

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE NOVA SCOTIA COURT OF APPEAL)**

BETWEEN:

HIS MAJESTY THE KING

APPELLANT
(Respondent)

-and-

HARRY ARTHUR COPE

RESPONDENT
(Appellant)

-and-

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INTERVENER

FACTUM OF THE APPELLANT
(Pursuant to Rule 42 of the *Rules of the Supreme Court of Canada*)

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PART I – OVERVIEW AND STATEMENT OF FACTS

A. Overview

1. In the early morning hours of June 27, 2021, Harry Cope viciously attacked Brittany Sack causing significant injuries to her face and torso. Ms. Sack is a vulnerable person: she is Indigenous, she is a woman, and she was Mr. Cope's intimate partner. Mr. Cope, the respondent, is also Indigenous. Sections 718.04, 718.201, and 718.2(e) were all engaged at sentencing.

2. The sentencing judge was statutorily required to consider the unique circumstances faced by the respondent, as an Indigenous person, and also by Ms. Sack, as an Indigenous woman and a victim of intimate partner violence. The sentencing judge imposed a five-year custodial sentence, after having considered all factors impacting the respondent's moral blameworthiness and the gravity of the offence.

3. A majority of the Nova Scotia Court of Appeal substituted a three-year custodial sentence. In doing so, the majority failed to give deference to the sentencing judge's weighing of sentencing considerations and findings of fact.

4. The majority acknowledged the challenge of balancing ss. 718.04, 718.201, and 718.2(e), but found insufficient weight had been placed on s. 718.2(e). The decision fails to give practical effect to Parliament's direction in ss. 718.04 and 718.201 and perpetuates a discounting of the lives of, and harms to, Indigenous women. This must stop.

5. Women are at disproportionate risk of becoming victims of violence generally and intimate partner violence in particular. Addressing gender-based violence requires structural change in many sectors – housing, education, health, childcare, employment opportunity, and more. One area in which Parliament has implemented change is in justice, through the enactment of ss. 718.04 and 718.201.

6. This appeal provides an opportunity for this Court to provide guidance on how to give effect to Parliament's mandate in ss. 718.04 and 718.201. These sections aim to ensure that sentencing judges impose sentences that reflect the higher moral blameworthiness and gravity of the offence when a vulnerable person is a victim of violent crime. The sentencing judge here displayed no error in how she gave effect to all relevant sentencing provisions and the sentence should be restored.

B. Statement of Facts

7. On June 27, 2021, shortly after 5:00 a.m., Mr. Cope repeatedly threw Brittany Sack to the ground. He repeatedly punched her in the face. He repeatedly smashed her face into the sidewalk. He repeatedly kicked her in both the head and ribs. A witness inside a nearby residence could hear Ms. Sack's head being hit against the sidewalk multiple times. At one point, Ms. Sack was lying motionless on the ground for 20-30 seconds.¹ This assault was captured on video.²

8. A passerby who had seen Mr. Cope go "at her as hard as he could" called 911. First responders observed her to have severe injuries to the left side of her face: her left eye was swollen shut, there was a large blood-covered contusion on the side of her face, and her lips were swollen making it difficult to speak. These injuries were photographed.³

9. A CT scan showed Ms. Sack suffered a medial left orbital wall blow out fracture with slight medialization of the medial rectus muscle, a subcutaneous hematoma to the right of her sternum, and a possible non-displaced buckle fracture of the sternum. She required plastic surgery for the blow out fractures.⁴

10. Mr. Cope was arrested nearby. He could be seen in the video stumbling and swaying at times. He was verbally aggressive and non-cooperative with police. He repeatedly declared that he "smashed her in the face" and that his girlfriend had hit him, so he hit her back.⁵ He later said he hit her to protect her,⁶ then he said he did not remember hitting her.⁷ Mr. Cope was charged with aggravated assault.

¹ Nova Scotia Provincial Court Sentencing Decision, February 16, 2023, A.R., Tab 1B, p. 12, 24 ["NSPC Decision"]; Transcript Excerpt, April 25, 2022, A.R., Tab 3, p. 124-30 ["Transcript Excerpt, April 25, 2022"]; Nova Scotia Court of Appeal Decision, June 14, 2024, A.R., Tab 1C, paras. 190-93, Scanlan J.A., dissenting ["NSCA Decision"].

² Video, Exhibit 1, A.R., Tab 5, 5:13 a.m. to 5:24 a.m.

³ Transcript Excerpt, April 25, 2022, p. 125, 129; Photographs, Exhibit 2, A.R., Tab 6, p. 256-62.

⁴ Transcript Excerpt, April 25, 2022, p. 132-33.

⁵ Transcript Excerpt, April 25, 2022, p. 126, 128, 130.

⁶ Gladue Report, A.R., Tab 9, p. 360.

⁷ Sentencing Circle Recommendations, A.R., Tab 10, p. 368.

11. On July 5, 2011, Mr. Cope sent messages to Ms. Sack, contrary to a “no contact” bail condition. On August 11, 2021, Mr. Cope was found at Ms. Sack’s residence, again contrary to a “no contact” bail condition.⁸

12. Ms. Sack and Mr. Cope have a long-standing off-and-on intimate partner relationship. They have a child together.⁹ Ms. Sack is Mi’kmaw. She is an Indigenous woman from Sipekne’katik First Nation. Mr. Cope is also Mi’kmaw. He is from Millbrook First Nation.

13. On the first day of trial for the aggravated assault, the respondent pleaded guilty. A *Gladue* report was prepared and a sentencing circle was held. The sentencing circle was attended by the judge and was not recorded. The sentencing circle did produce a written list of recommendations for non-custodial programming.

14. Ms. Sack did not provide a statement to police, nor file a victim impact statement, nor participate in the sentencing circle.

15. At sentencing, the Crown sought a five-to-six year jail sentence for the aggravated assault, less any pre-sentence credit that was not already applied to the breaches. The Crown adduced the respondent’s criminal record,¹⁰ including the facts from some of the respondent’s earlier convictions for violence:

- In 2007, the respondent threatened two people with a rifle and shot at the victims’ vehicle. These offences took place in Millbrook.
- In 2011, the respondent stomped on the head and chest of a victim with both feet while the victim was on the ground. Third parties intervened to stop the respondent. The victim suffered a brain bleed as well as broken ribs and bruising over his chest and face. This offence also took place in Millbrook.
- In 2017, the respondent and a co-accused robbed a gas station. The co-accused approached the gas station clerk with a knife and the respondent stole merchandise.¹¹

⁸ Transcript Excerpt, January 30, 2023, A.R., Tab 4, p. 149-51 [“Transcript Excerpt, January 30, 2023”].

⁹ NSPC Decision, p. 21-23; Gladue Report, p. 353, 356; Sentencing Circle Recommendations, p. 368.

¹⁰ Offender’s Criminal Record, A.R., Tab 8.

¹¹ Transcript Excerpt, January 30, 2023, p. 192-94.

16. The respondent filed academic articles, reports from September and October 2021 prepared on other matters pursuant to s. 672.11 of the *Criminal Code*, and letters supporting or describing available community-based programming. The respondent also testified, giving explanations for how and when he stopped using his psychiatric medication and restarted using illicit drugs in the lead up to the aggravated assault.¹²

17. The respondent sought a sentence that was, effectively, a 50-month term of imprisonment, reached by giving credit for 26 months of pre-sentence custody, followed by a two-year conditional sentence order (“CSO”).¹³ The CSO focused on rehabilitation with various treatment options organized for the respondent in the community.

18. The sentencing judge recognized there were a plethora of relevant sentencing factors. She acknowledged that the principles of *Gladue* needed to be forefront in her analysis. She accounted for the respondent’s mental health and addictions issues manifesting around the time of the offence: these factors reduced what was otherwise an appropriate sentence.¹⁴ She also accounted for those factors increasing the gravity of the offence: the significant harm to the victim, the context of intimate partner violence, and the victim’s own Indigeneity. The sentencing judge considered ranges from *R. v. Tourville*¹⁵ as a guideline in her analysis.

19. The sentencing judge found that the respondent continued to present a danger to the community. She had reservations about the respondent’s ability to follow through on a rehabilitative plan and did not accept his explanation for how he came to be using drugs at the time of the offence.

20. The sentencing judge found none of the prerequisites to a CSO had been met. She imposed a five-year sentence for the aggravated assault and a further eight months for the two breaches of the “no contact” bail conditions. From this global sentence, she deducted 26 months of pre-sentence custody.

