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CANADIAN SENTENCING DIGEST QUANTUM SERVICE

Nadin-Davis & Sproule

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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:

- **Offences Against the Criminal Code—Offences Against the Person and Reputation—Assaults—Sexual Assault—**The accused, aged 29 at the time of the offences and 32 at sentencing, pleaded guilty to sexual assault, being unlawfully in a dwelling house and forcible confinement. The Crown sought a sentence of 10 to 12 years jail time. The defence argued for 3 to 5 years. The victim was an 84-year-old woman with advanced dementia, who was the accused's neighbour and lived about 500 metres from him. He gained entry to her home through the front door. He sexually assaulted her in the kitchen and forcibly confined her by preventing her from fleeing through a kitchen exit. The assaults, which were captured on security cameras, included forced oral sex and vaginal penetration in the victim's bedroom. The victim's first language was not English. She was clearly distressed. Afterwards, she was hospitalized with emotional issues and died a few weeks later of COVID-19. In his victim impact statement, the victim's son blamed the accused for his mother's death. He also detailed his anxiety, sleeplessness, feelings of inadequacy and shame. The accused had visited the victim years earlier and had shown her "granny porn", leaving when someone knocked on the door. The accused was a moderate drinker and used cannabis twice a week. He completed high school and had attended college but had left to pursue a music career. He had a varied work history.

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- He had been on restrictive house arrest conditions since his arrest and during this time, had completed financial services courses and started working with his father assisting in his financial planning work. The accused had a psychiatric assessment and attended 15 sessions of psychological therapy. The psychiatrist noted that the accused had had a wide range of deviant sexual behaviors over the years. He had compulsive sexual behaviors, seeking sexual gratification whenever he could from indiscriminate sources, and had an erotic preference for older women. The accused was suffering from multiple paraphilic interests and was diagnosed with Paraphilia, unspecified. He was progressing on a relapse-prevention plan but the plan needed significant further work. He was at a moderately high risk to reoffend, but the risk had the potential to be attenuated. The court's emphasis was to remain on denunciation and general deterrence in cases of sexual violence, even in the case of a youthful first-time offender. Rehabilitation, while important, carried less weight. Sexual violence was morally blameworthy. The accused's crimes were disturbing and reprehensible. He demonstrated callous disregard for the elderly victim. The aggravating factors included the victim's vulnerability; the offences occurred in her home; and the home invasion was an aggravating feature on the charge of forcible confinement. The mitigating factors included that the accused had no prior record; the guilty plea; remorse; family and community support; and rehabilitative potential. The sentence should take the accused away from society for a time to permit for intensive sex offender treatment, in aid of rehabilitation. Wright J. viewed the crime as a home invasion. The court imposed a sentence of 6.5 years incarceration for sexual assault, two years concurrent for being unlawfully in a dwelling house and 18 months concurrent for forcible confinement. The accused was given credit for 51 days in pre-sentence custody and 466 days for restrictive bail conditions, resulting in approximately 5 years and one month left to serve. The court also imposed a 20-year SOIRA order: *R. v. Balahumar*, 2024 CarswellOnt 19706 (Ont. C.J.).

- **Offences Against the Criminal Code—Sexual Offences, Public Morals and Disorderly Conduct—Sexual Offences—Sexual Interference with Person under 16—**The accused, aged 39 at the time of the offences and 48 at sentencing, was convicted after a judge alone trial of sexual interference and sexual assault (stayed per the Kienapple principle). The Crown sought a sentence of two and a half to three years' imprisonment. The defence argued for a conditional sentence order ("CSO") of two years less a day plus probation. Four incidents of sexual touching took place during a 7-month period when the victim, the accused's niece, was 12 years old. The accused, some of his 8 children, the victim and her two siblings lived together as an extended family in her grandmother's home. He had worked in the construction industry for many years. He was described as a good person who loved his family and served his religious community. He was at a low risk of re-offending against a child. Denunciation and deterrence were the primary sentencing goals. The aggravating factors included that the offences occurred in places where the victim was entitled to feel safe; the accused was in a position of trust, at the higher end of the trust spectrum; and the victim was an Indigenous girl who was vulnerable due to her disabilities. The mitigating factors included that the accused did not have a criminal record; had strong family and church support; and had not committed further offences while on bail. The sentencing range was from two years less one day to two and half years. The degree of physical interference was at the lower end. The incidents were short and discrete, and stopped after the victim reported the abuse to her grandmother. At trial, the victim described the profound impact of the offences, classically mirroring many of the harms of childhood sexual violence identified in *Friesen*. Further harm befell the girl when her grandmother blamed her and told her not to tell anyone else. The victim was severed from important familial relationships. The accused bore a relatively high degree of moral blameworthiness. The judge found this to be one of the rare child sexual abuse cases mentioned in *Friesen* and *C.K.* where the principles of deterrence and denunciation could be achieved through a CSO. The trial judge imposed a CSO of 2 years less a day, followed by three years of probation. The Crown appealed the sentence on the basis that the judge's findings were incompatible with the imposition of a CSO, which failed to recognize and reflect the inherent wrongfulness and harmfulness of the accused's conduct. The Crown

