CITATION: *R. v. Hall*, 2025 MBPC 34

THE PROVINCIAL COURT OF MANITOBA

BETWEEN:

His Majesty the King	)	L. Campbell,
	)	for the Crown
	)	
-and-	)	
	)	
Gregory Hall	)	C. Antila,
	)	for the Accused
	)	
	)	
	)	Reasons for Decision
	)	Delivered: April 25, 2025

BRIGHT P.J.

[1] This is my decision on sentence for the accused, Gregory Hall, who pleaded guilty to one count of possession of child pornography between September 13, 2020, and October 13, 2022.

The circumstances of the offence

[2] On September 13, 2020, the National Centre for Missing and Exploited Children (NCMEC) in the United States received a report that an account holder with the username "mirror13" had uploaded three images and one video of child pornography (hereinafter referred to as child sexual abuse material, or CSAM) to the

Kik Messenger mobile app using the name "Horny Daddy." The email address connected to the Kik account was mmirror_13@yahoo.ca.

[3] NCMEC referred the report to the National Child Exploitation Coordination Centre (NCECC) in Canada. The IP address information resolved to a Shaw subscriber in Winnipeg and the report was sent to the Winnipeg Police Service (WPS) in March 2022. WPS obtained a production order for the subscriber information which listed the accused as the subscriber. The email address associated with the subscriber account was the same one used in the Kik Messenger account that uploaded CSAM in 2020.

[4] On July 28, 2022, WPS executed a search warrant at the accused's home where he was located along with his wife and their two-year-old daughter. The accused told police that he had been "hacked" a number of times over the years and CSAM had shown up on his devices. He said that he deleted it and denied uploading it. Police seized several electronic devices from the home.

[5] A subsequent search revealed 427 unique images and 34 unique videos of CSAM found on four different devices. The accused was arrested on October 13, 2022.

[6] On April 8, 2024, the first day of the accused's trial, he entered a guilty plea to possession of child pornography contrary to s. 163.1(4) of the *Criminal Code* (*Code*). When entering his plea, the accused said that he was accepting responsibility

for committing the offence but said that he did not remember committing it due to memory loss.

The circumstances of the offender

[7] A pre-sentence report (PSR) was prepared and filed as an exhibit at the accused's sentencing. The accused is now 41 years old. He has no prior criminal record. He was raised by his parents in Starbuck, Manitoba. He had a positive upbringing, and he continues to maintain a good relationship with his parents. He has a high school education, and he later completed a diploma program in digital animation. He has no history of substance abuse. He was employed full-time as a painter until the fall of 2024. He is currently on disability assistance as a result of issues relating to his foot and leg that prevent him from working.

[8] The accused is married and shares a daughter with his wife and is a step-parent to his wife's teenage son from a previous relationship. Child and Family Services (CFS) became involved with the family after the accused was charged. CFS initially allowed supervised visits between the accused and his daughter while she was being cared for by his parents. However, a supervisor interviewed for the PSR advised the author that the accused had not engaged with CFS in the previous months and had declined to participate in a psychological assessment. As a result, visits between the accused and his daughter were no longer permitted.

[9] When the offences were discussed with the accused, he acknowledged that he was in possession of CSAM but said he did not recall downloading or possessing it due to memory loss that he said began shortly before being diagnosed with brain cancer. While he said that he would be willing to participate in sex offender counseling, he also told the probation officer that he did not think that he needed it. He denied any sexual interest in children. He confirmed that his memory loss had not had any other impact on his life, such as his ability to care for himself and his family, complete daily tasks, maintain employment, or drive a vehicle.

[10] The accused provided a letter from his oncologist confirming that he was diagnosed with a brain tumor in 2020. He received chemotherapy treatment that year, which was completed in 2021. He is currently cancer-free.

[11] The accused began to experience seizures related to his brain tumor around the time of his cancer diagnosis and has been taking anti-seizure medication since then. According to his oncologist, the accused's last reported seizure was in December of 2022. The accused filed medical records confirming that he attended the Grace Hospital emergency department on December 19, 2022, with a suspected seizure.

[12] On the issue of memory loss, the oncologist's letter indicates that people with the type of brain tumor the accused had "can experience periods of short-term memory loss."

[13] The accused was in custody at the first hearing date for his sentencing in October 2024 as a result of being arrested on allegations of breaching his release order. Between the first hearing date and the continuation date in January 2025, the accused was released from custody following a bail review in King's Bench.

