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Date: 20030131  
Docket: 02-00414A  
00-00635B  
Registry: Whitehorse

*R. v. Glada*, 2003 YKTC 11

**IN THE TERRITORIAL COURT OF YUKON**  
(Before His Honour Chief Judge Lilles)

REGINA

v.

JOSEPH GLADA

Leigh Gower

Appearing for Crown

Bob Dick

Appearing for Defence

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**REASONS FOR SENTENCING**

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[1] LILLES C.J.T.C. (Oral): This is the matter of *Regina v. Joseph Glada*. Joseph Glada is a 38-year-old First Nations man whose common law partner for nine years was L.C. Together they had two children and also raised a third. The relationship came to an end in November of 2000.

[2] Mr. Glada plead guilty and was convicted on the following offences.

- 1) On October 3, 2002, an assault on L. C., contrary to s. 266 of the *Criminal Code*. This assault consisted of a punch on the side of Ms. C.'s head which resulted in some bruising.

- 2) On October 3, 2002, uttering a threat to cause L.C. bodily harm contrary to s. 264.1(1)(a) of the *Code*. This threat occurred just prior to the assault described above. He cocked his fist so as to hit her, stating: "Don't look at me like that or I'll beat you up good."
- 3) Between January 16, 2002 and October 3, 2002, there were several assaults on L.C. contrary to s. 266 of the *Code*. These involve several incidents of slapping, pushing, pulling hair and choking.
- 4) Between January 16, 2002 and October 13, 2002, a breach of probation by virtue of failing to keep the peace and be of good behavior, contrary to s. 733.1(1).
- 5) Between August 19, 2002 and September 13, 2002, breach of probation, namely failing to attend the Family Violence Prevention Unit as directed, contrary to s. 733.1(1) of the *Criminal Code*.

[3] As the details of these offences are set out in detail in my decision reported on January 29, 2003, that is *R. v. Glada*, [2003] Y.J. No. 8, it is unnecessary to review them again here.

[4] Mr. Glada's criminal record is extensive and includes over 40 previous convictions going back to 1981. The record includes 16 convictions for breach of probation or disobeying court orders, often called process offences. It also includes nine convictions for assault, the most recent in 2002, being a spousal assault on the same complainant. It also includes convictions for robbery and a sexual assault.

[5] In her victim impact statement, L.C. stated:

Joseph punched me once with his right fist to my left side of my head. I saw a doctor the next day at Whitehorse General Hospital through the advice from Kim Outridge,

Victim Services. I had a headache for some days, my jaw hurt when I chewed food or opened my mouth more than half-way. My temple had a lump on half of it plus you could feel where his knuckles landed. My top one half of my ear was bruised as well.

Her statement also speaks to her emotional injuries, her disappointment and unhappiness. She also identifies the impact of their separation on her children. Yet, she remains supportive of him as an individual. She wants him to get on a healing and rehabilitative path for his sake and wants him to have a role as the father of their children. She is clear, however, that their relationship is over.

[6] The aggravating and mitigating circumstances were well canvassed by counsel in their submissions. I will not purport to deal with every single factor, but perhaps I should highlight the main ones.

[7] The aggravating factors include the fact that this was a domestic situation and a breach of a position of trust. Certainly the last incident, the October 3rd incident, took place in the family home, and in the complainant's bedroom, which I consider to be aggravating. This is not the first time this happened. Mr. Glada has accepted responsibility for other assaults and there is a previous conviction going back two years for a similar charge on the same complainant. He failed to complete the Spousal Abuse Program earlier. That indicates to me that he continues to be at high risk.

[8] There are mitigating factors as well and these were canvassed by Mr. Dick. The most important in my view is that notwithstanding the trial of a particular issue, I am satisfied that with respect to the substantive offences with respect to which he was found guilty, he entered early guilty pleas. He made early apologies to L.C. and apparently these were accepted. Ms. C. believes that Mr. Glada has made progress

in his own healing path and she wants that to continue. In my view that is a good sign and a mitigating factor.

