Citation: *R.* v. *Quock*, 2015 YKTC 32

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14-00430
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

KENNETH BLAINE QUOCK

Appearances:
Keith Parkkari — Counsel for the Crown
Nils F. N. Clarke — Counsel for the Defence

REASONS FOR SENTENCING

[1] Kenneth Quock was convicted after trial of having committed offences contrary to ss. 268 and 811 of the *Criminal Code*. Oral reasons for judgment were provided on March 12, 2015. On July 17, 2015, Mr. Quock entered guilty pleas to having committed breach offences contrary to ss. 733.1(1) and 145(5)(b) as well.

[2] Briefly stated, the facts underlying the s. 268 aggravated assault conviction are as follows.

[3] Mr. Quock and the victim, Lawrence Henyu, had been consuming alcohol on October 12, 2014 at the Whitehorse residence where Mr. Henyu's domestic partner and

their two children resided. Mr. Henyu generally stayed at this residence when he was in Whitehorse. On this date the children were staying at their grandmother's house.

[4] Mr. Henyu became intoxicated and went into the bedroom he and his partner shared in order to sleep. He awoke to find Mr. Quock assaulting him, striking him in the face. They ended up wrestling on the floor of the bedroom. Mr. Quock left the room and returned with a sharp object that he swung at Mr. Henyu, striking him and almost entirely severing Mr. Henyu's left-hand index finger. Mr. Quock then ran from the room.

[5] As a result of the assault, Mr. Henyu suffered severe bruising to his face, as well as several abrasions. His index finger had to be reattached and it no longer functions as it should.

[6] As Mr. Quock was on a peace bond on October 12, 2014, the conviction for the s. 811 offence is for failing to keep the peace and be of good behaviour and arises out of the facts as they pertain to the conviction for the s. 268 offence.

[7] The facts of the s. 733.1(1) offence are that on August 11, 2014, Mr. Quock was located in Whitehorse in an intoxicated state. At the time, Mr. Quock was bound by a probation order that required him to abstain from the possession or consumption of alcohol.

[8] The facts of the s. 145(5)(b) offence are that Mr. Quock failed to attend court on October 22, 2014. He had been required to attend court on that date pursuant to an Appearance Notice that he had been issued in regard to the abstain breach allegation

from August 11, 2014. Mr. Quock had previously attended court on September 24 and October 8 pursuant to the Promise to Appear.

Positions of Counsel

[9] Crown counsel submits that Mr. Quock should receive a sentence of three years custody for the s. 268 offence with 60 days concurrent for the s. 811 offence. In addition he should receive consecutive sentences of 30 days for the s. 733.1(1) and s. 145(5)(b) offences.

[10] Crown counsel submits that, in accordance with s. 719.3 and the Yukon Court of Appeal decision in ***R.*** v. ***Chambers***, 2014 YKCA 13, Mr. Quock is only entitled to receive 1:1 credit for his time in custody since October 25, 2014, as a s. 524(8) application was made on that date.

[11] Counsel for Mr. Quock submits that an appropriate sentence would be a global sentence of 15 – 18 months custody, less credit for time served, to be followed by two years of probation.

[12] Counsel submits that Mr. Quock should be entitled to be considered for credit at 1.5:1 for his time in custody in remand. No constitutional argument was advanced to support this position, however, counsel submits that, notwithstanding ***Chambers***, such a result is available in accordance with the principles of statutory interpretation.

Circumstances of Mr. Quock

[13] Mr. Quock is 36 years old. He is a member of the Kwanlin Dun First Nation.

[14] He has a lengthy criminal record, comprised of 11 youth entries and 43 adult entries.

[15] As a youth he was convicted of a s. 267(b) assault causing bodily harm offence for which he received a six month sentence to be served consecutive to sentences for several breach and property offences.

[16] As an adult he was sentenced for the following offences of violence:

- s. 344 (robbery) in 1997 for which he received a five month jail sentence;
- s. 266 (assault) in 2002 for which he received 30 days jail plus one year probation;
- ss. 266 and 267(b) in 2008 for which he received one and six month jail sentences;
- s. 267(b) in 2010 for which he received a 10 month jail sentence;
- ss. 266 and 267(b) in 2012 for which he received a nine month conditional sentence and 14 months' time served respectively. He was breached twice on the conditional sentence and it was suspended for 30 days and six months.

[17] A Pre-Sentence Report ("PSR") and a ***Gladue*** Report were provided for sentencing purposes. Mr. Quock was noted as presenting as generally cooperative and pleasant during the PSR interview process.

[18] Mr. Quock and his sister were apprehended by Family and Children's Services in Whitehorse when he was four years old, due to substance abuse issues in the home. They lived in several foster homes until he was placed with a Great-Aunt and Uncle who resided in Atlin, B.C. For one year, he lived in Fort Smith, N.W.T.

[19] Mr. Quock describes his time residing with his Great-Aunt and Uncle in positive terms, stating that he and his sister were made to feel part of the family. He stated the following to Mark Stevens, the author of the PSR:

> It was a pretty strict home – tough love, I guess. I was glad I was getting taken care of, but there was always the 'why' factor.

[20] Mr. Quock's sister described living at this home as follows:

> It was a good home…It was better than growing up around drunks. [But there] was some abuse at [C]'s. [C.] would lock him up in the basement. Our cousin was weird and messed with him sexually.

[21] Mr. Quock describes his year in Fort Smith in generally positive terms. He stated, however, that he experienced quite a bit of bullying: "Eskimo kids don't like natives…I used to fight lots up there". During this time it appears that he was prescribed Ritalin, a medication commonly used to treat Attention Deficit-Hyperactivity Disorder ("ADHD").

[22] In 1989 Mr. Quock and his sister returned to Whitehorse to live with their father, Watson George, who had applied for custody of them. Mr. Quock states that he was happy to be going home but sad that he was leaving his Great-Aunt and Uncle.

[23] Mr. Quock lived with his father for approximately three years before he left home at the age of 13. There is no indication that Mr. Quock was subject to violent behaviour in this home. His father would, however, at times get drunk and tell Kenny about his residential school experiences until two or three in the morning.

[24] It appears from file information that Mr. Quock ran away from home frequently as a child and youth, although there is some indication that this was primarily after he was returned to live with his father at the age of ten. Mr. Quock spent much of his time after the age of 13 wandering around the village of Kwanlin Dun. After running away, Mr. Quock reconnected with his mother and has since lived in various places, including with her, with family members and with a girlfriend. He has also spent a considerable period of time in custody over the years. He has not resided in a stable home since he was 13. In the past six years, he has spent the majority of his time living with his grandmother, in conjunction with residing at several other locations with friends and family.

[25] Mr. Quock's youth probation officer referred to Mr. Quock as being like "a lost kid". He was noted to be respectful and interactive but also a youth who was struggling with some issues.

[26] When Mr. Quock returned to living in the Kwanlin Dun village at the age of 16, he states that his older cousins used to beat him up and make him drink alcohol and steal. He did not like alcohol but enjoyed using marijuana.

[27] Mr. Quock states that his parents were rarely there for him when he was growing up, including for events such as birthdays. He currently maintains a relationship with both parents, with his mother living and working in Whitehorse and his father in Moose Jaw, Saskatchewan.

[28] As noted, Mr. Quock's father attended residential school. His mother, after her mother died when she was five, was initially placed in the care of an abusive step-mother until she was placed in foster care in a non-Aboriginal home. Mr. Quock's

mother believes that her mother attended residential school. In describing the impacts of her upbringing on how she raised Mr. Quock, Ms. Quock stated to Mark Stevens that:

> A lot of times I think about my kids and cry because I couldn't look after them the way I should have…I wasn't taught that. I wasn't taught how to look after kids. I was always beat [sic]. I had to have the house cleaned before 8 am before going to school. I would be scared coming home from school. How are you supposed to be good in school if you are afraid you're going to be beat [sic] when you get home?
>
> …
>
> I was drinking a lot when he [Mr. Quock] was born…His dad was always taking off to Vancouver. I didn't know what do with these two kids [they were] both one year apart, still babies, so I would take off and drink to be away from the turmoil of those little kids. [Kenny] was with babysitters a lot. Different people would babysit him, or his grandma and grandpa. His grandma and grandpa were always drunk too. Everywhere he went, people were drinking. Welfare took him and placed him in three different homes.

[29] Mr. Quock was close to his paternal grandparents and states that he was significantly affected by the death of his grandfather in 2004. He states that he "went crazy" for a little while and was drinking heavily. He also states that this was a positive turning point for him and that he did not get into trouble for almost four years. I note that this coincides with a four-year gap in his criminal record. Mr. Quock states that he wasn't doing anything remarkable in order to stay out of trouble for this approximate four-year period. He states that he was just upgrading and hanging out with his grandmother. Mr. Quock maintains a close relationship with his grandmother as well as with his sister, Stacy Quock, who resides in B.C.

[30] Mr. Quock has never attended a residential treatment program. He failed to complete the domestic violence treatment programming during his most recent probation order, due primarily to him committing breaches of the probation order, time

spent out of the Yukon, and his time in custody. In 2012 he completed a ten-session Respectful Relationships program but did not continue further programming on probation as he should have.

[31] During his time in remand custody at the Whitehorse Correctional Centre ("WCC") on these charges, Mr. Quock has completed the Substance Abuse Management program ("SAM") and has been involved in individual substance abuse programming with Raghu Kolothumkattil, a counsellor with Midnight Sun Healing and Aftercare. He has also attended the Yukon College academic upgrading courses, the Men's Healing Group, church services, the WCC Christmas concert, the Drum-Making program, the Courage to Change program and the Painting program. He provided a Certificate of Participation for having completed the Violence Prevention Program July 3, 2015.

[32] The Yukon College instructor at WCC noted that due to Mr. Quock's other programming priorities, he had to do a lot of self-study. He stated that:

> Kenny went out of his way to do academic work…My impression of him was a good one. He was interested in doing work, although some of his follow-through hasn't been great.

