Court of Queen's Bench of Alberta

Citation: R v Barton, 2021 ABQB 603

Date: 20210727
Docket: 120294731Q2
Registry: Edmonton

Between:

Her Majesty the Queen

Crown

- and -

Bradley Barton

Offender

Reasons for Decision
of the
Honourable Mr. Justice S.D. Hillier

I. Introduction

[1] Ms. Cindy Gladue, aged 36 died tragically at the Yellowhead Inn in the early hours of June 22, 2011. In review of earlier proceedings, the Supreme Court issued its decision on May 24, 2019. The trial of Mr. Bradley Barton on this Indictment commenced January 11, 2021, and the jury rendered its verdict in the evening of February 19, 2021.

[2] By agreement of counsel, the matter was scheduled for sentencing submissions to be made June 1 to 4, 2021. Those dates were later re-scheduled to June 28 to 30, 2021 to accommodate a hearing on other issues.

[3] The sentencing hearing was completed on June 30, 2021, and included victim impact statements and oral submissions of counsel.

[4] The issue for the court is to now determine a fit and proper sentence for this crime. The assessment and articulation of reasons for sentencing in a criminal case is often considered among the most challenging responsibilities of a trial judge. It engages an assessment of the wrongfulness of sexual violence and the harm that it causes in order to give proper effect to both: ***R v Friesen***, 2020 SCC 9 at para 43.

[5] A number of factors in the specific circumstances of this case complicate that challenge:

i) The various routes available to determine manslaughter;

ii) The number of legal and evidentiary issues raised;

iii) The public profile of the circumstances; and,

iv) The length of time since the Indictment was first laid.

II. Role of Court to Determine Facts

[6] Section 724(2) of the *Criminal Code* (the *Code*) sets out that the Court:

a) shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty;

The section goes on to provide that the Court:

b) may find any other relevant fact that was disclosed by evidence at the trial to be proven, or hear evidence presented by either party with respect to that fact.

[7] For sentencing purposes, where the assessment could arise in varying ways, I accept responsibility for the preparation of reasons which are most consistent with the evidence upon which the jury based its conviction.

[8] The decision of ***R v Ferguson***, 2008 SCC 6 informs that, in determining the facts required for sentencing, it is important not to speculate about the actual jury reasoning process. As has been well expressed by the SCC in ***R v Thatcher***, [1987] 1 SCR 652 and reinforced in ***Ferguson*** at para 22, jurors are instructed that they are entitled to arrive at an unanimous verdict based on different theories of the case from their assessment of all the evidence.

[9] In the unusual circumstances of the case, counsel were invited to, and did, provide written submissions on the findings of fact in support of the jury verdict, as well as recommendations on penalty. Those submissions were marked for the record.

[10] It has been noted that reducing findings of credibility into writing is very difficult: ***R v Gagnon***, 2006 SCC 17 at para 20. The challenge extends to sentencing after a jury verdict: ***R v Punko***, 2012 SCC 39 at para 11.

III. Preliminary Determinations

[11] Two points need to be confirmed in laying out the facts in this case:

1. To reach a verdict, it was necessary for the jury to determine, from all the evidence, the sexual activity in question. The evidence supports that Mr. Barton engaged in an aggressive thrusting of his left hand in a conical shape which

penetrated most, if not the entire length, of Ms. Gladue's vagina. The force was excessive and sustained; to the extent that it caused the 11 cm wound before Mr. Barton withdrew and observed blood on his hand.

In this decision I will refer to the sexual activity by Mr. Barton as Fist Thrusting. The use of this term is for clarity only and not in the least intended to represent any normalization of the behaviour.

2. The second preliminary point is to confirm that Mr. Barton was not a reliable historian or witness in general. It is not necessary to address the extensive details of his evidence which support this assessment. It included various attempts to exonerate his conduct: sustained deceits, self-serving distortions, rationalizing contradictions as "figures of speech" and other colourable evasions.

> (a) Particularly disingenuous was his allegation that he repeatedly typed two terms – ripped and torn – on his computer searches because those words were easier to type than "stretched", which he alleged was all that he was looking for and found. Both words used by him carry a plain meaning of physical damage. The prosecution did not rely on any sites actually searched and was not obliged to provide such evidence in proof of his awareness of the real risk of injury to the vagina.
>
> (b) Mr. Barton's bizarre description of body position during the sexual activity in question was also entirely unworthy of belief. Not only did Dr. Cundiff testify that the pubic bone would block the vagina in the position Mr. Barton described; it defies any logic to choose and maintain such positioning on the edge of a queen-size bed as the injury was sustained.

[12] The problems with Mr. Barton's testimony in various key areas have nothing to do with intellect, occupation, or the passage of time, as argued by Defence. His responses were simply unreliable distortions, particularly in attempts to rationalize his words and actions. These concerns permeated his account that: when he saw blood, Ms. Gladue agreed she may be having her period; that he told her he was not paying and she did not object; further, that he just fell asleep as she went to the washroom, somehow carrying the huge comforter that he later found and kicked back towards the bed.

IV. Facts

[13] At the time of the offence, Mr. Barton was a 43-year-old Ontario resident in a long-term relationship. He worked as a long-haul driver for Rawlinson Moving & Storage Ltd. on assignments across North America.

[14] In June 2011 he was part of a crew waiting to unload household property in the Edmonton area. On the evening of June 21, 2011, Mr. Barton invited Ms. Gladue to meet with him at the Yellowhead Inn for a sex-for-money transaction.

[15] As supported by video images and witness evidence, Ms. Gladue drank with Mr. Barton in the hotel lounge; she then went with him to his room in the early hours of June 22, 2011, and drank some more alcohol.

[16] As supported by her blood-alcohol level, Ms. Gladue was highly intoxicated by the time Mr. Barton initiated sexual activity with her. At some point Mr. Barton engaged in the Fist Thrusting of his left hand in and out Ms. Gladue's vagina.

[17] Although aware of the risks of ripping or tearing, as reflected in the search terms he typed into his computer on at least 10 occasions, Mr. Barton took no steps to inform Ms. Gladue of the risks of Fist Thrusting or to request her consent.

[18] From the autopsy, medical, and forensic evidence, serious injuries were inflicted on Ms. Gladue's vagina. Most significantly, she sustained an 11 cm through and through tear to the vaginal wall and surrounding blood vessels. The cause of injury was consistent with what Mr. Barton described as thrusting by him with his left hand just past the second knuckles while she was on the bed.

[19] The physical evidence, extensive photos, and the blood expert support two important inferences: that the injury and high-volume bleeding occurred in the middle of the bed on top of the comforter; further that Mr. Barton lifted Ms. Gladue up with the comforter, carried her into the adjacent washroom and placed her in the bathtub where she bled out. The assertion that Ms. Gladue walked to the washroom, perhaps with the comforter between her legs, climbed into and laid herself down in the bathtub is rejected; so too, his conflicting descriptions of where and how the comforter was positioned.

