SUPREME COURT OF YUKON

Citation: *R v Atkinson*, 2024 YKSC 21

Date: 20240716
S.C. No. 21-01512
Registry: Whitehorse

BETWEEN:

HIS MAJESTY THE KING

AND

PHILLIP JOSEPH ATKINSON

Before Justice M. David Gates

Counsel for the Crown — Adam Halliday and Willam McDiarmid

Counsel for the Accused — Jennifer Cunningham

This written decision supplements oral reasons delivered on April 30, 2024.

REASONS FOR SENTENCING

Introduction and Overview

[1] The Accused, Phillip Atkinson, has entered a plea of guilty to the offence of manslaughter, contrary to s. 235 of the *Criminal Code*. I have accepted his plea of guilty. He is here to be sentenced today. This matter was originally set for a five-week jury trial in Whitehorse. In resolving this matter without the necessity of a trial, the Crown and Defence jointly submit that a fit and proper sentence in this instance is 9.5 years imprisonment, less time spent in custody to April 30, 2024.

[2] The Crown also seeks the following ancillary orders:

a) a DNA Order pursuant to s. 487.051(1) of the *Criminal Code*; and

b) a Firearms Prohibition Order – for life (s. 109(1)(a) of the *Criminal Code*).

[3] The Defence concedes that each of these requested orders should be granted.

[4] For the reasons that follow, I accept the joint submission.

Facts

[5] The facts of this case are set out in an Agreed Statement of Facts, Exhibit S-1. The Agreed Statement of Facts provides as follows:

a) The deceased, Mary Ann Ollie, was 59 years old at the time of her death. She was Kaska and lived in Ross River, Yukon.

b) Phillip Atkinson was 62 years old at the time of the offence. He is Kaska and lived in Ross River.

c) Phillip Atkinson lived at 25 Wolf Road, Ross River.

d) On July 31, 2019, Ms. Ollie was noted by community members and family to be walking around Ross River.

e) Ms. Ollie is observed on the store video entering the Dena Store at approximately 2:39 p.m. Edna Simmons noticed that Ms. Ollie was seeking cigarettes and she delivered a package of cigarettes to her at Mr. Atkinson's house, where she was on the steps, at around 2:55 p.m.

f) Ms. Ollie was at Mr. Atkinson's home earlier in the evening on July 31, 2019. She was observed to be lying on the floor by Louise Dick who spent time there socializing and smoking marihuana with Mr. Atkinson.

g) Ms. Dick provided a statement to the police where she said that she left Mr. Atkinson's house before it got "too dark".

h) At approximately 12:40 a.m. on August 1, 2019, Ideana Dick and Denise Linkletter entered Mr. Atkinson's home and found Ms. Ollie on the floor and determined that she was not breathing.

i) Ideana Dick went to Louie Tommy's house and called the medical centre to advise that an ambulance was needed and that she was told a family member "already passed" and to "send help now".

j) Mr. Atkinson attended Marie Atkinson's house and then Jenny Caesar's house to find a phone for medical assistance.

k) The Ross River Emergency Medical Services were dispatched to attend Mr. Atkinson's home. The nurse on call and two EMS personnel attended at 25 Wolf Street. CPR was performed by the medical personnel and Ms. Ollie was pronounced dead at 1:09 a.m.

l) When the medical personnel attended on scene, it was noted that Ms. Ollie was lying on her back. She had jeans on but did not have a top on. It was noted that a hoodie sweatshirt was underneath her. Her shoes were by the door.

m) When attempting to gather a history of the events that night, the medical personnel noted that the civilians first on the scene were very intoxicated.

n) The RCMP were dispatched to attend the home at 1:05 a.m. The officers noted that there were no obvious signs of struggle. At the time, Ms. Ollie's death was not considered suspicious. The home was not preserved, nor searched for evidence as it was not considered to be a crime scene at the time.

o) The local Coroner attended and arrived at 2:00 a.m. She conducted her examination and took photographs of Ms. Ollie and the scene.

p) An autopsy was performed on August 14 and 15, 2019, on Ms. Ollie. It was determined that Ms. Ollie had multiple injuries including:

- contusions to her head that could have been the result of falls or could have been strikes inflicted on her. The contusions could have resulted in a loss of consciousness; and
- anorectal wounds that demonstrated significant trauma that would have been caused by the force of an unknown object. Wounds included multiple lacerations around the anal margin, with further internal lacerations in the rectal lining, with two full thickness defects extending though the rectal wall; multifocal haemorrhage to the structures inside the abdomen and pelvis; and focal bleeding to the right side of the diaphragm, about 40 cm above the level of the anal margin.

q) A fragment of blood-stained tissue paper was located within the low abdominal pelvic cavity, which appeared to have been inserted through one of the rectal defects.

r) The pathologist could not determine what injury caused Ms. Ollie's death, but his opinion was that the blunt force injury to the head, anorectal injuries, and acute toxic effects of alcohol are the three factors that likely contributed to her death.

s) After receiving the pathologist's findings, a homicide investigation was initiated by the RCMP.

t) Mr. Atkinson does not have a memory of July 31-August 1, 2019, but he does not dispute causing the traumatic anorectal injury that was a significant contributing cause of Ms. Ollie's death.

Joint Submissions

[6] There is no dispute that joint submissions and plea bargains are an essential component of the criminal justice system. It is well-settled that joint submissions benefit the accused, witnesses, victims, and the justice system as a whole: *R v Anthony-Cook*, 2016 SCC 43, at para. 35. At para. 25, Moldaver J. described the importance of plea bargains:

> It is an accepted and entirely desirable practice for Crown and defence counsel to agree to a joint submission on sentence in exchange for a plea of guilty. Agreements of this nature are commonplace and vitally important to the well-being of our criminal justice system, as well as our justice system at large. …

[7] The Court in *Anthony-Cook* placed significant reliance on the *Martin Report* (the *Report of the Attorney General's Advisory Committee on Charge Screening, Disclosure, and Resolution Discussions)*, chaired by the Hon. G. Arthur Martin QC. One of the key findings of the *Martin Report* was that guilty pleas in exchange for joint submissions on sentence are a "proper and necessary part of the administration of criminal justice" (at p. 290).

[8] In a sentencing proceeding involving a joint submission, this Court is bound by the Supreme Court's decision in *Anthony-Cook*. Sentencing judges should not depart from a joint submission unless its imposition would bring the administration of justice

into disrepute or would otherwise be contrary to the public interest. The Court explained, at paras. 32-34, that the joint submission must be "so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons … to believe that the proper functioning of the justice system had broken down."

[9] In this instance, the Crown contends that the public interest is engaged as the Crown has secured accountability for the homicide of Mary Ann Ollie, who died almost five years ago in 2019. Second, the Crown says that Mr. Atkinson's guilty plea relieved the Crown of its significant burden of proof in circumstances in which the Crown's case was jeopardized by the unreliability of some of its key witnesses. Further, the Crown suggests that civilian witnesses have been spared the need to travel outside of their community to give evidence in a trial taking place in an unfamiliar environment. Next, the Crown maintains that a jury has been spared the need to attend a trial that would potentially have lasted at least five weeks and would have involved graphic evidence that could have been disturbing to unsuspecting jurors. Finally, the Crown says that the people of Ross River have been spared the pain of reliving a very tragic community event through prolonged media reporting of the trial. To this list, I would add the savings in terms of both cost and time to the administration of justice, generally, in Yukon.

