
CANADA / JUDGMENT

R. v. Christhurajah

2017 BCSC 2455

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Supreme Court of British Columbia

DECIDED

11 September 2017

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Christhurajah,

2017 BCSC 2455

Date: 20170911

Docket: 26117

Registry: Vancouver

Regina

v.

Kunarobinson Christhurajah

Before: The Honourable Madam Justice Wedge

Oral Reasons for Sentence

Counsel for the Crown:

C.F. Hough

Counsel for the Accused:

C.L. Leggett

Place and Date of Hearing:

Vancouver, B.C.

August 17-18, 2017

Place and Date of Judgment:

Vancouver, B.C.

September 11, 2017

- [1] THE COURT: These are my reasons on the sentencing of Mr. Kunarobinson Christhurajah.
- [2] Following a trial by judge and jury, Mr. Christhurajah was convicted of one count of human smuggling under s. 117 of the Immigration and Refugee Protection Act, S.C. 2001, c. 27 [IRPA].
- [3] At the time of the offence, which was July 2010, s. 117(1) read as follows:
117. (1) No person shall knowingly organize, induce, aid or abet the coming into Canada of one or more persons who are not in possession of a visa, passport or other document required by this Act.
- [4] Under the IRPA at the time, the maximum penalty for the human smuggling offence under s. 117 was life in prison if a group of 10 or more persons were smuggled. There was no mandatory minimum for the offence. That changed in December 2012, when new legislation known as Protecting Canada's Immigration System Act, S.C. 2012, c. 17, came into force. That Act imposes a mandatory minimum of 10 years for this offence.
- [5] I will turn first to the circumstances of the offence. As Mr. Christhurajah was convicted by a jury, s. 724(2) of the Criminal Code directs that I accept as proven all facts, express or implied, that are essential to the jury's verdict of guilt, and that I may find any other relevant fact that was disclosed by the evidence with respect to that fact.
- [6] In the summer of 2010, Canadian border authorities located a vessel several hundred miles off the coast of British Columbia; it was a small freighter, the Sun Sea, built for coastal travel with what appeared to be hundreds of passengers aboard. When the vessel was ultimately intercepted, authorities discovered 493 Sri Lankan immigrants of Tamil ethnicity aboard, including Mr. Christhurajah, his spouse, his brother, and brother-in-law. The freighter was not designed to cross an ocean, but had travelled from the Gulf of Thailand to coastal British Columbia, taking approximately six weeks to cross the Pacific Ocean.
- [7] The conditions on the freighter were appalling. Most of the migrants were crammed into the hold of a single-hulled ship, living on simple sleeping pallets. There were also migrants living under tarps on the decks above the hold.
- [8] All 493 passengers were fleeing Sri Lanka where, for several preceding decades, civil war had been waged between the Sri Lankan government forces and an organization fighting for an independent Tamil state in northern Sri Lanka. These militants were known as the Liberation Tigers of Tamil Eelam, otherwise known as the Tamil Tigers.

- [9] Male persons of Tamil origin, whether or not they supported the Tamil Tigers, were viewed with suspicion by the government forces and were the subject of severe persecution, including physical assaults and even death.
- [10] Given the conditions on the ship, it is clear the pan-ocean journey was a very dangerous one. There was grossly insufficient safety equipment. The freighter contained only one hold, unlike vessels designed for ocean voyages, which have multiple holds. Had there been any damage to this single hold, the freighter would likely have sunk. The living conditions were horrendous, given the crowding and scarcity of washrooms.
- [11] Nevertheless, the Sun Sea arrived intact in Canadian waters, and the passengers were determined by Canadian authorities to be in quite good health. All passengers applied for refugee status. I am advised that over 200 of those on board, including Mr. Christhurajah's spouse and brother-in-law, have been granted refugee status in Canada, and 130 applications are pending.
- [12] Mr. Christhurajah himself was immediately detained by Canadian immigration authorities as a suspected organizer of the voyage. He was placed in pretrial custody from August 12, 2010, shortly after the vessel was intercepted, until the criminal charge was laid on May 14, 2012. He was then detained on the criminal charge from May 14, 2012 until February 6, 2017. In total, Mr. Christhurajah was incarcerated for six and a half years before his release in February of this year. He was released on bail at the conclusion of his first trial on this charge. The trial over which I presided was Mr. Christhurajah's second trial on the charge. The first was also by jury; it ended in a mistrial when the jury could not reach a verdict with respect to him.
- [13] The central issue for the jury in this case was whether the evidence concerning Mr. Christhurajah's activities, before and during the voyage, constituted "organizing or aiding or abetting", prohibited by s. 117 of the IRPA.
- [14] As a result of the recent decision of the Supreme Court of Canada in *R. v. Appulonappa*, 2015 SCC 59, which concerned the interpretation and application of s. 117 of the IRPA, persons who fall within the category of organizing, aiding, or abetting are not guilty of an offence under s. 117 if they are either, first, providing humanitarian aid to asylum seekers or, second, are themselves asylum seekers providing mutual aid to other asylum seekers, including family members.
- [15] At trial, I concluded that these two exceptions constituted defences to the charge of human smuggling and, accordingly, that the evidence must first establish an air of reality before the potential defence could be put to the jury. If such an air of reality did exist, then the burden was on the Crown to disprove the defence beyond a reasonable doubt. My reasons concerning this issue are indexed at 2017 BCSC 1212.