[14] At the continuation hearing, the accused said that he had had four night seizures since being released from custody in December, and that he had woken up not knowing who he was or where he was. The accused also asserted that his seizure medications were not being properly provided to him while he was in custody at the Winnipeg Remand Centre (WRC). He did not file any documentation from WRC relating to the provision of his medications while he was in custody.

[15] The accused filed two pages of correctional log notes from WRC. The logs indicate that on November 7, 2024, he was found lying on his back on the floor of his cell. He received medical attention immediately. It appears that he was medically cleared and transferred to the medical wing at WRC the following morning. The accused said that he had a seizure on November 7. He did not provide any medical documentation confirming that he had a seizure on that date or on any subsequent date after being released from custody.

The nature of the CSAM collection

[16] There were 427 CSAM images located on four devices in the accused's residence: a Samsung S20 cell phone and a Samsung S22 cell phone found in the accused's bedroom, a computer tower hard drive in an office, and on a Lexar USB thumb drive also located in the office. There were 34 unique videos located on the Samsung S20 and the computer hard drive. All of the CSAM on the computer hard drive was in a folder labeled "private." Also located in this folder were images of the accused masturbating while wearing little girls' underwear.

[17] The accused also had a Snapchat account which was accessed on the Samsung S20. The accused's username on Snapchat was mirror1382. The email address associated with the Snapchat account was the same one used for the Kik Messenger account and the accused's home internet subscriber account.

[18] The collection of CSAM stored on the accused's devices is extensive and horrific. A representative sample was shown in court. Most of the children in the images and videos were female and range in age from 6 years old to 13 years old, though some of the children were also young toddlers. The majority of the images and videos featured children engaged in sex acts with other children or adults, including oral sex and penetrative sex acts. There were images of mostly nude or fully nude children exposing their genitals and images of children inserting objects into their vaginas and anuses. There were images of children who were bound by the

wrists and in some cases tied to furniture like a bed. Some of these children were also blindfolded. Sex acts were perpetrated on some of the children while they were bound. Some of the images of children who were bound also included bestiality. The collection also included CGI-generated CSAM images of male children engaged in sex acts with adult females.

[19] The videos featured equally depraved sexual abuse of children. One video depicts a toddler being repeatedly vaginally penetrated by an adult male penis. In another video, a male forces fellatio on a female child who is approximately 8 to 10 years old. He pushes her head down on his penis with his hands to the point where the child gags and vomits. He tells her to spit it out and then forces her to continue. In another video, a 13-year-old child is nude in the back seat of a vehicle and is seen wincing in pain while an adult male penetrates her with his penis. He asks her if she likes it and asks her if she loves him. The male slaps her across the face and chokes her with his hands while saying, “you’re my little 13-year-old slut, you’re all mine.”

[20] It is difficult to understand how anyone can see this material and experience anything other than deep sadness and horror at the degradation and sexual violation of these children. While the accused told the probation officer that he has no sexual interest in children and never has, there is no other reasonable explanation for seeking out, accessing and collecting these kinds of images and videos. CSAM is

produced for the sexual gratification of those who produce it and for those who view them. There is no other reason for its existence.

[21] In addition to the CSAM, police located 5,163 files categorized as "investigative interest" on the accused's devices. These included images and videos of female children between the ages of 8 and 12 years old posing provocatively while wearing lingerie or swimsuits. There were also many images of female toddlers wearing only underwear, "upskirt" images of children's underwear, and what police described in the Image Analysis as "MANY" images of toddler girl underwear. Police also located images of an unknown male wearing little girls' underwear.

[22] Police reviewed the browser history of the cell phones and computer tower and found that similar search terms were used across all three devices. The browser history of the Samsung S20 phone included the search terms "teen porn; lolli; daughters/tiny panties; incest; guy wearing panties; horny dad; cock and panties." The Samsung S22 phone's browser history contained the search term "lolli con," a term used for Japanese-style anime images of female children engaged in sexual situations. On the computer tower hard drive, the browser history included the search terms "lolli; hair pulling; doggy style; and milf tune."

Victim Impact

[23] Six known victims were identified in the CSAM in the accused's possession. They are all people whose images have been previously identified in CSAM collections circulating on the internet, sometimes for many years. Victim impact statements (VIS) for each known victim were filed and read in court. The statements were prepared using pseudonyms and contain no information that could identify them.

1. "Emily" is currently 18 years old. She expressed an inability to find peace because the images of her abuse continue to be shared online. She described never feeling truly safe: "The demons are still there and I am reminded of them each time I receive a notification identifying yet another one of my abusers."