[10] From the Accused's perspective, this joint submission provides him with certainty in terms of the outcome of this very lengthy proceeding and allows him to more quickly address the underlying problems that have brought him to this place.

[11] *Anthony-Cook* properly reminds sentencing judges that trial counsel are knowledgeable about the circumstances of the case and, as such, well placed to reach an agreement that reflects the interests of the accused as well as that of the Crown.

[12] I accept the position advanced by both the Crown and Defence that there are important underlying policy objectives associated with the wide-spread use and acceptance of plea bargains and joint submissions. Joint submissions are, in my view, entitled to a high degree of deference and should only be rejected in those rare circumstances where it can be demonstrated that the imposition of the sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

Role of a Sentencing Judge Presented with a Joint Submission

[13] What is the role of a sentencing judge when presented with a joint submission during a sentencing hearing? While a judge must exercise restraint and only depart from a joint submission in very limited circumstances, the Supreme Court of Canada recognized (at para. 3) that "joint submissions on sentence are not sacrosanct. Trial judges may depart from them."

[14] In this instance, counsel maintained that their joint submission took into account the mitigation effect of adverse remand conditions arising during the Covid-19 pandemic, as well as *Gladue* factors applicable to Mr. Atkinson. Counsel acknowledged the admissibility of the community and victim impact statements, but were uncertain on the role of the sentencing judge in the treatment of such impact statements. Counsel were also uncertain as to the application of the relevant principles of sentencing to the facts of the case and the personal circumstances of the individual before the court in

consideration of the joint submission. This sentencing hearing was adjourned on December 4, 2023, in part to afford counsel the opportunity to advance further submissions on these issues.

[15] *Anthony-Cook* requires judges to approach the joint submission on an "as is" basis; directs that the public interest test is to be applied if the court is considering either "jumping" or "undercutting" a joint submission; and encourages judges to seek out the circumstances leading to a joint submission when faced with a contentious agreed-upon sentence.

[16] The Supreme Court also directs counsel to "provide the court with a full account of the circumstances of the offender, the offence, and the joint submission…" and that "sentencing cannot be done in the dark" (at para. 54). Further, the Court held, again at para. 54, that:

> The Crown and the defence must 'provide the trial judge not only with the proposed sentence, but with a full description of the facts relevant to the offender and the offence', in order to give the judge 'a proper basis upon which to determine whether [the joint submission] should be accepted (*DeSousa*, at para. 15; see also *Sinclair*, at para. 14.)

[17] In *R v Naslund*, 2022 ABCA 6, a case more fully described below, Greckol J.A., for the majority, confirmed that "it was incumbent upon the sentencing judge to probe the sentence sufficiently to decide for himself whether the joint submission met the standard set by *Anthony-Cook*" (at para. 88). Greckol J.A. also underscored the need for case law to inform the sentencing judge's assessment of the proposed joint submission. Citing the Supreme Court of Canada's decision in *R v Parranto*, 2021 SCC 46 at para. 11, in turn citing *R v Friesen*, 2020 SCC 9 at para. 33, she referred to the fact that "courts cannot arrive at a proportionate sentence based solely on first

principles, but rather must ‘calibrate the demands of proportionality by reference to sentences imposed in other cases’” (at para. 91).

[18] As previously indicated, the Court in *Anthony-Cook* placed significant reliance on the *Martin Report*. At 329-30 of the *Martin Report*, it is stated:

> The sentencing judge will not, in the Committee’s view, have committed any error in principle in accepting a joint submission, as recommended above, provided he or she arrives at the *independent conclusion, based upon an adequate record*, that the sentence proposed does not bring the administration of justice into disrepute and is otherwise not contrary to the public interest. Indeed, this recommendation embodies the essence of the sentencing judge’s obligations in passing sentence ... (emphasis added).

[19] A determination of the ultimate question when presented with a joint submission requires the judge to apply the so-called public interest test first articulated in the *Martin Report* and then adopted by the Supreme Court in *Anthony-Cook*. In my view, this necessarily entails some form of comparison between the sentence advanced and something else. That “something else” must at least include the determination of an appropriate sentence or sentence range otherwise justified by the circumstances of the case. The determination of whether a joint submission would bring the administration of justice into disrepute cannot be decided in a vacuum. Some point of reference or comparison must be established. This comparison is but one element of the process. Another critical element must, of course, be proper respect for the agreement reached between counsel. As *Anthony-Cook* makes clear, the test is not whether the trial judge agrees with the proposed sentence, or even whether she or he considers it to be a fit sentence. Rather a sentencing judge’s inquiry must focus on the public interest test, as set out above.

[20] A fulsome understanding of the precise role of a trial judge when presented with a joint submission informs the determination of what materials must be placed before the trial judge in such circumstances. What I take from *Anthony-Cook* and the *Martin Report* is that a trial judge requires an adequate record upon which to make the ultimate determination mandated by a proper consideration of a joint submission. This requirement for an adequate record is just as critical to the judicial consideration of a joint submission as it is in the case of a conventional sentencing hearing.

[21] Before turning to consider the role of the sentencing judge more fully when presented with a joint submission, it is important to speak about the role of counsel in such circumstances. The *Martin Report* noted that "the record created in sentencing proceedings should not be sparse, but, rather, must always support the submissions made" at 329. As previously stated, the *Martin Report* also referred to the requirement that a sentencing judge "arrive at the *independent conclusion*, based on *an adequate record*, that the sentence proposed does not bring the administration of justice into disrepute or is otherwise contrary to the public interest" (emphasis added). In *Anthony-Cook*, the Court explained that counsel should provide a "full account" of the joint submission and, further, that they should do so without waiting for a specific request from the trial judge (at para. 54). In this regard, the Court also explained the public interest underpinning the requirement for counsel to justify their joint submission. Citing Ruby on *Sentencing*, 8th ed, 2012) at 73, the Court found that "[u]nless counsel put the considerations underlying the joint submission on the record, 'though justice may be done, it may not have the appearance of being done; the public may suspect, rightly or wrongly, that an impropriety has occurred'" (*Anthony-Cook* at para. 57).

[22] In my view, there is lingering confusion as to the role of counsel when presenting the court with a joint submission. All too often, counsel simply advise the court that they have resolved the matter without the necessity of a trial, and that resolution will take the form of a guilty plea to some or all of the outstanding changes and a joint submission as to sentence. Counsel then conclude their abbreviated submissions in the seeming expectation that the presiding judge will simply endorse their plea bargain and agreed upon sentence without further inquiry or scrutiny. My review of the *Martin Report*, as well as the Supreme Court's decision in *Anthony-Cook* and the various authorities that have interpreted and applied that decision, underscore the important proactive role of counsel in placing comprehensive background materials before the court in such situations. These cases also underscore the burden resting on the sentencing judge to arrive at an independent conclusion as regards the agreed-upon sentence.

[23] Counsel have provided the Court with a number of decisions that consider the role of the sentencing judge when presented with a joint submission, including *R v CRH,* 2021 BCCA 183; *R v Manca*, 2019 BCCA 280; *R v Druken*, 2006 NLCA 67; *R v McInnis*, 2019 PECA 3; *R v Cheema*, 2019 BCCA 268; and *R v Naslund*, 2022 ABCA 6. The decisions in *CRH*, and *Naslund* are of particular assistance in that they consider and apply most of the other decisions referred to above.