- [16] I concluded on the evidence that the defence of mutual aid should go to the jury for its consideration, because there was evidence which gave the defence an air of reality. There was some evidence of aid rendered by Mr. Christhurajah, who was himself an asylum seeker, to the other migrants on the vessel and some aid rendered among the other asylum seekers on the vessel.
- [17] However, I also concluded on my reading of the Appulonappa decision that, for the defence to succeed, mutual assistance must be the sole motive of the accused. For example, if there were dual motives of mutual assistance and any secondary motive involving profit or other prohibited motive, such as illegal drugs, the defence was not available.
- [18] Accordingly, I instructed the jury that should they conclude that Mr. Christhurajah organized, aided, or abetted the smuggling and that profit was one of the motives, even a secondary one, then the defence was not available. My instruction to the jury in this respect is relevant to my task as a trial judge under s. 724(2) of the Criminal Code in determining the facts, express or implied, that were essential to the jury's finding of guilt.
- [19] The following facts are consistent with that verdict.
- [20] Mr. Christhurajah was the owner, or one of the owners, of the Sun Sea through his company, the Sun and Rshiya Company. Mr. Christhurajah was involved to some extent in arranging accommodation for various migrants in Thailand prior to their boarding the Sun Sea. He had a van that he used to bring Sri Lankans to an apartment building in Bangkok. He used a false name and an Indian passport in another's name to conceal his identity. He was seen bringing supplies to the apartment building.
- [21] Mr. Christhurajah met one of the migrants at an assigned location and provided him with a bus ticket in Bangkok to get him to the Gulf of Thailand. He was present in the van, transporting various migrants to the Gulf at one stage, although he himself did not board the ship until almost two months later.
- [22] He was, on one occasion, seen on the bridge of the ship with crew members using a satellite phone. He was seen on another occasion with those holding information meetings, although there was no evidence that he conducted any meetings himself.
- [23] Four of the migrant witnesses at trial said they handed over sums of money to persons other than Mr. Christhurajah before boarding the vessel and pledged to pay upwards of \$20,000 to \$30,000 upon arrival of the ship in Canada. However, there was no evidence of that money ever changing hands.
- [24] There are additional facts, that are relevant to the determination of a fit sentence in this case.

- [25] First, the persons aboard the Sun Sea were fleeing persecution. I instructed the jury that they were all asylum seekers, including Mr. Christhurajah and his family members. In other words, the passengers chose to be on the vessel because they feared for their safety if they remained in Sri Lanka or another country, such as Thailand, where the passengers were assembled before boarding the ship and where they could be forced to return to Sri Lanka.
- [26] All five Crown witnesses who were passengers on the ship testified about their harrowing experiences during and after the civil war at the hands of government forces. None of these witnesses testified that they were mistreated by the crew on the Sun Sea or that they had any wish other than to be aboard the ship and to flee to Canada.
- [27] The conditions on the ship were deplorable, but there was no evidence to suggest that Mr. Christhurajah and his family enjoyed any better conditions. His involvement in procuring accommodation in Thailand, and the other anecdotal evidence to which I have already referred, speak to his involvement.
- [28] However, although there was evidence of money changing hands and pledges from some of the passengers to pay substantial sums upon arrival, there was no evidence that Mr. Christhurajah personally demanded or received that money. The migrant witnesses testified that they handed the money over to other individuals who did not board the ship. The evidence tying Mr. Christhurajah to the organization aiding or abetting was his ownership or nominal ownership of the vessel and the other factors to which I have already referred.
- [29] The passengers on the Sun Sea were not hoping to enter Canadian waters undetected. Once in Canadian waters, the crew's intention must have been to be intercepted by Canadian authorities, the passengers taken ashore and the vessel seized.
- [30] On the evidence at trial, it can be inferred that there was a cast of characters in Sri Lanka and Thailand who were involved in the organization of the Sun Sea voyage. None of those individuals put themselves at risk by boarding the Sun Sea.
- [31] The factors to which I have referred concerning Mr. Christhurajah's involvement do not establish that he was a mastermind or leader of the enterprise.
- [32] Counsel for Mr. Christhurajah, in a book of documents entered during the hearing on sentence, provided a document (shown on a slide) prepared by a team of Canadian and Thai police investigating the Sun Sea. The document names the individuals the investigating team suspected as the leaders or masterminds of the operation. Mr. Christhurajah's name was not among them.
- [33] The evidence given at trial by the migrant witnesses was that an individual by the name of Sathi was the leader on the vessel, and an individual known as Emmanuel was the captain.
- [34] I will turn now to the positions of Crown and defence as to a fit sentence in this case.