[33] The Courage to Change program required Mr. Quock to complete, mostly on his own, seven self-study booklets. These booklets covered areas such as peer relationships, skills for successful living, responsible thinking, social values, strategies for success, self-control, and family ties, with an emphasis on changing Mr. Quock's attitudes towards life out of custody.

[34] As a 17 year old, Mr. Quock participated in a cultural camp in the community of Old Crow. He opted into this programming as an alternative to secure custody and remained involved in the program for 9 and one-half months.

[35] Mr. Quock states the following with respect to his time in the community of Old Crow:

> I did really good up there. They really liked me. I liked it so much that I went up for another camp, and I stayed there for another nine months. We went out to Crow Flats. We had sweat lodges. It was one of the best times of my life….
>
> …
>
> I was done with the Courts when I came back to Whitehorse…But there was no follow-up, so I fell back into doing the same things.

[36] Mr. Quock attended a pilot project at the Jackson Lake Healing camp in 2010. He found this camp enjoyable and therapeutic. He states, however, that when the camp was over there wasn't much follow up and he quickly returned to his old habits. I note that since this pilot project, federal and territorial funding has allowed for the creation of a Wellness Team who offer year-round aftercare to clients who have attended the Jackson Lake camp.

[37] Mr. Quock states that he tried to make some positive changes in his life in 2014. He returned to Vancouver to help his sister out when she was quite ill. This was the second occasion he had done so. He was working with a British Columbia First Nation and doing well. He became homesick however, and came back to Whitehorse, in part to deal with an outstanding warrant. When he came back to Whitehorse, however, he found himself going down the same destructive road.

[38] Mr. Quock states that he had his first alcoholic drink at the age of 13 and did not drink again until he was 16. He states that he drank regularly until he was 18, at which point in time he abstained for one and one-half years. His drinking progressed steadily from 19 until it reached its peak when he was 24. His sister's recollection is that Mr. Quock did not begin to drink alcohol heavily until he was 23, being primarily a marijuana user prior to that. Mr. Quock states that he was able to remain sober for most of 2011, with some slips. He recalls this as being the healthiest year of his life with respect to alcohol use. He attributes this to having a support team and people that actually believed in him. Mr. Quock scores on the Problems Related to Drinking Scale ("PRD") as having a substantial level of problems related to alcohol abuse.

[39] Mr. Quock admits to regular use of marijuana since the age of 14. He first used cocaine when he was 23 and has also experimented with acid, mushrooms and ecstasy. He does not consider drugs, in particular hard drugs, to be a problem for him. He scores as having a low level of problems related to drug abuse on the Drug Abuse Screening Test ("DAST").

[40] Mr. Quock was assessed using the Yukon Supervision Inventory ("YSI") which is used to assess an offender's criminal-history related risk and criminogenic needs. Mr. Quock is noted to score as having a high criminal-history risk rating with a high level of criminogenic needs (an indication of his dynamic risk needs factors). It is indicated that a high level of supervision is appropriate for Mr. Quock.

[41] He scores as high in the following needs areas:

- Family/Significant others;
- Living Arrangements;
- Friends/Acquaintances;
- Academic/Vocational Skills;
- Employment Pattern;
- Financial Management;
- Behavioural/Emotional Stability;
- Substance Abuse; and
- Attitude.

[42] Mr. Quock dropped out of school in Grade nine. He was suspended from school on numerous occasions for truancy, not following the rules and for smoking cigarettes and marijuana. He was held back in Grade eight. He states that he did not like school but that he believes he achieved average grades and that he had a good relationship with his teachers and classmates.

[43] He completed two months of upgrading while in custody in 1998. He also started a further upgrading program in 2003 at the Kwanlin Dun First Nation House of Learning, which he temporarily continued but failed to complete in 2007.

[44] In 2006, while attending the Northern Lights College in Fort Nelson, Mr. Quock completed the following programs:

- Workplace Hazardous Materials Information Systems;
- Transportation of Dangerous Goods;
- Food Safe;

- First Aid and CPR; and
- the more advanced Wilderness First Aid Certificate.

[45] Mr. Quock describes himself as an easygoing, happy and outgoing individual. File information indicates that Mr. Quock "…spends a significant amount of time socializing and generally hanging out with others, on the streets of Whitehorse and in Kwanlin Dun, who are often engaged in public intoxication and criminal activity".

[46] Mr. Quock has a poor and limited employment history, with no period of employment lasting more than the four months he worked for an outfitting company when he was 22. His source of income since the age of eighteen has almost entirely been social assistance. While in custody on remand, he has been employed as a Unit Cleaner since December 18, 2014. A review of Mr. Quock's sporadic employment history shows that he has the greatest interest in environments where the bush and cultural skills he has acquired growing up are utilized. Mr. Quock enjoys spending time with older individuals and is will liked by the Elders in the Kwanlin Dun community. He has assisted with numerous potlatches and other community events in Kwanlin Dun.

[47] While in custody on remand, Mr. Quock was written up on several occasions for minor institutional infractions such as roughhousing and loitering, as well as being noted to have been rude and disrespectful at times. Generally, however, he appears to have managed to stay out of trouble.

[48] With respect to the s. 268 offence, Mr. Quock describes the series of events that led up to the incident as being an "unfortunate series of events that took place, I am remorseful about it, not proud of it". He recalls being "in a drunken stupor" at the time

and, although not happy with the result of the trial, appears to accept some measure of responsibility, not because he believes he committed the offence but, because he was found guilty of having committed the offence. He states that he has little or no memory of the incident, although he does recall trying to protect his cousin who was being "put down" by Mr. Henyu.

[49] Mr. Quock stated, (quoting from the ***Gladue*** Report): "I take responsibility because [the judge] found me guilty". However, Mr. Stevens noted Mr. Quock to be very remorseful and shocked by the severity of the injury to Mr. Henyu.

[50] With respect to his plans for release, Mr. Quock is concerned about being placed on conditions that are unrealistic. The concern about Mr. Quock being "set up for failure" is shared by Kwanlin Dun Justice worker Viola Papequash, who has known Mr. Quock since he was a child. At the same time, Ms. Papequash believes that Mr. Quock requires a structured release with lots of support. Ms. Papequash states that Mr. Quock "…needs external help to maintain his sobriety…he doesn't have the strength or will to be able to say 'no' himself".

[51] Ms. Papequash recognizes that there are benefits to Mr. Quock not being in Kwanlin Dun. At the same time, she notes that he has many supports in the community.

[52] Ms. Papequash feels that Mr. Quock would benefit from some guided self-assessment through Kwanlin Dun's House of Learning, in order to determine what his strengths and weaknesses are and to show where his interests lie. This would perhaps address Mr. Quock's somewhat defeatist thinking as to his future prospects.

[53] Mark Stevens notes that the approach suggested by Ms. Papequash is consistent with the Good Lives Model of Offender Rehabilitation ("GLM"). He states as follows:

> The GLM is a strengths-based approach to offender rehabilitation that is premised on the idea that society needs to build up the capabilities and strengths of offenders in order to reduce their risk of re-offending.
>
> > …Criminal behaviour results when individuals lack the internal and external resources necessary to satisfy their values using pro-social means. In other words, criminal behaviour represents a maladaptive attempt to meet life values (Ward and Stewart, 2003). Rehabilitation endeavours should therefore equip offenders with the knowledge, skills, opportunities and resources necessary to satisfy their life values in ways that don't harm others….

[54] Mark Stevens notes that, in applying this model to Mr. Quock, the starting point is determining through an assessment what constitutes Mr. Quock's idea of a "good life". Given the recurrent theme of his working on the land and within his culture, it may be that with community support, including employment opportunities, he may be sufficiently equipped to work towards achieving his life goals in a pro-social manner. It is noted that Mr. Quock has considerable support in the community, with many of those involved in treatment areas having known Mr. Quock since he was little. Mr. Quock's noted quiet and respectful demeanour with his Elders is a noted strength. The important thing is for Mr. Quock to identify positive life goals through self-assessment and then work towards achieving those goals with the available community support.

[55] Of interest is Mr. Quock's belief that it isn't treatment he needs to deal with his addiction issues, it is being busy with healthy distractions that will allow him to stay away from alcohol and drugs.

[56] I note that this is consistent with the concept of expending energy working towards a positive goal, rather than expending the same energy working against something you want to avoid. This is somewhat analogous to learning to drive a car and wanting to avoid the ditch. The key is to look straight ahead to where you want to go, rather than looking at the ditch you want to avoid. That way you will actually go straight ahead and the ditch soon becomes a non-issue.

[57] Filed with the Court was a Contract for Change (the "Contract"). The Contract sets out the members of Mr. Quock's support team and the expectations and commitments for both the support team members and Mr. Quock. Also set out are goals Mr. Quock is to work towards, in recognition of specified issues he has struggled with.

[58] Counsel for Mr. Quock submits that, despite Mr. Quock's track record in the past, he is committed to complying with the requirements of the Contract and living a pro-social life. Mr. Quock's recent performance while in custody on remand and his involvement with his community supports in the Circle that was held in WCC shows that he is serious about making a change in his life. The Contract, which involves a significant commitment on the part of Mr. Quock's supports, demonstrates that Mr. Quock's belief that he can change is supported by members of his community who wish to commit themselves to being part of that process of change.

[59] Mark Stevens notes that the Contract involves employed individuals as well as friends, thus strengthening the plan for Mr. Quock. He states that the Kwanlin Dun community at this time is very concerned about the safety of its citizens and is

considering banishment of some individuals as a way to protect their community. Notwithstanding the present concerns about community safety, and the risk factors associated with Mr. Quock, he remains an individual that the community wishes to reach out to and support.

[60] Mr. Quock expressed to Mr. Stevens that the present level of community support is really the first time he has felt that the community has been there for him. He realizes that if he fails and recommits offences, he will in turn cause damage to his community. Alternatively, if he is successful in his rehabilitative efforts, he can help the community and its programs. Mr. Quock trusts the individuals who have indicated that they will support him, as they know his strengths and weaknesses and they grew up with him.