2. "Jenny" is currently 18 years old. She was abused at age seven and images of her have been circulating online for the last two years. As is unfortunately common for many victims of CSAM offences, she spoke of the fear of being recognized in public. She said that she was attending therapy but stopped because she wanted to forget what happened to her, but with her images circulating online, that has proved to be impossible.

3. "Henley" was abused by her father from age 5 to 12. She described how having her images online is, as she put it, like a consequence that doesn't end: "like constantly having a scab ripped off a wound that is trying to heal." She also described the fear of being recognized in public and said that people who have seen her images online have tried to find her. As a result of this she cannot own property in her own name or in her mother's name. She has been diagnosed with PTSD which has resulted in work absences, and she cannot afford therapy. She described feeling guilt and shame and being trapped and powerless like a child.

4. "Sarah" was abused from age 5 to 11 when she was tricked into being a "model" by an adult posing as a teenage girl online. When she found out

that her images were being circulated, she was "stunned beyond belief" and described it "like a constant cloud that hangs over me."

5. "Sloane" described being manipulated and cyberstalked online by people who have seen her images and are trying to find her. For example, someone who had seen her images contacted one of her friends when she was in college and attempted to get her contact information. She described how her sexual objectification and enslavement never seem to end, and she worries that if she ever has a family, her spouse and children might also become targets.

6. "Pia": This VIS was written by the child's mother who described how speaking about her child's abuse made her feel physically ill. She outlined her constant fears for her child's safety and wanting to change her child's appearance for fear that they might be recognized in public, and someone might try to kidnap them. She spoke of a conversation with one of her other children where they said, "But Mom, [the images] can be removed forever, right?" She ended her statement saying, "I am overcome with grief. I feel dead."

[24] What emerges from the statements is that victims of CSAM offences experience tremendous emotional, physical and psychological harm above and beyond the trauma from the sexual abuse itself as a result of having their images circulated, viewed, and collected by people who use them for their own sexual gratification. They are re-victimized each time someone accesses or circulates their images. They spend their lives worrying that they will be recognized, and in some cases, they have had to take significant steps to protect themselves from people who are intent on locating them. They are left to sit with the knowledge that their images might always be out there no matter what they do. It is, as one victim put it, like a black cloud perpetually hanging over their heads.

The positions of the parties

[25] The Crown seeks a sentence of two years less a day in custody. The accused seeks a sentence of the same length but asks that it be served in the community in the form of a conditional sentence order (CSO).

[26] The Crown says that a CSO would not be in keeping with the purposes and principles of sentencing for child sexual abuse offences. The Crown says that there is no nexus between the accused's offending and his medical condition such that his moral culpability is reduced.

[27] The accused says that a CSO is appropriate in his case because he has no prior criminal record, he poses a low risk to re-offend and he can be safely managed in the community. While he does not explicitly argue that his medical condition is mitigating, much of his submission was focused on it and on how it could be impacted if he was sentenced to custody in an institution.

[28] Following sentencing submissions, I advised both counsel that I was considering imposing a sentence higher than what the Crown was recommending. In accordance with the Supreme Court's directive in *R v Nahanee* 2022 SCC 37, counsel were invited to make further submissions on the length of sentence and did so at a subsequent hearing date.

[29] The accused takes the position that because the length of sentence being recommended by both counsel is the same, the Court is bound by the public interest

test set out by the Supreme Court in *R v Anthony-Cook*, 2016 SCC 43. The Crown takes the position that there is no joint recommendation for the Court to consider.

[30] In *Nahanee*, the Supreme Court articulated what constitutes a joint recommendation:

> To be clear, a joint submission covers off every aspect of the sentence proposed. To the extent that the parties may agree to most, but not all, aspects of the sentence — be it the length or type of sentence, or conditions, terms or ancillary orders attached to it — the submission will not constitute a joint submission. The public interest test does not apply to bits and pieces of a sentence upon which the parties are in agreement; it applies across the board, or not at all.
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> *R v Nahanee*, para. 27. (emphasis added)

[31] Notably, the accused in *Nahanee* urged the Supreme Court to extend the public interest test to contested sentencing hearings following a guilty plea. While the Court acknowledged the impact of guilty pleas on the proper functioning of the criminal justice system, it held that "the *Anthony-Cook* public interest test must remain confined to joint submissions" nonetheless. (para. 29)

[32] Here, the length of sentence being proposed by both counsel is the same, but the parties are not joined in their recommendation on how that sentence should be served. The difference between serving a sentence in a custodial institution and serving it in the community is a significant point of contention which resulted in a full day contested sentencing hearing. The circumstances before me do not lead me to conclude that this is a joint recommendation as defined by the Supreme Court and the public interest test does not apply.

