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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—Fraudulent Transactions Relating to Contracts and Trade—Fraud: Over \$5,000**—The accused pleaded guilty to six counts of fraud. The Crown sought a sentence of two years in jail plus probation. The defence argued for a jail sentence of 18 months. The accused was part of a “grandparent scam”, a sophisticated fraud operation, that involved eight victims, in their 70’s and 80’s, and 10 fraudulent actions. He performed the role of courier in the scheme. A fraudster telephoned the victims, pretended to be their grandsons or sons, who found themselves in a variety of urgent situations requiring immediate financial assistance from the victims. The accused would pick up the money, often from retirement homes. He was warned by police twice but persisted in taking the risk. In total he defrauded the victims of almost \$32,000.00. The victim impact statements disclosed that the victims felt deeply embarrassed, angry, frightened, more vulnerable and less competent. They suffered significant financial losses which they might never recover given their ages and fixed incomes. The accused had an unremarkable childhood. He was born and raised in Winnipeg by loving, community-minded parents. His father founded the Children’s Wish Foundation in Woodlands, Manitoba.

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- He left school in Grade 10 to work for a moving company, travelling and working across Canada for two years. More recently he worked as a heavy equipment operator. He was divorced and had two children. He became addicted to crack cocaine and needing more money to fuel this addiction, he became involved in the crimes. The accused had not availed himself of treatment programs while in custody. The court found that he had done very little in 10 months to address his criminogenic factors, criminal attitude and addiction. The aggravating factors included that the victims were elderly and had been targeted; the emotional manipulation used was despicable; the offending went on for two years; and there had been no restitution. The mitigating factors included the guilty plea; remorse; and the accused took full responsibility. The primary sentencing principles were denunciation and general deterrence. The accused's moral culpability was very high, elevated by the fact that the victims were elderly, vulnerable people, and that the fraudulent behaviour continued for a full two years. This crime was becoming increasingly common and had the potential to become more sophisticated and difficult to stop as AI proliferated rapidly. In Manitoba in 2023, there were 17 incidents and in 2024 there was an increase to 63 incidents of grandparent fraud. The crime had become notorious. Devine Prov. J. stated that sentences must be severe enough to serve to denounce the crime and deter others from taking the risk of engaging in what was essentially elder abuse. The sentence must also acknowledge the harm the crime had done to the victims, most of whom did not recoup their financial losses. Devine Prov. J. held that the Crown's sentence recommendation of 2 years was too low given the prevalence of the offence in Manitoba and throughout the country, and the high degree of the accused's culpability. The court imposed a sentence of 3 years imprisonment and 3 years probation. The court also made a stand-alone restitution order of \$31, 700.00. the accused was given enhanced credit totalling 419 days for presentence custody. He would therefore serve his sentence in a provincial institution: *R. v. Strebly*, 2025 CarswellMan 311 (Man. P.C.).
- **Offences Against the Criminal Code—Offences Against the Person and Reputation—Assaults—Uttering Threats: Death or Bodily Harm—**The accused, aged 41, was found guilty after a judge alone trial of threatening to blow up synagogues and threatening to kill Jews. The Crown sought a four-to-six-month jail sentence followed by three years probation. The defence sought a conditional discharge and agreed to the probation. While speaking a car salesman, who was a stranger, at a local dealership, the accused expressed dehumanizing and conspiratorial opinions about the State of Israel, Israelis, and Jewish people more generally. He further stated that he was going to plant a bomb in every synagogue in Toronto and blow them up to kill as many Jews as possible. The accused was born in Afghanistan to an Ismaili Muslim family. The accused fled the turmoil in Afghanistan with his grandparents, eventually settling in Canada and becoming a citizen. He was married with two teenaged children. He worked long hours at his shawarma shop to support his family. He admitted to a gambling addiction which he said was under control. His community offered support, making it clear it did not condone the hate-filled threats. Letters of support were filed expressing universal shock by those learning of the accused's actions. The accused's reputation prior to these offences was one of a hard-working immigrant Canadian who supported various charitable community causes with donations of food from his restaurant. There was no evidence of a collection of weapons, explosives, maps, planning or coordination. Prutschi J. clarified that the accused's guilt was based on his empty threats, communicated to a stranger, mistakenly assuming that person would be sympathetic to the accused's own warped and hateful worldview. The threats were clearly motivated by bias, prejudice and hate towards Israelis and Jews. This was a serious statutorily aggravating factor. The hate-motivated bias at the core of the accused's comments was the most serious aggravating factor. The court cited statistics showing a "shocking portrait of a Jewish community under siege". The accused's threats contributed to a profound and pervasive sense of fear and despair amongst Canadian Jewry, as described in the community impact statements. The charges and media coverage of the subsequent trial had a tremendous devastating and negative impact on the accused and his family. The accused lost his business. He expressed shame for his behaviour. He was on a waiting list for mental health support. He read from a statement that showed he had important insight into the harm his threats had caused and expressed his opposition to antisemitism or violence in any form. The accused had taken preliminary steps to engage positively