- [35] The Crown seeks a sentence of 18 years' incarceration. It submits such a sentence is required in light of the extraordinary and aggravating factors in this case. The Crown says this is a case of international organized crime preying on desperate people and that there are no mitigating factors of any significance, whereas there are numerous aggravating factors. The paramount sentencing principles are denunciation and deterrence, argues the Crown, and a sentence near the maximum is necessary to satisfy these principles.
- [36] The Crown submits that the sentencing of Mr. Christhurajah is a case of first instance. It is a rare case for an organizer of a migrant smuggling vessel to be caught and convicted. Canadian sentencing case law on s. 117 is sparse. Accordingly, says the Crown, this court should look to Australian case law concerning the offence of human smuggling.
- [37] In the case of organizers, the Australian courts have said that severe sentences should be imposed where the lives of migrants were endangered in ocean voyages. The Crown argues it should be no different in Canada.
- [38] The Crown points out that had Mr. Christhurajah's offence been committed two and a half years later, he would have faced a 10-year mandatory minimum sentence under the Protecting Canada's Immigration System Act.
- [39] Although Mr. Christhurajah is not subject to the new mandatory minimums, they reflect the seriousness with which Parliament views the offence of human smuggling. That, says the Crown, is something this Court can and should take into account when sentencing Mr. Christhurajah. Further, no credit should be given for Mr. Christhurajah's almost two years in immigration detention prior to the laying of the criminal charge.
- [40] Taking into account his time served since the charge was laid, which is 56 months, calculated on the basis of 1.5 to one credit per month, he is entitled to 84 months' credit or slightly more than seven years. Thus, says the Crown, Mr. Christhurajah should serve an additional 11 years in jail.
- [41] The Crown bases its position on two Australian case authorities. The Crown readily concedes that the most significant sentence imposed by the courts in this province for an offence under s. 117 of the IRPA is four years. Nevertheless, argues the Crown, the world has changed since the sentences imposed by British Columbia courts on human smuggling, as has the legislation and the seriousness with which Parliament views this crime.
- [42] Counsel for Mr. Christhurajah submits that the Crown's position on sentencing can only be described as extreme. Given the range of sentences imposed by courts in this province for the same offence as that for which Mr. Christhurajah has been convicted, the Crown's position violates the principle of parity and, more importantly, the principle of proportionality. Counsel submits that the sentence the Crown is proposing can only be reserved for the worst offenders, such as repeat offenders who were not themselves asylum seekers on the vessel with their families taking the same risks as all of the passengers, and for those offenders clearly motivated only by financial gain, which is far from the case here.