[20] Unavoidably aware of the serious bleeding, Mr. Barton failed to initiate or call for any emergency assistance. He wiped up a bit of blood in the middle area of the bathroom floor and dropped the comforter on the bedroom area floor where it was later photographed by police.

[21] Relevant after-the-fact conduct in this case did support common-sense inferences as to Mr. Barton's recognition of wrong-doing, far beyond Mr. Barton's purported attempts to distance his unfaithful behaviour from friends and family. In the morning, Mr. Barton disposed of a faintly bloodstained towel in a dumpster behind his hotel room, checked out of the room, and took his bag to a vehicle; he then spoke with a co-worker before he re-acquired a key and returned to the room to call 911. He reported a girl in his bathroom covered in blood. Personnel attended immediately.

[22] Mr. Barton told a series of lies to various people, including police officers, in an unyielding attempt to avoid responsibility for Ms. Gladue's death.

[23] The degree of invasiveness and the serious extent of injuries from the sustained Fist Thrusting inflicted a significant degree of pain, notwithstanding that Ms. Gladue's blood-alcohol content was more than four times the legal limit.

[24] Mr. Barton may not have been fully aware of the degree of her intoxication. However, he knew or was willfully blind to the reality that Ms. Gladue never consented to his Fist Thrusting, with associated pain and damage to her body, because he never raised the matter with her at all.

[25] Mr. Barton's assertion that he believed she signaled consent by moaning and groaning and widening her legs as he was Fist Thrusting and she was performing fellatio is simply not credible. The medical evidence confirmed that the sulcar tear would be quite painful both at the time and after the injury occurred. Even the expert evidence tendered by Defence confirmed that the level of pain, if ameliorated by pressure to a wounded area, will return once the hand is moved. Although pain tolerance varies, the evidence is clear that pain would be felt even with a high blood alcohol concentration.

[26] Mr. Barton demonstrated his awareness, from his own words typed repeatedly in recent computer searches, that Fist Thrusting would risk, if not facilitate rips or tears to vaginal tissue; he took no steps to inform Ms. Gladue of those risks, much less discuss his intentions with her in any effort to obtain consent.

[27] Of note, Mr. Barton weighed over 200 pounds and is about 6 feet tall with large hands. By contrast Ms. Gladue was 5 foot 5 inches in height and 110 pounds.

[28] The expert evidence also supported that medical attention within about 20 to 30 minutes may have enabled Ms. Gladue to survive this injury.

Pre-sentence Report

[29] The Pre-sentence Report of Probation Officer Kennedy filed on May 21, 2021, provides some background on a variety of topics of some assistance, bearing in mind that Mr. Barton disagrees with the verdict and official circumstances of the offence. In addition, "During the interview, the subject was hesitant to divulge information surrounding his family and was evasive when questioned about prior substance use and sexual behaviours."

[30] However, according to the report, Mr. Barton appears to have maintained a respectful demeanor during his incarceration at ERC and carries a favourable attitude towards legal authorities in general.

[31] His family was close knit and Mr. Barton experienced a happy childhood free from any abuse. His 20-year common law relationship with Ms. Greier has recovered from the stress of this criminal matter; his relationship with his twin sons from his original marriage is good.

[32] Four letters of support from family and friends were marked as exhibits including the following extract from Ms. Greier:

> *"... Despite the darkness in Brad's life, he was always trying to help others. He was always offering a helping hand to a neighbour with a flat tire, or changing their oil, checking or fixing their cars and trimming trees for them or putting up their Christmas lights. Brad has a truly kind heart and has always been the first to jump in and help anyone, even perfect strangers."*

[33] In the face of difficulties with employment after the loss of his trailer unit, Mr. Barton says that he expects to resume work as a trucker when his legal issues are resolved. He cannot identify areas for potential change. The Officer expresses concern this could limit the potential benefit that Mr. Barton may receive from available programming and support.

[34] The Defence elaborates that Mr. Barton lost six jobs which have impacted his bankruptcy as well as the family in the face of publicity of this matter. There have been no bail breaches; he has appeared as required and continues to support his family.

Victim Impact Statements

[35] Victim Impact Statements were received from family members honouring the memory of Cindy Ivy Gladue. These provided strong confirmation that the consequences of this tragic loss of life are very real and endure more than ten years later.

[36] In particular, Ms. Gladue's mother, Ms. Donna McLeod, has expressed concern for the family, Cindy's younger siblings Kevin, Jeffrey, and Marilyn. As the adult who has taken care of

Ms. Gladue's three daughters (aged between 10 and 15 at the time of her death), Ms. McLeod reports:

> *"...The girls asked me why, who did this to their mom, why would they want to hurt our mom? To hear the girls tell me they don't have a mommy anymore broke my heart. I never cried so much to see my grandkids so heartbroken".*

Tellingly as to her character in conveying such a traumatic message, she then stated

"I told the girls we'll get through this."

[37] A close cousin, Prairie Adaoui, expressed similar concerns about the intergenerational trauma as it impacted on the family and spoke of personally feeling the pain of Ms. Gladue's final moments. She states that: "*... This pain required ceremonial treatment from my Elders..."* and then goes on to express the truism which regrettably characterizes each sentencing decision in all homicides:

"*... There is no sentence this legal system can offer that will bring her back to us."*

[38] These voices have been heard and are deeply respected. At the same time, it is the court's responsibility to meld a proper and justified sentence from the entirety of the circumstances.

V. Verdict Pathways

[39] The evidence provided three potential pathways by which the members of the jury could consider the culpability of Mr. Barton in the death of Ms. Gladue. Two pathways were tied to Ms. Gladue's lack of consent and the third related to Mr. Barton's awareness of the real risk of serious bodily harm. More specifically, then:

1. Ms. Gladue did not consent to the Fist Thrusting or was incapable of consent by reason of intoxication.

2. Mr. Barton did not have an honest but mistaken belief in communicated consent to Fist Thrusting, based on reasonable steps to ascertain her consent communicated by words or conduct at the relevant time and absent recklessness or willful blindness.

3. Even if Ms. Gladue may have consented to the Fist Thrusting, Mr. Barton either intended or was aware of the real risk of serious bodily harm and was reckless in the face of that real risk.

[40] Although each juror could reach a verdict by any one or more of those pathways, there are different levels of responsibility that may attach. Counsel have made submissions which attribute varying gravity to the offence as well as differing attributions of moral culpability or blameworthiness.

VI. Positions of the Parties

Crown

[41] The Crown argues that the law clearly distinguishes fault as relates to the mental component of an offence, distinct from the overall moral blameworthiness for the crime, having regard to all the circumstances as profiled in ***R v Laberge***, 1995 ABCA 196 at para 6. The gravity of the offence together with Mr. Barton's awareness of the risks of serious injury place the matter at the high end of the second level of accountability in *Laberge*.