[9] Let me say something about the seriousness of these kinds of offences. I am referring to a decision reported as *R. v. Stone*, [2002] N.J. No. 109 (QL) from the Newfoundland Provincial Court. I understand that it may be unpublished, but the reference is 2002, Carswell, Newfoundland 106. In this case the judge states:

The seriousness of spousal violence should not be underestimated. Parliament, in s. 718.2(a)(ii) of the *Criminal Code of Canada*, R.S.C. 1985 has deemed such a circumstance to be an aggravating factor. In *R. v. Dodd* (1999), 139 C.C.C. (3d) 2, 180 Nfld. & P.E.I.R. 145, the Newfoundland Court of Appeal, in the context of a case involving spousal violence stated:

...In responding to such conduct the criminal law system is constrained to employ its power of sanction with an eye to protecting the safety and security of the victim and society in general. This requires both specific and general deterrence to play important roles in fashioning an appropriate sentence. It needs to be noted that that general deterrence, in the context of sentencing for assaults arising out of domestic violence of the nature perpetrated in this case, is not restricted to dissuasion of like minded persons from assaulting their spouses. While this is obviously a very important concern, it must also be borne in mind that third parties, including police officers, who are called on to intervene in such situations, [meaning domestic violence situations] or just happen to be in its path, at times fall victim to the wrath of the uncontrolled perpetrator.

The point here is that the police are always called to attend at domestic violence scenes and for the police this also represents a situation of extremely high danger.

That decision continues:

In *R. v. O'Keefe* (1997), 158 Nfld. & P.E.I.R. 138 (N.F.S.C.) Hyslop, P.C.J., sentenced an offender to a period of two

years imprisonment for an assault that he described as a “vicious, mean spirited and prolonged one.” In imposing sentence, Judge Hyslop adopted the comments of the Alberta Court of Appeal in *R. v. Brown* (1992), 73 C.C.C (3d) 242 (Alta. C.A.) where the court at page 250 stated:

...the more important principles are that the sentence should be such as to deter other men from similarly conducting themselves towards women who are their wives or partners (what is called the principle of "general deterrence"), and that the sentence should express the community's wish to repudiate such conduct in a society that values the dignity of the individual.

[10] The research literature indicates that there is a significant price paid by victims of abuse in domestic violence situations. In addition to immediate physical injury, clinical depression, loss of self esteem, post-traumatic stress disorder, social isolation, inability to work and form new relationships, the costs are in fact staggering. The economic costs are staggering as well. Justice Canada reports family violence has enormous economic costs for Canadian society. For example:

The first research study to estimate the costs of various forms of violence against women, including woman abuse in intimate relationships, found that this problem costs Canadian society an estimated \$4.2 billion per year in social services, education, criminal justice, labour, employment, health, and medical costs. Criminal justice costs alone total an estimated [\$900] million per year. The total costs related to all forms of family violence have yet to be calculated but would clearly be higher.

[11] Yet, these costs are not the only costs. Abuse between intimate partners has profound implications for children. As I understand the evidence in this case, there were children in the home when this assault took place. Statistics Canada reports that over one-half million Canadian children witness a parent or a caregiver being assaulted by an intimate partner in the home every five years. The actual numbers

are higher than these figures suggest because parents commonly do not know about and tend to minimize children's presence during abusive family episodes. Most children do not witness their parents violence directly. They hear the shouting, hitting, crying or observe the results.

[12] Psychologists report that children exposed directly or indirectly to abuse and violence in the home and children exposed on a long-term basis to high levels of conflict between parents or adult caregivers are psychologically damaged in much the same way as children targeted directly by child abuse. Moreover, researchers claim that abuse is intergenerational. Male children who witness their parents abuse are more likely than those who do not to become abusive themselves. Many end up in the criminal justice system. Female children who witness abuse are more likely to become victims themselves. (Paragraphs 10 - 12 above are extracted from a December 6, 2002 draft *Bench Book* in preparation by L. Nielson for the National Judicial Institute, Ottawa).

[13] In summary, then, this Court considers the charges facing Mr. Glada to be extremely serious. I am grateful to counsel for assisting me in developing the appropriate sentence in this particular case. I note that Mr. Glada has been in remand custody for four months. Counsel are in agreement that he should receive the usual two-for-one credit for "dead time". So for the purpose of this sentencing, my starting point is that he has served the equivalent of eight months custody.

[14] Taking that into account with respect to the October 3, 2002 assault, I impose one day in jail deemed served. The clerk will endorse the information that Mr. Glada served four months in custody for which I allocate double-time, the equivalent of eight months.