21. A majority of the Nova Scotia Court of Appeal (Derrick and Bourgeois JJ.A.) held that the sentencing judge gave insufficient weight to the respondent’s *Gladue* factors and their complex

¹² Transcript Excerpt, January 30, 2023, p. 171-85.

¹³ The parties did not make submissions about the legality of this proposed sentence.

¹⁴ NSPC Decision, p. 31.

¹⁵ *R. v. Tourville*, [2011 ONSC 1677](#), [paras. 27-30](#).

interrelationship with his mental health and addictions issues. The majority made a finding – a finding that the sentencing judge had not made – that the respondent was in a “profoundly dysregulated state” when he committed the aggravated assault and breaches. They intervened to impose a three-year sentence which, after taking into account pre-sentence credit, resulted in an 18-month sentence “going forward” and could be followed by probation. The majority then directed that the matter return to the sentencing judge for imposition of the probation conditions.

22. The dissenting judge (Scanlan J.A.) was “convinced our justice system has not done enough to protect the most vulnerable within Indigenous communities”. Justice Scanlan observed that courts have been focussed on keeping Indigenous offenders out of jail cells, but such sentences “often come[] at the expense of the Indigenous communities and the most vulnerable in those communities”.¹⁶ Justice Scanlan asserted that, when offences involve serious harm to Indigenous women and Indigenous intimate partners, “it is time for the amended sections of the *Code* to have meaningful impact”.¹⁷

23. Justice Scanlan acknowledged the sentencing judge’s assessment that the respondent presented a public safety risk. He also found that the sentencing judge’s weighing of factors was not unreasonable. There was no error permitting appellate intervention and, as a result, he would have upheld the sentence imposed by the sentencing judge.

PART II – STATEMENT OF QUESTIONS IN ISSUE

24. The appellant raises the following questions:

- (1) What does the deferential standard of review mean in terms of weighing sentencing factors and making factual findings?
- (2) How should courts approach sentencing when ss. 718.04, 718.201, and 718.2(e) apply?

PART III – STATEMENT OF ARGUMENT

25. The appellant will first review how and why ss. 718.2(e), 718.04, and 718.201 developed and then discuss the broader societal issue of violence against vulnerable victims. This review provides the necessary context for how to address any friction that exists between the sections.

¹⁶ NSCA Decision, paras. 184, 212, Scanlan J.A., dissenting.

¹⁷ NSCA Decision, para. 231, Scanlan J.A., dissenting.

The appellant will then outline how the Nova Scotia Court of Appeal erred in substituting their decision for that of the sentencing judge.

A. Background: The evolution of ss. 718.2(e), 718.04, and 718.201

26. Proportionality requires that full consideration be given to both the gravity of the offence and the moral blameworthiness of the offender. As social values and goals have shifted, Parliament has enacted or amended sentencing provisions to ensure those values and goals are reflected in a proportionate sentence. Sections 718.2(e), 718.04, and 718.201 are three such enactments.

(a) A legislative overhaul of Part XXIII and the enactment of s. 718.2(e)

27. Indigenous people¹⁸ have a fraught relationship with the Canadian criminal justice system. Historically, the criminal justice system was reluctant to prosecute where Indigenous people were victims of crime, lacked cultural awareness, and caused an overrepresentation of Indigenous people in prison.¹⁹ Further, “most traditional aboriginal conceptions of sentencing hold restorative justice to be the primary objective”,²⁰ which is not always consistent with how sentencing objectives are weighted. Consequently, many Indigenous people are “alienated from this system which frequently does not reflect their needs or their understanding of an appropriate sentence”.²¹

28. In 1996, Parliament overhauled Part XXIII of the *Criminal Code*, enacting ss. 718, 718.1, and 718.2.²² This enactment marked “the first codification and significant reform of sentencing principles in the history of Canadian criminal law”.²³ The new Part XXIII also introduced additional non-custodial dispositions (s. 717 – adult alternative measures and s. 742.1 – CSOs).

¹⁸ The appellant uses the term “Indigenous”, unless quoting from a source that uses different language.

¹⁹ See, e.g., Truth and Reconciliation Commission of Canada, [*Honouring the Truth, Reconciling for the Future: Summary of the Final Report of the Truth and Reconciliation Commission of Canada* \(2015\)](#), p. 165-66, 168, 170-72 [“*Honouring the Truth*”].

²⁰ *R. v. Wells*, 2000 SCC 10, para. 37 [“*Wells*”].

²¹ *R. v. Gladue*, [1999] 1 S.C.R. 688, para. 88 [“*Gladue*”].

²² Former Bill C-41, [*An Act to amend the Criminal Code \(sentencing\) and other Acts in consequence thereof*](#), 1st Sess., 35th Parl., 1995, cl. 6 (assented to 13 July 1995).

²³ *Gladue*, para. 39.

29. Section 718.2(e) was a specific response to overincarceration and the overrepresentation of Indigenous offenders in penal institutions.²⁴ Through s. 718.2(e), Parliament sought to reduce the use of prison as a sanction and expand the use of restorative justice principles in sentencing.²⁵

(b) This Court provides guidance: *Gladue*, *Wells*, and *Ipeelee*

30. In 1999, this Court first provided guidance on the interpretation and application of s. 718.2(e) in *R. v. Gladue*. The Court examined the wording of the section, its place in the overall scheme of Part XXIII, its legislative history, and the social context in which the provision was enacted.

31. This Court concluded that s. 718.2(e) was not simply a codification of existing sentencing principles, but was instead a clear signal to courts that sentencing Indigenous offenders requires a different methodology. The Court noted two particular ways in which an Indigenous offender's circumstances are distinct from those of a non-Indigenous offender: (1) their unique systemic or background factors may have played a part in bringing the particular Indigenous offender before the courts and, as a result, could impact the offender's moral blameworthiness; and (2) these factors may indicate which sentencing objectives and sanctions may be appropriate in the circumstances in recognition of the different conceptions of sentencing held by Indigenous people.²⁶

32. Section 718.2(e) is a call for education, understanding, and – to the extent possible in sentencing – “remedying injustice against aboriginal peoples in Canada”.²⁷

33. The following year, this Court again substantively addressed s. 718.2(e) in *R. v. Wells*. The Court reiterated the *Gladue* methodology and the remedial purpose of s. 718.2(e). This remedial purpose focusses on the concept of restorative justice, being “a sentencing approach which seeks to restore the harmony that existed prior to the accused's actions” and taking “into account the needs of the victims, the offender, and the community as a whole”.²⁸

²⁴ *Gladue*, [paras. 46-47](#). See also *Gladue*, [paras. 52-57](#); *R. v. Ipeelee*, [2012 SCC 13](#), [para. 57](#) [“*Ipeelee*”].

²⁵ *Gladue*, [para. 48](#).

²⁶ *Gladue*, [para. 66](#); *Ipeelee*, [para. 59](#).

²⁷ *Gladue*, [para. 65](#).

²⁸ *Wells*, [para. 36](#).

34. The Court also re-emphasized three key points about applying the *Gladue* methodology: (1) it does not necessarily mandate a lesser sentence or even a different result than a similarly-situated non-Indigenous offender; (2) it does not mean that greatest weight must always be given to the principles of restorative justice; and (3) it remains up to the sentencing judge to weigh all relevant sentencing considerations.²⁹

35. This Court revisited s. 718.2(e) in *R. v. Ipeelee* in 2012. The Court observed that the problem of overrepresentation and overincarceration had only worsened since the release of its decision in *Gladue*. To the extent that this phenomenon was due to a misunderstanding and misapplication of *Gladue* principles, this Court provided further guidance.³⁰ Sentencing judges were reminded that they must apply the *Gladue* principles and endeavour to remedy the causes of overincarceration. However, the caveat remained that *Gladue* is not a panacea; the ability of the criminal justice system to address the complex and interrelated causes of the problem is limited. As a result, “sentencing will not be the sole — or even the primary — means of addressing Aboriginal overrepresentation in penal institutions”.³¹

(c) Parliament focusses on victims: the amendment of s. 718.2(e)

36. The language in s. 718.2(e) went unchanged for almost 20 years.

37. Then in 2015, s. 718.2(e) was amended to its current form with added wording:

718.2(e) all available sanctions, other than imprisonment, that are reasonable in the circumstances <u>and consistent with the harm done to victims or to the community</u> should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.	718.2(e) l’examen, plus particulièrement en ce qui concerne les délinquants autochtones, de toutes les sanctions substitutives qui sont raisonnables dans les circonstances <u>et qui tiennent compte du tort causé aux victimes ou à la collectivité</u>.³²
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38. At the same time, Parliament also broadened the definition of “victim”, enacted the *Canadian Victims Bill of Rights*, and amended s. 718(a) to its current form by adding:

²⁹ *Wells*, paras. 40, 44, 49-52. See also *Gladue*, para. 88.