[61] Ms. Papequash notes that the Circle that was held at WCC was with the permission of the Directors of Kwanlin Dun. She notes that Mr. Quock identified some of the participants. She states that his attitude has changed from an "I'll just do my time" one, to an attitude of desiring change. She said that, as indicative of this change in attitude, it was Mr. Quock who asked for the ***Gladue*** Report in this case. It is her opinion that a clean and sober Mr. Quock adds value to his community.

Case Law Provided

[62] In ***R.*** v. ***Jordan***, 2003 YKTC 104, the accused was sentenced to six years custody after a guilty plea to a charge of breaking and entering and committing aggravated assault, as well as one year to be served concurrently on an assault conviction. Mr. Jordan led "a gang of enforcers" into a residence where they engaged in a vicious attack on the victim over unpaid drug debts. The victim was severely beaten

with a hammer and a baseball bat. In addition, his face was slashed with a meat cleaver and, after his arm was held down, his little finger was chopped off. He suffered numerous contusions, cuts and bruises to his face, upper body and arms. His finger was reattached but unsuccessfully and it appeared that he had not regained the use of it. He continued to suffer pain and discomfort. The victim of the assault was standing in the doorway of her residence when she was pushed aside by the throat in order to allow for the pursuit of Mr. Martin within the house.

[63] Mr. Jordan was described as a 'career criminal' with 54 prior convictions, many of which were related to the circumstances of the offences for which he was now being sentenced. The sentencing judge noted as an aggravating feature that the victim was forced to participate in his own dismemberment. The pre-sentence report in this case "…provides no cause for optimism that Mr. Jordan is likely to change his life."

[64] The co-accused 19-year-old, M.D.N., was sentenced to three years imprisonment for his role in the aggravated assault. M.D.N. was an Aboriginal individual with a very troubled upbringing. He suffered from severe drug and alcohol abuse problems. He was believed to be suffering from ADHD and conduct disorder.

[65] He had a significant record for breaking and entering and other assaultive behaviour. While in remand custody at WCC on his charges, M.D.N. had been continuously involved in a number of serious incidents, "…including assaults on other inmates, self-mutilation, repeated damage to gaol property and attempts at suicide".

[66] He was described by the sentencing judge as being:

> …a seriously disturbed youth in desperate need of treatment. I am very sympathetic to the pleas of his family and friends that [he] needs treatment and not punishment. However, at this point Mr. M.D.N. presents such a danger to himself and others that the only option is to provide the treatment in a secure setting.

[67] In ***R.*** v. ***Bland***, 2006 YKTC 103, the offender, after conviction at trial, was sentenced to two years custody, after receiving credit for one and one-half months in pre-trial custody. Mr. Bland had viciously attacked the victim in the victim's bedroom in what was found to be "…a settling of accounts by a drug dealer". Although no weapon was found, it was clear to the sentencing judge that a weapon of some sort had been used due to the number of wounds inflicted on the victim, none of which were life-threatening.

[68] There were no particularly mitigating circumstances noted and deterrence and denunciation were the primary sentencing considerations. This said, the sentencing judge recognized Mr. Bland's limited criminal record, his struggles with ADHD and drug addiction, as well as the global effect of the sentence, given that Mr. Bland was serving a custodial sentence on other matters and the sentence imposed was to be consecutive to that sentence.

[69] The sentencing judge stated in para. 7:

> …I agree with the submission that the range here is from something in the order of sixteen months, more or less, to six years imprisonment, as indicated in *R.* v. *Johnson*, 2006 YKTC 52, and accepted by Judge Overend of this court in the *R.* v. *Wiebe* case, [2006] Y.J. No. 86, 2006 YKTC 75. I also agree with the comments in *Johnson* that the sentences at the lower end of the range would tend to be imposed in fight situations, where the altercation escalates, and the sentences at the higher end of the range would tend to be imposed in situations where victims are attacked with a weapon, without provocation, and without any opportunity

> to defend themselves. If one looks at that, unfortunately for Mr. Bland, he would tend to fall more at the higher than the lower end of things. …

[70] Crown counsel also provided two sentencing decisions involving Mr. Quock. In ***R.*** v. ***Quock***, 2010 YKTC 58, Mr. Quock was sentenced to ten months custody after a guilty plea to the offence of assault causing bodily harm. The assault, which occurred in the context of a spousal relationship, consisted of Mr. Quock, in the course of an argument with the victim that involved both parties throwing things at the other, struck the victim, causing her to suffer two lacerations to her head and scalp, resulting in a total of nine stitches. Mr. Quock suffered some minor injuries to his lip and mouth.

[71] In the subsequent decision of ***R.*** v. ***Quock***, 2012 YKTC 49, Mr. Quock pled guilty to assault and assault causing bodily harm, as well as three s. 145(3) offences. The victim was the same domestic partner for which he had been sentenced for assaulting in 2010. The circumstances of the assault were that, in a public area, Mr. Quock pushed the victim to the ground, kicked her in the arm and face and punched her a number of times. The victim suffered a slight bruise and a cut.

[72] With respect to the s. 267(b) offence, Mr. Quock came into the bedroom where the victim was sitting on a bed. He threw a plank-type piece of wood at her, striking her in the temple area. He then continued to assault her by striking her at least ten times to the head and body while she was on the ground. The victim had extensive swelling and bruising. She also required three stitches to repair a torn lip.

[73] At the time of sentencing, Mr. Quock had participated in a number of violence-related programming. Interestingly, the sentencing judge noted that Mr. Quock had

solid bonding with other adult males who genuinely cared for him and that Mr. Quock had come to realize the importance of kinship with First Nations men. In para. 18 Luther J. states:

> There is, at long last, a ray of hope to be found in this young man. Despite all he has gone through, and his upbringing, and the serious errors of judgment for which he has taken responsibility, I do believe there is a viable release plan with the support of his mother, his First Nation male supporters and his enhanced opportunity for work in the mining industry. …

[74] I note that, in some respects, this remains a part of the submission before me in support of a rehabilitation-focused disposition, rather than one that would focus on the separation of Mr. Quock from society through further incarceration.

[75] Mr. Quock was assessed in 2012 as a high risk to re-offend violently against an intimate partner and/or against others. The risk of re-offending was significantly reduced when he was sober.

[76] Mr. Quock received a sentence of 14 months time served for the s. 267(b) offence (being credited for 279 days in custody on remand at 1.5:1). Mr. Quock received a further nine months for the assault conviction, to be served conditionally in the community. I note that following two breaches of this conditional sentence order, Mr. Quock's conditional sentence was collapsed.

[77] At the time that Mr. Quock committed the s. 267(b) offence he was bound by a recognizance that required him to have no contact with the victim and to abstain from the possession and consumption of alcohol. For each of these offences, as well as a curfew breach, he was sentenced to one-month sentences to be served concurrently.

[78] Counsel for Mr. Quock filed several cases. The assistance of these cases varies, and I found the following to be the most useful in determining the appropriate sentence for Mr. Quock.

[79] In ***R.*** v. ***Washpan***, [1994] Y.J. No. 79 (C.A.), the 21-year-old Aboriginal offender had been sentenced to five months imprisonment followed by three years of probation for having committed the offence of aggravated assault, with one month imprisonment to be served consecutively for being unlawfully at large. Mr. Washpan had stabbed the victim four times with a knife during a fight between them. Mr. Washpan had been losing the fight so he went into the kitchen and returned with the knife.

[80] Mr. Washpan, who had previously been sentenced, during a sentencing circle, to a period of custody of two years less one day plus two years of probation, had been released from custody on a temporary absence pass after serving 14 months of this custodial disposition when he committed the aggravated assault offence.

[81] The Court, in dismissing the Crown appeal from sentence, noted that, despite the sentencing circle's "strong belief in Washpan's rehabilitative potential" that potential had not been realized, as demonstrated by the commission of the aggravated assault offence.

[82] However, the Court found as follows in paras. 7-9:

> …the underlying purpose of the trial judge in imposing the sentence he did was to give the respondent a second chance to break the vicious cycle of alcohol abuse leading to offending leading to incarceration in which the respondent was evidently trapped. He gave effect to that purpose in the hope that in doing so the long term protection of society would be enhanced through Washpan's ultimate rehabilitation. He did so after

> hearing at length from a number of people in the community to the effect that the potential for such rehabilitation still exists, and he did so obviously after reaching the same conclusion himself.
>
> …
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> While it is true that generally speaking a conviction for aggravated assault will require the imposition of a severe penalty, if the applicable principles of sentencing are to be followed, resort to the cases has demonstrated, as it usually does, that exceptions can be made to the general rule in appropriate circumstances.
>
> …
>
> In the end I cannot say that [the trial judge] was wrong in his conclusion that the ultimate rehabilitation of Washpan remains a possibility and if effective such rehabilitation will enhance the long term protection of society. …

[83] In ***R.*** v. ***Dick***, 2008 YKTC 6, after a conviction at trial for aggravated assault, uttering threats and carrying a weapon for a purpose dangerous to the public, as well as several breach and property offences, the Aboriginal offender was sentenced to 16 months custody for the aggravated assault, followed by both consecutive and concurrent sentences on the other convictions, for a total of 20 months custody.

[84] In ***Dick*** the offender had started an altercation with the victim at a point earlier in the evening, threatening him while holding a baseball bat. Mr. Dick then later went to the victim's residence, armed with a bat and a knife. During the ensuing altercation Mr. Dick assaulted the victim with a knife, causing several wounds, including a chest wound that penetrated the victim's lung. In sentencing Mr. Dick to a sentence towards the lower end of the 16 month to six year range, the sentencing judge found that this offence was:

> …something in the order of a fight that escalated and not, as in *Bland* [2006 Y.J. NO. 116 (Q.L.)], a sort of premeditated attack on somebody,

> taking them by surprise. That having been said, it has to be remembered that it was Mr. Dick who was clearly pushing matters here, and pushed them on more than one occasion on the date in question.

