

CANADA / JUDGMENT

R. v. Loutit

2025 BCSC 1310

COURT

Supreme Court of British Columbia

DECIDED

28 May 2025

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2025 BCSC 1310 R. v. Loutit

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Loutit,

2025 BCSC 1310

Date: 20250528

Docket: 73551-2

Registry: Prince George

Rex

v.

Scott William Loutit

Before: The Honourable Madam Justice Wilkinson

Oral Reasons for Sentence

Counsel for the Crown:

M. Khajuria

Counsel for the Accused Scott Loutit:

J.C. LeBlond, KC

Place and Date of Hearing:

Prince George, B.C.

May 27 & 28, 2025

Place and Date of Judgment:

Prince George, B.C.

May 28, 2025

[1] THE COURT: On March 11, 2024, I convicted Mr. Loutit of one count of storing firearms carelessly under s. 86(1) of the Criminal Code [Code], RSC 1985. C C-46, one count of possession of a loaded restricted firearm under s. 95(1) of the Code, and one count of possession of cannabis for the purpose of selling it under s. 10(2) of the Cannabis Act, SC 2018 c 16 (the "Act") following trial in January and February 2024.

[2] These are my reasons for sentence.

Facts surrounding the offences

[3] The facts surrounding the offences are set out in my reasons for judgment indexed at R. v. Loutit and Wiebe, 2024 BCSC 525 at paras. 23-50. The charges arose from an investigation into the distribution and sale of cannabis pursuant to ss. 9(1) and 10(1) of the Act from Mr. Loutit's residence (the "Residence"). An investigation into Mr. Loutit was undertaken in March 2019. Surveillance of the Residence was set up on March 14, 2019. It was continued on March 22 and 23, 2019.

[4] A search warrant for the Residence and one of the vehicles registered to Mr. Loutit was obtained on March 23, 2019, and executed at approximately 10:38pm that evening. Cpl Morris knocked on the front ground floor door. Mr. Loutit answered the door. Police executed the search warrant.

[5] Police located over 100 pounds of cannabis bud in the garage and other areas of the ground floor of the residence, much of it in plain view worth between \$240,000 and \$300,000. Pre-packaged and labelled cannabis shatter was found in the garage and in a clear bag atop a container of toys in the downstairs living room hall, worth between \$40,000 and \$60,000. A large quantity of high-potency pre-packaged THC cannabis edibles was found in open boxes in the garage. Large amounts of drug packaging and paraphernalia was also found.

[6] A Smith & Wesson 357 Magnum revolver was found in an open safe in the garage along with 50 rounds of ammunition. Bundled cash totalling over \$500,000 was also located in the safe. A shotgun magazine was located on top of one of the safes. In the other separate room downstairs, new retail point of sale equipment, computers, a cash register, cannabis bud, glass pipes, and a Benelli Nova shotgun in an unlocked soft case were located. In the master bedroom upstairs a Mossberg Maverick shotgun and an Uzkon shotgun were found leaning against a dresser, a Benelli SuperNova shotgun was found loaded with three 12-gauge rounds leaning against the wall inside an open closet, a CZ 858 semi-automatic tactical rifle loaded with ten rounds in the magazine was found leaning against a dresser, two magazines for a semiautomatic tactical rifle were found in a bedside table in two drawers, along with a box

of 12-gauge rounds, and a loaded Browning .22 pistol was found inside a holster on a shelf. The loaded pistol is the subject of Count 2 under s. 95 of the Code.

- [7] \$13,000 of bundled cash was found in a purse found atop a shelf. Loose cash was found in drawers, and a modified rifle magazine with bullets was found in a bedside drawer covered in clothing.
- [8] The four shotguns and semiautomatic rifle are non-restricted firearms. The Browning pistol and Smith & Wesson revolver are restricted firearms. The two magazines for the rifle are prohibited devices. None of the triggers of the firearms which were loaded with (bullets or cartridges in the weapons' magazine and/or the chamber were locked when found. Mr. Loutit was not authorized or otherwise licensed to have firearms.
- [9] Children and pets clearly resided in the Residence, although there was no evidence that children were found to be in the home at the time the search warrant was executed on the evidence at trial before me. I found that the Residence was used not only as a personal Residence, but also as a location for high-level cannabis distribution and not a "stash house".

Position of the Crown

- [10] The Crown submits an appropriate sentence for Mr. Loutit is a total of 60 months (or five years) of imprisonment broken down as follows:
 - a) Count 1 (Careless Storage): six months, concurrent to Count 2;
 - b) Count 2 (Unauthorized Possession of Loaded Firearm): 40 months jail time; and
 - c) Count 3 (PPT Cannabis): 20 months jail time, consecutive to Count 2.
- [11] If consecutive sentences are imposed, the Crown submits that a reduction to 54 months of total jail time would be appropriate for totality considerations.
- [12] The Crown further seeks the following ancillary orders: a 10-year firearms prohibition, a DNA order, and a forfeiture order.

The position of the offender

- [13] Mr. Loutit agrees that six months concurrent to Count 2 is appropriate for the sentence for Count 1.
- [14] He submits that, with respect to Count 2, an appropriate sentence is two years jail, and for Count 3, an appropriate sentence is one year jail, to be served concurrently.

He agrees with the forfeiture and firearms prohibition orders, but objects to a DNA order being imposed, and as a result I have already executed the forfeiture order based on agreement of the parties.

Reports Received for Assistance on Sentencing

- [15] When I convicted Mr. Loutit in March 2024, I ordered a presentence report (PSR) and a Gladue report to be completed by June 17, 2024. As a result of not being able to schedule an interview with Mr. Loutit, this date was revised to November 23, 2024. Interview arrangements were hampered by other events, including Mr. Loutit's change in contact information and illness.
- [16] I adjourned sentencing dates more than once to provide additional opportunities for these reports to be prepared in order to assist the court.
- [17] Just prior to sentencing, I received a PSR filed March 27, 2025, and a Gladue report filed May 20, 2025.