- [43] Counsel for Mr. Christhurajah challenges the Crown's assertion that the British Columbia authorities on this issue are dated and therefore should no longer reflect the appropriate range of sentence. The considerations enunciated in those decisions are the very considerations that continue to exist today. Counsel says that the Australian cases have no persuasive value. To rely on those cases is to compare apples to oranges, given the highly distinguishable facts in those cases and the very different sentencing regime in Australia.
- [44] Counsel for Mr. Christhurajah submits that the Crown's use of foreign sentencing law is not binding on this Court and says caution must be exercised before relying on it. He says the Crown makes several statements about Australian law without foundation and they should not be considered without a proper evidentiary foundation.
- [45] Counsel also notes that the scale of human smuggling in Australia is several orders of magnitude more significant than in Canada, and the sentencing regime is likely responding to that very different reality.
- [46] Counsel for Mr. Christhurajah points out that for an offence such as human smuggling, the degree of seriousness and moral blameworthiness associated with an accused's conduct can vary significantly. He submits that the Crown bears the onus of proving any aggravating factors beyond a reasonable doubt and has failed to do so.
- [47] I will turn now to the legal parameters governing this hearing, addressing first the relevant legislation.
- [48] The principles of sentencing are set out in s. 718 of the Criminal Code: deterrence, denunciation, and rehabilitation are all important sentencing objectives. Under s. 718.1, the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. A fit sentence must take into account the nature of the offence, the character of the offender, and the circumstances of the offence.
- [49] Another important principle is parity; similar offenders committing similar offences must be similarly treated in sentencing.
- [50] Further, the court must take into account mitigating and aggravating circumstances. The Crown has referred to s. 718.2(a), which states that an aggravating circumstance is the commission of the offence for the benefit of a criminal organization. The Crown's position is that the evidence at trial establishes that Mr. Christhurajah was working on behalf of a criminal organization.
- [51] Section 121(1) of the IRPA creates several aggravating circumstances. Subsection (1) states:
121. (1) The court, in determining the penalty to be imposed under subsection 117(2) or (3) or section 120, shall take into account whether
- (a) bodily harm or death occurred during the commission of the offence;

- (b) the commission of the offence was for the benefit of, at the direction of or in association with a criminal organization;
- (c) the commission of the offence was for profit, whether or not any profit was realized; and
- (d) a person was subjected to humiliating or degrading treatment, including with respect to work or health conditions or sexual exploitation as a result of the commission of the offence.

[52] Subsection (2) defines criminal organization, which is:

. . . an organization that is believed on reasonable grounds to be or to have been engaged in activity that is part of a pattern of criminal activity planned and organized by a number of persons acting in concert in furtherance of the commission of an offence punishable under an Act of Parliament by way of indictment or in furtherance of the commission of an offence outside Canada that, if committed in Canada, would constitute such an offence.

[53] The Crown says, on the evidence, that all four of these factors have been proven. Counsel for Mr. Christurajah disputes that assertion.

[54] I will turn now to the case authority. I am going to deal first -- and only briefly -- with the Australian authorities on which the Crown relies to advance its position that 18 years' incarceration is a fit sentence.

[55] The Crown does not rely on a body of Australian authority; it relies on only two decisions. In my respectful view, neither decision is persuasive. The first, *R. v. A.K.H.*, 2014 WASCA 52, involved five different vessels and four different boats, an accused who was a mastermind, who was not on any of the vessels, and who was not an asylum seeker. One boat capsized; 50 people died. I will not go into the rest of the facts, except to say that they are far removed from those of the present case. Further, the legislative framework on which the decision rests bears no relationship to the legislation governing this Court.

[56] The second Australian authority is *R. v. Omeid*, a decision dated May 20, 2015, of the District Court in Western Australia. Given the manner in which the case is reported, it is very difficult to understand the factual context. Suffice to say that, so far as I can determine, the facts bear no relation to the facts of the present case.

[57] In any event, two authorities from a jurisdiction in which the sentencing framework is very different provide very little if any persuasive value. I have declined to consider them.

[58] I have considered the Ontario decision of *R. v. Alzehrani*, [2009] O.J. No. 5797 (S.C.J.), also advanced by the Crown. The facts of that case also bear no resemblance to those of the present case. In several respects, they are significantly more egregious. Even so, the two accused received sentences of 4.5 and four years respectively.