³⁰ *Ipeelee*, paras. 63-86.

³¹ *Ipeelee*, para. 69.

³² Former Bill C-32, *An Act to enact the Canadian Victims Bill of Rights and to amend certain acts*, 2nd Sess., 41st Parl., 2015, cl. 24 (assented to 23 April 2015).

718(a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct.

718(a) dénoncer le comportement illégal et le tort causé par celui-ci aux victimes ou à la collectivité.

39. These enactments are an important direction from Parliament. Some courts determined that the amendment to s. 718.2(e) was a mere codification of factors already being considered. In *R. c. Tukkiapik*, for example, the sentencing judge determined the amendment had little impact because harm to victims was already built into the sentencing process.³³ But Parliament does not speak in vain. The words added to s. 718.2(e) and 718(a) are presumed to play a specific role in advancing its legislative purpose.³⁴

40. These amendments sought to recognize the harm that crime has on victims and society.³⁵ The Bill’s sponsor, then Minister of Justice, the Hon. Peter MacKay, stated that the amendment to s. 718.2(e) aimed to “ensure there is a proper balance between the rights of offenders and those who have been victimized by offenders’ behaviour” as well as bring sentencing principles in line with the amended sentencing objective of denunciation.³⁶

41. The amendment to s. 718.2(e) does not reduce or diminish the requirement to consider the particular circumstances of Indigenous offenders. Rather, it indicates that sentencing judges must not discount or leave unacknowledged the harms done to victims of crime.³⁷

42. The amended s. 718.2(e) was a signal that courts needed to ensure that the harms caused by crime were properly recognized in a sentence while still giving effect to *Gladue* considerations.³⁸ Parliament’s amendment reflects that this balance was not always being struck.

³³ *R. c. Tukkiapik*, [2018 QCCS 5938](#), [paras. 235-42](#).

³⁴ *McDiarmid Lumber Ltd. v. God’s Lake First Nation*, [2006 SCC 58](#), [para. 36](#); *D. R. Fraser & Company Limited v. Canada (National Revenue)*, [\[1948\] 4 D.L.R. 776](#) at 781 (JCPC).

³⁵ [Canadian Victims Bill of Rights](#), S.C. 2015, c. 13, s. 2, preamble.

³⁶ [House of Commons Debates](#), Vol. 147, No. 072 (9 April 2014) at 4489 (Hon. Peter MacKay).

³⁷ *R. v. Bunn*, [2022 MBCA 34](#), [paras. 89-97](#) [“*Bunn*”]; *R. c. L.P.*, [2020 QCCA 1239](#), [paras. 72-73](#) [“*L.P.*”].

³⁸ *Bunn*, [para. 97](#).

(d) Violence against Indigenous women and girls: the impetus for ss. 718.04 and 718.201

43. In late 2015, the Truth and Reconciliation Commission of Canada (“TRC”) released its final report. The TRC noted that Indigenous women reported being victims of violent crime at a rate nearly three times higher than non-Indigenous women.³⁹

44. The TRC called for an inquiry into Canada’s missing and murdered Indigenous women and girls. The TRC also called for the implementation of “Aboriginal justice systems”, noting that “Aboriginal forms of justice may be as diverse as Canada’s Aboriginal peoples themselves”.⁴⁰ Parliament established an inquiry to investigate Canada’s missing and murdered Indigenous women and girls – an issue of national importance.

45. In 2019, the National Inquiry into Missing and Murdered Indigenous Women and Girls delivered its final report. The Inquiry concluded that the criminal justice system did not hold accountable those who perpetrated violence against Indigenous women and girls. Instead, violence against Indigenous women and girls is met with impunity.⁴¹ The Inquiry found there was a commonly held belief that Indigenous offenders receive more lenient sentences because of s. 718.2(e) and that all offenders receive more lenient sentences when the victim is an Indigenous woman or girl.⁴²

46. Further, the Inquiry concluded that court and *Criminal Code* language minimized “the nature and severity of violent offences and serve[d] to minimize the responsibility of the offender and the impact of the crime”.⁴³ The Inquiry found:

There is a lack of research about the effectiveness of Gladue principles and section 718.2(e) of the *Criminal Code* on the safety of Indigenous women, girls, and 2SLGBTQQIA people and Indigenous communities. In any event, sentencing, as it is currently carried out, is not

³⁹ *Honouring the Truth*, p. 179.

⁴⁰ *Honouring the Truth*, p. 181.

⁴¹ National Inquiry into Missing and Murdered Indigenous Women and Girls, [*Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, Vol. 1a*](#), (Ottawa: NIMMIWG), p. 696-97, 717 [“*Reclaiming Power and Place: Final Report, Vol. 1a*”]. See also p. 627-31.

⁴² *Reclaiming Power and Place: Final Report, Vol. 1a*, p. 718.

⁴³ *Reclaiming Power and Place: Final Report, Vol. 1a*, p. 717.

resulting in creating safer communities or reducing the rates of violence against Indigenous women, girls, and 2SLGBTQIA people”.⁴⁴

47. The Inquiry ultimately called on the federal government to engage in law reform to ensure offenders were properly held accountable.⁴⁵

(e) Parliament acts again: the enactment of ss. 718.04 and 718.201

48. In 2019, Parliament passed the omnibus Bill C-75, which included ss. 718.04 and 718.201.⁴⁶ These sections were a direct response to the Inquiry.⁴⁷

49. These new sections were enacted as part of Parliament’s effort to address the harms done to Indigenous victims of crime as well as bolster the justice system’s response to intimate partner violence. At second reading, then Minister of Justice, the Hon. Jody Wilson-Raybould, affirmed that:

Intimate partner violence is a reality for at least one in two women in Canada. Women who are indigenous, trans, elderly, new to Canada, or living with a disability are at increased risk for experiencing violence due to systemic barriers and failures. The personal and often lifelong consequences of violence against women are enormous.⁴⁸

50. Coextensive with the enactment of s. 718.201 was the enactment of s. 718.3(8), increasing the maximum penalty for repeat intimate partner violence, and the expansion of s. 718.2(a)(ii), to include as an aggravating factor abuse of family members. Both of these provisions call for an increase in sentences for intimate partner or family violence.⁴⁹

⁴⁴ *Reclaiming Power and Place: Final Report, Vol. 1a*, p. 718.

⁴⁵ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place: Executive Summary of the Final Report*, (Ottawa: NIMMIWG) p. 69, 71 (Calls for Justice 5.2, 5.3, 5.17, 5.18). See also p. 63, 64 (Calls for Justice 1.5 and 1.9).

⁴⁶ Former Bill C-75, *An Act to amend the Criminal Code, the Youth Criminal Justice Act and other Acts and to make consequential amendments to other Acts*, 1st Sess., 42nd Parl., 2019, cl. 292.1, 293.1 (assented to 21 June 2019).

⁴⁷ *House of Commons Debates*, Vol. 148, No. 435 (17 June 2019) at 29245 (Hon. David Lametti).

⁴⁸ *House of Commons Debates*, Vol. 148, No. 300 (24 May 2018) at 19603 (Hon. Jody Wilson-Raybould).

⁴⁹ *R. v. Friesen*, 2020 SCC 9, paras. 96-100 (import of maximum penalty), 116 (import of statutory aggravating factor) [*“Friesen”*].

51. Although the TRC and the Inquiry both made other calls for justice,⁵⁰ these are the ones Parliament acted upon.

(f) After Bill C-75: social context and legislative reform

52. In 2022, Parliament passed Bill C-5, which repealed a number of mandatory minimum terms of imprisonment and removed certain conditions which had previously limited the availability of CSOs.⁵¹ These amendments allow sentencing judges to consider non-custodial sentencing options – consistent with the purpose of s. 718.2(e) and the TRC’s Call to Action 32⁵²— where such options had previously been barred.