[42] The aggravating circumstances include that Mr. Barton:

1. was aware Ms. Gladue was in serious medical distress from the outset of significant bleeding and chose to taken no steps to arrange medical assistance;
2. was aware Ms. Gladue was intoxicated and used her condition to his advantage; and,
3. lied to police in a purposeful attempt to mislead the investigation and protect the truth that he knew he had injured Ms. Gladue and took no steps to assist her.

[43] Culpable homicide is among the most serious of crimes and inflicts devastating effects not only upon the victim but family, friends and the community.

[44] The Crown also includes the personal circumstances and vulnerability of Ms. Gladue as important components in determining a fit and proper sentence. It points to the well-documented concerns about the risks for Indigenous persons impacted by discrimination and jeopardy, particularly in the context of a sex for money transaction. Recent amendments to the *Code* (ss. 718.04 and 718.201) reinforce common law concerns with protection of vulnerable persons under primary sentencing objectives of denunciation and deterrence.

[45] The Crown emphasized that none of Mr. Barton's personal circumstances point to compelling mitigating factors.

[46] The lack of a prior criminal record is relevant and there is evidence of family support for Mr. Barton. However, the circumstances disclose no real acknowledgment of wrongdoing, much less the remorse with guilty pleas reflected in other cases with serious aggravating factors.

[47] The Crown provided some thirty-one court decisions covering a wide number of relevant topics. The list of cases is appended to this decision along with extracts from the Interim and Final Reports of the National Inquiry into Missing and Murdered Indigenous Women and Girls.

[48] The Court was invited to find most compelling the relatively few decisions that paralleled the offence in this indictment of sexual assault manslaughter: ***R v Cheddesingh***, 2002 CarswellOnt 2660 (CA), aff'd 2004 SCC 16; ***R v Dunlop***, 2015 ABQB 770; and ***R v Nowdlak***, 2012 NUCJ 19, together with ***R v Snelson***, 2011 BCSC 1808 listed by Defence. Acknowledging differences in aggravating and mitigating circumstances, the sentences imposed in these cases were life imprisonment, 11 years, 12 years and 15 years respectively.

[49] Having regard to the seriousness of the crime, the moral blameworthiness of the invasive injury, the failure to call for medical assistance, and the vulnerability of Ms. Gladue, Crown urges consideration of a period of imprisonment between 18 and 20 years, less credit for pre-sentence custody.

[50] In addition, Crown seeks ancillary orders including a lifetime *SOIRA* order, a DNA order and a weapons prohibition.

Defence

[51] The Defence cautions that proportionality, as an important part of fundamental justice, cannot ignore parity or the significance of restraint; the matter of retribution cannot be turned to vengeance. While denunciation and deterrence are prominent in a sexual assault manslaughter, the prospects of rehabilitation to reintegrate back into the community need to be tied to the assessment of public safety.

[52] In context, the Defence acknowledges that Mr. Barton injured Ms. Gladue's vagina during the 10 minutes of Fist Thrusting. However, careful attention is needed in applying the *Laberge* factors. When assessing this *actus reas*, the evidence can only support that Ms. Gladue at some point stopped consenting in her mind to that aspect of the sexual activity. Objectively, this cannot place the conduct beyond the higher end of the *Laberge* second level.

[53] As for the *mens rea*, Defence urges that the only conclusion supported beyond a reasonable doubt was that Mr. Barton failed to take reasonable steps in the circumstances known to him at the time to determine that Ms. Gladue was actually consenting to the Fist Thrusting.

[54] Addressing blameworthiness, this failure attributes limited intention or awareness of risks of harm. Accordingly, Mr. Barton's subjective culpability falls closer to the lower end of the second level in *Laberge*.

[55] Two factors are aggravating: the failure to seek medical assistance and misdirecting police during their investigation. Mr. Barton explained that he needed advice of a friend and he was confused or panicked. The Defence argued further that he was encouraged to maintain his position as an unwitting witness particularly during his interview with Det. Ockerman. His conduct must be assessed in its total context.

[56] In all events these aggravating factors cannot be used to carry Mr. Barton's blame to the third level in *Laberge*. The conduct must be measured in the context of a consensual sex for money transaction. Intoxication of the victim as well as the disparity in size are not aggravating in a case that does not involve additional acts of violence.

[57] Of the many cases provided to address the applicable range for sentencing, the Defence stridently distinguishes the circumstances in the sexual assault manslaughter decisions as much more aggravating. According to the Defence, cases with stronger parallels include: ***R v Scott***, 2014 BCSC 2457; ***R v Valente***, 2012 ABQB 151; ***R v Craig***, 2003 CanLII 12866 (ONCA) and ***R v Dyck***, 2014 SKCA 93. Again, with variable aggravating and mitigating circumstances, the sentences imposed in these cases were seven years, four years, seven years, and six years respectively.

[58] The Court in ***R v Holloway***, 2014 ABCA 87, per Justice Berger in dissent, expressed that the range for the second level of the *Laberge* scale is between four and eight years. These are not, however, rigid sentencing ranges: ***R v Wharry***, 2008 ABCA 293 at para 56.

[59] Concerns about credibility need to be placed in context: Mr. Barton was not a sophisticated witness as measured by education, employment, and vocabulary, all impacted by the passage of time and the challenges of testifying at a re-trial.

[60] In addition, the Court must include a number of mitigating factors including that Mr. Barton is a first-time offender and he has already suffered collateral consequences: loss of employment, bankruptcy, stress, and impact on family. During this period, he has also been under restrictive bail conditions and his incarceration at the Edmonton Remand Centre has been impacted by COVID-19.

[61] Defence asserts further that the inordinate time taken to complete this case needs to be included in the individualized consideration of a fit and proper sentence, referencing section 11(b) of the *Charter* and the law applicable at the time reflected in ***R v Morin***, [1992] 1 SCR 771. The Court in ***Morin*** (at para 23) refers to the right to liberty in the context of minimizing anxiety and stigma by prompt disposition. See also ***R v Keegstra***, 1996 ABCA 308 at paras 19-

20. Measuring the ten years in total, including compliance with strict bail conditions, the impact on Mr. Barton should be a further consideration in setting the appropriate sentence.

[62] Factoring all of these points as part of the proportionality principle and the fundamental purposes of sentencing, Defence argues that the proper range for incarceration in these circumstances is between five and nine years, less credit for time served.

[63] The only concern of the Defence with the Ancillary Orders as sought by the Crown relates to whether manslaughter falls within the scope of a mandatory *SOIRA* order.

VII. Analysis

[64] As prescribed by section 236 of the *Code*, manslaughter can result in liability to imprisonment for life. It is a very serious offence although in rare circumstances the penalty may be as low as a suspended sentence in instances of near-accident: ***Laberge*** at para 6.