[24] In *CRH*, the accused plead guilty to five counts of historic sexual assault involving children, one count involving multiple assaults on the same child. The sentencing judge was presented with a joint submission of two years less a day, followed by three years probation in respect of the four adult counts, and probation for 12 months in relation to the youth count. The sentencing judge rejected the joint

submission on the basis that it was too lenient and imposed a sentence of 60 days open custody on the youth matter, and one year on each of the other four counts, all to be served consecutively. The Court of Appeal set aside the sentence and imposed the sentence set forth in the joint submission.

[25] Before the Court of Appeal, counsel for both the Crown and the Defence argued that the sentencing judge had "reverse engineered" the joint submission by focusing on the sentence that would have been imposed after trial and comparing that sentence to the joint submission. The Court of Appeal rejected this argument, finding that the sentencing judge only turned to consider the fitness of the sentence in accordance with conventional sentencing principles after having first rejected the joint submission on the basis of the public interest test.

[26] After referring to the public interest test articulated in *Anthony-Cook*, Bauman C.J.B.C. went on to pose the following questions (at para. 58):

> Again, I ask how the test can be applied without some consideration of any otherwise fit sentence. It cannot be determinative of the judge's assessment of the joint submission, but it must be a consideration in determining whether the administration of justice will be brought into disrepute notwithstanding the many advantages to the joint submission process that stand in counter-weight.

[27] The Court went on to find (at para. 63) that "a joint submission that gives rise to a dramatically unfit sentence can by itself trump all of the perceived advantages of the joint submission where it would bring the administration of justice into disrepute …". In such circumstances, the Court, citing *Anthony-Cook*, held that such a joint submission would be "markedly out of the line with the expectations of reasonable persons aware of

the circumstances of the case" that reasonable persons would "view it as a breakdown in the proper functioning of the criminal justice system".

[28] After citing several authorities, the Court in *CRH* found that "the comparison between a fit sentence and that contemplated by the joint submission in question figured in the court's analysis in each of these cases" (at para. 72). In terms of the sequencing internal to the consideration of a joint submission, the Court of Appeal found that "a judge is entitled to consider what an ordinary expectation of a sentence might be *before or while factoring in* the particular circumstances of the case and the public interest considerations that support imposing the joint submission" (at para. 83) (emphasis added).

[29] Ultimately, the British Columbia Court of Appeal allowed the appeal and imposed the sentence contained in the joint submission. The Court found that the reasons of the sentencing judge failed to reveal "a demonstrated consideration of the benefits of the joint submission process" (at para. 84) [emphasis in original].

[30] In *Naslund*, a majority of the Alberta Court of Appeal rejected a joint submission of 18 years imposed at first instance in a case where the accused entered a plea of guilty to manslaughter. The accused was initially charged with first degree murder and indecently offering an indignity to human remains in relation to the death of her husband. She entered a plea of guilty to manslaughter in exchange for the Crown agreeing to a sentence of 18 years and the withdrawal of the other charge. Relying on *Anthony-Cook*, Ms. Naslund appealed her 18-year sentence on that basis that it was unduly harsh because it failed to account for the fact that she was a battered woman who had been subject to physical abuse during a 27-year marriage. She contended that

such a harsh sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

[31] After referring to the decisions in *CRH*, as well as other decisions including *R v Belakziz,* 2018 ABCA 370, Greckol J.A. for the majority in *Naslund* held that "whether a joint submission is fit on the basis of conventional sentencing principles is a *relevant, though not determinative*, consideration when deciding whether accepting such a sentence would bring the administration of justice into disrepute" (at para. 67). She went on to elaborate that an application of the public interest test "requires that a sentencing judge consider both the specific benefits of the joint submission as well as fitness of the sentence on the basis of conventional sentencing principles" (at para. 90). Further, Greckol JA explained (at para. 73):

> … Indeed, were the reasonableness of the sentence not part of the equation, it would be impossible to determine whether the sentence as "unhinged from the *circumstances of the offence and the offender"*: *Anthony-Cook*, para 34, emphasis added. After all, a sentence cannot be "unhinged" in the abstract; it is unhinged *from something*, namely the gravity of the offence and the degree of responsibility of the offender. Proportionality is thus a necessary (though not sufficient) consideration when determining whether a joint submission meets the "public interest" test. (emphasis in original).

[32] Subsequently, at para. 77, the majority in *Naslund* held that "determining an appropriate range based on conventional sentencing principles remains important because a joint submission found to be *sufficiently outside the range* will, at least in certain circumstances, be contrary to the public interest – a determination that cannot be made without some recourse to proportionality and parity." Finally, at para. 94, Greckol J.A. held that the determination whether the joint submission sentence was proportionate in the circumstances was a "*necessary* step" (emphasis in original) in the

determination of “whether the sentence was sufficiently ‘unhinged from the circumstances of the offence and the offender’: *Anthony-Cook*, para. 34.”

[33] The Defence in this case maintains that a proper application of *Anthony-Cook* excludes the *requirement* for a sentencing judge to undertake a conventional sentencing analysis as part of the consideration of a joint submission. As such, Defence Counsel suggests that *Anthony-Cook* creates a new process independent of the conventional sentencing process and that this new process *can* form part of the judicial consideration of a joint submission, particularly in situations where the agreed upon sentence clearly falls outside the range of sentence normally imposed for that kind of case. However, in situations where the agreed upon sentence clearly falls within the range, the Defence maintains that a reduced level of oversight is required.

[34] In my view, this argument is inconsistent with the decisions in *CRH*, *Naslund*, and the other appellate decisions previously discussed. A finding that a joint submission falls within (or, indeed, outside) the range of sentences typically imposed in similar cases will be an important factor in the consideration of a joint submission. In my view, determining the appropriate range requires an application of conventional sentencing principles, notably a consideration of proportionality and parity in considering whether a joint submission is contrary to the public interest (*Naslund* at para. 73). In addition, as previously indicated, consideration of the benefits of a joint submission must figure prominently in the analysis.

[35] I cannot accede to the contention that *Anthony-Cook* mandates a water-tight approach to sentencing that exists independently from what is commonly understood as the conventional approach to sentencing.

[36] The ultimate issue confronting a sentencing judge presented with a joint submission is to consider whether the sentence would bring the administration of justice into disrepute or otherwise be contrary to the public interest. This is the high threshold that must be reached before a joint submission may be rejected. As part of the determination of this issue, the sentencing judge is required to undertake a conventional fitness analysis to provide a basis to consider whether the agreed upon sentence is contrary to the public interest. The sentencing judge must, however, then go on to consider the basis for the joint submission, including the important benefits to the administration of justice. It is only after conducting both of these lines of inquiry that a sentencing judge is equipped to determine whether the joint submission is "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case" such that acceptance of the joint submission would lead them "to believe that the proper functioning of the justice system had broken down" (*Anthony-Cook* at paras. 33-34).