53. Also in 2022, the federal, provincial, and territorial ministers responsible for status of women launched the National Action Plan to End Gender-based Violence. This plan forms part of a whole-of-government initiative to prevent and address gender-based violence, including intimate partner violence and other forms of violence that disproportionately impact women and girls. This ten-year plan seeks to address the root causes of, and ultimately prevent, gender-based violence. This plan is aimed at long-term change.⁵³

54. In 2023, the Joint Federal/Provincial Commission into the April 2020 Nova Scotia Mass Casualty (“Mass Casualty Commission”) released its final report. The Mass Casualty Commission found that gender-based, intimate partner, and family violence is an epidemic warranting a meaningful, whole-of-society response. Further, these types of violence disproportionately affect women and girls with even greater affect on women and girls from marginalized communities, including Indigenous women and girls, and women living in northern, rural, and remote communities.⁵⁴

⁵⁰ See, e.g., NSCA Decision, paras. 102-103.

⁵¹ Former Bill C-5, [*An Act to amend the Criminal Code and the Controlled Drugs and Substances Act*](#), 1st Sess., 44th Parl., 2022 (assented to 17 November 2022).

⁵² *Honouring the Truth*, p. 174.

⁵³ [*In Brief: National Action Plan to End Gender-Based Violence*](#) (Ottawa: Women and Gender Equality Canada, 2022).

⁵⁴ The Joint Federal / Provincial Commission into the April 2020 Nova Scotia Mass Casualty, [*Turning the Tide Together: Final Report of the Mass Casualty Commission Executive Summary and Recommendations*](#) (2023), p. 163 [“*Turning the Tide*”].

55. The Mass Casualty Commission recommended shifting focus away from carceral responses and towards primary prevention. Additionally, where a woman-centred approach is maintained and survivors are adequately supported and resourced, the Mass Casualty Commission urged “restorative approaches”.⁵⁵ However, the Mass Casualty Commission also noted that one of the factors contributing to severe underreporting of intimate partner violence is a fear that survivors’ safety will not be ensured by authorities.⁵⁶

56. All of this background – the language of the sections, their place in the overall scheme of Part XXIII, their legislative history, and the social context in which the sections were enacted – will inform how we apply ss. 718.04 and 718.201 going forward.

B. Violence against vulnerable victims

57. In order to meaningfully apply ss. 718.04 and 718.201, we must also understand the broader social issue with which they aim to grapple: violence against vulnerable victims. Sections 718.04 and 718.201 focus on victimization in two different, but often overlapping, ways. Section 718.04 applies in situations where a vulnerable person has been abused. Section 718.201 applies in situations of intimate partner violence. Both sections specifically call attention to the circumstances of Indigenous women.

(a) Vulnerable populations

58. In s. 718.04, Parliament is calling attention to harms inflicted against vulnerable or marginalized communities. Society has an interest in protecting its most vulnerable citizens. Where certain groups or communities are disproportionately victims of violence crime, their right to equality is undermined. Victimization of vulnerable populations therefore requires a meaningful judicial response. To effectively respond, we must appreciate the harm and pervasiveness of violence against our vulnerable populations, including women, Indigenous people, and individuals at the intersection of multiple inequalities.

⁵⁵ *Turning the Tide*, p. 174.

⁵⁶ *Turning the Tide*, p. 167.

59. Women are victims of violence at a rate nearly double that of men.⁵⁷ 45% of non-Indigenous women and 63% of Indigenous women have experienced physical or sexual violence.⁵⁸

60. Although this appeal focusses on women – and Indigenous women, in particular – other marginalized groups are similarly vulnerable. For example, sexual orientation is associated with a higher risk of being the victim of a violent crime: non-heterosexual individuals are twice as likely to be the victim of a violent crime than their heterosexual counterparts.⁵⁹ People with disabilities experience violent victimization at a rate almost three times higher than people without disabilities.⁶⁰ And people who have experienced homelessness, or who were experiencing homelessness in 2019, reported violent victimization at higher rates than those who did not have these experiences.⁶¹

61. This Court has already recognized the nexus between vulnerability and sexualized violence. Sexual violence disproportionately impacts women, members of marginalized communities, and those at the intersection of multiple inequalities.⁶²

62. Section 718.04 specifically contemplates the intersection of those who are “Aboriginal and female” – and for good reason. Violence against Indigenous women and girls is an epidemic.⁶³ Indigenous women are overrepresented as victims of gendered violence.⁶⁴ Indigenous women and girls are 12 times more likely to be missing or murdered than non-Indigenous women and girls⁶⁵ and the homicide rate for Indigenous women in 2020 was five times that of non-Indigenous women.⁶⁶

⁵⁷ Statistics Canada, [Criminal victimization in Canada, 2019](#) by A. Cotter (Ottawa: Minister of Industry, 2021) at 9, 29 (Table 3) [*“Criminal victimization, 2019”*].

⁵⁸ Statistics Canada, [Intimate partner violence: Experiences of First Nations, Métis, and Inuit women in Canada, 2018](#) by L. Heidinger (Ottawa: Minister of Industry, 2021) at 10, 19 (Table 4A) [*“IPV: Experiences, 2018”*]; Statistics Canada, [Violent victimization and perceptions of safety: Experiences of First Nations, Métis, and Inuit women in Canada](#) by L. Heidinger (Ottawa: Minister of Industry, 2022) at 5 [*“Violent victimization: Experiences”*].

⁵⁹ *Criminal victimization, 2019* at 10-11.

⁶⁰ *Criminal victimization, 2019* at 11.

⁶¹ *Criminal victimization, 2019* at 13-14.

⁶² *R. v. Kirkpatrick*, [2022 SCC 33](#), para. 62.

⁶³ *Reclaiming Power and Place: Final Report, Vol. 1a* at 55, 75.

⁶⁴ *IPV: Experiences, 2018* at 9.

⁶⁵ *Reclaiming Power and Place: Final Report, Vol. 1a* at 7, 55.

⁶⁶ *Violent victimization: Experiences* at 14. See also p. 37 (Table 10).

63. Despite their higher rates of being victims of violent offences, violence is underreported by women. While a significant proportion of Indigenous and non-Indigenous women have at least some confidence in police (82% and 91%, respectively), far fewer women have at least some confidence in criminal courts (54% of Indigenous women and 60% of non-Indigenous women).⁶⁷ Women are half as likely as men to report an incident of violence to police and, amongst women victims of violent crime who chose not to report, 43% cited a belief that the offender would not be adequately punished as a reason for not reporting.⁶⁸

64. Canadians from vulnerable populations are at greater risk of being victims of violent crime. This disproportionate victimization is particularly acute for those at the intersection of multiple inequalities. This disproportionate harm – coextensive with characteristics like gender, sexual orientation, race or ethnicity, or ability – undermines a core value of Canadian society: equality. All sectors of Canadian society, including the criminal justice system, have a vested interest in protecting its vulnerable citizens and thereby promoting equality.

65. Parliament has indicated that the way in which the criminal justice system can address this inequality is by recognizing and ameliorating the disproportionate harms experienced by our vulnerable populations. Parliament has sent this message through s. 718.04.

(b) Intimate partner violence

66. In s. 718.201, Parliament is calling attention to harms caused by intimate partner violence. Intimate partner violence is also an epidemic.⁶⁹ As with violent crime generally, intimate partner violence disproportionately impacts women and other vulnerable populations. All sectors of society will have to be involved to address this inequality. The criminal justice system has been tasked by Parliament with responding to intimate partner violence through specific consideration of the increased vulnerability of its primary victims: women.

67. Women form a disproportionate majority – 79% – of victims of intimate partner violence.⁷⁰ As of 2018, an estimated 3.6 million women have been victims of physical or sexual violence by

⁶⁷ *Violent victimization: Experiences* at 38.

⁶⁸ *Criminal victimization, 2019* at 17-19.

⁶⁹ *Turning the Tide*, p. 120, 163.