- [59] I turn then to the decisions of this Court which are more on point, *R. v. Li*, 2001 BCSC 458, and *R. v. Chen*, 2001 BCSC 1865. These cases were decided under the predecessor statute to the IRPA, the 1976 Immigration Act. They concerned the arrival of two boats of Chinese nationals from the Fujian province of China on the west coast of British Columbia in the summer of 1999. It is significant to note that the Chinese nationals were not asylum seekers; they were illegal immigrants.
- [60] In *Li*, the captain of the vessel and two others, again not asylum seekers, were held to be organizers and enforcers in the smuggling enterprise. One accused had threatened a passenger with a gun in order to obtain the compliance of the passengers on the vessel. The migrants paid huge sums of money to secure passage on the ship.
- [61] Justice Stromberg-Stein imposed a sentence on each accused of four years' incarceration less time served. At paras. 7 and 9, she emphasized the reasons for sentence based on deterrence and denunciation where illegal migrants are smuggled into the country. At para. 7, she says:
- [7] Canada is a multi-cultural, multi-racial society. Immigration is encouraged and Canada is enriched by the immigrants that it admits. Thousands of qualified immigrants are admitted every year. Canada must have the ability to protect and control its borders and screen and control the flow of migrants into this country so that only those deemed qualified are granted entrance to this country. Canada is entitled to select immigrants who reflect the values of Canadian society. Those migrants who are exploited or funded by criminal organizations, or who may owe an allegiance to or be vulnerable to unsavoury elements, are unlikely to be considered desirable or acceptable migrants to this country.
- [62] At para. 9, she said:
- [9] There is an adverse impact on all Canadians due to the actions of those who facilitate the entry of illegal migrants to Canada, or to Canada as a back door to the U.S.A. Law-abiding Canadians who travel to the U.S.A. are faced with tighter border security and restrictions. There is an astronomical cost, borne by the Canadian taxpayer, associated with processing the claims of illegal migrants, returning them to their country of origin and prosecuting the organizers. The abuse of the refugee process, facilitated by the migrant smugglers, undermines public confidence and support for the refugee process and fuels racial prejudice and racial tension in the community. The growing trade in people smuggling must be deterred because it adversely impacts on all aspects of Canadian society.
- [63] *Chen*, involving similar facts, involved another boatload of Chinese nationals, all illegal immigrants. Mr. Justice Williamson followed the *Li* decision to impose a four-year sentence on the accused. Thus, in both cases, four-year sentences were imposed.
- [64] Although the Crown submits that the world has changed since 1999, I agree with the submission of defence counsel that while the legislation has changed, the very concerns addressed by the Court in both *Li* and *Chen* are those expressed by Parliament in debating and passing the new legislation.

- [65] The Crown also advanced the case of *R. v. Ng*, 2008 BCCA 535. In that case, the accused was a pimp who was convicted under s. 117 of aiding and abetting the illegal entry of a woman from China who was then required to work in the sex trade at his massage parlour in Vancouver. The facts are obviously very different. The accused was sentenced to 27 months by the Court of Appeal. However, the case is instructive; certain comments made by the Court suggest that the range of sentence for human smuggling is that argued by defence in the present case.
- [66] I am cognizant of the fact that the legislative regime has changed since the decisions in *Li* and *Chen*, but the four-year sentences imposed did not involve asylum seekers, nor were the accused persons responsible for the vessels asylum seekers themselves. That is an important distinction, in my view. In *Li* the Court emphasized that it is in the public interest to stem the flow of illegal immigrants from China. The smuggling of asylum seekers is equally a crime. Nevertheless, I am of the view that in the circumstances of this case, where the accused is himself an asylum seeker, general deterrence should not be overemphasized.
- [67] It must be borne in mind, even though the Courts in *Li* and *Chen* held that general deterrence was the overriding principle, that the accused in each case received four years, which is almost half the hard time that Mr. Christhurajah has already served.
- [68] As other courts and academic authors have observed, there exist varying levels of culpability among persons involved in migrant smuggling. This was well expressed by authors A. Gallagher and F. David, *The International Law of Migrant Smuggling*, (2014), Cambridge: Cambridge University Press. The learned authors said the following at page 373:
- The existence of varying levels of culpability among persons involved in migrant smuggling is clear. For example, the person who receives direct and substantial financial rewards through sending multiple boatloads of smuggled migrants from Indonesia to Australia is unlikely to be one of those who crews the boat and is arrested on or before arrival. This reality underscores the importance of ensuring that criminal laws cover organizers, including those who seek to direct criminal conduct from a safe distance.
- [69] In my view, Mr. Christhurajah is not among those offenders.
- [70] Are there aggravating factors here as argued by the Crown? It may be that the enterprise in which the *Sun Sea* was involved falls within the definition of criminal organization under the IRPA. However, Mr. Christhurajah was himself an asylum seeker, as were all of the other passengers. That fact is a distinguishing factor in this case.
- [71] The evidence did not establish that Mr. Christhurajah was a mastermind or leader of the voyage. His circumstances on the vessel were little different from those of other passengers.
- [72] While a passenger died while on board during the voyage, the evidence did not establish that he died of other than natural causes.