[65] The fundamental purpose and principles of sentencing are codified in sections 718, 718.1 and 718.2 of the *Code*. Protection of society as well as respect for the law are integral to our system of justice.

Proportionality

[66] Of basic significance is the need for proportionality which addresses the gravity of the offence. This requires considerations of not only the wrongfulness of the behaviour but also the degree of blameworthy harm. As expressed in ***R v Brown***, 2020 ONCA 657 at para 57 (quoting from LeBel J in ***R v Nasogaluak***, 2010 SCC 6 at para 42):

> Whatever the rationale for proportionality, however, the degree of censure required to express society's condemnation of the offence is always limited by the principle that an offender's sentence must be equivalent to his or her moral culpability, and not greater than it. The two perspectives on proportionality thus converge in a sentence that both speaks out against the offence and punishes the offender no more than is necessary. [Emphasis added in ***Brown***]

[67] In ***R v Arcand***, 2010 ABCA 363 the Alberta Court of Appeal explained the concept of gravity of an offence in the following terms: "This concept is directed to what the offender did wrong. It includes two components: (1) the harm or likely harm to the victim[1] and (2) the harm or likely harm to society and its values …" (para 57). The degree of responsibility includes consideration of the offender's personal circumstances, as well as mental capacity or motive for committing the crime (paras 57-58).

Vulnerability

[68] Another important consideration from the *Code* is expressed in s. 718.04:

> When a court imposes a sentence for an offence that involved the abuse of a person who is vulnerable because of personal circumstances — including because the person is Aboriginal and female — the court shall give primary consideration

[1] The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls expresses that: "We do not use the term "victim" of violence unless it is necessary in the context of the criminal justice system, in response to those families and survivors who expressed how the language of victimization can be disempowering." (p 58) To respect the concern as expressed, this judgment will minimize reference to that term.

> to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

[69] A broad application of this legislative expression of concern is supported by the wording of s. 718.201 which states:

> A court that imposes a sentence in respect of an offence that involved the abuse of an intimate partner shall consider the increased vulnerability of female persons who are victims, giving particular attention to the circumstances of Aboriginal female victims.

[70] The definition of "intimate partner" is open and inclusive of a dating partner. The circumstances here constitute a specific invitation or date initiated by Mr. Barton for the express purpose of the intimate act of sexual intercourse.

[71] Although these sections were not enacted at the time of the offence, such considerations have at minimum been part of the fair and proper exercise of judicial discretion in sentencing. Having mandatory language simply reinforces my view that the concern is certainly relevant to disposition in this case: ***R v Milovanovic***, 2020 CarswellQue 14318 (Sup Ct) at para 32; ***R v LP***, 2020 QCCA 1239 at paras 80-81. See also ***R v Barton***, 2019 SCC 33 at para 204; ***R v Wood***, 2021 MBQB 4 at paras 32-33.

[72] Vulnerability and serious risks of exploitation in sex for money transactions have long been recognized as an issue: ***Prostitution Reference***, [1990] 1 SCR 1123; ***Bedford v Canada (Attorney General)***, 2013 SCC 72. The concern clearly applies to circumstances of Indigenous women: ***R v Profeit***, 2020 ABQB 138 at paras 31-33, quoting from ***R v AD***, 2019 ABCA 396. See also the recent decision in ***R v Morin***, 2021 ABQB 433 at paras 4-6.

[73] Although the evidence did not establish a full awareness by Mr. Barton of the level of her intoxication, the fact that he supplied alcohol both in the lounge and in his room and described her to police as "loaded" cannot be ignored as a factor in the exploitation of Ms. Gladue's vulnerability.

[74] Each of the principles expressed in the *Code* must, of course, respond to the specific circumstances as presented in an individualized process. Recognizing this case must include incarceration, I will address rehabilitation from the evidence provided and parity from a review of cases.

Laberge **Ladder**

[75] The case law on sentencing for the offence of manslaughter ascribes a full spectrum of penalties which may be appropriate. As profiled in submissions from Crown and Defence, in ***Laberge*** Fraser CJA (paras 6-9) identified three broad categories of cases:

> i. those which are likely to put the victim at risk of, or cause, *bodily injury*;
>
> ii. those which are likely to put the victim at risk of, or cause, *serious bodily injury*; and
>
> iii. those which are likely to put the victim at risk of, or cause, *life-threatening injuries.*
>
> In Alberta, this spectrum continues to be referred to as the "*Laberge* Ladder".

[76] I do not interpret the broad categories as described in ***Laberge*** as obliging the Court to select or exclusively place the conduct in one category. The difference between serious and life-threatening cannot derive from the application of precise measures, having regard to the variables of human anatomy. Nonetheless, I respect that the purpose of the *Laberge* Ladder is not to attribute foreseeability with the benefit of hindsight but to ascribe a level of fault.

[77] As to placement on the *Laberge* Ladder, a number of factors have been listed by the Court of Appeal (paras 14-21), including:

- the nature and quality of the act;
- the method and force used in committing the act;
- the extent of the deceased's injuries;
- the time taken to perpetrate the act; and,
- the element of chance involved in the resulting death.

[78] As to additional factors, the evidence at trial provides little, if any basis to evaluate the true extent of planning, any provocation, or added violence.

[79] The positions of counsel capture superficial consensus that the case falls within the second level where Mr. Barton's actions subjected Ms. Gladue to the risk or likelihood of causing serious bodily injury. However, their disparate positions reveal that placement on a ladder is an analytical tool and not a compartmentalization.

[80] I have concluded that the moral blameworthiness of Mr. Barton falls at the top end of the level where his actions most certainly put Ms. Gladue at risk of at least serious bodily injuries.

[81] Points which support this include:

1. the act itself was deliberate and highly invasive;
2. it engaged disproportionate body size, in particular that he would inflict the mass of his hand into her vaginal cavity without lubrication, measuring a displacement width up to 11 cm across his base knuckles;
3. the injury to body tissue extended virtually the full length of the vaginal wall;
4. the Fist Thrusting persisted for a period of time exceeding the tensile strength of tissue and inflicted extensive injury to an internal area of the body surrounded by a significant pattern of blood vessels;
5. the offender held a consciousness of significant risk of serious injury, if not purpose, as reflected in the terms used in his computer searches just nine days earlier which he failed to disclose to Ms. Gladue;
6. once aware of the serious bleeding, Mr. Barton took no steps to assist in any way. His failure to call for emergency assistance foreclosed any opportunity for medical intervention which may have saved Ms. Gladue's life.

Aggravating Factors

[82] Aggravating factors are contemplated in a non-exhaustive list under section 718.2 of the *Code,* some of which help to inform of the seriousness of the offence in specific context even when the circumstances do not entirely match the language used. In this regard, the following matters from section 718.2(a) are noteworthy:

> (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim;
>
> (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation.