Conditional Sentence Orders for CSAM Offences

[33] Courts across the country have been clear that the upward trend in sentencing in accordance with the Supreme Court's directive in *R v Friesen*, 2020 SCC 9 coupled with the increased understanding of the wrongfulness and harmfulness of child sexual abuse and exploitation means that while CSOs are not prohibited for these offences, they are to be reserved for cases where there are extraordinary or compelling mitigating circumstances which justify them.

[34] The accused filed several decisions in support of the imposition of a CSO. All were from outside this jurisdiction with the exception of *R v Nepon*, 2020 MBPC 48, decided just prior to the release of *Friesen*. I will not review each decision in detail here, but I note that each one referenced the need for exceptional or compelling circumstances to justify a CSO:

1) *R v Friesen*, 2022 ABCA 147: The offender pleaded guilty to possession of child pornography. He had 102 CSAM images on a single device. He was also using Kik Messenger to discuss trading and sharing CSAM images with other users. The offender was 21 years old. He grew up in a dysfunctional family and was sexually abused as a child by an uncle. His mother died of an overdose when he was 19. Following his arrest, he enrolled in and completed significant counseling and therapy for addictions and sexual deviancy. He demonstrated insight into his offending and recognized the harm he caused to real children.

   The sentencing judge imposed a two year less one day CSO. In upholding the sentence on appeal, the Court found that it was open to the sentencing judge to find that the accused's circumstances fit

into the category of "exceptional" cases where a CSO could be justified. (paras. 21, 24)

2) *R v Scott*, 2023 ONSC 3023: The offender crossed the border with a number of digital devices in his luggage containing a total of 1550 CSAM images. Most of the collection was anime images or stories. He was convicted of possessing and importing child pornography. The offender was 76 years old and had no prior criminal record. He had significant family support and expressed remorse for his offending. He attended therapy following his arrest. The psychological report indicated that he was receptive to therapy, spoke openly about his deviant sexual interests and he "appeared genuinely interested in better understanding his motivation and in wanting to learn to manage his problem effectively to prevent future behaviours." (para. 41)

   The Court found that the only aggravating factor was the amount of material in the accused's possession. There were significant mitigating factors which, combined with the offender's age and health issues, "lift[ed] this case into the exceptional range," resulting in the Court imposing a CSO. (para. 65)

3) *R v Nepon*, 2020 MBPC 48: The offender pleaded guilty to possession of child pornography. He had 626 images of pre-pubescent children posing nude with their genitals exposed. There were no images of children engaged in any sex acts and no videos. The images were all located on one computer hard drive. The offender was 35 years old and had no prior criminal record. He had a congenital eye condition and was legally blind. He was diagnosed with autism spectrum disorder and major depressive disorder. The Crown proceeded summarily and sought a 15-month custodial sentence.

   The offender engaged in significant sex offender treatment and counseling following his arrest. He demonstrated insight into his offending and developed a wellness plan. The Court found that in addition to numerous mitigating factors, there was compelling evidence of a connection between the offender's physical and psychological conditions and his offending which reduced his moral culpability. The Court imposed a 12-month CSO.

[35] The remaining decisions filed by the accused are cases outside this jurisdiction where the Crown proceeded summarily and sought sentences of six months custody or less (*R v Quested*, 2019 BCPC 95; *R v Dutchession*, 2021 ONCJ 480; *R v Ereault*, 2022 ONCJ 270). There were additional distinguishing features and I found these decisions were of limited assistance.

[36] The Manitoba Court of Appeal recently dealt with the imposition of CSOs for child sexual abuse offences in *R v Dew*, 2024 MBCA 55, where the Court overturned a 12-month CSO for luring a child and substituted it with a 16-month custodial sentence. The Court held that a CSO was inconsistent with the purposes and principles of sentencing in that case, and more broadly:

> Conditional sentences are rare for sexual offences against children because the need for denunciation or deterrence is so pressing that incarceration is typically the only suitable way to express society's condemnation or to deter similar conduct. Cases that rise to the level of the rare case where a conditional sentence was appropriate for such crimes typically involve some extraordinary mitigating factor(s), in addition to the usual mitigating factors.
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> *R v Dew*, para. 64, citing *R v Storheim*, 2014 MBQB 141 (leave to appeal sentence denied), para. 37.