[15] For the October 2002, uttering threat, the offence contrary to s. 264.1(1)(a) of the *Criminal Code*, I impose one day deemed served. The appropriate sentence would be 30 days in custody. That would be served concurrently with the first offence and would be served as part of the remand custody that Mr. Glada has already served.

[16] With respect to the January 16th to October 13, 2002 assaults, I am imposing a period of four months custody, consecutive, for the reasons discussed earlier. I am satisfied that he can serve this sentence as a conditional sentence of imprisonment in the community.

[17] With respect to the two breaches of probation, I am suspending the passing of sentence and placing him on probation for a period of 12 months.

[18] I have not heard counsel speak specifically with respect to a DNA order or a firearms order. Unless you can persuade me to the contrary, I would be inclined to impose both.

[19] MR. DICK: No position.

[20] THE COURT: Thank you.

[21] Let us deal with the conditional sentence and probation orders. The two orders will be largely similar, possibly with the exception of two terms. I say that for the assistance of the clerk, who will be writing furiously, I am sure, as I speak. I will also look to counsel to listen carefully and assist me if I have omitted something or added something that they think would be a problem.

[22] So with respect to the conditional sentence, the statutory terms will apply. One of the statutory terms, of course, is to report forthwith to a conditional sentence supervisor, that is forthwith upon his release from custody.

[23] I will go back to the October 3rd assaults. I indicated four months custody, consecutive, conditional sentence. It should be four months in order to get him through and over the Spousal Abuse Treatment Program at the Family Violence Prevention Unit.

[24] The terms of the conditional sentence then are the statutory terms. No contact directly or indirectly with L.C., provided this term does not preclude L.C. contacting Mr. Glada by telephone. Nor does it preclude indirect contact by counsel, by agreement or by court order, relating to access to the children. Mr. Glada is not to attend at Ms. C.'s residence, currently 129 Klondike Road, except for the purpose of exercising access to children, if arranged in advance according to the previous condition setting out the terms of contact.

[25] He is to attend the Family Violence Prevention Unit for assessment into the Spousal Abuse Program. If accepted into that program, he is to participate and complete that program successfully. He is to participate in any subsequent Family Violence Prevention Unit programs including relapse prevention. He is to participate and complete a psychological assessment and participate in such other programming or counselling as may be directed. This includes but is not limited to substance abuse programming, grief programming or grief counselling, and parenting programming. He is to participate in such additional counselling and programming in Ross River under the direction of the community wellness worker and the conditional sentence supervisor. He is to reside at such place as may be approved and directed

by the conditional sentence supervisor.

[26] While residing in Ross River, he is to attend for a review of this order at every Ross River court circuit, unless he is excused from so doing by his supervisor or by the Court.

[27] He is to abstain absolutely from the possession and consumption of alcohol. Should a peace officer have a reasonable suspicion to believe that he is in breach of this condition, the peace officer or conditional sentence supervisor may make a demand for a breath sample or a urine sample and he shall comply with such demand.

[28] He is to abide by a curfew by remaining in his place of residence between the hours of 8:00 p.m. and 7:00 a.m. unless he has the prior written consent of the conditional sentence supervisor.

[29] With respect to the conditional sentence, Mr. Dick, any issues? Any additions?

[30] MR. DICK: No, Your Honour.

[31] THE COURT: Okay. Anything that we have omitted?

[32] MR. GOWER: No, Your Honour.

[33] THE COURT: Okay.



should include the requirement that he use reasonable efforts to seek and maintain employment. It applies to both the conditional sentence and the probation order. I think it is a good thing, regardless of whether he is at the ARC or whether he is residing at Ross River, that he keeps himself occupied.

[39] Mr. Glada, about the conditional sentence, I am sure Mr. Dick has already talked to you about it; if not, he will explain to you that any breach of a conditional sentence order will result in your immediate re-arrest, you will be brought back to court and a judge will decide whether you should be released or serve the balance of your conditional sentence in custody.

[40] Based on your record, whether it is myself or another judge considering the breach, it is likely that you will end up serving the balance of your term in custody. So I am just giving you a heads-up on this. It is very, very important that you abide by all the terms, of course, but you should know that a breach of the conditional sentence can have significant consequences for you. Do you understand that?

[41] Thank you, counsel, for your assistance.

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LILLES C.J.T.C.