with the Jewish community. It would clearly be contrary to the public interest to grant a conditional discharge. Denunciation and deterrence must be the primary sentencing principles, suggesting that a jail sentence might be the only appropriate penalty. Probation alone was insufficient. It was appropriate to register two findings of guilt reflecting the two distinct offences, such that a conditional stay on one of the charges was not registered under the *Kienapple* principle. The court imposed a global sentence of 60 days in custody to be served conditionally in the community, with house arrest, followed by three years probation: *R. v. Akbari*, 2025 CarswellOnt 12075.

- **Offences Against the Criminal Code—Sexual Offences, Public Morals and Disorderly Conduct—Sexual Offences—Sexual Interference with Person under 16**—The accused pleaded guilty to sexual interference, making child pornography, and possession of child pornography. Counsel presented the sentencing judge with a joint submission of 18 years' imprisonment, based on an agreed statement of facts. The accused had acquired a large collection of child sexual abuse material (CSAM). He began to sexually abuse his 4-year-old daughter mirroring some of abuse in his collection. Over the next 4.5 years, the accused created more than 1000 images of the victim that met the definition of child pornography. In approximately 18 instances, the accused recorded his sexual abuse of the victim by photo and video. The aggravating factors included the breach of trust; the age of the victim; and the accused's planning and deliberation. The primary mitigating factor was the accused's guilty plea. The primary sentencing principles were Denunciation and deterrence. Despite requests from the Crown that the sentencing judge view the representative sample of CSAM, the judge declined to enter the sample into evidence and view the material. The judge rejected the joint submission and instead imposed a sentence of 14 years imprisonment: 10 years for sexual interference, 4 years reduced to 3 years consecutive for making child pornography and 2.5 years reduced to one year consecutive for possession of child pornography. The judge also imposed a lifetime SOIRA order. The accused was given 198 days enhanced pre-sentence credit. The Crown appealed advancing two arguments: that the sentencing judge erred in his application of the public interest test for rejecting a joint submission, as established in *R. v. Anthony-Cook* and the judge erred in refusing to admit and view a representative sample of the CSAM. The Court of Appeal [Friesen, Hawkes J.J.A., Pentelchuk] allowed the appeal. The Court noted that the issues of the appeal were set against the backdrop of *R. v. Friesen* wherein the S.C.C. directed sentencing courts to recognize and give effect to the inherent wrongfulness of sexual offences against children and the many actual and potential harms caused by the crimes. The Crown had demonstrated reviewable error, both in the sentencing judge's reasoning in rejecting the joint submission, and in declining to view the representative sample of CSAM. On the latter point, The Court thoroughly reviewed the various approaches to choosing to review or not review CSAM, including arguments related to the possible traumatization of justice system participants and the revictimization of the children depicted. The Court stated, however, that refusing to view the material could not simply be a reactionary response to a distasteful judicial task. The Court provided guidance on the scope of *Hunt* on the principles that guide the exercise of a sentencing judge's discretion to determine whether to view CSAM when requested to do so. In particular, the sentencing judge should generally admit CSAM evidence and view it, unless the prejudicial effect of doing so outweighs the probative value, analyzed on a case-by-case basis. The test for rejecting a joint submission is the *Anthony-Cook* "public interest test". This joint submission was neither disconnected from the offences and the offender nor did it bring the administration of justice into disrepute, and therefore there was no basis to reject it. The sentencing judge had erred in applying the public interest test. First, the judge's reasons revealed that he effectively applied a conventional sentencing analysis. Secondly, he erred in his analysis of the benefits of the joint submission as it clearly provided general benefits to the administration of justice. The court set aside the sentence and sentenced the accused to a global sentence of 18 years' imprisonment, as detailed in the original joint submission: 10 years for sexual interference, 6 years consecutive for making child pornography, and 2 years consecutive for possessing child pornography. The accused's enhanced pre-sentence credit and SOIRA order remained unchanged: *R. v. RPA*, 2025 CarswellAlta 2053 (Alta. C.A.).

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