[37] In *R v Pike*, 2024 ONCA 608, the Ontario Court of Appeal made similar findings:

> [S]ince *Proulx*, Parliament has increased maximum sentences and prioritized denunciation and deterrence for sexual offences against children and, further, the courts' understanding of the harmfulness and wrongfulness of these offences has deepened: *Friesen*, at paras. 109-110; see *M.M.*, at paras. 13-15. Thus, while there is no presumption against conditional sentences, these post-*Proulx* changes require more compelling personal circumstances, mitigating factors, and/or the absence of

> aggravating factors, to justify a conditional sentence than might have been the case when *Proulx* was decided more than two decades ago.
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> *R v Pike*, para. 181.

[38] In order to impose a CSO, I must first be satisfied that a sentence of less than two years is appropriate, and that the accused will not pose a risk to the public if he serves his sentence in the community. In examining the first two criteria, I am not satisfied that a CSO is appropriate in this case for a number of reasons including:

- The seriousness of the offences;
- The degree of harm;
- The lack of insight into the offending or any attempts to gain any insight into the offending;
- The allegations of breaching the protective conditions of the release order along with the conditions prohibiting access to or possession of a cell phone and other devices capable of accessing the internet.

[39] Given the above, I am not convinced on the first or second criteria under s. 742.1 of the *Code* that a CSO is appropriate.

[40] Even if I was satisfied based on the first two criteria, a CSO would be inconsistent with the fundamental purpose and principles of sentencing for this offender and for this offence. There are simply no compelling personal circumstances or extraordinary mitigating factors that reduce the accused's moral culpability or bring this case into the realm of one where such a sentence is appropriate.

Sentencing Jurisprudence from Manitoba

[41] Sentencing jurisprudence from this jurisdiction makes clear that sentences for first offenders who possess significant CSAM collections will generally be penitentiary length sentences absent some compelling reason to impose a lower sentence.

[42] In *R v Sinclair*, 2022 MBCA 65, the offender pleaded guilty to several offences including possession of child pornography for possessing 112 images and 52 CSAM videos. The sentencing judge imposed a total sentence of five years custody, including a 15 month sentence for possession.

[43] There were 12 children identified in the offender's CSAM collection, all of whom the offender had lured online and convinced to appear nude on camera. The offender had an intellectual disability and autism spectrum disorder as well as significant *Gladue* factors.

[44] The Court of Appeal determined that five years was not proportionate when considering the seriousness of the offences and the moral blameworthiness of the offender and imposed an eight year sentence. This included increasing the sentence for possession of child pornography to two-and-a-half years. The Court described the number of images and videos as a "significant collection." (para. 64) It determined that while the offender's personal circumstances were relevant factors to

consider, his degree of moral culpability was nonetheless high, and the need to protect the public vastly outweighed his personal factors. (paras. 77-78)

[45] In *R v Paracha,* (Manitoba Provincial Court, November 9, 2020), the offender pleaded guilty to possession of child pornography. He had 276 images and 110 videos on two different devices along with 1,760 images and 237 videos of investigative interest. He used Kik Messenger to seek out CSAM and engaged in graphic discussions about having sex with children with other users.

[46] The offender was 20 years old at the time the offences were committed and had immigrated to Canada from Pakistan six years earlier. He suffered from significant cognitive impairments and his abilities were assessed as being in the extremely low range. He was the victim of sexual abuse as a child and had engaged in significant therapy with a psychologist specializing in sex offender counselling prior to being sentenced, though the Court found that his continued efforts at impression management tempered his guilty plea and acceptance of responsibility.

[47] In determining the extent to which the offender's personal circumstances factored into the offending behaviour, the Court concluded that there was no causal connection between the offender's cognitive impairments and past victimization and the offences because they did not prevent him from understanding that what he was doing was harmful to children. The Court imposed a 27-month penitentiary sentence and held that while the offender's personal circumstances were mitigating, they were

not exceptional circumstances which outweighed the need to impose a sentence that focused on denunciation and deterrence.

[48] In *R v Cochrane* (Manitoba Provincial Court, May 23, 2024), the offender pleaded guilty to one count of possession of child pornography and one count of making written child pornography. The offender had 3,043 images and 574 videos in his possession at the time of his arrest. Most of the children were girls between the ages of three and six years old. The materials included posing and sex acts between children and other children and adults, including oral sex and penetration as well as images of bondage and bestiality.