[85] Mr. Dick was noted to have a criminal record which was more or less unbroken between 1978 and 2004 and was "…replete with related entries, in which danger was caused to public safety", as well as two relatively unfavourable pre-sentence reports.

[86] In ***R.*** v. ***Vittrekwa***, 2011 YKTC 64, the offender had entered a guilty plea to having committed a s. 267(a) offence on an original charge of having committed an aggravated assault. The circumstances of the offence were that Mr. Vittrekwa had, in the course of a fight, stabbed and slashed his friend and drinking partner with a knife, causing two lacerations 5 cm and 6-7 cm long, both of which required sutures. There was a joint submission of 12 months custody.

Determining a Fit Sentence

[87] Sections 718 – 718.2 read, in part, as follows:

> **718.** The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> (*a*) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
>
> (*b*) to deter the offender and other persons from committing offences;
>
> (*c*) to separate offenders from society, where necessary;
>
> (*d*) to assist in 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 acknowledgment of the harm done to victims or to the community.
>
> …
>
> **718.1** A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.
>
> **718.2** A court that imposes a sentence shall also take into consideration the following principles:
>
> (*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,
>
> …
>
> shall be deemed to be aggravating circumstances;
>
> (*b*) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
>
> (*c*) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
>
> (*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.

[88] The general sentencing range for aggravated assault offences varies from suspended sentences and probation to lengthy periods of custody in a federal institution. Where a weapon of some sort is involved, this is often considered to be an aggravating feature of the offence. This said, the use of a weapon may nonetheless

result in less significant injuries than an aggravated assault committed with an offender's hands and feet. As such, it cannot be said that sentences for aggravated assault offences involving the use of weapons are necessarily going to attract sentences that are more severe than in cases where a weapon has not been involved. Fists and feet can inflict severe damage and I would likely consider cases where the offender has repeatedly punched and kicked a vulnerable and perhaps unconscious victim to, in some circumstances, be more indicative of a higher level of moral blameworthiness and culpability than a single blow with a weapon, depending, of course, on the presence of factors such as the nature of the weapon, the likelihood of harm to be caused by the assaultive action and the actual harm caused.

[89] In ***R.*** v. ***Charlie***, 2015 YKCA 3, the appellate court dismissed a Crown sentence appeal of a sentence imposed for an offender convicted of a s. 344 offence. The Court considered the application of the notion of a sentencing range for offences. In paras. 37 – 40 the Court stated:

> 37 There is little doubt that the sentence imposed in this case is beyond the low end of range of sentences imposed on similar offenders for similar offences. However, as has been repeatedly said, sentencing ranges are merely guidelines.
>
> 38 In *R. v. C.A.M.,* [1996] 1 S.C.R. 500, at para. 92, the Supreme Court of Canada explained the underlying justification for the reliance on sentencing ranges, which is to "minimiz[e] the disparity of sentences imposed by sentencing judges <u>for similar offenders and similar offences committed</u>..." (Emphasis added). The Supreme Court discussed the relationship between the wide discretion granted to sentencing judges and the range of sentences for particular offences in *R. v. Nasogaluak*, 2010 SCC 6 at para. 44:
>
> > [44] The wide discretion granted to sentencing judges has limits. It is fettered in part by the case law that has set down, in some circumstances, general ranges of sentences for

> particular offences, to encourage greater consistency between sentencing decisions in accordance with the principle of parity enshrined in the *Code*. But it must be remembered that, while courts should pay heed to these ranges, they are guidelines rather than hard and fast rules. A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. Regard must be had to all the circumstances of the offence and the offender, and to the needs of the community in which the offence occurred. [Emphasis added.]

39 A sentencing judge does not commit an error in principle simply by crafting a sentence that falls outside of the typical range for a particular offence. The appropriate sentence is determined by the circumstances of the offender and the offence, whether aggravating or mitigating. It is for this reason that, as the Supreme Court explains in *C.A.M.* at para. 92, "a court of appeal should only intervene to minimize the disparity of sentences where the sentence imposed by the trial judge is in substantial and marked departure from sentences customarily imposed for similar offenders committing similar crimes..." (Emphasis added).

40 Further, as the Supreme Court of Canada explained in *R. v. Ipeelee*, 2012 SCC 13, sentencing judges enjoy a broad discretion in the sentencing process:

> [37] The fundamental principle of sentencing (i.e., proportionality) is intimately tied to the fundamental purpose of sentencing --the maintenance of a just, peaceful and safe society through the imposition of just sanctions. Whatever weight a judge may wish to accord to the various objectives and other principles listed in the *Code*, the resulting sentence must respect the fundamental principle of proportionality. Proportionality is the *sine qua non* of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. ... Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principle serves a limiting or restraining function and ensures justice for the offender. In the Canadian criminal justice system, a just sanction is one that reflects both perspectives on proportionality and does not elevate one at the expense of the other.

> [38] Despite the constraints imposed by the principle of proportionality, trial judges enjoy a broad discretion in the sentencing process. The determination of a fit sentence is, subject to any specific statutory rules that have survived *Charter* scrutiny, a highly individualized process. Sentencing judges must have sufficient manoeuvrability to tailor sentences to the circumstances of the particular offence and the particular offender. Appellate courts have recognized the scope of this discretion and granted considerable deference to a judge's choice of sentence. ... [Emphasis added.]

[90] In the end, a fit sentence is one which properly considers the circumstances of the offence, which include the impact on any victim of the offence, the impact upon the community in which the offence occurred and/or in which the offender resides or is anticipated to reside, the circumstances of the offender, and the purpose, objectives and principles of sentencing.

[91] ***R.*** v. ***Knott***, 2012 MBQB 105 was a case decided shortly after the Supreme Court of Canada released its decision in ***R.*** v. ***Ipeelee,*** 2012 SCC 13.

[92] In ***Knott***, a 25-year-old Aboriginal offender convicted after trial of aggravated assault had the passing of sentence suspended and was placed on probation for two years. The victim suffered severe and permanent injuries, although Mr. Knott's role in the offence and resultant injuries was somewhat lesser than that of the two other individuals convicted. The sentencing judge, stressing and applying the principles of ***Ipeelee*** and ***Gladue*** (***R.*** v. ***Gladue***, [1999] 1 S.C.R. 688), noted several mitigating features, in particular the offender's lack of a prior criminal history, lower degree of participation in the offence and cooperation with the police. It was further noted that Mr. Knott was generally of good character and had strong rehabilitative prospects, notwithstanding his ongoing struggles with alcohol consumption that caused him to be

rated as posing a high risk for reoffending. The offence was viewed as an isolated incident.

[93] In considering the application of the decision in ***Ipeelee*** to the circumstances of the Mr. Knott, McCawley J. stated in paras. 22 and 23:

> 22. In writing for the court, LeBel J. reminds us that innovative sentencing approaches that effectively deter criminality and rehabilitate offenders may be used to reduce crime rates in Aboriginal communities. Similarly, judges can ensure that systemic factors do not lead to discrimination in sentencing, citing as an example personal stability factors that may work against Aboriginal offenders as is the case here. Many of the factors that result in Mr. Knott being assessed as high risk to reoffend are the result of the indiscriminate application of those considerations which ignore the context in which they arose.
>
> 23. When one puts some of the concerns which might otherwise carry significant weight in context a very different picture emerges. …

[94] McCawley J. then considered the context in which Mr. Knott's high risk for re-offending was determined to exist and commented on the discriminatory systemic factors that contributed to his risk factors, for example a lack of employment. In the end, in imposing a suspended sentence, McCawley J., although not expressly stating so, appears to have acceded to submissions by Mr. Knott's counsel in para. 40 that:

> Additionally, despite the fact that Mr. Knott was assessed as high risk to reoffend, when one considers the reasons behind it and his lack of involvement before and after, it is apparent he is no risk to the community. Given that Mr. Knott's problems and his involvement here are related to his alcohol addiction and that he recognizes his need for treatment, his rehabilitation should be an overriding consideration. …

[95] I note that in ***R.*** v. ***Simms***, 2013 YKTC 60, Luther J. refers briefly to ***Knott*** and specifically disagrees with the approach taken by McCawley J. With all due respect, I

consider the approach taken by McCawley J. to be consistent with the reasoning in ***Gladue*** and ***Ipeelee*** and the expectation placed on sentencing judges with respect to the sentencing of Aboriginal offenders.

[96] In order to properly understand what an identified risk factor that contributes to a high risk rating means for the purpose of determining a fit sentence, it is important to understand the context in which the risk factor exists. In understanding this context, it may be that a plan can be identified to significantly reduce the risk factor, and such a plan could be focused on and/or involve non-traditional treatment methods. This could include options such as land-based Aboriginal healing camps, for example.

[97] This does not mean, however, that risk factors are to be ignored or minimized simply because they are associated with the systematic discrimination of Aboriginal offenders. To do so could potentially lead sentencing judges to impose sentences that do not properly balance the purposes and objectives of sentencing and that therefore do not adequately protect the public. It could be, in saying what he did, that this was the underlying concern of Luther J. in disagreeing with the reasoning in ***Knott***.

[98] In considering the application of the case law submitted in order to provide a range of sentence, McCawley J. states in para. 16 of ***Knott***:

> Counsel have provided me with a number of cases which suggest a range of sentence for those who have committed similar crimes in similar circumstances and who are similarly situated. I have considered them all. They represent a broad range from a period of incarceration of nine years to a non-incarceratory disposition. As with many offences, what is a fit and proper sentence depends very much on the particular circumstances of the case. It must also be recognized that no two cases are the same but, to the extent other cases are applicable, they provide a useful guideline…

[99] In the end, these cases simply reinforce the fact that the sentencing of an offender is an individualized process. While the principle of parity as set out in s. 718.2(b) must be considered, it is nonetheless not to be applied rigidly in a mathematical manner in order to locate the offender within a grid-like sentencing structure. As stated in ***R.*** v. ***C.A.M.***, [1996] 1 S.C.R. 500 in para. 92:

> …It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime…Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. As well, sentences for a particular offence should be expected to vary to some degree across various communities and regions in this country, as the "just and appropriate" mix of accepted sentencing goals will depend on the needs and current conditions of and in the particular community where the crime occurred. …

Application of Section 718.2(e)

[100] Section 718.2(e) is not a statement that Aboriginal offenders should receive lesser sentences simply on the basis of being Aboriginal and the acknowledged systemic discrimination Aboriginal peoples and communities have faced in Canada. A fit sentence that accords with all the purposes, objectives and principles of sentencing must still be imposed. It is, however, required that, in the case of every offender, Aboriginal or otherwise, all available sanctions other than imprisonment that are reasonable in the circumstances should be considered. It is simply that special consideration needs to be given to the circumstances of Aboriginal offenders. This is because no group of peoples in Canada has been subjected to the same type of destructive, structural and organized systemic discrimination at the hands of the federal government as Aboriginal peoples.