⁷⁰ Statistics Canada, [*Family violence in Canada: A statistical profile, 2019*](#) by S. Conroy (Ottawa: Minister of Industry, 2021) at 29 [*“Family violence, 2019”*].

an intimate partner.⁷¹ From 2009 to 2022, 46% of the women and girls who were victims of homicide were killed by an intimate partner.⁷²

68. Indigenous women are victims of physical forms of intimate partner violence at an even greater rate than non-Indigenous women (44% vs 25%).⁷³ Indigenous women are also at greater risk of experiencing the most severe forms of intimate partner violence: homicide, sexual assault, choking, and being beaten.⁷⁴ Indigenous women are vulnerable victims: they are more likely to experience violence, more likely to experience intimate partner violence, and more likely to experience more severe intimate partner violence.⁷⁵

69. Intimate partner violence results in an array of negative consequences for the victim, including injury and chronic pain, emotional impacts and post-traumatic stress disorder, challenges with relationships, and challenges maintaining stable employment.⁷⁶ Intimate partner violence not only has direct impacts on victims, but can also result in harm to their families and communities, including across generations.⁷⁷ For example, children who witness violence in the home are at greater risk of experiencing violence in adulthood – at a rate of nearly three times those who do not have such adverse childhood experiences.⁷⁸

70. Indigenous women are particularly vulnerable to intimate partner violence for many reasons. The enduring harms of “historical trauma, discrimination and violence rooted in colonialism in Canada...may further influence Indigenous women’s disproportionate risk of IPV later in life”.⁷⁹ Practical, structural, and systemic barriers also increase their risk of experiencing intimate partner violence, including cultural barriers to accessing resources, inaccessibility of

⁷¹ Statistics Canada, [Intimate partner violence in Canada, 2018: An overview](#) by A. Cotter (Ottawa: Minister of Industry, 2021) at 19 (Table 2) [*“IPV: Overview, 2018”*].

⁷² Trends in IPV, 2022 at 3.

⁷³ *IPV: Experiences, 2018* at 5, 16 (Table 2A); *Violent victimization: Experiences* at 7.

⁷⁴ *IPV: Experiences, 2018* at 3; *Violent victimization: Experiences* at 7.

⁷⁵ *Family violence, 2014* at 15, 16; *IPV: Experiences, 2018* at 3, 4; *R. v. AD*, [2019 ABCA 396](#), [paras. 25-26](#) [*“AD (2019)”*].

⁷⁶ *Family violence, 2019* at 29; *IPV: Experiences, 2018* at 7-8.

⁷⁷ *IPV: Overview, 2018* at 3; *IPV: Experiences, 2018* at 3, 6-7.

⁷⁸ *Criminal victimization, 2019* at 12.

⁷⁹ *IPV: Experiences, 2018* at 3.

supports, mistrust of police and the justice system, lack of housing alternatives, poverty and economic dependence, as well as physical, social, and psychological isolation.⁸⁰

71. Rates of intimate partner violence increased every year from 2014-2019 and remained at those increased levels in 2022.⁸¹ Yet, this abuse is not reported to police in 70% of cases where it has occurred.⁸²

72. Intimate partner violence is a gender-based crime. Society has a vested interest in promoting gender equality. The harms created by intimate partner violence are a pressing social issue. The Nunavut Court of Appeal, in speaking about sexual violence against Indigenous women, commented that “it is an ongoing challenge to address and remedy the failings within the criminal justice system in this area”.⁸³ This sentiment applies just as readily to other forms of gender-based violence, including intimate partner violence. And Parliament has spoken: we must consider the increased vulnerability of women who are victims of intimate partner violence.

C. A path forward

73. Sections 718.2(e), 718.04, and 718.201 are each a mandatory consideration when applicable to a sentencing hearing. Parliament did not intend for ss. 718.04 and 718.201 to diminish the principles in s. 718.2(e). When all three provisions apply, they require the sentencing judge to consider each provision – as is done with all other sentencing principles.

74. As the Manitoba and Alberta Courts of Appeal have held, the application of ss. 718.04 and 718.201 will often lead to a harsher sentence.⁸⁴ Similarly, the dissenting justice of the Nova Scotia Court of Appeal observed that “[g]enerally, offences involving the most vulnerable in our society have attracted harsher sentences”.⁸⁵ The Quebec Court of Appeal has acknowledged that application of these provisions will increase the gravity of the offence.⁸⁶ The appellant says the

⁸⁰ *IPV: Experiences, 2018* at 3, 5, 7.

⁸¹ Statistics Canada, News Release, catalogue no. 11-001-X, “[Trends in police-reported family violence and intimate partner violence in Canada, 2022](#)” (21 November 2023) at 1, 5 (Table 1), 6 (Table 3) [“Trends in IPV, 2022”].

⁸² Statistics Canada, [Family Violence in Canada, A statistical profile, 2014](#) (Ottawa: Minister of Industry, 2016) at 10 [“Family violence, 2014”].

⁸³ *R. v. Kolola*, 2021 NUCA 11, para. 29.

⁸⁴ *Bunn*, para. 110; *R. v. AD*, 2024 ABCA 178, para. 34 [“AD (2024)”].

⁸⁵ NSCA Decision, para. 210.

⁸⁶ *L.P.*, para. 119.

provisions go further: harsher sentences will often be the end result because abuse of a particularly vulnerable victim tends to increase both the gravity of an offence and the moral blameworthiness of the offender.

(a) Gladue continues to play the same role in sentencing

75. After the enactment of ss. 718.04 and 718.201, courts must still consider s. 718.2(e) as they did before. Section 718.2(e) requires a different *methodology* for assessing a proportionate sentence; it does not mandate or guarantee a different *result*.⁸⁷ It means courts must take into account the particular circumstances of Indigenous offenders.⁸⁸ But sentencing judges retain broad discretion on how these background factors are taken into account.⁸⁹

76. Section 718.2(e) does not necessarily mean the offender will receive a reduced, or even different, sentence than they would have without these factors.⁹⁰ As this Court noted, “[u]nless the unique circumstances of the particular offender bear on his or her culpability for the offence or indicate which sentencing objectives can and should be actualized, they will not influence the ultimate sentence”.⁹¹ Simply put, “[s]ometimes, the Indigenous circumstances of the offender affect the ultimate sentence imposed, and sometimes not”.⁹²

77. The *Gladue* methodology aims to reduce Indigenous overrepresentation in custody where reasonable in the circumstances. Contrary to the view of the majority of the Nova Scotia Court of Appeal, *Gladue* is not rendered “meaningless” if its principles do not “find expression in sentencing”.⁹³ What is required to ensure *Gladue* is meaningful is for a sentencing judge to embark on a different methodology by taking into account an Indigenous offender’s particular circumstances. This methodology does not guarantee that these principles will be “expressed” in the sentence imposed.

⁸⁷ *Wells*, [para. 44](#).

⁸⁸ *R. v. Sharma*, [2022 SCC 39](#), [para. 79](#) [“*Sharma*”]; *Gladue*, [para. 69](#).

⁸⁹ *Sharma*, [para. 79](#).

⁹⁰ *Gladue*, [para. 88](#); *Ipeelee*, [para. 60](#); *R. v. Chahalquay*, [2015 SKCA 141](#), [paras. 36-43](#), [52-54](#).

⁹¹ *Ipeelee*, [para. 83](#). See also *Gladue*, [para. 66](#).

⁹² *Bunn*, [para. 96](#).

⁹³ NSCA Decision, [para. 77](#).

78. There are two main ways in which the *Gladue* methodology can impact sentence. First, an Indigenous offender's background factors may "shed light on his or her level of moral blameworthiness".⁹⁴

79. It is important to be clear about how an Indigenous offender's background affects a given sentence. An Indigenous offender's "constrained circumstances may diminish their moral culpability".⁹⁵ In *Sharma*, this Court confirmed that the gravity of the offence is not impacted or attenuated by an offender's background circumstances.⁹⁶ Any authority to the contrary can no longer be regarded as good law.

80. The second way in which the *Gladue* methodology can impact sentence is in imposing "different or alternative sanctions [that] may more effectively achieve the objectives of sentencing in a particular community".⁹⁷

81. Where the *Gladue* methodology does impact sentence, it may manifest in a wide variety of ways, including:

- (1) The types of conditions or programming ordered or recommended, such as culturally appropriate and culturally sensitive programming;
- (2) The form of the sentence itself (ex. whether a term of imprisonment is required or whether a necessary term of imprisonment can be served in the community, whether a sentence outside the usual "range" is appropriate, etc.); or
- (3) The length of the sentence (ex. whether the custodial or community sentence should be less than a similarly situated non-Indigenous offender).⁹⁸

82. Nothing about ss. 718.04 and 718.201 changes the imperative to use the *Gladue* methodology. These provisions are not intended to diminish *Gladue* principles.⁹⁹ Nor is their effect to diminish *Gladue* principles. Rather, they add another layer of relevant sentencing considerations to the analysis.