[49] The offender was 23 years old at the time of the offences. Three fitness assessments were filed which described him as "confused, agitated, suspicious, unfocused, disorganized, distracted, and paranoid" (Transcript, T4). He had been previously diagnosed with major depressive disorder, social anxiety disorder and avoidant personality traits. In the months leading up to his sentencing, he was diagnosed with an unspecified psychotic disorder. He was prescribed anti-anxiety and anti-psychotic medications but was generally not compliant in taking them.

[50] The offender also had significant *Gladue* factors. His grandmother was a residential school survivor, an alcoholic, and the victim of a homicide by her domestic partner. He had a dysfunctional upbringing. He had no contact with his father and his mother also struggled with alcoholism while he was growing up. The

offender said that he was also victimized by other adults online including being instructed on how to self-harm.

[51] The Court was cognizant of the offender's personal circumstances, including his *Gladue* factors which reduced his moral culpability. Despite this, the Court imposed a three-year penitentiary sentence for possession of child pornography. The Court was alive to the potential impact of a custodial sentence on the offender, noting "I appreciate that he may be a vulnerable person by virtue of his mental illness, and particularly vulnerable in a jail setting and in a penitentiary. But that's no reason, if other sentencing principles call for jail, why jail ought not be imposed." (Transcript, T17)

[52] After considering the relevant jurisprudence from Manitoba along with the Supreme Court's directives in *Friesen*, the Court concluded that absent exceptional circumstances, a normative sentence for possessing CSAM where the collection is large and contains material that includes a high degree of depravity is a penitentiary term in the three-year range for a first offender who has no record and who has entered a guilty plea. (Transcript, T10) I concur with that finding.

Gravity of the offence and degree of responsibility of the offender

[53] The primary sentencing principles in sentencing for child sexual abuse offences are denunciation and deterrence. Where the emphasis is on these principles, the focus of the Court is on the offence rather than the offender. While the offender's personal circumstances remain relevant, they take on a reduced role. (*R v Hiebert*, 2024 MBCA 26, para. 17)

[54] Proportionality is the overall fundamental sentencing principle to be applied in all cases. It is based on the fundamental notion that the sentence imposed must be commensurate to the gravity of the offences and the degree of responsibility of the offender. (*R v Sinclair*, para. 78)

a. Gravity of the offence

[55] In *Friesen*, the Supreme Court directed sentencing judges to impose sentences that are commensurate with the gravity of sexual offences against children. It is not enough for sentencing judges to say that these offences are serious: the sentence imposed must reflect the Court's recognition of the wrongfulness and harmfulness of these offences. (para. 76)

[56] The Supreme Court further recognized that courts have been on a "learning curve" with respect to their understanding of the extent and the effects of sexual violence on children and the prevalence of these crimes. (para. 49)

[57] This is particularly so as it relates to online child sexual abuse offences such as possessing CSAM. It was not long ago when courts considered these offences less serious because they did not involve "hands on" contact between the offender and the child being abused in the images in the offender's possession. However, courts are now much more attuned to the significant impact of this kind of offending as society's recognition of the social harms flowing from the nearly unabated proliferation of CSAM online has deepened.

[58] Seeking out and collecting CSAM is not a harmless act. The production of images and videos of child sexual abuse is fuelled by demand. Offenders who search for and collect CSAM online work in concert with those who produce it by creating the demand, resulting in more and more children being victimized. The harm to children is further amplified by the fact that once these materials are online, they are nearly impossible to remove and remain out there in perpetuity.

[59] In *R v Andrukonis*, the Court noted that "child pornography constitutes a clear and present danger to children round the world":

> The reality is that the children captured for life in the child pornography have been abused somewhere. Therefore, the fact that child pornography allows perpetrators to take in the sexual abuse of children virtually through the Internet does not change its essential character. The unvarnished truth is this: possession of child pornography is itself child sexual abuse. To fail to recognize this is so improperly diminishes the gravity of this offence.
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> *R v Andrukonis*, 2012 ABCA 148, para. 29.