[101] The special circumstances of Aboriginal offenders are not solely retrospective considerations, but ones that are forward-looking as well. The sentencing judge must look to and consider all reasonable options and sanctions that may eliminate the need for a sentence of imprisonment, reduce the length of a sentence of imprisonment or, where available, allow for the imposition of a sentence of imprisonment to be served conditionally in the community.

[102] I will comment briefly on the role ***Gladue*** Reports play in this regard. ***Gladue*** Reports should do more than simply provide historical information pertaining to the circumstances of the Aboriginal offender, his or her family, and his or her community. A proper ***Gladue*** Report should also look ahead and advise the sentencing judge with information regarding the options available to the Aboriginal offender before the Court and the support that the offender has, whether this be through institutional programming, the offender's community or First Nation or comparable entity, and offender's family.

[103] It is not enough for the sentencing judge to be made aware of past circumstances. In order to impose a fit sentence and sanctions that are reasonable in the circumstances as per s. 718.2(e), the sentencing judge must also be made aware of what prospects and opportunities the Aboriginal offender has before him or her. A sentencing judge cannot impose a sanction other than imprisonment, in a case where imprisonment would be a readily available sanction, unless there is a reasonable option. The ***Gladue*** Report should assist the Court by providing information regarding such rehabilitative options that are available, in particular those that arise from support within the offender's Aboriginal family, culture and community.

[104] In addition, s. 718 (d), (e) and (f) speak to the objectives of rehabilitation, the provision of reparations for the harm done to victims and to the community and to promoting a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community. It would be of considerable assistance if ***Gladue*** Reports also provided information in regard to the harmful impact of the offender's crime upon the victim(s) and the community. Often, the victims are themselves members of the same Aboriginal community as the offender, and have been impacted along with the offender and the community by the destructive government policies associated with the residential school system.

[105] A fit sentence must take into account the harm caused to victims. Truly effective rehabilitation of an offender requires that the offender understand the harm he or she has caused, accept responsibility for having caused this harm and take such steps as are reasonably possible to try to repair the damage. In addition, such an understanding and acknowledgment of the harmful consequences of one's offending actions is, or should be, a deterrent to the offender from committing further such offences.

[106] While I understand that this is not the practice in some other jurisdictions with respect to the content of ***Gladue*** Reports, certainly, to the extent possible, for the purpose of sentencing hearings before me, I would encourage those that prepare ***Gladue*** Reports to include information regarding the impact of the crime on the victim(s) and community.

[107] This said, a ***Gladue*** Report, or the provision of ***Gladue*** information through another manner, is for the purpose of providing sentencing judges with sufficient

information regarding the particular Aboriginal offender before the court, for the purpose of determining a fit sentence for this offender in compliance with the requirements of s. 718.2(e). I am not saying that ***Gladue*** Reports should be a forum for victims of crime to provide a victim impact statement to the court. There is already a statutory regime in place to allow victims a voice in the sentencing process in ss. 722 – 722.2. To the extent that I am saying it would be helpful for ***Gladue*** Reports to include information about the harm done to victims and to the community, it is for the purpose of crafting a fit sentence for the offender before the court, for the reasons I have stated above.

[108] Section 718.2(e), the legislative foundation under which ***Gladue*** Reports have arisen, is a principle of sentencing that is focused on the offender before the court, and the circumstances of that offender.

[109] The importance of ***Gladue*** Reports to the sentencing of Aboriginal offenders cannot be overstated. While there are other means by which ***Gladue***-type information can be provided to the Court, these means are often not as efficient in providing the relevant information. In order for the sentencing of Aboriginal offenders to be done in compliance with s. 718 – 718.2 and the judgment of the Supreme Court of Canada in ***Gladue*** and ***Ipeelee***, ***Gladue*** information and considerations must be before the sentencing judge. Properly prepared ***Gladue*** Reports are the most effective means by which this can be done, and an important factor in allowing the sentencing judge to impose a fit sentence. The preparation of ***Gladue*** Reports requires resources. This said, I believe that it is the responsibility of the justice system to ensure that sufficient resources are made available to allow for these reports to be prepared when they are necessary.

[110] As noted by Monnin J.A.in ***R.*** v. ***L.L.G.***, 2012 MBCA 106:

> 30 The judge had at his disposal a pre-sentence report that also purported to address the *Gladue* factors that a judge must consider when imposing a sentence on a person of aboriginal descent. I say purported, because the only difference that I can see between the report that was presented to the judge and a commonly prepared pre-sentence report was that it contained a short history of the accused's home community and the general loss of culture and identity that has afflicted aboriginal communities generally. That portion of the report is a near mirror image of a report that was submitted to McCawley J. in *R. v. Knott (J.W.),* 2012 MBQB 105, 278 Man.R. (2d) 82. She had this to say with respect to the report in her reasons (at para. 18):
>
> > ... In addition to describing the northern community in which Mr. Knott grew up, St. Theresa Point, it refers also to the effects of colonization on the lives, language and social relations of the indigenous people of Canada as well as their ways of thinking, feeling and interacting with the world. ...
>
> 31 Furthermore, although the report states that it "will pay particular attention to the unique circumstances of the aforementioned aboriginal individual," I remain hard pressed to understand how it does so or how it could have been helpful to the judge, or any other judge for that matter, to discharge his obligation to consider the *Gladue* principles in crafting an appropriate sentence for this accused. The report, without wanting to criticize the individual who prepared it, but rather the system that permits it, reflects the problems raised by Sandhu P.J. in *R. v. Mason (J.L.),* 2011 MBPC 48, 269 Man.R. (2d) 297, when he wrote (at para. 32):
>
> > ... Unfortunately, the **Gladue** process outcomes in Manitoba are rendered generally weak and ineffective due to a lack of resourcing to put the **Gladue** principles into action in a manner that inspires confidence, both by the court and the public, **Gladue** principles, which favour, in the case of aboriginal offenders, sentences that will permit the court to confidently send an offender back into the community, confident in the knowledge that community resources would be, if not immediately, shortly and generously made available to the accused, under supervision, which would be adequate supervision, and in the case of conditional sentences, restrictive, and that the accused would receive the remedial measures very often necessary to reduce risk and promote rehabilitation within the community essentially on demand and by order of the court. Without that confidence, the application of **Gladue** principles is little utilized by the courts in Manitoba and is little respected by the public. The root problem of such a lack of confidence in the **Gladue** principles and its application is the matter of resources.

[111] For an option and sanction to be reasonable, however, it must still allow for the imposition of a sentence that accords with the purposes, objectives and principles of sentencing in a manner that is considered, proportional, fair and balanced.

[112] It is important to consider the purpose behind s. 718.2(e). In ***Ipeelee***, the Court stated in paras. 59, 60 and 75:

> 59 The Court held, therefore, that s. 718.2(e) of the *Code* is a remedial provision designed to ameliorate the serious problem of overrepresentation of Aboriginal people in Canadian prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing (*Gladue*, at para. 93). It does more than affirm existing principles of sentencing; it calls upon judges to use a different method of analysis in determining a fit sentence for Aboriginal offenders. Section 718.2(e) directs sentencing judges to pay particular attention to the circumstances of Aboriginal offenders because those circumstances are unique and different from those of non-Aboriginal offenders (*Gladue*, at para. 37). When sentencing an Aboriginal offender, a judge must consider: (a) the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection (*Gladue*, at para. 66). Judges may take judicial notice of the broad systemic and background factors affecting Aboriginal people generally, but additional case-specific information will have to come from counsel and from the pre-sentence report (*Gladue*, at paras. 83-84).
>
> 60 Courts have, at times, been hesitant to take judicial notice of the systemic and background factors affecting Aboriginal people in Canadian society (see, e.g., *R. v. Laliberte*, 2000 SKCA 27, 189 Sask. R. 190). To be clear, courts 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 for Aboriginal peoples. 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. ...

> 75 Section 718.2(e) does not create a race-based discount on sentencing. The provision does not ask courts to remedy the overrepresentation of Aboriginal people in prisons by artificially reducing incarceration rates. Rather, sentencing judges are required to pay particular attention to the circumstances of Aboriginal offenders in order to endeavour to achieve a truly fit and proper sentence in any particular case. This has been, and continues to be, the fundamental duty of a sentencing judge. *Gladue* is entirely consistent with the requirement that sentencing judges engage in an individualized assessment of all of the relevant factors and circumstances, including the status and life experiences, of the person standing before them. *Gladue* affirms this requirement and recognizes that, up to this point, Canadian courts have failed to take into account the unique circumstances of Aboriginal offenders that bear on the sentencing process. Section 718.2(e) is intended to remedy this failure by directing judges to craft sentences in a manner that is meaningful to Aboriginal peoples. Neglecting this duty would not be faithful to the core requirement of the sentencing process.