⁹⁴ *Ipeelee*, [para. 73](#).

⁹⁵ *Ipeelee*, [para. 73](#).

⁹⁶ *Sharma*, [para. 108](#).

⁹⁷ *Ipeelee*, [para. 74](#).

⁹⁸ *Gladue*, [para. 93](#); *Sharma*, [paras. 79-81](#).

⁹⁹ See, e.g., *Bunn*, [para. 110](#).

(b) The role of s. 718.04

83. Section 718.04 codified a long-standing principle of emphasizing denunciation and deterrence where a vulnerable victim was abused.¹⁰⁰ But, as with the amendment of s. 718.2(e), this codification was not merely an endorsement of the status quo. Rather, Parliament’s enactment was, itself, a signal. This codification “must at the very least mean that some courts had failed to properly situate this consideration”.¹⁰¹ The common law principle was not enough. The amendment to s. 718.2(e) was not enough. In s. 718.04, Parliament signaled that courts must do more to give effect to denunciation and deterrence.

84. In s. 718.04, Parliament mirrored the language in s. 718.01 (sentencing objectives for offences against children). This recurring pattern of expression suggests that similar interpretive principles apply to both sections.

85. Section 718.01 was a recognition that, while personal circumstances and mitigating factors are important, it is all too easy for those considerations to overshadow the wrongs and harms to child victims.¹⁰² As with s. 718.01, s. 718.04 aims to ensure appropriate attention is paid to the harms committed against vulnerable persons and that such profound harms are not overshadowed by the personal circumstances of the offender.

86. While the relative weighing of sentencing objectives is normally in the hands of the sentencing judge, ss. 718.01 and 718.04 require otherwise. This ordering “reflects Parliament’s intention for sentences to ‘better reflect the seriousness of the offence’”.¹⁰³

87. This Court observed that the prioritization of denunciation and deterrence in s. 718.01 “confirms the need for courts to impose more severe sanctions for sexual offences against children”.¹⁰⁴ As with s. 718.01, s. 718.04 is an indication that more severe sanctions are warranted to respond to the wrongfulness of abusing vulnerable victims.

¹⁰⁰ *Kolola*, [para. 34](#); *L.P.*, [para. 80](#).

¹⁰¹ *R. v. Merasty*, [2023 SKCA 33](#), [para. 64](#), leave to appeal to SCC refused, 40738 (October 12, 2023).

¹⁰² *R. v. Pike*, [2024 ONCA 608](#), [para. 160](#).

¹⁰³ *Friesen*, [para. 102](#).

¹⁰⁴ *Friesen*, [para. 101](#). See also [para. 116](#).

88. Denunciation communicates society’s condemnation of the offender’s conduct and is closely tied to the gravity of the offence.¹⁰⁵ Sentences must reflect society’s denunciation of violence against vulnerable populations and its support for the equality of all of its citizens. Victimizing a person from a vulnerable population – and victimizing Indigenous women in particular – increases the gravity of the offence because it is particularly wrongful to harm someone who is vulnerable.¹⁰⁶

89. Abusing a member of a vulnerable population is also relevant to moral blameworthiness. Where s. 718.04 applies, the offender has harmed someone who is already vulnerable because of personal characteristics or circumstance – someone who is more likely to face barriers to reporting, to be unable to fight back or defend themselves, to be dependent on their abuser or face other difficulties in leaving the abusive situation. Deliberately targeting or harming a vulnerable person increases an offender’s moral blameworthiness.

90. This is not to say that, where *Gladue* does mitigate an offender’s moral blameworthiness, that consideration is now irrelevant. To the contrary, sentencing judges can still accord significant weight to *Gladue*.¹⁰⁷ It does, however, mean that there are additional factors the sentencing judge must consider in assessing moral blameworthiness. That is what the sentencing judge did here: she kept the principles from *Gladue* in the forefront of her mind, she found the respondent’s *Gladue* factors mitigated his moral culpability, and she also gave effect to Parliament’s direction in ss. 718.04 and 718.201.

91. In practice, s. 718.04 will often (not always) mean increasing the length of a custodial sentence, weighing towards a custodial sentence, or imposing more restrictive or onerous conditions.¹⁰⁸ Such increases in the severity of sentence are necessary to reflect society’s denunciation of the harm done to the victim and the moral blameworthiness of the offender.

92. Further, where s. 718.2(e) might previously have led a sentencing judge to place greater or equal emphasis on the sentencing objective of rehabilitation, s. 718.04 now requires otherwise.

¹⁰⁵ *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500, para. 81; *R. v. Hills*, 2023 SCC 2, para. 139 [“Hills”].

¹⁰⁶ *R. v. Bear*, 2022 SKCA 69, para. 122. See also *Friesen*, para. 77-78.

¹⁰⁷ See, in the context of s. 718.01, *Friesen*, paras. 91, 104.

¹⁰⁸ *Bunn*, para. 110; *AD* (2024), para. 34.

93. Emphasizing denunciation and deterrence is one way to reduce violence against Indigenous women and girls.¹⁰⁹ Courts can prevent the next generation from being exposed to and coming to believe that violence directed at the most vulnerable is the norm,¹¹⁰ thereby helping to stop the cycle of violence against women and girls.

94. Additionally, when courts demonstrate that they are taking harm to victims seriously – through meaningful sentences – victims will be encouraged to report, again interrupting the cycle of violence.

95. In some circumstances, reconciliation may be better achieved by harsher sentences. A lengthy custodial sentence provides “a buffer to victims and communities so they may heal in the absence of a person who, if they remain, present a continuing danger”.¹¹¹ And, as the Alberta Court of Appeal has noted, efforts at reconciliation are not served by sentences that do not sufficiently deter violence against Indigenous women.¹¹²

96. Although “denunciation and deterrence” are not always required to be met through a custodial sentence, a custodial sentence is often the only option. Denunciation and deterrence may be served through a non-custodial sentence that addresses the root cause of the criminal behaviour – so long as the sentencing judge is satisfied that the root cause *can* be addressed in that manner. Where, for example, an offender has successfully completed a relevant counselling program, meaningfully engaged in addictions treatment, or proactively taken steps to manage their mental health, then the primary objectives of the sentencing may be achieved through a non-custodial sentence.

97. In contrast, where no efforts to address the root issues of offending have been made, the offender has a history of failing to address those root issues, and the offender is found to be a continued risk to public safety, then courts “have very few options other than imprisonment for meeting these objectives”.¹¹³

(c) The role of s. 718.201

¹⁰⁹ *R. v. J.F.V.D.*, [2025 BCCA 4](#), para. 44.

¹¹⁰ NSCA Decision, para. 213, Scanlan J.A., dissenting.

¹¹¹ NSCA Decision, para. 243, Scanlan J.A., dissenting.

¹¹² *R. v. McDonald*, [2021 ABCA 262](#), paras. 29-30.

¹¹³ *R. v. Lacasse*, [2015 SCC 64](#), para. 6.

98. Section 718.201 is Parliament’s response to the epidemic of intimate partner violence and the disproportionate harm of intimate partner violence on women and Indigenous women specifically.

99. Historically, intimate partner violence was viewed as less serious than violence against strangers. Intimate partner violence was considered a concern of the domestic sphere, not the judiciary or the public. Further, courts prioritized maintaining the domestic or family relationship and would impose more lenient sentences to accomplish this objective. If the victim forgave the offender, or remained in the relationship, these would be treated as mitigating factors.¹¹⁴

100. By the late 1980s, some courts began to recognize the seriousness of intimate partner violence.¹¹⁵ In 1996, as part of the overhaul of Part XXIII, Parliament enacted s. 718.2(a)(ii), making abuse of an intimate partner a statutory aggravating factor and placing intimate partner violence squarely in the category of a serious societal concern. Since then, society’s appreciation of the pervasiveness and harm of intimate partner violence has continued to evolve and deepen. But more work is still required to ensure that sentences for intimate partner violence reflect the gravity of these offences. As of 2017, for example, one scholar found the seriousness of intimate partner sexual violence and intimate partner violence in a home invasion context remained underappreciated by courts.¹¹⁶

101. In s. 718.201, Parliament echoed the structure and language in s. 718.2(e). Section 718.201 requires sentencing judges to consider the increased vulnerability of all female victims of intimate partner violence, just as s. 718.2(e) requires courts to consider non-custodial sanctions for all offenders. The provisions both go on to require that “particular attention” be paid to the circumstances of “Aboriginal offenders” (s. 718.2(e)) and “Aboriginal female victims” (s. 718.201).