[83] As noted in ***R v George***, 2016 BCSC 2291 at para 79: "Where the victim is deceased, 'victim' means the victim's family, for the purposes of the *Canadian Victims Bill of Rights*, SC 2015, c 13, s 2 and related provisions under the *Code*."

[84] Although the circumstances of a sexual transaction for money is not entirely analogous to other recognized situations of trust or authority, the element of vulnerability, as previously addressed, is integral to an assessment of the power differential between the participants. The consent to sexual intercourse does not contextualize, much less condone unbargained, non-consensual abuse. The exploitation of Ms. Gladue impacts not only her Indigenous status and vulnerability (***AD,*** at paras 24-30) as I have already addressed; it also impacts her family and community.

[85] In measuring the exercise of authority, I find relevant the invitation by Mr. Barton for Ms. Gladue to join him at the bar, followed by his assurances to Ms. Gladue's concerned friend that "Cindy is with me ... And I gave him $5. I said everything is fine. You know who I am. Cindy and I hung out last night and there was no issues...".

[86] Despite these assurances Mr. Barton blithely invited his co-worker to "join in on the fun with Cindy". His treatment of Ms. Gladue shares common features as a breach of trust or authority, notwithstanding the short duration of the relationship.

[87] As established beyond any doubt by the evidence, the impact on Ms. Gladue could not have been more tragic by any measure.

[88] Other factors which need to be considered in this case include:

1. Knowledge of risks – I find this to be easily inferred and self-evident from hand and body size relative to Ms. Gladue;
2. Deliberateness and purpose of conduct – In the absence of a voice from Ms. Gladue, this must be inferred from the terms used by Mr. Barton repeatedly in his computer searches and his discussions with Ms. Gladue's friend and Mr. Atkins before taking Ms. Gladue to his room. It is difficult to measure the extent to which any sense of superiority or entitlement may relate to gender or Indigenous status. Since this level of evidence cannot meet the serious burden of proof beyond a reasonable doubt as a separate aggravating factor, it must be relegated to a relevant consideration only;
3. Callous failure to initiate any measures to provide or obtain any assistance as soon as serious bleeding commenced and for a significant lapse of time before abandoning the room;
4. Steps taken at the time or in the aftermath of fatality:

    a. placement of Ms. Gladue in the bathtub and wiping up some blood at the scene;

b. disposal of a towel with faint/rinsed blood staining in a dumpster in the parking area behind the room;

c. checking out without any notification as to circumstances in the room; and,

d. returning to call police from the room after misinforming Mr. Sullivan and then misleading the desk clerk to regain access.

5. A further litany of falsehoods provided in the 911 call and with various police officers to deflect any personal responsibility including: his comment to Cst. Jones that "I didn't do anything. I am married and I don't do this stuff."; to Det. Ockerman that "I woke up this morning and-and the comforter's pulled off to the side there and whatever and next thing I know, she's – she's laying in the tub. It was like – I was scared shitless." (Ex 19, p 16); and still later, to the undercover officer post-arrest that co-workers were responsible for what happened. None of these were statements rendered in panic.

[89] I am mindful of, and have applied, the principles set out in ***R v W(D)***, [1994] 3 SCR 521 and relied on in subsequent cases (see for example ***R v Sutherland***, 2005 MBQB 29 at para 13), in determining the aggravating factors that apply in this case.

[90] As noted, I do not believe Mr. Barton's evidence. I have found him to be an unreliable witness and historian. Nor does his evidence itself raise any reasonable doubts on the aggravating factors. However, I have also gone on to review the entirety of the evidence including Mr. Barton's testimony, and having done so, I am convinced that the aggravating factors set out above have been proven beyond a reasonable doubt by the evidence, except where stated otherwise. (para 88.2.)

Mitigating Factors

[91] Defence raised a number of allegedly mitigating factors which can inform the degree of blameworthiness of the offender. I will deal with a number of them under other headings. However, there are cases which acknowledge that family and community support can be a mitigating consideration.

[92] The Pre-sentence Report states that "Mr. Barton presents as a man with a positive support network and a healthy employment history which was confirmed during interviews with his collateral contacts". This included his common law spouse and two adult sons from a prior relationship. Those contacts concur that he is an easy-going, friendly man who is always willing to help friends and neighbours. While the Crown points to Mr. Barton's stark unwillingness to help Ms. Gladue, the testimonials are to be accorded some weight.

Rehabilitation

[93] The court must respect the entitlement of Mr. Barton to pursue an appeal against the verdict of the jury. At the end of the sentencing hearing on June 30, 2021 he stated:

> *I know a lot of terrible things have been said about me in this case and in the last 10 years. I've heard these things myself and so has my family back in Ontario. You may think I am a terrible person but I want you and everyone in the public to know that I never meant to hurt this lady who I called Cindy back then. We both got along well on both nights and I had no reason to want or (sic?) hurt her. Even so, I take responsibility for causing her death. I am sorry. I want to apologize to Cindy and her family.*

> *Also, I want to apologize to my wife and family for causing them so much shame and stress, not being able to support them the way I used to. I am very sorry to everyone. I am a better man and now behave … than 10 years ago and I will do my best to show it. Thank you.*

[94] Although such representations are relevant in sentencing despite the harsh reality that the loss of Ms. Gladue is irreversible, any prospect of rehabilitation cannot detract from the primary objectives of denunciation and deterrence in this case.

[95] Essential to the prospects of rehabilitation will be recognition of not only the tragic consequences but the blameworthiness and accountability for the behaviour which caused the death of Ms. Gladue as a vulnerable person.

[96] While Mr. Barton is not obliged to provide information for the court to measure the risk of recidivism, it does not therefore follow that an offender must be presumed to be capable of benefitting from counselling. This falls within the domain of institutional personnel.

[97] From the limited information available at this stage, including no reported misconduct, the risks to society do not support an enhanced period of incarceration. That does not detract from the serious blameworthiness of the crime.

First-time Offender

[98] The lack of a prior criminal record is a relevant factor which does not relate to the gravity of the offence or moral responsibility but which does relate to Mr. Barton's personal circumstances: ***R v Pham***, 2013 SCC 15; see also ***R v Eliasson***, 2021 ABCA 188 at para 17. It can be an important consideration in cases which may warrant alternatives to incarceration: section 718.2(d) and (e) of the *Code*. This is not at all equivalent to a mitigating factor but helps to further inform the appropriate sentence to be imposed.

[99] It must also be assessed with due regard to age and the opportunity for rehabilitation. However, these points must be weighed against the inherent gravity of the offence and the importance of general deterrence and denunciation in the context of protection of the public. Here we are dealing with manslaughter arising from an invasive sexual assault.