[113] Prior to ***Ipeelee***, on June 11, 2008 the Prime Minister of Canada issued an apology, on behalf of the Government of Canada, to the Aboriginal peoples of Canada (the "Apology")**.** The text of the Apology is as follows:

> ***Statement of Apology – to former students of Indian Residential Schools***
>
> The treatment of children in Indian Residential Schools is a sad chapter in our history.
>
> For more than a century, Indian Residential Schools separated over 150,000 Aboriginal children from their families and communities. In the 1870's, the federal government, partly in order to meet its obligation to educate Aboriginal children, began to play a role in the development and administration of these schools. Two primary objectives of the Residential Schools system were to remove and isolate children from the influence of their homes, families, traditions and cultures, and to assimilate them into the dominant culture. These objectives were based on the assumption Aboriginal cultures and spiritual beliefs were inferior and unequal. Indeed, some sought, as it was infamously said, "to kill the Indian in the child". Today, we recognize that this policy of assimilation was wrong, has caused great harm, and has no place in our country.
>
> One hundred and thirty-two federally-supported schools were located in every province and territory, except Newfoundland, New Brunswick and

Prince Edward Island. Most schools were operated as "joint ventures" with Anglican, Catholic, Presbyterian or United Churches. The Government of Canada built an educational system in which very young children were often forcibly removed from their homes, often taken far from their communities. Many were inadequately fed, clothed and housed. All were deprived of the care and nurturing of their parents, grandparents and communities.

First Nations, Inuit and Métis languages and cultural practices were prohibited in these Schools. Tragically, some of these children died while attending residential schools and others never returned home.

The government now recognizes that the consequences of the Indian Residential Schools policy were profoundly negative and that this policy has had a lasting and damaging impact on Aboriginal culture, heritage and language. While some former students have spoken positively about their experiences at residential schools, these stories are far overshadowed by tragic accounts of the emotional, physical and sexual abuse and neglect of helpless children, and their separation from powerless families and communities.

The legacy of Indian Residential Schools has contributed to social problems that continue to exist in many communities today.

It has taken extraordinary courage for the thousands of survivors that have come forward to speak publicly about the abuse they suffered. It is a testament to their resilience as individuals and to the strength of their cultures. Regrettably, many former students are not with us today and died never having received a full apology from the Government of Canada.

The government recognizes that the absence of an apology has been an impediment to healing and reconciliation. Therefore, on behalf of the Government of Canada and all Canadians, I stand before you, in this Chamber so central to our life as a country, to apologize to Aboriginal peoples for Canada's role in the Indian Residential Schools system.

To the approximately 80,000 living former students, and all family members and communities, the Government of Canada now recognizes that it was wrong to forcibly remove children from their homes and we apologize for having done this. We now recognize that it was wrong to separate children from rich and vibrant cultures and traditions that it created a void in many lives and communities, and we apologize for having done this. We now recognize that, in separating children from their families, we undermined the ability of many to adequately parent their own children and sowed the seeds for generations to follow, and we apologize for having done this. We now recognize that, far too often, these

> institutions gave rise to abuse or neglect and were inadequately controlled, and we apologize for failing to protect you. Not only did you suffer these abuses as children, but as you became parents, you were powerless to protect your own children from suffering the same experience, and for this we are sorry.
>
> The burden of this experience has been on your shoulders for far too long. The burden is properly ours as a Government, and as a country. There is no place in Canada for the attitudes that inspired the Indian Residential Schools system to ever prevail again. You have been working on recovering from this experience for a long time and in a very real sense, we are now joining you on this journey.
>
> The Government of Canada sincerely apologizes and asks the forgiveness of the Aboriginal peoples of this country for failing them so profoundly.
>
> In moving towards healing, reconciliation and resolution of the sad legacy of Indian Residential Schools, implementation of the Indian Residential Schools Settlement Agreement began on September 19,2007. Years of work by survivors, communities, and Aboriginal organizations culminated in an agreement that gives us a new beginning and an opportunity to move forward together in partnership. A cornerstone of the Settlement Agreement is the Indian Residential Schools Truth and Reconciliation Commission. This Commission presents a unique opportunity to educate all Canadians on the Indian Residential Schools system. It will be a positive step in forging a new relationship between Aboriginal peoples and other Canadians, a relationship based on the knowledge of our shared history, a respect for each other and a desire to move forward together with a renewed understanding that strong families, strong communities and vibrant cultures and traditions will contribute to a stronger Canada for all of us.
>
> June 11, 2008
>
> On behalf of the Government of Canada
> The Right Honourable Stephen Harper,
> Prime Minister of Canada

[114] On May 31, 2015 the Summary of the Final Report of the Truth and Reconciliation Commission of Canada was released (the "Summary Report").

[115] The Preface to the Summary Report contains the following excerpts:

> Canada's residential school system for Aboriginal children was an education system in name only for much of its existence. These residential

> schools were created for the purpose of separating Aboriginal children from their families, in order to minimize and weaken family ties and cultural linkages, and to indoctrinate children into a new culture—the culture of the legally dominant Euro-Christian Canadian society, led by Canada's first prime minister, Sir John A. Macdonald. The schools were in existence for well over 100 years, and many successive generations of children from the same communities and families endured the experience of them. That experience was hidden for most of Canada's history, until Survivors of the system were finally able to find the strength, courage, and support to bring their experiences to light in several thousand court cases that ultimately led to the largest class-action lawsuit in Canada's history.
>
> …
>
> The Commission heard from more than 6,000 witnesses, most of whom survived the experience of living in the schools as students. The stories of that experience are sometimes difficult to accept as something that could have happened in a country such as Canada, which has long prided itself on being a bastion of democracy, peace, and kindness throughout the world. Children were abused, physically and sexually, and they died in the schools in numbers that would not have been tolerated in any school system anywhere in the country, or in the world.
>
> But, shaming and pointing out wrongdoing were not the purpose of the Commission's mandate. Ultimately, the Commission's focus on truth determination was intended to lay the foundation for the important question of reconciliation. Now that we know about residential schools and their legacy, what do we do about it?
>
> Getting to the truth was hard, but getting to reconciliation will be harder. It requires that the paternalistic and racist foundations of the residential school system be rejected as the basis for an ongoing relationship. Reconciliation requires that a new vision, based on a commitment to mutual respect, be developed. It also requires an understanding that the most harmful impacts of residential schools have been the loss of pride and self-respect of Aboriginal people, and the lack of respect that non-Aboriginal people have been raised to have for their Aboriginal neighbours. Reconciliation is not an Aboriginal problem; it is a Canadian one. Virtually all aspects of Canadian society may need to be reconsidered. This summary is intended to be the initial reference point in that important discussion. Reconciliation will take some time.
>
> ...

[116] Including within the Summary Report was a section entitled "Call to Action". The Call to Action in the area of justice included the following:

30) We call upon federal, provincial, and territorial governments to commit to eliminating the overrepresentation of Aboriginal people in custody over the next decade, and to issue detailed annual reports that monitor and evaluate progress in doing so.

…

31) We call upon the federal, provincial, and territorial governments to provide sufficient and stable funding to implement and evaluate community sanctions that will provide realistic alternatives to imprisonment for Aboriginal offenders and respond to the underlying causes of offending.

…

32) We call upon the federal government to amend the *Criminal Code* to allow trial judges, upon giving reasons, to depart from mandatory minimum sentences and restrictions on the use of conditional sentences.

…

33) We call upon the federal, provincial, and territorial governments to recognize as a high priority the need to address and prevent Fetal Alcohol Spectrum Disorder (FASD),and to develop, in collaboration with Aboriginal people, FASD preventive programs that can be delivered in a culturally appropriate manner.

…

34) We call upon the governments of Canada, the provinces, and territories to undertake reforms to the criminal justice system to better address the needs of offenders with Fetal Alcohol Spectrum Disorder (FASD),including:

i. Providing increased community resources and powers for courts to ensure that FASD is properly diagnosed, and that appropriate community supports are in place for those with FASD.

ii. Enacting statutory exemptions from mandatory minimum sentences of imprisonment for offenders affected by FASD.

iii. Providing community, correctional, and parole resources to maximize the ability of people with FASD to live in the community.

iv. Adopting appropriate evaluation mechanisms to measure the effectiveness of such programs and ensure community safety.

...

35) We call upon the federal government to eliminate barriers to the creation of additional Aboriginal healing lodges within the federal correctional system.

36) We call upon the federal, provincial, and territorial governments to work with Aboriginal communities to provide culturally relevant services to inmates on issues such as substance abuse, family and domestic violence, and overcoming the experience of having been sexually abused.

…

37) We call upon the federal government to provide more supports for Aboriginal programming in halfway houses and parole services.

…

38) We call upon the federal, provincial, territorial, and Aboriginal governments to commit to eliminating the overrepresentation of Aboriginal youth in custody over the next decade.

…

39) We call upon the federal government to develop a national plan to collect and publish data on the criminal victimization of Aboriginal people, including data related to homicide and family violence victimization.

…

40) We call on all levels of government, in collaboration with Aboriginal people, to create adequately funded and accessible Aboriginal-specific victim programs and services with appropriate evaluation mechanisms.

…

41) We call upon the federal government, in consultation with Aboriginal organizations, to appoint a public inquiry into the causes of, and remedies for, the disproportionate victimization of Aboriginal women and girls. The inquiry's mandate would include:

i. Investigation into missing and murdered Aboriginal women and girls.

ii. Links to the intergenerational legacy of residential schools.

42) We call upon the federal, provincial, and territorial governments to commit to the recognition and implementation of Aboriginal justice systems in a manner consistent with the Treaty and Aboriginal rights of Aboriginal peoples, the *Constitution Act, 1982,* and the *United Nations Declaration on the Rights of Indigenous Peoples,* endorsed by Canada in November 2012.

[117] The Summary Report does not, of course, have any binding legal effect. It is nonetheless an extremely comprehensive and considered study of the circumstances of Aboriginal peoples in Canada. It is clearly an error, in sentencing an Aboriginal offender, to not take into account the special circumstances of the particular Aboriginal offender before the Court. It would also be an error to not take into account the circumstances of Aboriginal peoples in general in Canada. Certainly the Summary Report provides relevant information about these circumstances.