102. Special attention must be given to the circumstances of Indigenous female victims of intimate partner violence because the criminal justice system has not done enough to protect them.

¹¹⁴ Department of Justice Canada, [*Sentencing for Intimate Partner Violence in Canada: Has s. 718.2\(a\)\(ii\) Made a Difference?*](#) (A report prepared for the Department of Justice Canada) by I. Grant (Ottawa: Minister of Justice and Attorney General of Canada, 2017) at 8 [“*Sentencing for IPV*”].

¹¹⁵ *Sentencing for IPV* at 8-9.

¹¹⁶ *Sentencing for IPV* at 55, 63. See also 55-61, 63-65.

Not only do these victims bear the burdens of colonialism in equal measure with Indigenous men, but they *additionally* and *disproportionately* bear the harms of intimate partner violence.¹¹⁷ Section 718.201 is Parliament's recognition that sentences must take this dual burden into account.

103. Since 2015, Parliament has made efforts to focus attention back onto the harms done to victims. Taking into consideration the increased vulnerability of women – Indigenous women, in particular – means imposing a sentence that, to the extent possible, addresses the inequality of intimate partner violence. This will often lead to more severe sanctions because of the presence of these frequently seen factors:

- Victim vulnerability – abuse of a vulnerable person always increases the gravity of the offence and, where the offender knows their victim is a vulnerable person, their moral blameworthiness also increases. All women are vulnerable because of their disproportionate risk of becoming victims of intimate partner violence. In addition, the more vulnerable the victim, the greater the harm. Vulnerability will increase, for example, where the victim is at the intersection of more than one inequality (such as Indigenous women), where the victim is isolated or otherwise has fewer access to supports and resources (such as in rural or northern communities), or where the victim faces language, cultural, social, or other barriers (such as some immigrant women).
- Nature of the relationship – abuse of an intimate partner is a statutorily aggravating factor.¹¹⁸ In addition, the more intertwined the lives of the victim and offender are, the greater the harm inflicted, increasing the gravity of the offence and moral blameworthiness of the offender. In those circumstances, there is greater emotional investment in the relationship. There may be children and a desire to preserve the family unit. Finances, housing, healthcare, childcare, and other responsibilities are shared. There is often a greater degree of dependence, a greater difficulty leaving the abuser, and greater risk of violence recurring.

¹¹⁷ See, in the sexual violence context, *R. v. Kownirk*, [2023 NUCA 2](#), para. 61.

¹¹⁸ *Criminal Code*, s. 718.2(a)(ii).

- Degree of harm or violence – significant harm to the victim is a statutorily aggravating factor.¹¹⁹ Intimate partner violence almost always results in an emotional impact¹²⁰ and the negative society-wide impact of intimate partner violence must be considered. In addition, the greater the violence or harm to the victim, the greater the gravity of the offence and moral blameworthiness.
- Duration and frequency – physical or sexual abuse of an intimate partner often occurs more than once.¹²¹ Sustained or repeated acts of violence increases the harm to the victim and increases the gravity of the offence and the moral blameworthiness of the offender.¹²²
- Repeat offending – where an offender has previously been convicted of intimate partner violence, the offender may be subject to a higher maximum penalty,¹²³ which reflects the increased gravity of the offence.¹²⁴
- Risk of reoffending – if the sentencing judge has concerns that the offender is a risk to reoffend, then rehabilitation is going to play a lesser role and further separation of the offender may be warranted.

104. Sections 718.04 and 718.201 aim to break the cycle of intergenerational trauma and dysfunction that disproportionately impacts Indigenous women.¹²⁵ To give effect to this objective, courts must appreciate that:

- The “seriousness of family violence offences are not always fully appreciated in Indigenous communities”;¹²⁶

¹¹⁹ *Criminal Code*, s. 718.2(a)(iii.1).

¹²⁰ *IPV: Overview, 2018* at 7-8.

¹²¹ *IPV: Overview, 2018* at 17-18 (Table 1B).

¹²² See, in the context of sexual violence against children, *Friesen*, [paras. 131-33](#).

¹²³ *Criminal Code*, s. 718.3(8), which applies where the offender is convicted of an indictable offence.

¹²⁴ *Sharma*, [para. 106](#).

¹²⁵ *AD* (2024), [para. 31](#) (referencing s. 718.04 only).

¹²⁶ NSCA Decision, para. 260 Scanlan J.A., dissenting, quoting Joannathan Rudin, *Indigenous People and the Criminal Justice System*, 2d ed. (Toronto: Emond Publishing, 2022), p. 298.

- “Power dynamics within the particular Indigenous community may well have a gendered dimension which can make it difficult for women to refuse to participate [in community-based dispositions] or to express their fear of the offender”;¹²⁷
- “The prospect of a violent offender being immediately released into a community on a CSO, not in a locked jail, must have a chilling effect on victims of violent crimes”¹²⁸ where such crimes are already underreported;
- The “[f]ailure to protect the most vulnerable serves only to perpetuate the cycle of violence”;¹²⁹ and
- Given the diversity of Indigenous communities across the country, and the diversity of experiences by individual victims, there will never be a single answer for what sentencing outcome best supports and protects “Indigenous victims”.¹³⁰ Nevertheless, Parliament specifically exercised its power to legislate in the sentencing sphere and intentionally chose denunciation, deterrence, and victim vulnerability as its focus.

105. A proper application of ss. 718.2(e), 718.04, and 718.201 – driven by an understanding of their animating purposes – will not result in greater rates of incarceration where it is unwarranted. There will be concerns that, if ss. 718.04 and 718.201 are viewed as calls for more severe sanctions, then the aims of s. 718.2(e) will be undermined – that is, the problem of overincarceration of Indigenous offenders will be exacerbated. The appellant recognizes that Indigenous offenders are still more likely to receive custodial sentences or CSOs than white offenders.¹³¹ Courts must continue to critically examine whether custodial sentences are required in all situations. But some situations cry out for a custodial sentence; Parliament has indicated that committing a violent crime against a vulnerable person is one such situation.

¹²⁷ *Sentencing in IPV* at 38. See also p. 49.

¹²⁸ NSCA Decision, para. 259, Scanlan J.A., dissenting.

¹²⁹ NSCA Decision, para. 213, Scanlan J.A., dissenting.

¹³⁰ See, for a brief outline of conflicting scholarly opinions, *Sentencing for IPV* at 36-37.

¹³¹ Statistics Canada, [*Disparities in decision and sentencing outcomes between Indigenous accused and White accused in adult criminal court, 2016/2017 to 2020/2021*](#) by M. Khorrami and L. Paquin-Marseille (Ottawa: Minister of Industry, 2025) at 13-14, 16.

106. Sections 718.04 and 718.201 are not automatic or reflexive calls for penal sanction. Rather, they are additional considerations which tend to weigh in favour of more severe sanctions. Where, for example, the offender has worked to treat the underlying causes of their conduct, the offender is not a risk to public safety, the emotional and physical harm to the victim is minimal, the intimate partner relationship was brief, and the community is ready to support the victim, then a custodial sentence may not be required, or a relatively short custodial period may be appropriate. In contrast, where the victim has been deeply harmed, the community supports the offender alone, the offender has previously failed to address the root causes of his behaviour, and the breach of trust of the intimate partner relationship is more profound, then a lengthy custodial sentence should be the norm.

107. Parliament's message over the last decade has come into sharp focus: we must take violence against vulnerable victims seriously. These provisions signal that we have not been doing enough. Sentences should increase. Parliament did not intend to change the *Gladue* methodology but instead require "that, in having regard to the circumstances of Aboriginal offenders, the courts do not discount the lives of or harms done to Aboriginal victims of crime, their families and their communities".¹³²

D. The Nova Scotia Court of Appeal erred by interfering with the sentencing judge's decision

108. A majority of the Nova Scotia Court of Appeal manufactured error in order to intervene and reduce the respondent's sentence. The majority found no deference was required because the sentencing judge erred in three ways: (1) in her weighing of the *Gladue* factors, (2) in relying on a particular sentencing range, and (3) in her factual findings.