- [73] Finally, while profit was a motive in this case, it was not the only motive. Another motive was mutual assistance among asylum seekers.
- [74] That brings me to the circumstances of Mr. Christhurajah. He has served almost seven years in custody at Fraser Regional Correctional Centre in Maple Ridge. Although the first two years were not, strictly speaking, pretrial custody, they were, at the same time, hard time as pretrial custody. While it is the case that no court has treated immigration detention in the same way as pretrial custody, it is my view that it is a mitigating factor in sentencing. Mr. Christhurajah.
- [75] As Justice Stromberg-Stein noted in *Li* at para. 13, the time spent in immigration detention is a significant contribution to the deterrent value of sentencing for an offender convicted under s. 117 of the IRPA.
- [76] Aside from the two years of immigration detention, once time and a half has been credited for pretrial custody, Mr. Christhurajah has served seven years.
- [77] It is clear from the letters of reference filed in this sentencing hearing that specific deterrence plays no role in this sentencing. There is virtually no risk of Mr. Christhurajah reoffending.
- [78] Individuals who have had extensive contact with Mr. Christhurajah in his almost seven years of incarceration vouch emphatically for his character and his conduct as a model inmate during his lengthy time in custody.
- [79] Chaplain Thomas is a chaplain for the Ministry of Justice. In that capacity, he has known Mr. Christhurajah for almost seven years. The statements he makes in his letter come from hundreds of hours of speaking with Mr. Christhurajah, speaking with those with whom he interacted, and observing his behaviour and attitude in a vast array of circumstances. He wrote at length in glowing terms about Mr. Christhurajah as a model inmate during his time in detention.
- [80] There were other letters equally as supportive. One of those was from Erin Pearce. She is a clinical traumatologist who was first introduced to Mr. Christhurajah in September 2015 in her role within the United Nations High Commissioner for Refugees Detention Monitoring Program. From June 2015 to December 2016, she worked as an implementing partner for the UNHCR in collaboration with her employer, Kinbrace Community Society. She reported on the detention conditions of immigration detainees seeking asylum in the western region of Canada, ensuring conditions corresponding with international law and the UNHCR's international detention guidelines.

[81] In this role, Ms. Pearce interviewed Mr. Christhurajah concerning his status in Canada, his ongoing legal proceedings, and the conditions at Fraser Regional Correctional Centre. On average, she would visit the centre four to six times annually, and was thus able to communicate regularly with Mr. Christhurajah over time and to develop an understanding of his person and his experience since arriving on the Sun Sea in August of 2010.

[82] In her letter, Ms. Pearce states:

Thirdly, I feel strongly that Mr. Christharajah [sic] poses no risk to the public. Conversely, I feel that he makes important and inspiring contributions to Canadian society, his church community and to his family. My experience working with him has been extremely pleasant and I am confident that he will continue to demonstrate honesty, a strong work ethic and gentleness in the future.

[83] She further states:

My experience of Mr. Christharajah is that he is a gentle, hard working and articulate man. At FRCC he demonstrated a strong work ethic as a diligent and consistent participant in the work programs offered on site. The manager of the work program for Mr. Christharajah's unit repeatedly identified him as the most responsible and hardworking participant she had in the program. Mr. Christharajah treated the facility staff and other detainees with the utmost respect. He often assisted other detainees with issues that arose, assisting with immigration advice, navigating the unit telephone system and serving lunch [and so on] . . . While at FRCC his most troubling concern was the well-being of his wife and child. He expressed deep grief about his inability to be present for his daughter, who had only met her father occasionally, and only in the context of brief court appearances.

[84] Mr. Christhurajah's daughter was born shortly after he was first incarcerated. Mr. Christhurajah had no contact with her for the first six years of her life.

[85] I accept the argument of the Crown that I must at least consider the effect of the change in legislation which would now require a 10-year mandatory minimum sentence, were Mr. Christhurajah to have committed the offence in 2013 instead of August 2010. However, there are many factors to which I have already referred which persuade me that Mr. Christhurajah's sentence should not be increased in light of the new legislation.

[86] In the result, I am satisfied that Mr. Christhurajah's time in custody exceeded, by a wide margin, the sentence that would satisfy the principles of general deterrence and denunciation. Taking into account the relevant principles of sentencing, including parity, I conclude a sentence of four years is appropriate.

[87] Mr. Christhurajah, please stand. I sentence you to four years for the offence under s. 117 of the IRPA. Crediting you with 7.13 years of pretrial custody, which significantly exceeds your sentence, you will serve no further incarceration time.

[88] Thank you. Anything further?

[89] MR. HOUGH: Nothing further, My Lady.

[90] THE COURT: Nothing further.

[91] MR. LEGGETT: Thank you.

[92] THE COURT: All right. Thank you.

The Honourable Madam Justice C.A. Wedge

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Prepared on 28 October 2026 · Esheria