[118] With respect to the Apology, while also not legally binding, it is a recognition of the significant harm caused by the actions of the Government of Canada to the Aboriginal peoples of Canada and an acceptance of responsibility for having been the cause of this harm. The resultant dysfunction in many Aboriginal individuals, families and communities has been a significant factor underlying the involvement of Aboriginal offenders in criminal activity and has contributed to the well-documented over-representation of Aboriginal individuals in custody in Canadian jails. This is only one result, and does not even touch on the other resultant harms, such as the number of Aboriginal victims of crime, the number of Aboriginal children in care, and substance abuse and poverty within Aboriginal families and communities.

[119] As I have previously stated in several decisions, it is not enough to apologize for having caused harm without then taking steps to try to repair the harm. Such inaction would make the Apology hollow and meaningless. Worse than inaction on the part of the Government of Canada would be the Government taking steps to increase the harm already caused. Such action would make a mockery of the Apology.

[120] To the extent that the *Criminal Code* has been amended in order to support a "get tough on crime" policy agenda, and to the extent that these amendments have resulted in more offenders being sentenced to terms of imprisonment, such as through mandatory minimum sentences, restrictions on the availability of conditional sentences, and restrictions on the credit allowable for time in custody on remand, the likely result will be that the time spent by Aboriginal offenders in Canadian jails will increase, rather than decrease. Rather than addressing the long-recognized issue of the over-representation of Aboriginal offenders in custody by taking steps to reduce the presence of Aboriginal offenders in custody, such legislative amendments have the opposite effect. So, while recognizing that wrongful Governmental action has caused great harm to Canadian Aboriginal peoples, and while apologizing for having caused this harm, steps have nonetheless been taken, through legislative amendments to the *Code*, that will result in the increased incarceration of Aboriginal offenders.

[121] The Summary Report Call to Action with respect to justice makes the recommendations that it does in order to address such concerns.

[122] With respect to s. 718.2(e) of the *Code*, this provision is binding on the sentencing judge. However, it is becoming increasingly difficult to give full effect to s. 718.2(e) as the discretion to impose sentences that take into account the circumstances of all offenders, noting in particular Aboriginal offenders, is becoming more limited.

[123] I will repeat what I said in ***R.*** v. ***Rodrigue***, 2015 YKTC 5 at para. 109, in the context of considering the appropriateness of a conditional discharge for an Aboriginal offender:

> Further, the public interest includes much more than sending a strong "get tough on crime" message. The public interest in the Canadian justice system requires that we "get it right on crime". Getting it right, will at times be the same as getting tough on crime. At other times it will not.

Application to Mr. Quock

[124] Mr. Quock comes before this Court for sentencing with a serious and significant criminal history. He has numerous offences of violence, some of which involve the use of weapons.

[125] Aggravating factors in the s. 268 offence are as follows:

- this was an unprovoked attack against a sleeping and initially defenceless victim;
- the attack involved the use of a sharp weapon that caused a serious and significant injury; and
- the offender has a history of convictions for having committed offences of violence.

[126] There are no mitigating factors associated with the commission of offence itself. However, with respect to Mr. Quock:

- he has a group of supporters from within his community who are well acquainted with him and with the involvement of Aboriginal offenders in the justice system, and who believe that Mr. Quock has a different mindset towards his offending than he has ever had before;
- through considerable effort a Contract for Change has been drawn which involves commitments from Mr. Quock and from his supporters;
- notwithstanding the Kwanlin Dun community's concerns about violence in the community and steps that are being taken to address this violence, the community still wishes to provide support for Mr. Quock, rather than have him removed from the community; and

- Mr. Quock has involved himself in a number of programming activities while in custody and has been an active participant.

[127] I am aware that there is similarity between Mr. Quock's involvement with the males in his community who are offering him their support now and his involvement with such individuals at the time he was sentenced by Luther J. His commission of the offences for which he is now being sentenced shows that, notwithstanding his support from the community at the time he was before Luther J. and his stated positive intentions, Mr. Quock still posed a significant risk for the commission of further offences of violence within the community.

[128] I am aware that Mr. Quock is rated as being at a high risk for re-offending and has a high criminogenic needs rating. Certainly the factors identified as contributing to Mr. Quock's risk/needs rating are consistent with the negative impacts of the systemic discrimination of Aboriginal peoples. Any reduction in Mr. Quock's high risk/needs criminogenic rating must address the listed factors. This will not happen overnight and will take time. The important factor is that consistent progress needs to be made towards eliminating or reducing these factors as problems in Mr. Quock's life and towards providing stability in these areas, without unreasonably risking the commission of further offences by Mr. Quock.

Impact of Time in Custody on Remand

[129] Section 719(3.1) reads as follows:

> Despite subsection (3), if the circumstances justify it, the maximum is one and one-half days for each day spent in custody unless the reason for detaining the person in custody was stated in the record under subsection

> 515(9.1) or the person was detained in custody under subsection 524(4) or (8).

[130] Mr. Quock was arrested on August 11, 2014 on an allegation that he had breached a term of his probation order that required him to abstain absolutely from the possession and consumption of alcohol. He was released on that date on a Promise to Appear that required him to come to court to respond to this breach of probation allegation. There were no "bail" conditions attached to Mr. Quock's release other than the required appearance in court pursuant to the Promise to Appear. He in fact appeared in court as required on two occasions, September 24, 2014 and October 8. 2014.

[131] Mr. Quock then committed the ss. 268 and 811 offences on October 12 and failed to attend court on October 22 on the breach of probation offence. He was arrested on October 24 and a s. 524(8) application to revoke all prior process was made on October 25, 2014.

[132] Section 524(8) reads as follows:

> (8) Where an accused described in subsection (3), other than an accused to whom paragraph (*a*) of that subsection applies, is taken before the justice and the justice finds
>
> > (*a*) that the accused has contravened or had been about to contravene his summons, appearance notice, promise to appear, undertaking or recognizance, or
> >
> > (*b*) that there are reasonable grounds to believe that the accused has committed an indictable offence after any summons, appearance notice, promise to appear, undertaking or recognizance was issued or given to him or entered into by him,

> he shall cancel the summons, appearance notice, promise to appear, undertaking or recognizance and order that the accused be detained in custody unless the accused, having been given a reasonable opportunity to do so, shows cause why his detention in custody is not justified within the meaning of subsection 515(10).

[133] The effect of the s. 524(8) application was to revoke all prior process. Thus the Promise to Appear was revoked and so, it would seem, was the s. 810 peace bond recognizance that Mr. Quock had entered into. I note that s. 524(8) does not distinguish between a recognizance entered into under s. 515 and one entered into under s. 810. Thus a strict and literal reading of s. 524(8) would appear to include both.

[134] Mr. Quock did not seek judicial interim release and consented to his remand in custody. According to the judgment in ***Chambers***, by which I am bound, Mr. Quock has been detained in custody since that date and thus is entitled to a maximum credit of 1:1 for his time in custody on remand until today's date. This is a total of 329 days as of September 18, 2015.

[135] Absent the s. 524(8) application, Mr. Quock would have been entitled to have received credit of 1.5:1 for his time in custody on remand. This would have allowed him a credit of 496 days. However, due to the fact that Mr. Quock was on the s. 810 recognizance and the Promise to Appear at the time he committed the s. 268 and 811 offences, he is not entitled to receive anything more than 1:1 credit. He has thus been denied recognition of and credit for an approximate 5.4 months credit that would otherwise have been available to him. I find that, in accordance with the reasoning in ***R.*** v. ***Summers***, 2014 SCC 26, and on the facts before me, that, absent the s. 524(8)

application, Mr. Quock would have been in a position to receive enhanced credit at a rate of 1.5:1.

[136] Defense counsel submits that in accordance with the principles of statutory interpretation, I should allow for Mr. Quock to receive credit at a rate of 1.5:1.

[137] I am satisfied, however, that this argument is, on the principles of statutory interpretation, without merit. There is nothing in the wording of s. 524(8) and s. 719(3.1) that is unclear with respect to the issue of credit for time in custody once an offender has been detained in custody pursuant a s. 524(8) application. The wording of these sections is unambiguous.

[138] As such, I find that Mr. Quock is entitled to a maximum credit of 329 days custody for his time in remand.

[139] It is worth noting, somewhat briefly, what the Court in ***Summers*** stated about the legislative purpose behind the *Truth in Sentencing Act's* amendments to the *Criminal Code* that limit the allowable credit for time in custody on remand:

> 51 The intention of Parliament can be determined with reference to the legislative history, including Hansard evidence and committee debates, although the court should be mindful of the limited reliability and weight of such evidence (R. Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at pp. 593-94 and 609).
>
> 52 Parliament clearly intended to restrict the amount of pre-sentence credit. This is plain from the cap of 1.5 days credit for every day spent in detention. It is also consistent with statements made by the then Justice Minister, before the House of Common Standing Committee on Justice and Human Rights, on May 6, 2009:
>
> > The practice of awarding overly generous credit can put the administration of justice into disrepute because it creates the

> impression that offenders are getting more lenient sentences than they deserve. The public does not understand how the final sentence reflects the seriousness of the crime. For these reasons, the current practice of routinely awarding two-for-one credit must be curtailed. [p. 11]

(*Evidence*, No. 20, 2nd Sess., 40th Parl.)

This objective is achieved regardless of what circumstances may justify the use of enhanced credit in s. 719(3.1).

53 Parliament also intended that the process of granting credit under s. 719 should be more transparent and easily understood by the public. It achieved this end through the insertion of ss. 719(3.2) and 719(3.3), which provide that judges should give reasons for granting credit and state both the fit sentence and the amount of credit granted.