sought a penitentiary sentence of two and a half to three years but later focused its submissions on changing the mode of serving the sentence, rather than its length. The Court of Appeal [DeWitt-Van Oosten, Winteringham, Donegan JJ.A.] allowed the appeal. The Court found that the judge committed errors in principle that impacted the sentence and also imposed a sentence that was demonstrably unfit. The victim was Indigenous and vulnerable. The offences occurred in the context of a significant breach of trust. Thus, a CSO was not consistent with the purposes and principles of sentencing or with the principles in *R. v. Friesen*. The Court clarified that although a CSO was available for sexual offences involving children, this case demanded more than a notional consideration of the victim's Indigeneity and vulnerabilities, particularly where the judge had found a serious breach of trust. The Court set aside the CSO and replaced it with a sentence of two years less a day imprisonment. The 3 years of probation remained unchanged: *R. v. J.F.D.V.*, 2025 CarswellBC 27 (B.C.C.A.).

- **Offences Against the Criminal Code—Offences Against the Person and Reputation—General—Manslaughter—**The accused, aged 27 at the time of the offences and 30 at sentencing, pleaded guilty to manslaughter using a firearm and committing an indictable offence for the benefit of or at the direction of a criminal organization. The accused was a low-level member of Redd Alert, an Edmonton street gang which was acknowledged to be a criminal organization. The accused was directed to shoot the victim in the leg as retribution for perceived infractions against the gang. When he initially refused, a gun was pointed at him, and thus he felt he had no choice but to shoot the victim. He and another person shot at the victim who died shortly afterwards. The accused was Indigenous. An Indigenous Sentencing Report revealed that the accused experienced substantial turmoil as a child and as a youth. He was apprehended by Children's Services at 6 months old. He was placed in the care of his grandmother until age 13. She was a residential school survivor who had problems with alcohol. At times the accused and his brother were cared for by their uncles who were often physically and verbally abusive. The accused was returned to his mother and her new partner, where there was domestic violence. He then lived in his girlfriend's home until he was17. He began spending time with a bad group of friends. Between the ages of 15 and 23 he was the victim of gang violence on three occasions. He had an 8-year-old child. He had assumed sole custody but later his mother gained custody. The accused moved to Edmonton, lived on the streets, lapsed into addictions, joined the Redd Alert gang and became engaged in the drug trade. He had a grade 10 education and had worked at a variety of jobs before moving to Edmonton where he remained unemployed. The accused had a lengthy prior criminal record with entries for violence, property and driving offences. He was incarcerated several times and had served periods of probation. The primary sentencing objectives were denunciation and deterrence. Rehabilitation was less important. The court noted the accused's *Gladue* factors. The aggravating factors included that firearms were used; the victim was vulnerable; and the accused was subject to a firearms prohibition and to terms of probation at the time. The mitigating factors included the guilty plea and the coercion factor. The gravity of the offence was very high. The accused's moral blameworthiness (assessed in accordance with *R. v. LaBerge*) was high even after the moderation related to his Indigenous sentencing factors and the coercion. There was a degree of planning, and the accused and others took steps to cover up the crime by committing arson to destroy the house where the body was. Henderson J. concluded that it would violate the intention of Parliament and would be contrary to public policy to recognize any generalized reduction in moral blameworthiness for those who commit offences for the benefit of organized crime. However, the accused was not responsible for the unfortunate circumstances that resulted in him being in the position he was in at the time of the shooting. He had been at a high risk of being targeted for membership in an Indigenous gang. Were it not for the attenuation of the blameworthiness the fit and proper sentence would have been well in excess of the 8-to-12-year range for manslaughter. The court imposed a total sentence of 13 years incarceration: 12 years for manslaughter and one year, consecutive, for the criminal organization offence. The accused received credit for time in remand of 917 actual days at 1.5 to 1 for a total of 1,376 days, rounded up to 46 months, resulting in a net of 9 years and 2 months: *R v. Shortneck*, 2025 CarswellAlta 23 (Alta. K.B.).

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