Mr. Loutit's background

- [18] Mr. Loutit is 40 years old. He was born and raised in Prince George, British Columbia. He has a brother and sister, aged 35 and 36. Mr. Loutit was raised by his biological parents and they are now 66 and 70.
- [19] Mr. Loutit explains that during childhood, he witnessed a significant amount of fighting between his parents, primarily consisting of verbal altercations. He recalls these conflicts primarily arose due to financial issues or his father's alcohol consumption. He reports experiencing feelings of anxiety as a child, due to his father's drinking and fearing the possibility of his parents separating. Mr. Loutit explains that his father struggled with alcohol use since he could remember, and that his father's usage affected him significantly as a child. His mother indicates the household was tense and dysfunctional, and confirms Mr. Loutit witnessed verbal altercations, and his father's alcohol misuse from an early age.
- [20] Mr. Loutit's mother explains that her husband is Métis and his mother, Mr. Loutit's grandmother, attended residential school. She is of the view the intergenerational trauma impacted the family, and reports that her husband witnessed physical abuse and alcoholism in his own youth. Mr. Loutit reports having contact with his parents several times a week, and that he has contact with his siblings every few weeks at this point.
- [21] Mr. Loutit reports he began drinking alcohol at 16 and daily cannabis use at the age of 17.
- [22] Mr. Loutit has three children, now age ten, eight, and three. He reports in 2021, he separated from the mother of his children, after approximately three years of marriage. His ex-partner was Mr. Loutit's co-accused on the charges. She was acquitted. Mr. Loutit advises the Ministry of Children and Family Development (MCFD) are involved, and that until December 2024, he had parenting time with his children every other week. He reports he can no longer have any contact with his children, and this is confirmed by Mr. Loutit's mother.

- [23] Mr. Loutit has been renting at his current Residence for approximately two months, residing with a close friend and his friend's girlfriend. Mr. Loutit describes the Residence positively and that it has been a relaxing environment for him. He reports having changed residences several times within the last several years. He states he sold his house and trucking business soon after being arrested on the charges in 2019, believing he would be sentenced to a jail term shortly thereafter. He shared with the Gladue writer the following statement: "I thought I was going to be going to jail right away, and that's why I was selling everything. It was for my family, to help when I was in jail." Mr. Loutit indicates he may have done otherwise had he known the length of time this matter would take to conclude. He reports prior to his current residence, he rented another home for four years until that home was sold.
- [24] He married his now former partner in 2019, shortly after the arrest. After the charges were laid in 2020, his use of alcohol increased, and he started using cocaine. He reports he was anxious about going to prison and estimates that immediately after the index offence, he increased his drinking to about a case of beer daily.
- [25] Mr. Loutit and his former-partner separated in August 2021. Mr. Loutit says he made an effort to reconcile with her and reduced his use of alcohol and cocaine. He reports that he drank every day until about 2022, and then quit drinking and using substances in 2022, after realizing he was getting out of control. While it was extremely hard, he was able to stop using cocaine without any counselling or outside assistance, he reports. His sister and a friend confirm that substance use did cease for a time.
- [26] Mr. Loutit reports he was seriously assaulted in April 2023, stating he was stabbed and almost lost his life. He started reusing cocaine heavily, stating he was depressed and he believes he now suffers from PTSD as a result of the stabbing. A friend reported Mr. Loutit was very scared after that point and his alcohol and drug use accelerated.
- [27] In August 2024, Mr. Loutit had some form of interaction with the police which was reported in the local news publication. Mr. Loutit reports being very upset about this. His friend states, Mr. Loutit was embarrassed and withdrew from others. Apparently as a result of the publication, his former-partner obtained a court order to prevent Mr. Loutit from contacting his children, despite no charges being laid.
- [28] Mr. Loutit says he was assaulted again in late October 2024 and his jaw was broken. The restricted diet resulted in significant weight loss.
- [29] Mr. Loutit reports to the Gladue writer that he continues to use cannabis regularly and occasionally drinks alcohol. His family and friends express concern about his substance use. Mr. Loutit's use of hard drugs in pill form has been observed, but not recently.
- [30] Mr. Loutit reports having many close friends, many of whom he has known since high school. He reports that except for one, his friends are not involved with the criminal justice system. He enjoys engaging in activities with his friends.

- [31] Mr. Loutit advises since his separation with his former partner in 2021, he has been in several relationships. However, explains it has been difficult to maintain a relationship while awaiting the results of his court matters. He reports he is currently not in a relationship.
- [32] Mr. Loutit has a grade 12 education. He recalls, due to bullying and conflicts with other students, he switched to College Heights Secondary and completed grade 12 there. He describes himself as a social, good student, and advises he graduated on the honour roll. His mother reports that Mr. Loutit was an intelligent and well-behaved child and did well in school.
- [33] Mr. Loutit obtained a Class 1 driver's licence in 2012. He had a stable employment history and is currently employed with a trucking company owned by a close friend he has known for over 20 years. His employer confirms he has been employed on and off since 2021, and describes Mr. Loutit as a reliable employee. Mr. Loutit states prior to his current employment, he operated his own transport business from 2015 to 2019. As noted above, he reports he sold his business in 2019 due to costs associated with the current court matters.
- [34] Mr. Loutit reports owing approximately \$30,000 on credit cards. He expresses his financial situation causes him significant stress and attributes his debts to costs associated with the current court matters and child support.

