global sentence fails to recognize the overall gravity of these sexual offences. The court imposed a total sentence of 12 years' incarceration. The ac-

cused was given credit of 806 days for pre-sentence custody, leaving 9.8 years to serve. The court made a s. 161 order for 10 years and a 20 year SOIRA order. *R. v. Pathmanathan*, 2023 CarswellOnt 4287 (Ont. C.J.).

- **Offensive Weapons — Possession of Prohibited or Restricted Firearm with Ammunition** — The accused, aged 29, pleaded guilty to possession of a restricted firearm, possession of a firearm without being the holder of a license or registration certificate, and failing to appear for trial. The Crown proceeded by indictment. The police stopped the accused for a by-law infraction relating to the bike she was riding. She had three outstanding warrants and was arrested. In her guitar case, the police found a 12-gauge pump action shotgun with the serial number defaced and unreadable. The barrel and stock had been sawed off and shortened. The firearm was not loaded. Another sawn-off shotgun and loose ammunition were also found. The accused alleged she was on her way to deliver the bag, which was not hers, in exchange for methamphetamine as payment. The accused was Indigenous. She was the mother of five children ranging in age from 3 to 12, who were in the care of her mother. The accused had four biological siblings and five half siblings. She was introduced to drugs and criminality by her sister and became addicted to methamphetamine by the age of 24. She also suffered physical abuse at the hands of a brother. Despite her adversities, she obtained a Business Diploma in 2017. The relevant Gladue factors included that the accused's maternal grandparents attended residential school; the accused was involved in the foster care system between the ages of three and five ; and she suffered abuse at the hands of relatives. When sentencing for an offence as serious as possession of a restricted weapon, public safety is paramount, and denunciation and deterrence are primary sentencing objectives. The accused's moral culpability was at the high end for knowingly transporting illegal weapons in exchange for payment through illicit drugs. The mitigating factors included the accused's volunteer work and her commitment to turn her life around. Her criminal record consisted primarily of failing to appear and failing to comply convictions. The court imposed a sentence of 27 months' incarceration allocated as follows: 2 years for possession of a restricted firearm; one year for possession of a firearm without being the holder of a license or registration certificate, concurrent; and 3 months, consecutive for failing to appear. She was credited with 3 months presentence custody. *R. v. Powder*, 2019 CarswellAlta 3005 (Alta. P.C.).

## ProView Developments

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