Principles of Sentencing

[37] The principles of sentencing are set out in some detail in s. 718 of the *Criminal Code*. The section reads as follows:

> The fundamental purpose of sentencing is 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 that have one or more of the following objectives:
>
> a) to denounce unlawful conduct;
>
> b) to deter the offender and other persons from committing offences;
>
> c) to separate offenders from society, where necessary;

> d) to assist rehabilitating offenders;
>
> e) to provide reparations for harm done to victims or to the community; and
>
> f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and the community.

[38] I note that s. 718.2 is applicable in this instance:

> a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender and, without limiting the generality of the foregoing;
>
> …
>
> (ii) evidence that the offender, in committing the offence, abused the offender's intimate partner or a member of the victim or offender's family…
>
> …
>
> shall be deemed to be an aggravating circumstance.
>
> a) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.
>
> …
>
> d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
>
> e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[39] These principles guide and direct courts in what is for most judges one of the most difficult judicial tasks: crafting a fit and proper sentence for an offence and an offender.

Victim and Community Impact Statements

[40] Victim and community impact statements allow the victims of crime to take an active and meaningful role in the sentencing process. Through their participation in the sentencing process, we gain a better understanding of how crime affects real people. Crime also affects communities or groups of people. The impact of crime on small, remote communities can be particularly significant given the close personal relationships, including family relationships, that exist within such communities. The community dynamic that exists in small communities like Ross River can mean that crime touches the lives of a large portion, if not everyone, who live in that community. It can create divisions within the community and between families. In the victim and community impact statements that were presented in this matter, several people spoke of this case tearing the community and tearing families apart.

[41] Several victim impact statements were presented to the Court on December 5, 2023, at the beginning of this sentencing hearing. We heard from Mary Ann Ollie's son, Curtis Ladue (Exhibit S-6), as well as from her sisters, Joan Asklack (Exhibit S-3) and Joyann Asklack (Exhibit S-2). Two of her friends and fellow community members, Vanessa Redies (Exhibit S-4), and Lorraine Sterriah (Exhibit S-5), also presented their impact statements. In addition, I have before me, the victim impact statement prepared by Ms. Ollie's daughter, Rebecca O'Brien (Exhibit S-7). In accordance with her wishes, Ms. O'Brien's victim impact stated was filed with the court but not read into the record.

[42] I want to express my appreciation to Government of Yukon, Victim Services for the assistance and support they have provided to the various individuals who prepared and delivered victim impact statements last December.

[43] Of the six victim impact statements received in this case, all but one was prepared by a woman. These victim impact statements express a range of emotions and reaction to the loss of Mary Ann Ollie from the lives of family members, friends, and other members of her community. What all these victim impact statements have in common is the sense of shock, anger, and grief that they have experienced. They also contain expressions about how this offence is part of a broader pattern of violence directed towards women in their community.

[44] We also heard from the Ross River Dena Council, a Yukon First Nation (Exhibit S-8), and the Liard Aboriginal Women's Society, a non-profit, charitable Indigenous organization providing programs and services to the Kaska Nation in the Yukon and northern British Columbia (Exhibit S-9).

[45] This was the first time in more than 40 years working in the justice system, first as a lawyer, and more recently as a judge, that I have had the experience of seeing or receiving a community impact statement. I agree with the Council of Yukon First Nations that a community impact statement is an important tool for Yukon First Nations to participate in the sentencing process for crimes that have occurred within their community. I understand that there have been very few occasions when these community impact statements have been presented to the court. This is very unfortunate. We all need to better understand the many ways that crime impacts communities. I want to thank the Ross River Dena Council and the Liard Aboriginal Women's Society for helping us better understand how communities experience crime. I also want to encourage all Yukon First Nations to actively use this right to file a

community impact statement when a crime has affected their community. We need this information to help us improve the justice system for the benefit of us all.

[46] Ross River is one of the most isolated communities in Yukon, located in the central part of the Territory, at the confluence of the Ross River and the Pelly River. It was a traditional summer gathering place for the Dene, Northern Tutchone, Gwich'in, and Kaska people. Approximately 338 people live in Ross River, of whom more then 85% identify as First Nation.

[47] The Ross River Dena Council is one of five Kaska Nations. The other four are the Dease River First Nation in Good Hope Lake, British Columbia; the Daylu Dena Council in Lower Post, British Columbia; the Kwadacha First Nation in Fort Ware, British Columbia; and the Liard First Nation in Watson Lake, Yukon. The Kaska Nation was divided into separate Bands by the *Indian Act* and later separated by provincial and territorial borders. The Ross River Dena Council is still considered a band under the *Indian Act* as it did not ratify land claims and self-government agreements with Yukon and Canada based on the Umbrella Final Agreement.

[48] The high level of community interest in this case has been clearly demonstrated throughout this sentencing hearing. I extend my thanks to all those groups and individuals who have come forward to share with us the impact this crime has had on their individual lives and on their communities. We admire the courage and strength that you have all demonstrated through your very active participation in this hearing.

[49] It is very clear to me that, notwithstanding the passage of nearly five years since this event, the communities and these individuals continue to suffer from sadness, emotional strain, anxiety, and physical distress. They are having difficulty moving past

the trauma flowing from this event. Various community members spoke of feelings of isolation and concerns about continuing to reside in the community. Some fear for their safety if the Accused returns to the community. Others express their distress at having to walk past the house where this offence took place. Sadly, there are many references in the victim and community impact statements to people turning to alcohol as a way to try and escape their grief and pain.

[50] Some of the victim impact statements refer to the length of time that it has taken for this matter to finally be resolved in the justice system. There are many reasons why this process has taken so long. Every one of us in this country has a right to a fair trial. The right to a fair trial is a fundamental principle of our justice system; a principle that is set out in the *Canadian Charter of Rights and Freedoms*. It is a sad reality that sometimes ensuring that a trial is fair takes longer than any of us would want. All of us involved in the justice system really do understand that trial delay has a negative impact on witnesses and the victims of crime. It has a negative impact on accused persons as well.

[51] I want to assure you that we understand that delay can have a negative effect on communities. Waiting for a complete explanation for what happened to Mary Ann Ollie has delayed your healing – the process by which community members support one and other in dealing with the loss of a family member, friend, or fellow community member. A few of you who prepared victim impact statements made mention of the anxiety caused by delay in this case. I am, of course, always very sorry to hear about the impact that court delay has on everyone. All I can say is that I believe everyone has been working very hard to get this matter resolved. I share your disappointment that we

were not able to finish this matter more quickly. Resolving matters quickly is important, but resolving matters fairly, fully respecting the rights of those directly involved, is also important.

[52] Some of the victim and community impact statements raised concerns about the period of time between the death of Mary Ann Ollie and the RCMP laying charges against Mr. Atkinson. One of the victim impact statements contained the following statement:

> … but the injustice of the whole situation is what bothers me. The fact that it took a year for Phillip to be charged, the fact that the investigation wasn't deemed important enough to see at the scene that a [homicide] had occurred, that the police didn't pay proper attention at the time of MaryAnn's death, especially in this day and age and with all the attention to Missing and Murdered Indigenous Women, I thought an extra look would have been considered. It's like she didn't matter until the coroner said it was a suspicious death. Once again if you are a First Nation woman and a person who drinks, it seems like we don't matter. Every time I have to tell the story of how she died it's not fair to me – it brings up grief and pain and anger at the injustice, and I have to feel their shock and anger too; and it restarts the cycle of grief.