The principles of sentencing

- [35] The fundamental principles and purposes to be considered by courts in sentencing are set out in ss. 718 and 718.2 of the Code.
- [36] Section 718 of the Code provides that the fundamental purpose of sentencing is "to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions" with reference to six objectives. These objectives are:
- a) denunciation of unlawful conduct;
 - b) deterring the offender and other persons from committing offences;
 - c) separating offenders from society where necessary;
 - d) assisting in rehabilitating offenders;
 - e) providing reparations for harm done to victims and the community, and
 - f) promoting a sense of responsibility in offenders, acknowledging the harm done to victims or to the community.
- [37] In addition to the Code provisions, the Act also provides for its own purpose and principles of sentencing which are found in ss. 7 and 15 of the Act:

7 The purpose of this Act is to protect public health and public safety and, in particular, to

- (a) protect the health of young persons by restricting their access to cannabis;
- (b) protect young persons and others from inducements to use cannabis;
- (c) provide for the licit production of cannabis to reduce illicit activities in relation to cannabis;
- (d) deter illicit activities in relation to cannabis through appropriate sanctions and enforcement measures;
- (e) reduce the burden on the criminal justice system in relation to cannabis;
- (f) provide access to a quality-controlled supply of cannabis; and
- (g) enhance public awareness of the health risks associated with cannabis use.

15 (1) Without restricting the generality of the Criminal Code, the fundamental purpose of any sentence for an offence under this Division is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.

(2) If an individual is convicted of a designated offence, the court imposing sentence on the individual must consider any relevant aggravating factors, including that the individual

(a) in relation to the commission of the offence,

(i) carried, used or threatened to use a weapon,

(ii) used or threatened to use violence, or

(iii) sold or distributed cannabis or possessed it for the purpose of sale or distribution, in or near a school, on or near school grounds or in or near any public place usually frequented by young persons; and

(b) was previously convicted of a designated offence, as defined in subsection 2(1) of this Act, or a designated substance offence, as defined in subsection 2(1) of the Controlled Drugs and Substances Act.

[38] Sentencing is an exercise in balancing. No single objective trumps the others, subject to statutory provisions. A sentencing judge's role is to determine which objectives deserve the greatest weight, given the circumstances of the offence and the offender: see *R. v. Nasogaluak*, 2010 SCC 6 at para. 43. Ultimately, "the overarching duty of a sentencing judge is to draw upon all the legitimate principles of sentencing to determine a 'just and appropriate' sentence which reflects the gravity of the offence committed and the moral blameworthiness of the offender": see *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, 1996 CanLII at para. 82.

Count 3: Cannabis PPT

- [39] The potential harms of illegal cannabis have been documented in a study conducted in 2021 by the B.C. Cannabis Secretariat of samples seized from illicit retailers in Metro Vancouver, highlights the need for general deterrence: British Columbia, Testing Finds Contaminates in Illegal Cannabis, published by the Public Safety and Solicitor General on June 9, 2021.
- [40] Testing of illegal cannabis samples had revealed unacceptable levels of bacteria, fungi, lead, and arsenic as contaminants. Cannabis products from licensed producers are regulated to ensure they are fit for human consumption. The study found that frequency and variety of contaminants identified through testing indicate that some illegal growers "may be engaging in practices that pose risks to both consumers and employees handling cannabis".
- [41] Prior to the Act being enacted in 2018, cannabis trafficking related offences fell under the Controlled Drugs and Substances Act (CDSA), with cannabis being a Schedule II substance. Possession for the purpose of trafficking cannabis under the CDSA had a maximum penalty of life in prison when proceeded by indictment. That maximum penalty has now been reduced to 14 years' imprisonment pursuant to s. 10(5) of the Act when proceeding by indictment. Despite the reduction in the maximum penalty, courts have not deviated much from the old regime of cannabis sentencing, particularly when it comes to high-level cannabis trafficking.
- [42] The Court of Appeal in *R. v. Coffey*, 2020 BCCA 195, considered whether the enactment of the Act should result in a lowering of the sentencing range to reflect changing societal attitudes towards cannabis. The court held that:
- [34] I am unable to accept the argument that the judge erred by imposing a sentence that fails to reflect changing public attitudes towards marihuana cultivation. The judge addressed this issue in his reasons, noting that the penalties for possessing large quantities of marihuana for the purpose of trafficking and illicitly producing marihuana have not significantly changed since the enactment of the Cannabis Act. A similar point was made in *R. v. Strong*, 2019 ONCA 15 at paras. 2-4:
- [2] The appellant's main argument rests on the assertion that the changed societal attitude toward marijuana use warrants a reduction in the established range for this kind of offence. We cannot accept this submission.
- [3] While the societal perception of the seriousness or harmfulness of the offender's conduct has a role to play in considering factors such as denunciation and deterrence, we see no basis to conclude that the conduct involved in this case would be viewed as anything other than serious criminal misconduct.
- [4] Parliament has not significantly altered the applicable penalty. Nor, in our view, can one assume that a large scale, prolonged trafficking for profit in marijuana is somehow viewed as less serious because of the legislative changes in respect of personal possession and use.

- [35] I see no error in principle in the judge's conclusion that the type of conduct engaged in by the appellant in the case at bar continues to be serious criminal conduct that warrants the imposition of penalties within established ranges.
- [43] This indicates that pre-2018 sentencing authorities for possession of cannabis for the purpose of trafficking under the CDSA continues to be applicable to sentencing for offences of possession for the purpose of selling cannabis under the Act.
- [44] The court in Coffey further noted the established range for offences involving commercial cannabis operations with reference to other appellate cases:
- [37] The appellant's submission that the sentence imposed is demonstrably unfit having regard to sentences imposed in like cases is unsupported by those cases, including by those upon which the appellant relies. While it is possible to identify lesser penalties imposed for offences of this kind, particularly on first-time offenders, the weight of the authorities is to the effect that the sentence imposed in this case is towards the bottom end of the appropriate range: *R. v. McGee*, 2017 BCCA 457 at paras. 4, 30 (where this Court noted that "[a]t a very minimum a 12- to 15-month sentence should have been imposed" in the case of a commercial marihuana grow operation); *R. v. Kwan*, 2016 BCCA 208 (where a 15-month sentence was upheld for a first-time offender who was the caretaker of a commercial marihuana grow operation); *R. v. Kwiatkowski*, 2010 BCCA 238 (where a 12-month sentence was upheld for a first offender who was tending to 3,000 marihuana plants); see also *R. v. Bentley*, 2017 ONCA 982 (where it was noted that the appropriate sentence for an individual involved in a large, commercial marihuana grow operation was 18 months' imprisonment).
- [45] The 2022 decision of *R. v. Letellier*, 2022 BCPC 110 North Vancouver Provincial Court File No. 68602-1, unreported, while on very different facts than those before me, contains very helpful comments from Judge Challenger regarding the ills of illegal cannabis distribution generally, highlighting the need for deterrence and denunciation. Starting at paragraph 35, Judge Challenger states:
- [35] The nature of the offence before the Court undermines the legislated aims of Parliament to regulate and control the safe production and taxable distribution of cannabis products. Such a scheme also undermines legitimate businesses which must operate as "brick and mortar" retail establishments and amounts to unfair competition for those who invested in obtaining the necessary licenses and permits to operate those retail outlets.
- [36] There is a need to strongly discourage the "black market" for cannabis products through the penalties imposed by the Courts under the Act. The sale of illicit cannabis has historically presented and, regrettably, continues to present an opportunity to reap enormous tax free profit. Such a profit motive has, in turn, a well established connection to the involvement of criminal organizations and the violence and corruption which follows.