[140] In ***R.*** v. ***Johnson***, 2011 ONCJ 77, Green J. noted that:

> 83 I think it analytically useful to independently identify Parliament's principal concerns and, as well, the mitigative impacts Bill C-25 is intended to provide. The primary legislative objective is clearly that expressed in the prologue to the Bill: "to limit credit for time spent in pre-sentencing custody". The Bill's core rationale is the conviction that accused persons ordered detained pending their trials are overcompensated for their pre-sentence custody. This overcompensation is said to have three major realms of adverse consequence, all of which Bill C-25 is designed to remedy. First, overcompensation - or, in the government's words, the "overly generous" extension of pre-sentence custody credit - engenders a public perception that criminals are being treated leniently which, in turn, compromises respect for the administration of justice. Second, overcompensation fails to adequately punish offenders for their crimes, particularly those who, in the view of the government, are most worthy of incarceration and are ultimately responsible for their own pre-trial detention. Third, overcompensation creates an incentive for defendants in pre-sentence custody to "abuse" the system by, in effect, ragging the puck while in remand, a pattern of conduct that leads to overcrowding in remand centres, congestion in the courts and delay in the prosecution of charged crimes. Bill C-25, by limiting pre-sentence custody, is intended to facilitate achievement of these various objectives. …

[141] See also ***R.*** v. ***Beck***, in which Malakoe J. reviewed in considerable detail the history of the jurisprudence regarding credit for time in pre-trial custody purpose and the purpose and effect of s. 719.

[142] I must say that I find little connection between the circumstances by which Mr. Quock finds himself limited to credit for his time in custody to a 1:1 credit, and any of the legislative rationale and objectives behind the *Truth in Sentencing* legislation.

[143] Frankly, I would think that a reasonable and properly informed member of the Canadian public, being mindful of the Government of Canada's apology to the Aboriginal peoples of Canada and the requirements of ss.718 – 718.2, in particular 718.2(e) and the intent therein to address the concerns regarding the disproportionate incarceration rates of Aboriginal peoples in prisons, would find it unfair and somewhat contrary to the purposes, objectives and principles of sentencing that Mr. Quock, a struggling Aboriginal individual, who consumed alcohol when he wasn't supposed to, and would therefore be disentitled to credit for 5.4 months of time in custody in these circumstances because of that conduct. This is, of course, in addition to any sentence he could receive for the breach of probation charge, which in this case, Crown counsel submits is 30 days consecutive to the sentence for the s. 268 offence.

[144] I expect that Mr. Quock is not the only Aboriginal offender similarly affected. This seems to be somewhat contrary to the principle of proportionality in s. 718.1, the principle of restraint in s. 718.2(d) and the requirements of s. 718.2(e). I also expect that non-Aboriginal offenders, in particular those most marginalized in society, such as

those struggling with mental health and poverty issues, are also being similarly impacted.

[145] However, these concerns noted, the task before me is to impose a fit sentence on Mr. Quock. I am not constrained in this case by the requirement to impose a minimum sentence. Were this to be the case, then the issue of assigning a maximum of 1:1 credit for time served would have a significant impact on Mr. Quock.

[146] I am required to take into account all the relevant circumstances before me in considering whether and how much further custody is required, and this includes any actual period of custody Mr. Quock has already served. While the concern regarding the over-incarceration of Aboriginal peoples in Canadian prisons is about more than simply the amount of time a particular Aboriginal offender spends in prison for a particular offence, the actual time the offender spends in jail is still a significant consideration.

[147] My task is to impose a fit sentence, not to ensure that a sentence falls within a particular range. It is the fitness of the sentence that matters and, as stated in ***Charlie***, while a range is certainly useful as a guide and can serve as a valuable means through which the principle of parity is achieved, it is a range only and the particular sentence for the offender before the court must be achieved through a consideration of numerous factors, of which the general range of sentence is only one.

[148] Mr. Quock is not in the same situation as that of M.D.N. where there was found to be no other option available for him than a lengthy period of custody. There are other options available for Mr. Quock. While, to some extent, some aspects of these options

have been available previously to Mr. Quock and he nonetheless committed the serious offence for which he is now being sentenced, I am satisfied that there is a progression in the understanding of Mr. Quock and in his willingness to seek to pursue a healing path. I also am satisfied that those who are supporting Mr. Quock are also more aware of the difficulties and challenges he faces and the pitfalls that await if they fail in their promises of support for Mr. Quock and/or if Mr. Quock fails to take advantage of the support they offer.

[149] That is not to say that there is no risk of Mr. Quock reoffending; such a risk remains. However, I am satisfied that the best way of managing the risk is to take advantage of the progress Mr. Quock has made and enable him, with the assistance of his supports, to continue on the path of healing and rehabilitation. The steps that Mr. Quock will need to take in future and the ones he most needs assistance with are those identified in the criminogenic risk/needs assessment, the most significant of which is in regard to the use and abuse of alcohol.

[150] If progress continues to be made in this area then I am satisfied that there is a very real prospect of progress being made in the other areas as well. While to some extent there needs to be progress made in all areas at the same time, rather than progressing in a linear fashion, Mr. Quock can only make the right choices if he does not consume alcohol and, in order to do this he must spend his time with those individuals who are working with him towards healing rather than those individuals who would work against him by encouraging him to drink alcohol.

Sentence Imposed

[151] I am satisfied that to the extent I find further incarceration of Mr. Quock to be necessary, it is to a very limited degree. I cannot sentence Mr. Quock to a custodial sentence longer than what is necessary. If I were to do that I would be committing an error.

[152] Denunciation and deterrence, both specific and general, are important considerations in this case. Mr. Quock, in particular with his history of criminal convictions, needs to know that his conduct in committing the aggravated assault was a serious violation of the expectations of society. His conduct needs to be denounced and he needs to be aware that further such conduct in the future will result in significant sanctions. Others need to know that such violent and unprovoked assaults will be met with significant sentences.

[153] In the absence of the significant progress Mr. Quock has made towards rehabilitation and in the absence of the community support Mr. Quock has, I would find myself somewhat in the position of the sentencing judge in ***Jordan*** in regard to M.D.N. I would have no sanction available other than a relatively lengthy period of imprisonment. I say this, keeping in mind the sentence imposed in the ***Washpan*** decision, in which the circumstances of the offence were very similar to those before me in Mr. Quock's case.

[154] However, I find that other options are available and I am satisfied that it is not necessary for Mr. Quock to serve a substantially longer sentence than the time in custody he has already spent. This is a case where the interests of society are best

served by encouraging the rehabilitative structure that is in place to continue. In this manner, I consider that society is best protected from future re-offending. In my opinion the objectives of denunciation, and both general and specific deterrence have been largely achieved through Mr. Quock's 329 days in custody.

[155] Mr. Quock's community has interceded on Mr. Quock's behalf and come forward with a plan and a commitment to that plan. This community's support is a significant factor in determining a fit sentence for Mr. Quock and I believe it is consistent with the principles set out in s. 718.2(e)(e) and with the judgments of the Supreme Court of Canada in ***Gladue*** and ***Ipeelee*** to allow the community to come forward as they have and provide information that is integral to this sentencing process in determining a fit sentence. I believe that it would be wrong not to respect this.

[156] For the s. 268 offence, I sentence Mr. Quock to a period of imprisonment of 395 days custody, less credit for 329 days of time served. This leaves a remanet of 66 days in custody.

[157] For the s. 811 offence there will be a concurrent sentence of 30 days of time served.

[158] For the s. 733.1(1) offence and the s. 145(5)(b) offences there will be 15 days on each to be served consecutively.

[159] Therefore Mr. Quock has an additional 96 days custody.

[160] He will be placed on a period of probation of two years. The terms of the probation order will be as follows:

1. Keep the peace and be of good behaviour;

2. Appear before the court when required to do so by the court;

3. Notify your Probation Officer in advance of any change of name or address and promptly of any change in employment or occupation;

4. Have no contact directly or indirectly or communication in any way with Lawrence Henyu except with the prior written permission of your Probation Officer and with the consent of Lawrence Henyu;

5. Do not go to any known place of residence, employment or education of Lawrence Henyu except with the prior written permission of your Probation Officer and with the consent of Lawrence Henyu;

6. Remain within the Yukon unless you receive written permission from your Probation Officer or the court;

7. Report to a probation officer immediately after your release from custody and thereafter when and in the manner directed by your Probation Officer;

8. Reside as approved by your Probation Officer and not change that residence without the prior written permission of your Probation Officer;

9. For the first three months of this order abide by a curfew by being inside your residence or on your property between 11:00 p.m and 7:00 a.m. daily, except with the prior written permission of your Probation Officer, or except in the actual presence of a member of your Support Team as identified in the Contract for Change filed in these proceedings, or another responsible adult approved in advance by your Probation Officer. You must answer the door or telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition;

10. Not possess or consume alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor;

11. Not attend any premises whose primary purpose is the sale of alcohol including any liquor store, off sales, bar, pub, tavern, lounge or nightclub;

12. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer and complete them to the satisfaction of your Probation Officer for the following issues: substance abuse, alcohol abuse, anger management, psychological issues and any other issues identified by your Probation Officer, and provide consents to release information to

your Probation Officer regarding your participation in any program you have been directed to do pursuant to this condition;

13. Participate in such educational or life skills programming as directed by your Probation Officer and provide your Probation Officer with consents to release information in relation to your participation in any programs you have been directed to do pursuant to this condition;

14. Make reasonable efforts to find and maintain employment and provide your Probation Officer with all necessary details concerning your efforts;

15. Not possess any firearm, ammunition, explosive substance or any weapon as defined by the *Criminal Code* except as required by your employment, or except when in the direct company of a responsible adult approved in advance by your Probation Officer, or except with the prior written permission of your Probation Officer;

16. Meet with the members of your Support Team once a month or as otherwise directed by your Probation Officer.

[161] The s. 268 offence is a primary designated offence and I order that you provide a sample of your DNA.

[162] This is also an offence for which there is a mandatory s. 109 prohibition order. As such, Mr. Quock is prohibited from possessing any firearm, cross-bow, ammunition,

restricted weapon and explosive substance for a period of ten years. He is further prohibited from possessing any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life. I say this subject to the ability of Mr. Quock to bring an application before the Court under s. 113 to be allowed to possess a firearm for the purposes of sustenance hunting.

[163] There is a total of $600.00 in Victim Surcharges. I order this amount to be payable forthwith, note Mr. Quock to be in default and order that Mr. Quock serve his default time concurrent to the sentences imposed and that a Warrant of Committal issue.

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COZENS T.C.J.