[53] The community impact statement prepared by the Ross River Dena Nation attaches a Juristat report released by Statistics Canada dated October 4, 2023, entitled "*Court Outcomes in Homicides of Indigenous Women and Girls, 2009-2021*". The report contains statistical information relating to court outcomes and police practices in homicide cases involving Indigenous women and girls. I allowed this report to be placed in evidence as part of the community impact statement. In my decision on this point delivered on December 6, 2023, I found:

> Describing the harm to this community flowing from this offence is necessarily understood in a broader context that

> encompasses a shared personal history within the community and as members of a nation-wide Indigenous family. Fear, shock, anger, and grief may well have been triggered by this specific crime, but it is not difficult to understand how these feelings and emotions are deeply rooted in past events and past experiences. To properly understand the immediate harm to this community coming about as a result of this specific crime, one must also understand how that harm may have had its origins elsewhere.

[54] I went on to find that the inclusion of this material was not advocacy for a particular sentence in this case. Rather, I found that it was submitted to "facilitate the court's understanding as to why there is mistrust of the mainstream justice system within this community and how that distrust contributes to the perceived harm flowing from this offence".

[55] These are important messages for the Court, as well as the members of the community. They are also important messages for those in leadership positions in Yukon. A copy of my decision in this case, together with a copy of the various victim and community impact statements will be sent to the Yukon Minister of Justice and to the Commanding Officer of the RCMP in Yukon for their consideration. My hope is that some positive action will come about because of this tragedy. Thank you again for your courage in coming forward to speak your truth. I would direct that the copies of the individual victim impact statements to be forwarded to the Minister and to the Commanding Officer should be redacted to remove the names of the authors and any other information that would tend to disclose their identity.

[56] The community impact statement filed by the Ross River Dena Council also speaks to the need for community healing. Reference is made to cultural and healing camps as a way to bring the Elders together to address the divisions between families

as a result of this offence. Mention is also made to bringing back the old ways and traditional teachings about how the community takes care of Elders and children. Finally, I note that this community impact statement also suggests that additional support for the community is needed, including the need for a Community Safety Officer, better training and resources for the RCMP, and more trauma treatment options for community members. Hopefully, it also means that the members of a close community are available to support one and other in grief and in healing.

[57] All of us involved in the criminal justice system have a responsibility to make our justice system work better and more efficiently. I hope that this case has been a good learning experience for all of us. We need to do better.

[58] There is, of course, nothing that the Court can do to give you what you most want – the return of your loved one. Sadly, this is not possible. While the sentencing process welcomes the participation of individuals who have been affected by a crime through the presentation of victim impact statements, the focus of a sentencing hearing is necessarily on the individual who has been found to be responsible for the crime.

[59] The victim and community impact statements that are part of this sentencing hearing provide you, Mr. Atkinson, with a clear expression of the impact of your crime on the family and friends of Mary Ann Ollie and on the communities that she was part of. I hope that this will serve as a powerful and enduring message to you regarding the consequences of your actions. You will have to live with this knowledge for the rest of your life.

The Personal Circumstances of the Offender

[60] Information relating to the personal circumstances of Mr. Atkinson comes from several sources, including the *Gladue* Report (Exhibit S-14), the report of Dr. Scott Bezeau (Exhibit S-11), Mr. Atkinson's family members, and the submissions of his counsel.

[61] The Accused is 67 years of age. He was born on January 6, 1956, on his father's trapline near Ross River. Mr. Atkinson was the fifth eldest of thirteen children born to Sidney and Kathleen Atkinson. He remains close to two of his sisters, Jenny Ceasar and Marie Atkinson. He also has three brothers that live in Ross River. Mr. Atkinson lost his Mother when he was approximately 12 years of age and went to live with his grandparents. His sister attempted to care for the younger children. He recalls that the family fell apart after the death of his Mother. He recalls some social services involvement with the family, but he was never apprehended.

[62] He was taken from the family trapline and placed in a Catholic convent in Whitehorse at some point when he was between 5 and 7 years of age. The school population consisted of white students and students of mixed ancestry. He recalled that the older boys at the convent abused their younger peers. He also recalls that the nuns and brothers at the convent abused the students, both physically and sexually.
Mr. Atkinson's native language is Kaska and, as such, he struggled with English when sent away to school. Combined with his mixed heritage, he was the target of harsh treatment. This mistreatment made him feel ashamed of himself and his people.

[63] After a number of years at the convent, Mr. Atkinson was sent to residential school, first to Yukon Hall and then Lower Post. He spent approximately two years at

each school. The residential school at Lower Post was in operation between 1950 and 1975. The legacy of physical and sexual abuse suffered by the students attending this residential school has been extensively documented. Mr. Atkinson recalls that the teachers would not help him to learn and that he only learned to read when he was in his 20s. He reports that his writing is still very slow and that he needs a dictionary to confirm the spelling of many words. He returned to Ross River to attend school in that community when he was approximately 14 years of age. He did not complete high school and went to work around the age of 16 years. At some point after he left Lower Post, Mr. Atkinson recalls being sent to Wolfe Creek, a youth detention facility. Unfortunately, no records are available regarding the time he spent at this facility.

[64] Mr. Atkinson maintains that his longstanding alcohol abuse started when he was an early adolescent, around the time of the death of his Mother. He recalls that there was a great deal of drinking in his family. Over the years, Mr. Atkinson has indulged in binge drinking, often to combat the grief and stress in his life. He reported that he consumed alcohol every day for the five years prior to his arrest in 2020. His abuse of alcohol led to depression and multiple suicide attempts.

[65] Counsel have submitted an Agreed Statement of Facts relating to Mr. Atkinson's experience with counselling and alcohol programs over the years (Exhibit S-15). He attended the Crossroads Treatment Centre for Alcoholism in Whitehorse in July-August 1985. He was also admitted to the Centre in January 1987, but did not complete the program. He did, however, successfully complete another program at the Centre in March-April 1987. Mr. Atkinson also attended the Ketza Camp Treatment Centre with Cecil Jackson for 2-3 months in 2000, and off and on for a year in 2018.

[66] While on remand at the Whitehorse Correctional Centre, Mr. Atkinson has participated in various forms of one-on-one counselling. Between October 2022 and March 2023, he attended nine sessions with Bluebell Psychological Services. He also attended 26 sessions with Connect Counselling & Psychotherapy between March 2023 and December 2023. During the sentencing hearing, Mr. Atkinson's counsel described his plan to attend a residential alcohol treatment program outside of the Yukon upon the completion of his sentence in this matter.

[67] This Agreed Statement of Facts also reveals that Mr. Atkinson received support and counselling in relation to his attendance at residential schools from the Margaret Thompson Centre in Ross River between 2018 and 2020. I note that he attended Yukon University for 33 days while on remand. He also attended cultural programming for nine days. Finally, he spent three days on a program entitled Transitions, Managing my Life and Arts and Justice.

[68] Mr. Atkinson has lived in Ross River for most of his life, though between 1980 and 2009, he was employed in various remote locations in British Columbia, Saskatchewan, and Yukon doing mining work, cutting transit lines, staking claims and surveying. Typically, he would work during the summer months and then return to Ross River for the winter. He generally maintained sobriety while working, but returned to drinking when he was back in Ross River. He reports that he has not worked for many years.