- [37] The decision to regulate cannabis products to allow for legal retail sales and personal possession reflected Canadian society's general acceptance of, and softening attitudes toward, the consumption of cannabis. However, there has not been any softening of attitudes towards those who choose to engage in the violation of laws which regulate drugs such as alcohol, tobacco and now cannabis products.
- [38] It cannot be lost sight of that production of substances which are intended for internal consumption in unregulated, and therefore unknown circumstances, can result in products with unknown ingredients and uncertain potency. As a result, the consumption of illicit cannabis gives rise to serious health and safety risks.
- [44] Denunciation and deterrence must be given significant weight in determining the penalty for offences which undermine regulatory aims and are engaged in for profit. Illicit drug distribution schemes which promise easy money entice non-addicted persons who possess the skills and capacity to be business like and organized. These people are, like the offender before the Court [in that instance], often of previous good character and are most likely to be deterred by imposing significant penalties.
- [46] The Crown refers me to the decision of *R. v. Aslam*, 2007 BCCA 122, where the offender appealed against a two-year prison sentence for PPT cannabis. He had no adult record and was 28 years of age at the time of sentencing. Pursuant to a traffic stop, he was found with over 200 pounds of cannabis, along with pieces of paper with delivery instructions. Despite being a so-called "mere courier" of the cannabis, the Court of Appeal upheld the two-year sentence and held:
- [5] As to the latter, the sentencing judge said this:
- [21] Mr. Aslam was involved in a large commercial criminal enterprise. People involved in such enterprises are financially motivated. Absent the alert work of the police officer in this case, 200 pounds of illicit drugs would have been on the street. The scourge of such large criminal commercial enterprises cannot be eradicated unless those who are tempted and recruited to participate are deterred by the consequences they face if caught.
- [6] The sentencing judge specifically recognized the mitigating factors, including: Mr. Aslam's age (28 years at the time of sentencing); his limited criminal record (youth convictions for impersonation, possession of stolen property, arson, possession of a weapon, and robbery, for which he was sentenced to a period of imprisonment); the fact that marijuana is considered to be a "soft drug"; and that Mr. Aslam was "a courier" not a seller.
- [7] As to the sentencing judge's observation that Mr. Aslam was only "a courier", I note the remarks of Mr. Justice Low in *R. v. Epp*, 2006 BCCA 570 in which he observed that there is no offence known to the law as being a "courier" of controlled substances.

- [8] Mr. Aslam's involvement in this very large marijuana transaction was essential to the transaction's success. The relatively transitory nature of Mr. Aslam's involvement does not render it less serious. He had in his possession notes that indicate that he was a part of a planned distribution.
- [9] Mr. Aslam does not have an adult criminal record, but he is not, strictly speaking, a first time offender. He played a key role in the anticipated trafficking of a very substantial quantity of marijuana that is consistent with the wholesale distribution of marijuana.
- [47] Crown also refers me to the decision of *R. v. Hill*, 2007 BCCA 309. A sentence of 30 months' jail and a \$50,000 fine was upheld by the Court of Appeal. Mr. Hill had been convicted post-trial of PPT cannabis of over 100 pounds of cannabis which was found in his upscale residence, along with three replica firearms, \$26,000 in cash, score sheets, coded messages, etc. (*R. v. Hill*, 2007 BCCA 309 para. 4). He was involved in a "sophisticated, organized, and large-scale commercial venture for the distribution and sale of marihuana at a substantial profit" (para. 5). His personal circumstances, as outlined, have similarities to Mr. Loutit's circumstances: he was 40 years of age, he had a variety of jobs, was a successful businessman, and had no criminal record. In the case of Mr. Hill, he used his illicit earnings to support a very luxurious lifestyle.
- [48] Of note, the court in *Hill* discussed the often-drawn distinction between hard and soft drugs in the sentencing context:
- [21] It is true that the courts have often drawn a distinction between "hard" and "soft" drugs when sentencing. The consequences for users of hard drugs in terms of addiction and criminal lifestyle have been seen to be more severe than those for users of marihuana. However, as the sentencing judge noted, the marihuana industry in this province has become pervasive. It is a lucrative business permeated by organized crime and it is often accompanied by violence and danger to innocent citizens and other "vile and destructive consequences", to use the words of the sentencing judge. In my view, as one progresses up the chain of the illegal drug industry from the user to the upper levels of trafficking, the effects on sentencing of the consequences at the user-level should carry less weight in relation to the malignant consequences of the industry generally.
- [22] The sentencing judge referred to a number of cases, some involving marihuana, some other drugs. She drew from these cases that denunciation and general and specific deterrence weigh heavily in the sentencing of non-addicted offenders engaged in the illegal drug trade purely for profit. She emphasized the harm caused to society by drug trafficking generally and stressed that this was an ongoing, sophisticated, mid to high level trafficking operation. In my view, she did not err in concluding that the nature of the drug involved was of secondary importance in these circumstances.
- [49] In declining Mr. Hill's appeal, the court in *Hill* discusses several high-level marihuana sentencing cases at paras. 33-38, holding:

