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<b>CANADIAN SENTENCING DIGEST</b> <b>QUANTUM SERVICE</b> Nadin-Davis & Sproule Release No. 2025-1, December 2024
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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—Trafficking in Persons**—The accused, aged 51 at the time of the offences and 55 at sentencing, was found guilty after a judge alone trial of human trafficking, material benefit from trafficking and assault. The accused recruited the victim, who was homeless and addicted to drugs, to work in the prostitution business. The victim was female and Indigenous. The accused was a principal of a criminal group called the Family, made up of vulnerable, addicted individuals who were primarily unhoused and resided around a downtown drop-in center in Calgary. Members of the Family worked for the accused selling drugs and in prostitution. The accused's exploitation of the victim occurred over a three-week period. Although she was not underage, she was vulnerable due to her drug addiction and circumstances. The accused exploited her addiction to maintain control over her. He used threats and violence, such as punching her for losing money, to ensure that she gave him the money she earned.

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- There was no evidence that the accused sexually assaulted the victim. A police investigation broke up the Family, leading to these charges and drug charges dealt with separately. The accused had come to Canada as a refugee in the 1990's. He was married with three adult children. His wife remained supportive. He had a background in mechanical design and had worked in construction. Denunciation and deterrence were the primary sentencing objectives. The aggravating factors included that the offences were committed for the benefit of the Family, a criminal organization (statutorily aggravating); the accused exercised control over every aspect of the victim's life; and the accused's lengthy related criminal record for violence and convictions for fraud, uttering counterfeit money, possession of credit cards. There were no mitigating factors. The accused's moral culpability was high. The court used applied the factors in *R. v. Tang* in assessing the gravity of the offence. The seriousness of human trafficking had been noted by many courts across Canada. The sentence the court imposed would be consecutive to a 10 year sentence for drug trafficking in a separate case related to the same investigation of the Family, because the court characterized drug trafficking as being sufficiently discrete from human trafficking (and the connected offences of assault and material benefit) such that they warranted their own penalty. The principle of totality was considered but the judge had little evidence regarding the drug charges as it was not put before the court. The court imposed a sentence of 6.5 years as follows: 5 years for human trafficking, one year consecutive for material benefit from trafficking and 6 months for assault, consecutive to the other sentences: *R v. Orubor*, 2024 CarswellAlta 566 (Alta. K.B.) [Nixon A.C.J.K.B.]
- **OFFENCES AGAINST THE CRIMINAL CODE—SEXUAL OFFENCES, PUBLIC MORALS AND DISORDERLY CONDUCT—SEXUAL OFFENCES—Voyeurism**—The accused, aged 52, was convicted after a judge alone trial of voyeurism. The Crown proceeded summarily and sought a jail sentence of 18 months, followed by 3 years' probation. The defence proposed a conditional sentence order with extremely restrictive conditions. The victim was changing in a gender-neutral change room at a community centre, when she observed the accused peering through the space between the bottom of her cubicle wall and the floor. Police were called and arrested the accused. The victim was terrified by the incident and continued to suffer anxiety especially when using public recreation facilities. The accused was a college graduate. In his 30's the accused had received an 18-month conditional sentence for attempting to kidnap a 13-year-old girl, who he tried to pull into his car as she was waiting at a bus stop. He was recommended to take sex offender treatment, but he maintained his innocence and claimed the recommendation was unfair. He was unmotivated to participate in any programs. Later, he was also convicted and received a sentence for committing an indecent act in a public place by masturbating at a popular swimming lake. Gouge Prov. J. rejected the defence position that the accused was a first offender and instead, characterized him as a repeat offender who suffered from a mental illness and refused to participate in medical procedures for assessment and treatment. Thus, he posed a material risk to public safety. The most important sentencing objective in this case was to protect the safety of the public. In view of the accused's resolute and consistent rejection of assessment and treatment, the only sentence available to provide some protection for the public was incarceration. There was some underlying frustration attached to the fact that the accused had not been deemed detainable under the *Mental Health Act*. The judge was very clear that he would have imposed a two-year sentence had the Crown requested it. Thus, the court imposed a sentence of 18 months imprisonment followed by 3 years probation: *R. v. Istephan*, 2024 CarswellBC 827 (B.C.P.C.) [Gouge Prov. J.]
- **OFFENCES AGAINST THE CRIMINAL CODE—OFFENCES AGAINST THE PERSON AND REPUTATION—GENERAL—Murder**—The accused,

aged 22 at the time of the offences and 62 at sentencing, pleaded guilty to two counts of second degree murder. He was automatically sentenced to two concurrent life sentences. The court decided on the period of parole ineligibility. The Crown sought a period of 22 years while the defence submitted that 18 years was appropriate. The two murders had remained unsolved for decades. In 2021, through genetic genealogy research, the accused was identified as a person of interest. After providing a DNA sample pursuant to a warrant, he confessed. On two separate occasions in 1983 he had broken into the homes of two women and murdered them. He sexually assaulted the first victim, a mother of 4 and killed her by stabbing her 13 times. He bound and sexually assaulted the second victim, a 22-year-old, and killed her by stabbing her in the chest twice. The victim impact statements showed that the surviving friends and families of the victims had kept their memories alive for 40 years, during which they had endured pain and grief, magnified because the perpetrator remained at large. The accused was Cree. He attended residential school, as did his older brothers and his mother. The accused was physically abused by a teacher who would regularly suffocate him to unconsciousness. He was also sexually abused by a family friend. He went to live with his mother and sister in Moosonee when he was 10 or 11 but remained distant from them. He had a grade 8 education and was unsuccessful in furthering his education when he joined his mother and sister in Toronto at age 19. The accused's family struggled with alcohol and the accused had issues with alcohol misuse off and on. In the year of the murders, he was living in a bachelor apartment in Toronto and feeling alone. He remembered very little from his life then. He told the author of the *Gladue* report that did not remember the first homicide and only vaguely remembered the second. He did remember feeling anguish and remorse afterwards and described that his mind "broke". He then embarked on a Spirit Quest where he encountered his victims and asked for forgiveness. This was a turning point for him, and he resolved to follow the path of a good human being. He eventually completed a computer programming course. He worked for a bank for 13 years and in IT for the Children's Aid Society for many years. The accused had been married and had an adult son. General deterrence and denunciation were the primary sentencing principles. The mitigating factors included that the accused pleaded guilty and had experienced *Gladue* factors. He was both directly and indirectly negatively impacted by colonialism and by the residential school system. Also, he had apologized to the victims' families. There was little effect to the accused's expression of remorse because he had demonstrated no willingness to examine his actions but rather wanted to avoid thinking or speaking about what he had done and why. The accused's efforts at rehabilitation after the offences had little mitigating effect or impact on the sentence. The aggravating features included the vulnerability of the victims; the violation of their homes and their bodies; and the brutal nature of the killings. Both murders fell close to first degree murder. The period of parole ineligibility should clearly denounce this conduct and deter others. An exemplary sentence was required. A parole ineligibility period of less than 20 years would not be sufficient. The accused's conduct was contextualized by his *Gladue* factors. His guilty pleas and the fact that he was a first offender also mitigated the sentence. These factors however, only moved the sentence downwards minimally because of the overwhelming seriousness of the offences. The court imposed a sentence of life imprisonment with no eligibility for parole for 21 years: *R. v. Sutherland*, 2024 CarswellOnt 4359 (Ont. S.C.J.) [Forestell J.]

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