[69] Prior to his arrest, Mr. Atkinson resided in a residence supplied by the Band Council. His home became, as he described it, "a drop-in centre with drugs". He was uncomfortable asking people to leave and so his home was consistently occupied by

visitors even when he was not present. He received some support from two of his sisters and others in the community.

[70] Mr. Atkinson suffers from high blood pressure and congestive heart failure. He was examined by Dr. Scott Bezeau in September 2023, and found to have language and memory impairment. Dr. Bezeau concluded that this impairment was “likely to have a substantial impact even on basic conversation ability”.

[71] Mr. Atkinson has been involved in three serious relationships and has two daughters, Sholene Esquire and Crystal Stevens, as well as five grandchildren. The second of these relationships coincided with a five-year period of sobriety during which he discovered his skills as an artist and carver. His daughters reside outside of Yukon with their respective mothers, and he has had little contact with them over the years. He has never met his grandchildren.

Aggravating Circumstances

[72] There are several aggravating circumstances in this case. First, I would describe this offence as one involving a brutal, indeed savage, attack on Mary Ann Ollie. As set out in the Agreed Statement of Fact (Exhibit S-1), her injuries included significant trauma to her anus and rectum caused by an unknown object, and multifocal haemorrhage to the inside structures of the abdomen and pelvis. Focal bleeding was also detected on the right side of the diaphragm, about 40 centimetres above the level of the anal margin. It is clear that some object was very forcefully inserted into her body through her anus and rectum.

[73] While Mr. Atkinson has no memory of the actual events leading to his attack on Ms. Ollie, there is no suggestion in the Agreed Statement of Facts that he sustained any injuries during this event.

[74] The taking of the life of another human being is one of the most serious offences in the *Criminal Code*. Manslaughter is an offence that carries a maximum punishment of life imprisonment. No minimum punishment is, however, prescribed.

[75] By virtue of s. 718.04 of the *Criminal Code*, the principles of denunciation and deterrence must be given primary consideration in imposing a sentence in this instance. Because Ms. Ollie was Indigenous and a female, she was a vulnerable person under the law. This is an aggravating circumstance in this instance.

[76] Mr. Atkinson has a very lengthy criminal record dating back 50 years to 1973. There is no dispute that alcohol has been a significant contributing factor to most, if not all, of his prior convictions. While there are no entries on his record since 2008, he has a serious record of violence dating back to 1974. My review of his criminal record reveals that he has four prior convictions for assault causing bodily harm; one prior conviction for assault with a weapon; one prior conviction for uttering threats; and fourteen prior convictions for assault. At the request of the Court, Crown Counsel was asked to provide information relating to the identity of the victims in these 20 convictions for offences of violence. With the assistance of the RCMP, the Crown determined that 12 of the 20 convictions involved an offence of violence visited upon a woman or girl. At least six of the convictions for assault involved a domestic partner, the same individual in five instances.

[77] The Crown acknowledges that this is a very concerning number of convictions for violent offences against women. I agree. In my view, this long record of violence, particularly violence directed at women, lends support to the safety concerns and expressions of fear found in some of the Victim and Community Impact statements before the Court.

[78] Again, at the request of the Court, the Crown has obtained two pre-sentence reports that were filed with the Court in 1992 and 1995, respectively. Both relate to convictions for assault on Mr. Atkinson's then domestic partner, the same individual in both instances. While he is not to be re-sentenced for either of these offences, the content of these pre-sentence reports is helpful in understanding Mr. Atkinson long history of alcohol related offences of violence.

[79] The second pre-sentence report was prepared by Clara Northcott, Probation Officer, and is dated June 8, 1995. At the time, Mr. Atkinson was awaiting sentencing on one count of assault and one count of breach of probation. As previously indicated, the assault related to his then common law spouse. In the report, Ms. Northcott reported (at p. 2) that "Mr. Atkinson takes no responsibility for the abuse in the relationship, usually blaming it on some perceived wrong of Ms. Tom's towards him. He shows no remorse for the present offence before the Court and indicated to the writer that it was self-defence." Later, at p. 4, the probation officer states:

> Mr Atkinson spent his developing years in a very violent, alcoholic environment. After losing his mother in an alcohol related death he indicates that he started drinking heavily and subsequently left his parental home. Similar to many children from violent homes, he has been unable to escape the vicious cycle of alcohol abuse and assaultive behaviour. Despite completing an Alcohol Treatment Program at Crossroads several years ago, he has been unable to

> remain sober for any length of time. In the past, he has shown no attempt to deal with his violent behaviour and this lack of motivation extends to the present charges. Mr. Atkinson stated throughout the interview that he was not the person with the problem, and as a result did not need counselling.
>
> Given Mr. Atkinson's minimization and denial of the problem it is unlikely that counselling would benefit him at this time. To achieve any real change in his behavior we would need to have some long-term commitment on his part to seriously address the problem, that commitment appears to be sadly lacking.

[80] I have quoted extensively from this pre-sentence report prepared in 1995 because it sums up, in my view, the essence of Mr. Atkinson's life-long difficulties with alcohol and the resulting violent behavior that followed. Ms. Northcott's insights are also very helpful in my assessment of the *Gladue* factors that apply in this instance, as set out later in these reasons.

Mitigating Circumstances

[81] I find that there are several mitigating circumstances in this instance. First, I accept the Defence contention that Mr. Atkinson's plea of guilty is an expression of remorse. While the timing of his change of plea has the effect of reducing the extent of the mitigation in this instance, it is nonetheless a mitigating circumstance. The guilty plea not only relieved the various witnesses from the necessity of giving evidence in relation to an emotion-charged event, but it also provided the certainty of a conviction and accountability for the death of Mary Ann Ollie. Further, the guilty plea spared a jury from a lengthy and difficult trial. Cost savings to the court system were also realized as a result of the plea.

[82] I accept that Mr. Atkinson's current health challenges, both mental and physical, are mitigating under the circumstances. The report prepared by Dr. Scott Bezeau (Exhibit S-11), and other material before the Court, describes Mr. Atkinson's high blood pressure and heart problems, as well as his memory deficits and impairment. Dr. Bezeau also refers to Mr. Atkinson Post Traumatic Stress Disorder ("PTSD").

[83] The Court has received an Agreed Statement of Facts filed April 15, 2024, outlining the circumstances of Mr. Atkinson's detention during his very lengthy period of pre-trial custody. Appended to the Agreed Statement of Facts are records provided by the Whitehorse Correctional Centre ("WCC"). Counsel agree that Mr. Atkinson has been in custody since September 20, 2020, a total of 1,323 days. Much of this time took place during the Covid-19 pandemic when extraordinary procedures were put in place at WCC to ensure the health and safety of staff and inmates. These materials reveal that Mr. Atkinson faced partial lockdown at WCC for 568 days, including 57 days when he was locked down for 22 hours or more. I would simply add that Mr. Atkinson tested positive for Covid-19 on two occasions while incarcerated.

[84] The way the Court should treat the circumstances of Mr. Atkinson's detention for sentencing purposes was not fully argued in this instance because of the joint submission. Counsel advised the Court that the circumstances of Mr. Atkinson's pre-trial custody was factored into the joint submission. Nonetheless, I accept the general proposition that the very challenging circumstances facing Mr. Atkinson at WCC during the Covid-19 pandemic is a factor to be taken in mitigation.