- [40] Thus, possession for the purpose of trafficking in marihuana is a serious offence on the scale of gravity of criminal offences. Moreover, the sentencing judge's characterization of the appellant's operation as an ongoing, sophisticated, organized, large-scale, mid to high level commercial criminal venture involving substantial profits was supported by the evidence. Thus, it was a pernicious offence on the scale of gravity of offences involving marihuana trafficking. The sentencing judge's concerns about the deleterious effects on society and its institutions of the marihuana industry generally and the appellant's conduct specifically were not misplaced.
- [43] Moreover, even if the need for specific deterrence has been extenuated in this case, there remains the need for denunciation of the offence and for deterrence of others who might be inclined to engage in similar criminal activity for the lucrative rewards it offers. As a result of his criminal enterprise, the appellant was rewarded with a life of affluence that was beyond the dreams of most law-abiding citizens. It is apparent from the submissions made on his behalf and the many letters in support that he is an intelligent and resourceful man with the ability to engage in many legitimate forms of gainful employment. Yet, motivated by greed, he chose to engage in this criminal activity. His conduct must be denounced and deterred.
- [50] Mr. Loutit refers me to additional decisions in *R. v. Wallis*, 2007 BCCA 377, and *R v. Kwan*, 2016 BCCA 208, which indicate that sentences in the lower range of one year (Wallis) to 15 months (Kwan) are available in grow op convictions involving as many as 9,000 plants (Kwan). This is also indicated in *Coffey*, where a 12-month jail sentence was imposed. Neither Wallis nor Kwan involved weapons. Mr. Wallis was a youthful offender and despite Crown and the accused putting forth a one-year joint recommendation, the court increased the time to 15 months. Mr. Kwan was a mere caretaker along with five others. The operations were not located in a Residence.
- [51] In Mr. Loutit's case, I agree that denunciation and deterrence should be the paramount considerations. Mr. Loutit was engaged in a high-level cannabis distribution operation out of his Residence which was also being occupied by two young children (now known to be his own children based on the information in the PSR). The cannabis was found within reach of anyone in the Residence, and the children could have easily gotten into it. Some was found in the children's play area downstairs, in plain view. There was clearly a high degree of organization and planning that went into the operation which was being run for profit and not to support a personal addiction, on the evidence before me.
- [52] A statutorily aggravating factor found in s. 15(2)(a)(i), (use of a weapon) of the Act is also present here. Mr. Loutit possessed several weapons in the context of his cannabis operation. For this consideration, I exclude the Browning pistol subject to the s. 95 charge. The remainder of the firearms found in the Residence, particularly ones found downstairs with the cannabis, are relevant in considering a sentence under this provision.

Count 2 - unregistered restricted firearm

- [53] The range for a s. 95(1) Code offence is well established in British Columbia with the bottom end of the "true crime" range being "close to three years": *R. v. Holt*, 2015 BCCA 302 at para. 19. The Court of Appeal in that case noted a spectrum of conduct which ranges from mere "regulatory" offences to more serious "true crime" offences of possession:
- [12] At the first appeal level, the Ontario Court of Appeal, per Mr. Justice Doherty, noted the wide range of conduct that can fall within the ambit of s. 95:
- [51] The scope of s. 95 is best understood by considering the range of potential offenders caught by that section. At one end of the spectrum stands the outlaw who carries a loaded prohibited or restricted firearm in public places as a tool of his or her criminal trade. By any reasonable measure, this person is engaged in truly criminal conduct and poses a real and immediate danger to the public. At the other end of the spectrum stands the otherwise law-abiding responsible gun owner who has possession of an unloaded restricted or prohibited firearm, but with readily accessible ammunition stored nearby. That person has a licence and registration certificate for the firearm, but knowingly possesses the firearm at a place that falls outside of the terms of that licence. That person's conduct may well pose little, if any, risk to others. I would characterize that misconduct as more in the nature of a regulatory offence. [Emphasis added]

He continued:

- [52] There is no doubt that the vast majority of persons charged under s. 95 fall at the true crime end of the spectrum. Most guns that are the subject matter of a s. 95 charge exist entirely outside of the regulatory scheme established under the Firearms Act. Most people charged under s. 95 would never think of applying for a licence and, were they to apply, would never obtain a licence or a registration certificate. Furthermore, the vast majority of s. 95 charges arise in situations where the possession of the firearm is directly connected to criminal activity and/or poses some other immediate danger to other persons.
- [53] The reality that the vast majority of s. 95 offenders will be engaged in conduct that would be classified as dangerous and criminal under any definition does not alter the reach of the section as drawn by Parliament. [Emphasis added.]
- [54] In *R. v. Do*, 2019 BCCA 191 at para. 22, the Court of Appeal reaffirmed *Holt* and increased Mr. Do's 95(1) sentence to 36 months, despite his first-time offender status. The gun in that case was found wrapped in a towel in a case on the floor of his townhouse. The gun was not loaded and there was no mention of children in the residence in the decision.
- [55] In *R. v. Abma*, 2019 BCPC 268, a sentence of 18 months to be served in the community was imposed. Mr. Abma pleaded guilty. Two firearms were wedged into the floor joists and in cases, unloaded but with ammunition stored beside them.