Collateral Consequences

[100] The Defence has urged the Court to reduce the sentence to acknowledge the impact of collateral consequences, including loss of Mr. Barton's truck unit, termination by Rawlinson, problems maintaining employment under the constraints of bail, and the stress of publicity.

[101] Collateral consequences have been defined by the court to include "any consequence arising from the commission of an offense, the conviction for an offense, or the sentence imposed for the offense, that impacts the offender.": ***R v Suter***, 2018 SCC 34 at para 47. The Supreme Court goes on to note, however, that predictable consequences directly linked to an offence may diminish mitigation value (para 49) and that vigilante physical harm should only be considered to a limited extent.

Financial Impact

[102] I am unpersuaded that financial consequences arising from job loss should have any material impact on the appropriate sentence to be imposed in these specific circumstances. Although Mr. Barton appears to have lost six positions over an extended period, he continued to

find further employment as a trucker. Prospectively, as reported in the Pre-sentence Report, despite struggles to maintain employment, "his only goal for the future is to find employment driving a truck and live a pro-social life free from involvement in the Criminal Justice System."

[103] Although Mr. Barton's family had to downsize to a smaller rental property, the reference that "he began the process for filing for bankruptcy" is very general. By affidavit in February 2020 he deposed that: "I went bankrupt in approximately 2012 as a result of my arrest and loss of employment as a long-haul truck driver, and remain an undischarged bankrupt." Accepting that statement, no further particulars are disclosed to tie exceptional hardship to the criminal offence and steps taken to deal with his status.

Stress of Publicity

[104] As to media attention and public humiliation arising from the circumstances, the case law does not materially assist the request for collateral reduction: ***R v Zentner***, 2012 ABCA 332 at paras 42-43; ***R v Joseph***, 2020 ONCA 733 at paras 132-133. Arguably, some of the coverage related to matters of evidence during the first trial that exceeded normal circumstances and warrant limited consideration now. However, the impact of publicity cannot be parsed with any refinement.

[105] No evidence was submitted of any unique circumstances, such as treatment for psychological health problems attributable to the sustained interest in this case. Given the specifics of this homicide, sustained media attention was almost inevitable and the circumstances here do not show a significant detrimental impact.

[106] As expressed in ***Eliasson*** at para 20: "Indeed, the proposition that a sentence should be reduced because the grave circumstance of it are such as to foreseeably attract widespread public condemnation is counterintuitive." See also ***R v Upright***, 2020 ABCA 329 at para 15.

[107] The Court is asked to factor two additional topics into the calculation of a proper period of incarceration: the terms of judicial interim release to the date of conviction and the total time taken to complete prosecution.

Judicial Interim Release

[108] The bail terms applicable to Mr. Barton for his period of release included a cash deposit, statutory reporting directions, passport surrender, prescribed residency with curfew (11pm to 5 am), maintaining employment in Ontario, no drugs or weapons, and a no contact list. A number of these terms were modified in September 2013 and again in August 2017. These clearly limited some freedoms but were not punitive in my view. In particular, neither the night curfew, nor the constraint against long-haul outside of Ontario were unreasonable in the circumstances. The matter charged arose while Mr. Barton was completing an extra-provincial job assignment.

[109] Even if these terms were characterized as strict, they do not constitute punishment at all equivalent to imprisonment. It is a matter of discretion whether to mitigate the sentence on this ground: ***R v Ijam***, 2007 ONCA 595. I have referred to earlier modifications. Upon request of Defence, Mr. Barton's need to attend was waived for a number of *voir dire* applications in 2020 for the second trial.

[110] I find very little to distinguish Mr. Barton's circumstances from the impact of convictions on other offenders where similar restrictions are deemed necessary. The conditions of interim release do not compel a reduction in the sentence to be served upon conviction.

[111] Compliance with terms is relevant but expected; it is not a mitigating factor: ***R v Gandour***, 2018 ABCA 238 at para 43. It is, however, relevant and will be included in the court's consideration of the appropriate sentence to be imposed.

Length of Proceedings

[112] I turn next to whether the time to be served should be reduced because of the extended period taken to complete this matter. The Supreme Court in ***Morin*** does refer to the importance of timely trials to minimize impact on liberty rights and as a benefit to society as a whole. To be clear, we are not dealing here with a challenge to overall timeliness pursuant to section 11(b) of the *Charter*. Rather, the court is asked to measure the stress of the process as a mitigating feature as recognized in the very unusual circumstances of ***Keegstra*** based on added expense and extended anxiety. I decline to rely on that decision in the exercise of discretion, independent or in addition to the effect of judicial interim relief, as already addressed.

Time in Custody

[113] Counsel are agreed as to the number of days in pre-trial custody to which a 1.5 for 1 ratio would be properly applicable pursuant section 719(3.1) of the *Code*: ***R v Summers***, 2014 SCC 26. There is further agreement that, at minimum the same credit would be applied to the post-verdict period of time served in custody between February 19 and the date of this decision, July 27, 2021. The only matter of dispute relates to a portion of this latter period as to which the Defence seeks enhanced credit at a two-for-one ratio because of the effects of COVID-19.

[114] Such a claim based on a *Charter* Notice under section 12 was advanced in ***R v Gordey***, 2020 ABQB 425. After referring to a distinction between quantitative and qualitative claims adopted in ***R v Adams***, 2016 ABQB 648, and noting that the evidence did not support a section 12 breach, the court in ***Gordey*** spoke against calculation of enhanced credit. However, the sentencing judge did factor a partial credit based on evidence which specifically impacted the offender. I note that the circumstances in that case unfolded in the early management of the pandemic. As well, the judge gave what amounted to a 25% extra credit.

[115] I have no information as to any dates that Mr. Barton was segregated due to COVID-19 as a matter of unique impact. I am advised by counsel that Mr. Barton was accommodated with a 28 day transfer to Red Deer which Defence excludes from its calculation. The total credit claimed on behalf of Mr. Barton is 410 days. The Crown takes the position that 344 days should be credited. The net difference amounts to 66 days.

[116] Even assuming that qualitative and quantitative time as described in ***Gordey*** can be isolated for differential consideration, I am unpersuaded that the circumstances in this instance warrant special enhancement above the 1.5 ratio of credit contemplated in section 719(3.1) and ***Summers***. Similarly, I find no support for any collateral sentence reduction to be invoked based on COVID-19 in this matter.

Victim Impact Statements

[117] As noted earlier, a number of family members and others have reported the lasting effects arsing from the loss of Cindy Gladue in their lives. No words can capture the tragedy and sorrow, particularly for the young family left suddenly without a mother. These expressions of testimonial consequence are important considerations that have been well conveyed for the record. Each statement has helped to better inform the sentencing process.

[118] It is acutely obvious that a trial and sentencing cannot reduce or undo any portion of the loss inflicted. While it is hardest on family and close friends, the broader community remains impacted. At the same time, there are fundamental principles of law by which a fit and proper sentence must be fashioned. To assist in some further understanding of how these principles have been applied in other tragic matters, I turn to a review of a representative sampling of relevant court decisions.