[60] In *R v Pike*, the Court reaffirmed the seriousness of the offence of possessing CSAM and how it amounts to shared culpability with the offenders who produce

images depicting the victimization of children which must be reflected in the sentence imposed:

> The offences for which [the respondent] was charged normalize and increase the demand for further child abuse and exploitation. They increase the risk of sexual abuse of children and perpetuate demeaning messages that children are property or objects and not people. A child-centered approach to sentencing requires judges to consider child victims and the wrongs and harms that people who possess child pornography inflict on them, to reject myths that minimize the perpetrator's responsibility and, finally, to apply a denunciatory sentencing range that reflect the abhorrent and harmful nature of these offences and their long-term negative impacts on children.
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> *R v Pike*, para. 7.

b. Degree of responsibility of the offender

[61] Sexual violence against anyone is morally blameworthy conduct. Where the victim is a child, the offender's moral blameworthiness is increased because children are inherently more vulnerable. Offenders who possess CSAM take advantage of the fact that someone else has exploited the vulnerabilities of the children depicted in the materials they search for and collect. The failure on the part of offenders to recognize that the children in these images are real victims being subjected to real abuse increases the degree of moral blameworthiness, particularly where there is an elevated level of sexual violence depicted.

[62] Further, as the Court noted in *Pike*, where the offender is a person of previous good character, the degree of responsibility is often even more significant, and their otherwise good character should be given less weight:

> [M]any perpetrators are people of otherwise good character who secretly commit the offence, and possession usually involves repeated conduct over a significant period rather than an out-of-character isolated act, and it is very blameworthy for people of otherwise prior good character to fail to appreciate the wrongfulness of their actions."
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> *R v Pike*, para. 172.

[63] In some instances, there may be personal factors regarding an offender that may tend to reduce their moral culpability or the degree of responsibility, such as cognitive deficits or *Gladue* factors. Other factors, such as participating in significant treatment or therapy, and evidence that an offender has expressed genuine remorse and recognition of the degree of harm caused by the offending, can also be relevant to the assessment of moral culpability where it can be shown that the offender has gained significant insight into the precursors of the offending.

[64] In this case, there are no factors which reduce the accused's degree of moral culpability. This includes his medical condition and his professed memory loss. There is no evidence of any nexus between the accused's medical condition and his offending. There is no evidence that it had any impact on his ability to understand that what he was doing was wrong or that he was causing real harm to children and as such it has no impact on his moral culpability.

Aggravating and Mitigating Factors

[65] The mitigating factors in this case include:

1) The guilty plea. This is tempered to some extent by the fact that it occurred on the first day of the accused's trial in the face of significant evidence implicating him in the offence;
2) The accused has no prior criminal record;
3) The accused has a positive employment history;
4) The accused's medical condition has impacted his physical health, which might make serving a custodial disposition more difficult;
5) The accused has a supportive family.

[66] The accused contends that his assessed "very low risk" to re-offend as set out in the PSR is a mitigating factor to consider. In some cases that may be, but in this case I have concerns that the assessment is not indicative of his actual risk to re-offend. He has no insight into his offending. He has not participated in any counseling or programming to understand and address the precursors of his offending. Even if his claim that he has no memory of committing the offences is true, he does not seem at all interested in finding out why, for over two years, he was searching for and collecting hundreds of CSAM images and storing them on multiple devices in his home. While he says that he will complete counseling if required to do so by the court, he does not think that he needs it, which is troubling.

[67] When I consider the accused's risk to re-offend, I find the following factors to be relevant:

a) The accused's offending was discovered because he uploaded CSAM images and videos to Kik messenger, a social media platform that is

well-known for being commonly used among offenders who trade and share CSAM;

b) The offending took place over more than two years;

c) CSAM was located on four different devices including two cell phones which by their nature are designed to be carried around and accessed at any time and anywhere;

d) The children depicted in the images and videos were very young and the level of depravity of the sexual abuse depicted was very high;

e) The CSAM images and videos on the computer tower hard drive were kept in the same folder as the video of the accused masturbating in little girls' underwear, which he says he made with his spouse with the intention of it being a private video for the two of them. This is also where police located thousands of investigative interest images and videos of provocatively dressed children, toddlers in their underwear, and images of toddler underwear. The folder was labelled "private". This is one of many aspects of the evidence that calls into serious question the accused's claim that he has no memory of the offending;

f) The browser history on the cell phones and the computer tower shows that the accused was looking for a particular kind of CSAM and was searching for it on multiple different devices;

g) The accused is alleged to have breached the conditions of his release order in a number of ways, including: by having access to his young daughter, with whom he also was prohibited from having contact because he was not complying with the requirements of CFS to ensure her safety; because he was residing in a home where there were multiple devices capable of accessing the internet, and; because he was using a cell phone, a device he had previously used to collect and store CSAM. While he had not been convicted of these offences the last time he appeared before me, they remain appropriate considerations in terms of assessing his risk to re-offend going forward.