- [56] In *R. v. McDonald*, 2017 BCCA 271, Mr. McDonald was charged with counts related to seven firearms: four concerned a registered and licenced handgun found in his bedroom dresser drawer unlocked and fully-loaded with a loaded clip beside it; and six counts concerned the storage of registered restricted weapons in an unauthorized place; namely, in his Residence rather than in a storage locker elsewhere. The issue was the place rather than the manner of their storage. Mr. McDonald was entitled to possess in total 49 registered restricted firearms, although the condition of his PAL required that they be stored securely in a storage locker at a certain secure location and that he was not entitled to store them at his Residence. Only seven were located by police after searching his home and storage locker. At least 30, and probably 40, were unaccounted for.
- [57] In *McDonald*, a sentence of 40 months for the firearms storage offence was reduced to 30 months. A registered handgun was found unlocked and loaded with a loaded clip beside it in the accused's residence. The Court of Appeal discussed the trial judge's consideration of the circumstances of the firearms offences in concluding that the offences were firmly within the "true crime" range of conduct in his misuse of firearms and not "mere licensing offences involving little or no moral fault and no danger to the public":
- [28] In my opinion, the judge was entitled also to have some regard to the fact that the missing guns had shown up at crime scenes. The judge had found Mr. McDonald to be dishonest. He found that he had lied about the how it was the guns had gone missing. He concluded that only Mr. McDonald knew what had happened and that he persisted in not being truthful. This evidence is relevant to Mr. McDonald's attitude and character as well as whether he could be regarded as a responsible gun owner who had merely committed regulatory offences. The evidence is relevant to Mr. McDonald's contemptuous attitude toward the scheme of regulation which is intended, among other purposes, to minimize the risk of firearms falling into the wrong hands. It is an aspect of the context of the convictions which involved a pattern of conduct displaying a flagrant disregard exhibited by Mr. McDonald for his responsibilities as a gun owner.
- [58] The Court of Appeal found that the offence was not firmly within the "true crime" range but instead was at the bottom of the range.
- [59] The firearm was possessed by Mr. Loutit in the context of a large-scale cannabis trafficking operation from the same location. It was loaded and stored carelessly in a Residence with two young children. However, being placed on a high shelf likely meant the young children would not have been able to access the gun if they entered the bedroom, without the aid of a chair or stool, for example.
- [60] Pointing toward this being a "true crime" offence is that there were six other firearms, some loaded or with ammunition readily accessible located throughout the Residence. None of them were stored in locked cases nor had trigger locks. Also, the Smith & Wesson revolver, which was another restricted firearm, and two rifle magazines, which were prohibited devices, were located in the Residence.

- [61] Furthermore, Mr. Loutit's explanation regarding the unregistered firearm does not appear to relate to the pistol but to one of the other firearms in the Residence. He reports his firearm was registered previously, but he forgot to renew his registration. As per the firearm affidavit in evidence at trial, Mr. Loutit had a regular Possession and Acquisition Licence (PAL) which was issued in October 2009 and expired in April 2015. There is no record since then that he applied to renew his licence. Four years is a very long time to simply "forget" to renew one's PAL. Also, as a regular PAL holder, he would not have legally been allowed to possess a restricted firearm such as the Browning pistol. In order to be able to do so, he would have had to have a restricted PAL, which are only permitted for certain purposes such as target shooting, collection, protection of life, or for professional purposes. However, having previously been authorized, Mr. Loutit would have had prior knowledge of the requirements for safekeeping.
- [62] I agree with Mr. Loutit that this is clearly not a circumstance of the firearm being located out in the community risking the general public's safety, nor at the time does it appear that Mr. Loutit was impaired or intoxicated, and he was not carrying the pistol. The pistol was located in his bedroom, not a common area of the Residence.
- [63] In these circumstances, I find that the offence is located below the "true crime" bottom, but is well above the regulatory end of the scale.

Count 1 - unsafe storage of firearms

- [64] Crown and defence agree that a sentence of six months to be served concurrently with Count 2 is a fit and proper sentence for the unsafe storage of firearms offence and I see no reason to deviate from that proposition.

Consecutive or concurrent sentences

- [65] The Crown seeks the sentence on Counts 2 and 3 to be served consecutively, having regard to the totality principle. In *R. v. Lee*, 2018 BCCA 428, the court reiterates the test for the imposition of concurrent or consecutive sentences, "whether the acts constituting the offence were part of a linked series of acts within a single endeavour", at para. 18. In that decision, a firearm and drugs were found in Mr. Lee's vehicle upon a traffic stop. In upholding the consecutive sentences, the Court of Appeal held:
- [18] In my view, Mann is dispositive of this ground of appeal. As this Court held in *Li*, the test for the imposition of a consecutive or concurrent sentence is "whether the acts constituting the offence were part of a linked series of acts within a single endeavour". That test does not, however, compel the imposition of concurrent sentences where there is similar or overlapping evidence relating to both charges or a close link in time and place between them. Nor does consideration of whether the offences engage different legally protected interests amount to a legal error. On the contrary, in *Mann*, the offender pleaded guilty to drug-related offences and to possession of a loaded handgun found in close proximity to the

drugs in his residence. The sentencing judge in Mann imposed a global sentence of seven years' imprisonment comprised of consecutive sentences for the drug and firearms offences. Applying *R. v. Crevier*, 2015 ONCA 619, the sentencing judge concluded that a consecutive sentence should be imposed for the firearms offence because, although committed at the same time, the gun and drug offences engaged different legally protected interests. On appeal in Mann, this Court saw no error in principle in the sentencing judge's analysis.

- [19] I am similarly unable to see any error in principle in the judge's analysis in this case. It was open to the judge to impose concurrent sentences, but she was not obliged to do so. Although she reasonably inferred that the firearm was connected to Mr. Lee's drug trafficking activity and noted it was located in the vehicle with the drugs, the judge did not find the two offences "were part of a linked series of acts within a single endeavour". Nor did she err in considering whether they addressed different societal interests. Rather, taking into account all of the circumstances, she exercised her discretion in accordance with established legal principle, and, in doing so, had appropriate regard to the totality principle. In my view, her decision is entitled to appellate deference.
- [66] The Crown also refers me to *R. v. Sadikov*, 2018 ONCA 609. There the Ontario Court of Appeal refused to interfere with consecutive sentences imposed on drugs and gun offences, despite the drugs and gun all being found pursuant to a search warrant conducted in an apartment. The court held:
- [17] I see no error in principle in the trial judge's conclusion. There are clearly different legally protected interests in play in this case. On the one hand, society has an interest in ensuring that people do not possess illegal substances (much less traffic in them). On the other hand, society also has a separate interest in ensuring that persons do not possess illegal firearms. While the fact that the gun was found in the execution of a search focussed on drugs might well have justified a concurrent sentence for the drug and gun offences in this case, the imposition of consecutive sentences cannot be said to be an error in principle. In the end result, the global sentence imposed is always subject to the totality principle.
- [67] Before me, the restricted firearm, found in the upstairs bedroom was not located in close proximity to the cannabis and trafficking paraphernalia. The latter items were found in the garage and bottom floor, and although some cash was located in the bedroom, the vast majority was located downstairs and in close proximity to the cannabis and trafficking paraphernalia.
- [68] Additionally, the Residence was not just a high-level cannabis distribution location or a "stash" house. It was clearly also the personal residence of Mr. Loutit and the two young children. Thus, it cannot be said that the firearm in question was definitively associated solely with the cannabis operation.
- [69] It is appropriate in these circumstances to sentence Mr. Loutit on Counts 2 and 3 consecutively, taking into consideration the totality principle.