[85] Finally, for the reasons that follow, I find that there are *Gladue* factors at play in this instance that also must be taken as impacting Mr. Atkinson's degree of moral blameworthiness in relation to the death of Mary Ann Ollie.

***Gladue* Factors**

[86] The Supreme Court of Canada recognized in *R v Gladue*, [1999] 1 SCR 688, and subsequently confirmed in *R v Ipeelee*, 2012 SCC 13, that Indigenous people face racism and systemic discrimination inside and outside the criminal justice system. *Ipeelee* identifies two ways in which specific *Gladue* factors properly inform the sentencing process, and then lays out the methodology to be employed by a sentencing judge. At para. 72 of *Ipeelee*, the Court directs judge to consider: "(1) the unique systemic and background factors … before the courts; and (2) 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."

[87] The Supreme Court in *Ipeelee* instructed judges (at para. 60) that they:

> …must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration of Aboriginal offenders. These matters, on their own, do not necessarily justify a different sentence for Aboriginal offenders. Rather, they provide the necessary *context* for understanding and evaluating the case-specific information presented by counsel. [emphasis in original]

[88] Counsel have also referred me to three decisions of the Court of Appeal of Alberta: *R v Dichrow*, 2022 ABCA 282; *R v Laboucane*, 2016 ABCA 176, and *R v Okimaw*, 2016 ABCA 246, as well as to the decision of the Court of Appeal for Ontario

in *R v Collins*, 2011 ONCA 182. All four decisions provide practical guidance in the identification and treatment of *Gladue* factors in the sentencing process.

[89] In *Laboucane*, the Court of Appeal of Alberta offers the following very helpful summary of the key principles emerging from the Supreme Court's decision in *Ipeelee* (at para 63):

> …
>
> 1. An offender is not required to establish a causal link between background factors and the commission of the current offence before being entitled to have those matters considered by the sentencing judge (citations omitted).
>
> 2. There is nothing in the *Criminal Code* or ***Gladue***, that places the burden of persuasion on an Aboriginal accused. As expressed in ***Gladue***, ***Wells*** and ***R v Kakekagamick***, [2006] 81 OR (3d) 664 (CA), the sentencing judge must 'give attention to the unique background and systemic factors which may have played a part in bringing the particular offender before the courts': ***Gladue*** at para 69. This is a much more modest requirement than the causal link suggested by some trial judges: ***R v Collins***, 2011 ONCA 182.
>
> 3. Systemic and background factors 'do not operate as an excuse or justification for the criminal conduct. Rather, they provide the necessary context to enable a judge to determine an appropriate sentence' (citations omitted).
>
> 4. Unless the unique circumstances of the particular offender bear on his or her culpability for the offence or indicate which sentencing objectives can and should be actualized, 'they will not influence the ultimate sentence': ***Ipeelee*** at para 83.
>
> 5. Numerous courts have wrongly concluded that *Gladue* principles do not apply to serious offences. This is due to their erroneous interpretation of the 'generalization' (so-called by the Supreme Court of Canada) in ***Gladue*** which says: '[g]enerally, the more

> violent and serious the offence the more likely it is as a practical reality that the terms of imprisonment for aboriginals and non-aboriginals will be close to each other or the same, even taking into account their different concepts of sentencing': ***Ipeelee*** at para 84 (other citations omitted).
>
> 6. ***Gladue*** makes clear that sentencing judges have a *duty* to apply s. 718.2(e). 'There is no discretion as to whether to consider the unique situation of the aboriginal offender; the only discretion concerns the determination of a just and appropriate sentence': ***Gladue*** at para 82. 'In each case, the sentencing just must look at the circumstances of the aboriginal offender': ***Wells*** at para 50.
>
> 7. This element of judicial duty during sentencing deliberations has been explicitly recognized in Alberta: ***R v Abraham***, 2000 ABCA 159.
>
> 8. Failure to undertake the statutory duty imposed by s. 781.2(e) of the *Criminal Code*, and failure to apply *Gladue* principles in any case involving an Aboriginal offender (unless expressly waived by the offender) constitutes an error justifying appellate intervention: ***Ipeelee*** at para 87.
>
> 9. But, nothing in s. 718.2(e) of the *Criminal Code* provides that an automatic discount from an otherwise proportionate sentence should be given merely because the offender is an Aboriginal person: **Ipeelee** at para 74 (other citations omitted). 'The fact that the sentencing judge was required to consider s. 718.2(e) does not mean that she was to ignore the effects of the offender's conduct on this community … or on the various individuals who have suffered and continue to suffer as a result of' the offences: *R v Johnny*, 2016 BCCA 61 at para 21.

[90] Mr. Atkinson's tragic life experiences, both personal and systemic, are, in my view, clearly linked to his moral culpability for this offence. While his early life on his father's trapline in rural Yukon appears to have been a generally happy and positive experience, alcohol abuse on the part of both his parents, together with domestic

violence, were features of his early life. While it is not clear precisely when this took place, social services was actively involved with this family, doubtless the result of parenting issues prompted by the abuse of alcohol. His Mother's untimely death from drowning was related to alcohol abuse. It seems clear that Mr. Atkinson's father used alcohol after the loss of his wife to deal with his grief. The family is reported to have "fallen apart" after the loss of Kathleen Atkinson. Indeed, Mr. Atkinson's long history of alcohol abuse has its origin in the loss of his Mother at a formative time of his life. There is ample evidence to support the observations of Clara Northcott in her 1995 pre-sentence report that Mr. Atkinson "was unable to escape the vicious cycle of alcohol abuse and assaultive behavior". She went on to observe that Mr. Atkinson was "unable to remain sober for any length of time".

[91] After being taken from his family at a very young age, Mr. Atkinson was exposed to bullying and violence because of his background and, most particularly, his challenges with the English language. This mistreatment led to feelings of shame, personal shame and shame on account of his Indigenous heritage. While few details are available, it is clear that Mr. Atkinson was physically and sexually abused while attending residential schools in both Yukon and British Columbia.

[92] In *Okimaw*, the Alberta Court of Appeal referred to the fact that Mr. Okimaw's "unique background and systemic factors are inextricably embedded in Okimaw's own life experience and clearly bear on his culpability for these offences" (at para. 75). I find that this language accurately describes Mr. Atkinson's circumstances. The combination of intergenerational trauma related to alcohol abuse and domestic violence, combined with a deep sense of shame rooted in his Indigenous background, and Mr. Atkinson's

own exposure to physical and sexual abuse, have "consumed and devastated" him: *Okimaw*, at para. 76. These significant challenges are compounded by PTSD, significant memory impairment, as well as other issues pertaining to his mental and physical health. This combination of personal and systemic factors led Mr. Atkinson to the vicious circle of alcohol abuse and crime throughout his adult life, culminating in the very serious matter now before this Court. While these circumstances do not "operate as an excuse or justification for the criminal conduct" evidenced in Mr. Atkinson's lengthy criminal record, I find that they "provide the necessary context to enable a judge to determine an appropriate sentence": *Ipeelee* at para. 83.

[93] The *Gladue* Report (Exhibit S-14) appends a document that describes the history of the Whitehorse Hostel, later known as Coudert Residence, one of the schools attended by Mr. Atkinson and some of his siblings. The hostel was completed in 1960 and closed in 1985. Reference is made to the fact that a childcare worker at Coudert Hall was fired and subsequently convicted of sexually abusing students.