Case Law

[119] As noted, numerous cases have been presented in support of the disparate range of incarceration which ought to be applied in these circumstances. I have carefully examined the reasoning for further guidance in the determination of a fit and proper sentence to be imposed. None of the decisions presents a strong basis for parity but, acknowledging that most of them involved guilty pleas, collectively they have assisted the court in arriving at a decision. I will very briefly summarize eight cases as most informative to this end:

[120] ***R v Dunlop***, 2015 ABQB 770 dealt with a guilty plea for the choking death of a vulnerable sex trade worker and indignity to her body. Dunlop was a 41 year old software developer and the deceased was 38 years old with a teenage child. He was sentenced to 11 years for manslaughter and two years consecutive for committing an indignity to the deceased. The judge emphasized three mitigating factors: the guilty plea, unequivocal expressions of remorse, and support of family and friends. Aggravating factors included: the vulnerability of the deceased as a sex trade worker, her small size compared to the offender, his admission that he wanted to hurt someone who would not be missed, non-consensual choking, and leaving a body in a secluded location undiscovered for weeks.

[121] ***R v MacLeod,*** 2018 ABQB 520 involved a 31 year old offender sentenced to 11 years on a guilty plea for domestic manslaughter. The Court noted the absence of any prior criminal record but criticized the story concocted - when the offender called 911 and alleged that the deceased committed suicide - as being cruel, cowardly, and socially abhorrent. The relationship was intimate but lasted less than one year and was marked with abusive arguments and alcohol.

[122] ***R v Profeit,*** 2020 ABQB 138 involved an Indigenous offender with a lengthy and serious criminal record who was sentenced to 12 years for manslaughter after trial. The parties had been in an intimate relationship for about eight months. Of note, the offender gave misleading statements to police. The decision addressed significant *Gladue* factors and FASD with severe cognitive impairment and a high risk to reoffend.

[123] ***R v Jamieson,*** 2012 ONSC 1114, aff'd 2014 ONCA 593 involved the guilty plea of a 49 year old for manslaughter of his four year common law partner while on probation and with a prior criminal record. The sentence imposed was 12 years. The Court found the offender knew the knife wound was serious because it was thrust very deep with moderate to severe force; further, that the offender knew the deceased needed medical attention based on the seriousness of the wound and chose not to get assistance. The Court noted a range for aggravated manslaughter is 8-12 years and 9-15 years for domestic cases on guilty pleas in Ontario.

[124] ***R v Jack,*** 1992 CarswellBC 1017 (CA) was another guilty plea over one year after the charge to aggravated sexual assault was laid, which resulted in a sentence of 10 years. The 29 year old offender placed a foreign object in the complainant's vagina and anus, causing a three-and-a-half to four inch tear that required extensive surgery with problems due to infection. His prior criminal record was minor. The complainant was a 38 year old alcoholic. The Court noted

two aggravating factors: that he left her without medical attention and it was the brother who later called for help. The Court was unable to assess the likelihood to re-offend.

[125] ***R v Brown,*** 2020 ONCA 657 dealt with an offender between the ages of 23-25 who pled guilty three years after a random aggravated sexual assault for which he was sentenced to 12 years. He had been drinking, attended hospital for a head wound and then followed two women successively before jumping the second woman by surprise. He bashed her head against some rocks then choked her to unconsciousness. The victim survived but was hospitalized for a week to recover from 100 stitches to her head. There was alcohol involved and a number of *Gladue* factors. Quoting from ***R v Nur,*** 2015 SCC 15 at para 43: "imposing a proportionate sentence is a highly individualized exercise, tailored to the gravity of the offence, the blameworthiness of the offender and the harm caused by the crime". The Court confirmed that the principle of restraint (vis incarceration) must yield to denunciation and deterrence in a case of random sexual violence.

[126] ***R v Scott***, 2014 BCSC 2457 involved a manslaughter guilty plea offered and accepted at the outset of a murder trial. The offender, age 26, had addiction issues and was in a stormy relationship with a 37 year old university professor that she terminated after less than nine months. During a later confrontation, he choked her then he passed out. He failed to report anything and lied to various people including police, who eventually confirmed his actions after a Mr. Big operation. The Court found a broad sentencing range between four and 12 ½ years. After noting a series of aggravating factors against the guilty plea with remorse, relative youth and addiction issues, the court imposed a sentence of seven years.

[127] ***R v Snelson,*** 2011 BCSC 1808 imposed a 15 year sentence after a jury verdict on manslaughter by a 27 year old offender. The deceased, aged 19 and very intoxicated, was sexually assaulted after a party then choked and bludgeoned. The Court emphasized that the crime was brutal, included a sexual assault, and the deceased was defenceless. Mitigating points included letters of significant support from family and community as well as steady employment. He had a relevant prior criminal record but no charges in the 17 years between the attack and sentencing.

[128] The facts all vary but there are some common points including vulnerability and fatal or devastating consequences. The violence was more overt in some cases. In others, the prior criminal record was important. Without reviewing each of the components which characterize the seriousness of the facts to be addressed here, in addition to the vulnerability and devastation, three points are compelling: the degree of invasive aggression with a real risk of serious injury, the failure to obtain medical assistance and the sustained deception of police. Collectively, the full circumstances in this matter constitute an intolerable level of blameworthiness.

VIII. Conclusion

[129] In summary, after full review of all factors, I have concluded that a proper and proportionate sentence in all the circumstances is that Mr. Barton serve a period of 12 ½ years of incarceration, less the credit for time spent in Interim Custody. As addressed earlier and calculated at a 1.5:1 ratio, the total credit amounts to 344 days. To be clear, the remainder of the sentence from the date of this decision amounts to 11 years and 204 days.

Ancillary Orders

[130] In addition to the incarceration as directed, the following Orders shall be imposed:

(1) a Mandatory DNA Order as manslaughter is a primary designated offence (s. 487.04 and 487.051);

(2) a ten-year weapons prohibition on firearms or cross bow as a first offender and lifetime prohibition as regards possession of any prohibited or restricted firearms, and prohibited weapon, device and ammunition, all as set out in s 109;

(3) a 20 year registration on the Sexual Offenders Information Registry under s. 490.011[2], in compliance with Form 52.

[131] All exhibits shall be forfeited forthwith to the Crown with directions for disposition as appropriate, in consultation with Ms. Gladue's family.

[132] Despite the time required to finalize formal reasons for sentencing from all that was presented for consideration by the court, I do commend counsel for the thoroughness of all submissions this matter.

Heard on the 28th to 30th day of June, 2021.
Dated at the City of Edmonton, Alberta this 27th day of July, 2021.

S.D. Hillier
J.C.Q.B.A.