Gladue considerations

- [70] Mr. Loutit is Indigenous. Section 718.2(e) of the Code requires consideration of the role of unique systemic and background factors, which we commonly refer to as the Gladue principles, pursuant to *R. v. Gladue*, 1999 CanLII 679, [1991] 1 S.C.R. 688, in sentencing Indigenous persons in appropriate types of sentencing procedures and sanctions, based on an offender's Indigenous heritage or connection. Also see *R. v. Mero*, 2021 BCCA 399 at paras. 65-74.
- [71] For serious offences, the length of the term of imprisonment must be considered in light of an Indigenous offender's unique circumstances. Alternatives to incarceration must be explored, even if the absence of community support in systemic and background factors may bear upon an Indigenous person's moral culpability and it may impact the sentencing principles of deterrence and denunciation.
- [72] The principles discussed in Gladue were reaffirmed by the Supreme Court of Canada subsequently in *R. v. Ipeelee*, 2012 SCC 13. Mr. Justice LeBel summarized Gladue at para. 59:
- [59] The Court held, therefore, that s. 718.2(e) of the Code is a remedial provision designed to ameliorate the serious problem of overrepresentation of Aboriginal people in Canadian prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing . . . It does more than affirm existing principles of sentencing; it calls upon judges to use a different method of analysis in determining a fit sentence for Aboriginal offenders . . . sentencing judges [are directed] to pay particular attention to the circumstances of Aboriginal offenders because those circumstances are unique and different from those of non-Aboriginal offenders . . . When sentencing an Aboriginal offender, a judge must consider: (a) the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection . . . Judges may take judicial notice of the broad systemic and background factors affecting Aboriginal people generally, but additional case-specific information will have to come from counsel and from the pre-sentence report . . .
- [73] In *Ipeelee* at paras. 71-75, Justice LeBel addressed the criticism that the application of the Gladue principles will have the practical effect of requiring shorter jail sentences for Indigenous offenders. He rejected this criticism, stating that the statutory provision in the Code "does not create a race-based discount on sentencing". Rather, he stated:
- . . . sentencing judges are required to pay particular attention to the circumstances of Aboriginal offenders in order to endeavour to achieve a truly fit and proper sentence in any particular case.
- [74] The Court of Appeal made a similar comment in *Mero* at para. 73

- [73] While restorative sentences may be more appropriate for Indigenous offenders, an application of Gladue principles will not necessarily lead to a reduced sentence. There is no automatic heritage-based discount. Generally, the more serious or violent the crime, the more likely it will be, as a practical matter, that the terms of imprisonment will be the same for an Indigenous and a non-Indigenous offender: Gladue at para. 33; R. v. Wells, 2000 SCC 10 at paras. 42-44; Ipeelee at paras. 84-85.
- [75] Nevertheless, it may be appropriate to sentence an offender to a lengthier prison sentence to address not only the sentencing principles of denunciation and deterrence, but to aid the offender in the offender's own rehabilitation: see R. v. Pouce Coupe, 2014 BCCA 255 at paras. 25-29.
- [76] Mr. Loutit appears to have the support of his mother and siblings.
- [77] Mr. Loutit has citizenship with Métis Nation British Columbia and notes his aunt's cousin assisted him to obtain documentation of his Fort Chipewyan Métis ancestry. His mother confirms that, in addition to membership with MNBC, Mr. Loutit and his siblings all have Métis citizenship with either the Northwest Territories Métis Nation or the Fort Chipewyan Métis Nation.
- [78] Beyond the position of citizenship, Mr. Loutit reports he knows little about his Métis traditions. His great-grandmother and grandmother were in the residential school system. Mr. Loutit reports that he is aware that his great-grandparents went through a lot of trauma, which led to my grandparents becoming heavy drinkers and to my dad becoming a heavy drinker." His mother observes that Mr. Loutit is the fourth generation that is affected by the impacts of colonialism.
- [79] Mr. Loutit states he is disconnected from his Métis culture. He says he has not had any interaction with local Métis organizations and, because of what he views as the violent origins of the Métis Nation, he is uncertain about whether to engage with the culture. A friend reports this view is reflected in the attitudes of some locals, including the local First Nations who he reports do not like Métis.
- [80] Although, Mr. Loutit's perspective on Métis origins appears negative, his mother reports he has encouraged his children to be proud of their ancestry. She reports that he encourages his children to be proud of their Métis heritage and engages in educational efforts with them.
- [81] While Mr. Loutit's father's alcohol misuse may have a strong connection to his own Métis grandmother and great-grandmother's history of being directly impacted by the colonial effects of the residential school system, it would appear that these offences before me were financially and philosophically motivated. Mr. Loutit was consistently gainfully employed and did not describe any need to engage in the cannabis operation to support an addiction.

- [82] Specific background factors which may go toward indication of a connection between Mr. Loutit's offending behaviour and his disconnection from his Métis culture or other Gladue factors have not been identified.