[68] The risk assessment in the PSR was conducted using the Level of Service Case Management Inventory (LSCMI) which is intended to assess an offender's risk to re-offend generally. It is not designed to assess risk to commit further sexual offences nor is it designed to assess risk to commit further online child sexual exploitation offences. There were no psychological or other assessments tendered which would assist in determining his risk to re-offend in a similar manner.

[69] In my view, the risk assessment outcome using the LSCMI is not supported by the evidence related to the offending. I cannot quantify his risk to re-offend, but I am satisfied that it is greater than "very low risk".

[70] There are a number of aggravating factors to consider, including:

1) The offence involves abuse of children under 18, which is statutorily aggravating;

2) The accused uploaded CSAM images and videos to Kik messenger;

3) CSAM was located on multiple devices. The fact that it was located on cell phones is an additional aggravating factor given their intended purpose to be used daily and regularly throughout the day;

4) The large size of the collection;

5) The collection includes images and videos of elevated levels of sexual violence and depravity perpetrated on young children by adults, including forced oral sex, penetration, bondage and bestiality;

6) The collection of investigative interest materials is enormous and is indicative of a significant sexual interest in young female children;

7) The victim impact is significant. As discussed, six children were identified in the accused's collection, which is a fraction of the actual

> number of victims in the materials he possessed. As set out in the victim impact statements, the victims, most of whom are now adults, have suffered and continue to suffer as a result of people like the accused who continue to access and collect their images online.

[71] When I consider the relevant sentencing principles, the gravity of the offence and the degree of responsibility of the offender, the custodial sentence being recommended by the Crown does not adequately address the principles of denunciation and deterrence and is not proportionate to the seriousness of the offence and the degree of responsibility of the offender. It constitutes a departure from the sentences typically imposed in this jurisdiction for similar offenders who commit similar offences in the absence of mitigating any factors which would justify a significantly lower sentence.

[72] When I consider the seriousness of the offence, the size and elevated level of depravity in the collection, the number of devices on which it was being stored, the risk to re-offend, and the lack of insight into the offending, along with the other relevant factors outlined above, the least restrictive sentence that appropriately condemns the accused's conduct and sends the message that the Court takes sexual violence against children seriously is three years imprisonment.

Ancillary Orders

[73] Pursuant to s. 490.012 of the *Code*, the accused will be required to comply with the Sex Offender Information Registration Act (SOIRA) for a period of 20 years.

[74] There will be an order pursuant to s. 161 of the *Code* for a period of 10 years. The conditions are outlined in Appendix "A" appended to these reasons.

[75] There will be an order that the accused will provide a sample of his DNA suitable for analysis. This sample will be taken while the accused is in custody.

[76] Pursuant to s. 109, there will be a weapons prohibition for a period of 10 years.

[77] Pursuant to s. 164.2, there will be an order of forfeiture of all devices containing CSAM.

Original signed by Judge Bright

BRIGHT P.J.

APPENDIX "A"- Section 161 conditions (10 years)

a) You are not to attend any public park or public swimming area where persons under the age of 16 years are present or can reasonably be expected to be present, or a daycare centre, school, playground or community centre;
b) You are not to seek, obtain or continue employment, whether or not that employment is remunerated, or become a volunteer in a capacity that involves being in a position of trust or authority over a person under the age of 16;
c) You will have no contact, including communication by any means, with anyone under the age of 16 years with the following exceptions:
    a. Unavoidable public encounters
    b. You may have contact with your child S.H. only while supervised and in the direct presence of a person or persons approved in advance and in writing by Child and Family Services
d) You must not use the internet or any other digital network except in accordance with the following conditions:
    a. You must not communicate with anyone under the age of 18 years or anyone purporting to be under the age of 18 years;
    b. You must not use or access any social media, dating websites or apps, chatrooms, or file-sharing networks, software or programs, including but not limited to Kik Messenger;
    c. You must not distribute, publish, post or make available in any way information, including comments and images which refer to or depict sexual activity involving persons under the age of 18 years;
    d. You must not possess or use any encryption or any computer wiping software or other means or device that could preclude access for a forensic examination of any computer system, cell phone, electronic storage device, data storage device, memory card, or portable media device either in your possession or which you can access;
    e. You must not password protect any device in your possession;
    f. You will submit to any demand by a peace officer, without warrant or reasonable and probable grounds, to conduct a forensic analysis on any computer system as defined in s. 342.1(2) of the *Code*, for the purpose of verifying compliance with this order;
    g. You may only use the internet or other digital network for purposes directly related to legitimate education, employment, banking, online news, communicating with a government agency, and formal rehabilitative treatment.