[94] In early 1961, the principal of the hostel wrote a report to the Education Division of Indian Affairs regarding the failure of what he described as "the experiment with integration of Indian students into Whitehorse Schools". The content of this appendix, particularly the reproduced extracts from the principal's report, provide a further illustration of the then common dehumanizing approach to the forced education of Indigenous youth in the Yukon. This was the environment to which Mr. Atkinson was sent as a young boy, along with countless other Indigenous youth.

[95] I am satisfied that Mr. Atkinson's background, together with the systemic and other background factors and circumstances described above, has the effect of

reducing his moral culpability. Reduced moral culpability is one aspect of the proportionality analysis.

Determining a Fit Sentence

[96] It is a fundamental principle of sentencing that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[97] Manslaughter is obviously a very serious offence. It is one of the most serious offences in our law as it involves the death of another person through an unlawful act. The primary sentencing objectives are denunciation and specific and general deterrence given the generally very high blameworthiness associated with the offence.

[98] All of the circumstances relating to the offence and to the offender, including the impact of *Gladue* factors, must be considered in the sentencing process in assessing this offender's degree of responsibility or moral blameworthiness.

[99] Counsel have referred me to many cases involving sentencing for the offence of manslaughter. Most of these sentencing decisions are from the Yukon, though some are from British Columbia, Alberta, Northwest Territories, and Nunavut. These include: *R v Chief*, 2018 YKSC 36; *R v Joe*, 2018 YKTC 38; *R v MacPherson*, 2017 YKTC 19; *R v DEB,* 2012 YKSC 6; *R v JKE,* 2005 YKSC 61; *R v CMA,* 2005 YKSC 58; *R v Chief*, 2022 YKSC 52; *R v Thorn*, 2021 YKSC 23; *R v MS*, 2005 YKTC 74; *R v Anaittuq*, 2022 NUCJ 37; *R v Barton*, 2012 ABQB 603; *R v Dunlop*, 2015 ABQB 770; *R v Cashaback-Myra*, 2023 YKSC 74; *R v CA*, 2005 YKSC 58; *R v MS*, 2005 YKTC 74; *R v Murphy*, 2016 YKSC 48; *R v Thorn*, 2021 YKSC 30; *R v Johnny*, 2016 BCCA 225; *R v KEM*, 2004 BCCA 663; *R v Peters*, 2014 BCSC 1009; *R v Russell*, 2018 BCSC 1196; and *R v*

Sayine, 2014 NWTSC 85. Counsel have advised that list includes every available manslaughter sentencing case from Yukon.

[100] Sentencing authorities are very helpful in determining a proportionate sentence in this and every other case. I would, however, observe that no two cases are alike and the role of the court is not to "dissect" sentencing authorities to find a perfect fit. The sentencing process is not a mechanical one, but rather the delicate balancing of sentencing principles, the unique circumstances of both the case and the offender, and the application of relevant aggravating and mitigating circumstances.

[101] While I have carefully considered all these decisions, I do not propose to review the facts or outcomes of all of these cases in detail. These decisions are very helpful in that they all involve the sentencing for the offence of manslaughter. While the facts of each case differ, there are some common themes that can be identified as similar to the circumstances of this particular case.

[102] I would, however, make mention of the decision of the Nunavut Court of Justice in *Anaiituq*, given the strikingly similar factual circumstances of that case. In that instance, the accused, a 37-year-old Inuit man, killed his common law wife while highly intoxicated. The cause of death was blunt force trauma and the resulting blood loss from a nine-centimeter laceration to the wall of her rectum. The pathologist concluded that the cause of this fatal injury was a hand or object forcefully inserted into Ms. Ihakkaq's anus. There was also non-life-threatening bruising to the face, head, torso, and limbs. The accused had a prior record of violence relating to this same victim and, indeed, was on probation at the time. The incident was witnessed by the couples four young children.

[103] In imposing a jail term of 15 years, Martin J. found that the sentencing range for intimate partner homicide in Nunavut was 12-15 years.

[104] I am satisfied that this group of prior decisions establishes a range of sentences normally imposed for the offence of manslaughter. In Yukon, the range is from 4.5 years to 12 years, with most of the cases grouped around a sentence of approximately 5-6 years. Based on the select group of cases submitted from British Columbia, the range would appear to be 5.5 to 8 years. The two Alberta cases submitted involve sentences of 11 and 12.5 years, respectively. The one case from Nunavut resulted in a jail term of 15 years. Taking this group of cases as a whole, the sentences imposed range from 4.5 years to 15 years.

[105] As previously noted, the Supreme Court of Canada's decision in *Gladue* does not support an automatic reduction in sentence because the offender is Indigenous, or that certain so-called *Gladue* factors may apply. The sentencing judge still has a duty to find a sentence that is fit considering all the circumstances. The application of the *Gladue* analysis, together with a consideration of all of the other relevant circumstances achieves an appropriate sentence.

[106] In this instance, I must consider the aggravating and mitigating circumstances that exist in this instance, including the Accused's reduced moral culpability previously described. Weighing all of these factors, I am satisfied that a fit and proper sentence in this instance would be in the range of 10-12 years imprisonment.

[107] While I am of the view that a fit and proper sentence in this instance would have been 10-12 years, the joint submission of 9.5 years clearly falls within the range described above. Given that this is a case involving a joint submission, I am bound by

the Supreme Court of Canada's decision in *Anthony-Cook*. As such, I must consider whether the sentence proposed would bring the administration of justice into disrepute or otherwise be contrary to the public interest.

[108] As I explained earlier in my decision, there were considerable benefits to the justice system because of the resolution of this matter by way of guilty plea and joint submission as to sentence. The Accused was held accountable for his unlawful act. Witnesses and a jury were spared a long and difficult trial. A community in grief was spared the prospect of having to relive this traumatic event. The justice system was spared a lengthy and expensive trial. These are important considerations that support in my view the Court's acceptance of the proposed sentence.

Disposition

[109] Mr. Atkinson, would you please stand up. On the charge of manslaughter involving the unlawful death of Mary Ann Ollie, I accept the joint submission of counsel and sentence you to 9.5 years imprisonment. You have spent a total of 1,323 days in remand. I agree that this should be credited at the rate of 1.5 days for every day served. In the result, I give you credit for 1,984.5 days of pre-trial custody. While I have not done the precise calculation of the amount of time that remains to be served, it is slightly more than 4 years.

[110] I direct that a copy of these reasons, once filed, are to accompany the Warrant of Committal that will go with you to the location where you will serve this sentence. I also direct that a copy of these reasons, once filed, is to be sent to the Ross River Dena Council for distribution to the residents of Ross River. Further, I direct that a copy of these reasons, together with a copy of the victim and community impact statements filed

in this matter be sent to the Yukon Minister of Justice and to the Commanding Officer of the Royal Canadian Mounted Police, “M” Division, Whitehorse, for their consideration.

[111] Under the circumstances, I decline to order a victim fine surcharge in this instance.

[112] Finally, I would make the following ancillary orders:

a) a mandatory firearms prohibition order pursuant to s. 109 of the *Criminal Code*. This order will be in place for the rest of your life.

b) a DNA order requiring you to provide a sample of your DNA within the next 72 hours.

_____

GATES J.