Mitigating and aggravating circumstances

- [83] This is Mr. Loutit's first conviction of any kind. He is a first-time offender.
- [84] Mr. Loutit appears to acknowledge his role in the offences and reports that he is "truly sorry" and that he regrets his actions and recognizes the harm that unregulated cannabis distribution can cause to users. Before me, he repeated his declaration of being truly remorseful. He reports that the criminal justice process has taken a huge toll on his life and that he has "learned his lesson". He stated he wished he knew how the Canadian justice system worked before this. His focus appears at this point to be on the harm he has suffered as a result of his crimes. This may indicate a level of specific deterrence limiting a risk of reoffending. However, he has demonstrated justifying and minimizing behaviours, citing the need for himself and others to use cannabis for mental and physical health purposes. He believes the government is not effectively using the benefits of cannabis. He felt he was doing good and enjoyed seeing people benefit from cannabis use. He otherwise does not explain why he would not choose to engage in selling cannabis legally, like so many others now do. While he cites the medicinal benefits of CBD and he recommends the average person use 100 milligrams of CBD a day. Yet the cannabis found had high THC content as opposed to high CBD content.
- [85] While I found that Mr. Loutit was a controlling mind, I accepted the possibility that he may have been aiding and abetting the controlling and directing minds of the operation. However, the operation was allowed to operate from his personal residence.
- [86] Mr. Loutit generally had a successful educational experience, while experiencing or otherwise observing discriminatory treatment based on his family's indigeneity. He has been able to secure gainful employment and run his own business on a consistent basis. Despite this, he engaged in criminal conduct and the level of his operation indicates the primary motive was profit.
- [87] His own reported substance abuse appears to be primarily related to his self-medicating for self-diagnosed anxiety and depression, the symptoms of which appear to have been exacerbated by these charges and subsequent events. Mr. Loutit reports using alcohol and cannabis daily in the Gladue report, up to his arrest in March 2019. To the PSR writer, he reported beginning to drink daily after the 2019 charges, and prior to that "he was not a heavy drinker". Nevertheless, Mr. Loutit reported to the Gladue writer that his substance use did not really affect his life path.
- [88] Mr. Loutit has recently suffered two assaults, which have also exacerbated his mental health systems, as well as causing significant physical harm. In addition, Mr. Loutit has been waiting a long time for these charges to be addressed and for his sentencing. However, as

referred to in my reasons on the delay application from last August in 2024, and above regarding the delay in holding this sentencing hearing, Mr. Loutit is not without fault in contributing to some of the delay. As well, he has chosen not to obtain professional assistance with his mental health symptoms.

- [89] Both the PSR and Gladue report reveal negative prospects of rehabilitation for Mr. Loutit, given his negative attitudes towards counselling and treatment. He is also uncertain about engaging with his Métis culture and seems to have a negative perspective on his Métis origins. However, he does not appear to have disconnected entirely, as he has taken it upon himself to engage his children with their Métis heritage.
- [90] The offence placed his family and his clientele at risk of significant harm.
- [91] I have noted above the statutory aggravating factors.
- [92] Despite the support expressed by his mother, siblings, and friends, it appears that Mr. Loutit pushes people away, according to his family and friends. I accept that this may be a result of his symptoms of anxiety and depression remaining untreated by professionals. He should take advantage of treatment programs while incarcerated. With treatment, Mr. Loutit has a very good chance of rehabilitation.
- [93] Overall, the aggravating factors outweigh the mitigating factors for Mr. Loutit, such that his blameworthiness is not significantly reduced.

Conclusion

- [94] As noted in *R. v. Harry*, 2023 BCCA 448 at paras. 23-25, blame shifting and lack of remorse is relevant to the consideration of the offender's insight into their offences and whether they are likely to reoffend and pose a risk to the public. I am concerned that Mr. Loutit has not gained the insight required to fully appreciate the harms involved as a result of his actions.
- [95] As noted, denunciation and deterrence are my primary considerations, while also having in mind the Code and Act statutory considerations.
- [96] Mr. Loutit, at this point, I ask you to please stand up.
- [97] On Count 1, I sentence you to six months to be served concurrently with Count 2.
- [98] On Count 2, I sentence you to 28 months in jail.
- [99] On Count 3, I sentence you to 20 months in jail consecutive to Count 2.
- [100] This results in a sentence of 48 months. Considering the applicable totality principles (see *R. v. Gilker*, 2022 NBKB 247 at para. 71), after taking a "last look", I find that the aggregate of the sentences is unduly long or harsh. In my view, a total sentence of 42 months (three and a half years) total jail time, is appropriate. I will reduce the sentence for Count 2 to 24 months and Count 3 to 18 months.

[101] I also impose further orders.

[102] As this is your first offence pursuant to s. 109(1) and (2) of the Code, you are prohibited for 10 years from possessing handguns (prohibited or restricted firearms) and the prohibited items named in s. 109(2)(a) and (b) of the Code.

[103] The forfeiture order has gone as sought.

[104] I decline to exercise my discretion to make a DNA order sought by the Crown. The Crown made conclusory submissions on why this order, which has a significant impact on the privacy of Mr. Loutit, would be in the interests of justice in these circumstances. I am not satisfied that it would be in the interests of justice to make such an order.

[105] Mr. Loutit, I appreciate you have waited a long time for this matter to conclude. I have every hope that you will be able to successfully begin to address your mental health and related substance misuse issues while in custody. I also hope that you will gain better insight into the harm your actions have caused.

[106] You may sit down at this point. Thank you very much.

[107] All right, counsel, anything arising from my reasons or is there any need of clarification on any point?

[108] CNSL M. KHAJURIA: Not from my perspective, Justice.

[109] CNSL J. LEBLOND: No, Madam Justice, everything was clear, thank you.

[110] THE COURT: All right, thank you, counsel, and I thank you for your well-presented submissions.

[111] CNSL M. KHAJURIA: Thank you, Justice.

[112] CNSL J. LEBLOND: Thank you, Justice.

[113] THE COURT: Thank you.

"Wilkinson J."

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Prepared on 27 October 2026 · Esheria