Appearances:

Lawrence Van Dyke and Julie Snowdon
for the Crown

Dino Bottos, Q.C. and Jessica Swann (Student-at-Law)
for the Offender

[2] *I have considered and reject the position of Defence that Crown has failed to prove intent for sexual assault as reflected in s. 490.012(2). The sexual assault was the unlawful act of upon which the jury verdict of manslaughter was based. The SOIRA Order is mandatory:* ***R v Giroux,*** 2013 ABCA 100.

Appendix
Case Citations

Crown:

1. *R v Friesen*, 2020 SCC 9
2. *R v Arcand*, 2010 ABCA 363
3. *R v Laberge*, 1995 ABCA 196
4. *R v Arkell*, 1990 CarswellBC 197, [1990] 2 SCR 695 (SCC)
5. *R v Luxton*, 1990 CarswellAlta 144, [1990] 2 SCR 711 (SCC)
6. *R v Martineau*, 1990 CarswellAlta 143, [1990] 2 SCR 633 (SCC)
7. *R v Cheddesingh*, 2002 CarswellOnt 2660 (CA); 2004 SCC 16
8. *R v Dunlop*, 2015 ABQB 770
9. *R v Nowdlak*, 2012 NUCJ 19
10. *R v Spotted Eagle*, 2020 ABPC 70; aff'd 2021 ABCA 26
11. *R v George*, 2016 BCSC 2291
12. *R v MacLeod*, 2018 ABQB 520
13. *R v Profeit*, 2020 ABQB 138
14. *R v Jamieson*, 2012 ONSC 1114; aff'd 2014 ONCA 593
15. *R v Wood*, 2021 MBQB 4
16. *R v Sherrard*, 2012 NUCJ 4
17. *R v Green*, 1998 CarswellNfld 184 (Sup Ct)
18. *R v Jack*, 1992 CarswellBC 1017 (CA)
19. *R v HMRS*, 2020 ONCA 209
20. *R v Brown*, 2020 ONCA 657
21. *R v Bird*, 2018 ABPC 135
22. *R v Anderson*, 2012 ONCA 373
23. *R v Leduc*, 2017 ONSC 398
24. *Bedford v Canada (Attorney General)*, 2013 SCC 72
25. *R v AD*, 2019 ABCA 396
26. Chapter 1, Interim Report of The National Inquiry Into Missing and Murdered Indigenous Women and Girls
27. Excerpts, The Final Report of The National Inquiry Into Missing and Murdered Indigenous Women and Girls, Volume 1a
28. *R v Eliasson*, 2021 ABCA 188
29. *R v Upright*, 2020 ABCA 329
30. *R v Joseph*, 2020 ONCA 733
31. *R v Gandour*, 2018 ABCA 238
32. *R v Zenari*, 2012 ABCA 279
33. *R v Zentner*, 2012 ABCA 332
34. *R v Giroux*, 2013 ABCA 100
35. ***R v Morin***, 2021 ABQB 433

Defence

1. Section 718-724, *Criminal Code*
2. *R v Nasogaluak*, 2010 SCC 6
3. *R v Ipeelee*, 2012 SCC 13
4. *R v Oliver*, [1977] BCJ No 932 (CA)
5. *R v Hamilton*, [2004] OJ No 3252 (CA)

6. *R v Arcand*, 2010 ABCA 363
7. *R v Friesen*, 2020 SCC 9
8. *R v Moriarty*, 2016 ABPC 25
9. *R v CAM*, [1996] 1 SCR 500
10. Clayton C. Ruby, Gerald Chan, Nader R. Hasan, Annamaria Enenajor, *Sentencing* (9th edition, 2017) LexisNexis Canada, p 7 (Deterrence and Denunciation); pp 412-421 (First Time Offenders)
11. *R v Pettigrew*, [1990] BCJ No 996 (CA)
12. *R v Proulx*, 2000 SCC 5
13. *R v Wismayer*, [1997] OJ No 1380 (CA)
14. *R v Harrison*, [1977] BCJ No 939 (CA)
15. *R v Gardiner*, [1982] 2 SCR 368
16. *R v Ferguson*, 2008 SCC 6
17. *R v Hames*, 2000 ABQB 958
18. *R v Laberge*, 1995 ABCA 196
19. *R v Holloway*, 2014 ABCA 87
20. *R v Dunlop*, 2015 ABQB 770
21. *R v Snelson*, 2011 BCSC 1808
22. *R v Craig*, 2003 CanLII 12866 (ONCA)
23. *R v Sandercock*, 1985 ABCA 218
24. *R v Razak*, 2019 BCSC 1677
25. *R v Blake*, 2020 ONSC 5658
26. *R v Leblanc*, 2021 ABQB 230
27. *R v Dyck*, 2014 SKCA 93
28. *R v Charlie*, 2018 BCSC 1800; rev'd in part, 2020 BCCA 157
29. *R v Shah*, 1994 CanLII 1290 (BCCA)
30. *R v Bernandino*, [2003] OJ No 5674 (CJ)
31. *R v Walker*, 2019 ONCJ 132
32. *R v Kutsakake*, 2006 CanLII 32593 (ONCA)
33. *R v Nusrat*, 2009 ONCA 31
34. *R v Goodstoney*, 1999 ABCA 100
35. *R v Montoya*, 2016 ABQB 660
36. *R v Kramer*, 2015 ABQB 440
37. *R v Nottebrock*, 2014 ABQB 662
38. *R v Pratt*, 2014 ABQB 529
39. *R v Anstie*, 2020 ONSC 5505
40. *R v Morin-Leblanc*, 2014 ONSC 2056
41. *R v Corpuz*, 2014 ABQB 290
42. *R v Priest*, 1996 CanLII 1381 (ONCA)
43. *R v Samaras*, [1971] OJ No 355 (CA)
44. *R v Winchester*, 2014 ONSC 2591
45. *R v Suter*, 2018 SCC 34
46. *R v Heatherington*, 2005 ABCA 393
47. *R v Bunn*, 2000 SCC 9
48. *R v Campbell*, [1995] BCJ No 1484 (CA)
49. *R v Gallacher*, [1991] BCJ No 762 (CA)
50. *R v Hoelscher*, 2017 ABCA 406
51. *R v Keegstra*, 1996 ABCA 308

52. *R v Hames*, 2000 ABQB 958
53. *R v Gordey*, 2020 ABQB 425
54. *R v Morgan*, 2020 ONCA 279
55. *R v EF*, 2021 ABQB 272
56. *R v Head*, 2020 ABPC 211
57. *R v Holguin*, 2021 ABPC 67
58. *R v Scott*, 2014 BCSC 2457
59. *R v Valente*, 2012 ABQB 151
60. *R v Morin*, [1992] 1 SCR 771
61. *R v Heiser*, 2016 SKPC 153