109. This Court has repeatedly emphasized that sentencing judges are to be afforded considerable deference on appeal.¹³³ Unless the requisite standard of review has been met, appellate intervention is impermissible. Here, the majority intervened when the established standards of review had not been met.

¹³² *AD* (2019), [para. 27](#) (emphasis in original removed).

¹³³ *Lacasse*, [paras. 10-12](#), [48](#); *Friesen*, [para. 25ff](#).

(a) “Different weighing” does not equate to “unreasonableness”

110. When an alleged error relates to the weighing or balancing of relevant factors, a sentencing judge’s exercise of discretion must be assessed against the reasonableness standard of review. An appellate court may not interfere simply because it would have weighed factors differently. It is only where the sentencing judge exercised their discretion unreasonably that intervention is permitted because such unreasonableness constitutes an error in principle.¹³⁴

111. The majority stated that the sentencing judge did not sufficiently account for,¹³⁵ underemphasized,¹³⁶ failed to adequately account for,¹³⁷ and fell short¹³⁸ in giving mitigating effect to, the respondent’s *Gladue* factors. However, the majority did not point to errors that demonstrate “unreasonable” weighing. Rather, the majority simply found it would have weighed circumstances differently. When, then, does “different” become “unreasonable”?

112. The majority equated “underemphasis” with meeting the requisite standard of review: unreasonableness. Such reasoning erodes the meaning of deference. As the dissenting judge stated “[d]eference is not a principle which permits a court of appeal to embrace a lenient sentence when it is the sentence the appeal court judge would have imposed, then discard the principle when dealing with one other than what they would have imposed”.¹³⁹ The sentencing judge’s weighing of relevant factors was not unreasonable; it was simply different than how the majority would have weighed them.

113. “Reasonableness” here should find its meaning from its use in other, parallel legal contexts.

- (1) A trial judge’s verdict is “unreasonable” if reached illogically or irrationally.¹⁴⁰
- (2) In the civil context, a discretionary decision is “unreasonable” if there is nothing in the record that could justify it.¹⁴¹

¹³⁴ *Friesen*, [para. 26](#).

¹³⁵ NSCA Decision, paras. 6, 84.

¹³⁶ NSCA Decision, paras. 6, 79, 80, 83, 162.

¹³⁷ NSCA Decision, para. 37.

¹³⁸ NSCA Decision, para. 78.

¹³⁹ NSCA Decision, para. 225.

¹⁴⁰ *R. v. Sinclair*, [2011 SCC 40](#), [para. 44](#).

¹⁴¹ *The Beaverbrook Canadian Foundation v. The Beaverbrook Art Gallery*, [2006 NBCA 75](#), [para. 4](#).

- (3) In the administrative law context, a decision is “unreasonable” if it does not fall within the range of possible acceptable outcomes defensible in respect of the facts and law, or if it is not justified in light of the legal and factual constraints that bear on the decision.¹⁴²
- (4) Importantly, a decision is not unreasonable simply because a different conclusion could be supported.¹⁴³

114. Applying this type of language, a sentencing judge’s weighing of factors should only be found to be “unreasonable” – thus permitting appellate intervention – if such weighing could not be justified or supported on any rational basis. The majority here intervened because, in their view, the sentencing judge placed insufficient weight on *Gladue* principles. But as the dissenting judge noted, the question is whether the sentencing judge’s weighing was unreasonable.

115. The sentencing judge’s weighing was rational and based on the information before her. It was reasonable.

(b) Choosing a sentencing range is not a reversible error

116. A sentencing judge’s discretion includes the choice of a sentencing range or of a category within a range and “this exercise of discretion cannot in itself constitute a reviewable error”.¹⁴⁴

117. An appellate court cannot “intervene simply because the sentence is different from the sentence that would have been reached had the range of sentence or starting point been applied”,¹⁴⁵ nor because it would have placed the offence in a different range or category.¹⁴⁶

118. The only time the majority found the sentencing judge’s exercise of discretion was unreasonable was when they characterized the sentencing judge as having placed too much emphasis on the ranges in *Tourville*. The majority discounted the value of *Tourville* because it did not reflect *Gladue* principles.¹⁴⁷

¹⁴² *Dunsmuir v. New Brunswick*, [2008 SCC 9, paras. 47, 74](#); *Canada (Minister of Citizenship and Immigration) v. Vavilov*, [2019 SCC 65, para. 99](#).

¹⁴³ *Ifeanyi v. Canada (Citizenship and Immigration)*, [2018 FC 419, para. 23](#).

¹⁴⁴ *Lacasse*, [para. 51](#); *R. v. Parranto*, [2021 SCC 46, para. 30](#) [“*Parranto*”].

¹⁴⁵ *Friesen*, [para. 37](#).

¹⁴⁶ *Parranto*, [para. 30](#).

¹⁴⁷ NSCA Decision, paras. 79, 84, 121.

119. The majority’s reasoning was, itself, premised on two errors.

120. First, the majority was wrong that the *Tourville* ranges did not reflect *Gladue* principles. Not only did *Tourville* involve an Indigenous offender and the application of *Gladue*, the ranges cited were crafted, in part, by reference to cases also involving Indigenous offenders. Other courts have found *Tourville* of value in determining a fit and appropriate sentence for an Indigenous offender.¹⁴⁸

121. Second, the majority was wrong to assert that cases setting out ranges or starting points are irrelevant or should be discounted where *Gladue* was not considered in those cases. The *Gladue* methodology “does not mean that *Gladue* and starting-point methodologies are mutually incompatible”.¹⁴⁹ Rather, ranges or starting points are useful tools for situating the gravity of an offence and offer a place for judges to “begin their thinking”.¹⁵⁰

122. Courts can consider case ranges that did not apply *Gladue* so long as the sentencing judge applies the *Gladue* methodology in their own analysis.

123. The majority’s characterization here diminishes the sentencing judge’s fulsome analysis. The sentencing judge noted that *Tourville* was only a guide and was not to be applied rigidly, nor was she bound by its categories.¹⁵¹ Just as this Court has directed.¹⁵²

124. The sentencing judge went on to remind herself that the guiding principles from *Gladue* must be at the forefront of her analysis and went on to consider: comparator cases to assist in the application of parity, the vulnerability of the victim, the nexus of the respondent’s *Gladue* factors and his mental health and addictions issues, the respondent’s acceptance of responsibility and remorse, the sentencing circle’s recommendations, the respondent’s prospects for rehabilitative success, and the respondent’s serious criminal record.¹⁵³

125. Using the “reasonableness” definition advanced above, the sentencing judge did not commit any error by referencing the *Tourville* ranges. Rather, the ranges in *Tourville* were one of

¹⁴⁸ See, e.g., *R. v. Rabbit*, [2023 ABCA 170](#); *R. v. Quash*, [2019 YKCA 8](#).

¹⁴⁹ *Parranto*, [para. 49](#).

¹⁵⁰ *Parranto*, [para. 44](#).

¹⁵¹ NSPC Decision, p. 17, 19.

¹⁵² *Parranto*, [paras. 36-37](#).

¹⁵³ NSPC Decision, p. 19-30.

many tools the sentencing judge used to situate a fit and appropriate sentence in this case. Contrary to the majority's finding, such use of sentencing ranges could not, on its own, amount to a reversible error and did not equate to an unreasonable consideration.

(c) The sentencing judge's findings of fact must be respected

126. Absent palpable and overriding error, a sentencing judge's findings of fact must be respected. Here, without a challenge to the sentencing judge's factual findings, and without reference to this standard of review, the majority recast the facts to justify intervention.

127. The sentencing judge found as a fact that the respondent was a danger to the community. Not only did the respondent have a history of violent offences,¹⁵⁴ but he also had a history of failing to address his addictions – an important factor in the sentencing judge's risk assessment:

- He chose to keep using drugs instead of engaging in sweats when given an ultimatum by an Elder,¹⁵⁵
- He did not follow through on a treatment plan in June 2020,¹⁵⁶
- He discharged himself from a detox facility two or three days after being admitted in the spring of 2021,¹⁵⁷
- He stopped "all" drugs on June 23, 2021 but was using cocaine daily by August 11, 2021.¹⁵⁸

128. The sentencing judge also rejected the respondent's explanation for returning to illicit drug use in the lead up to the offence. The respondent's explanations for using drugs again were conflicting. He said he stopped taking his psychiatric medication and began using illicit drugs when his infant daughter passed away. The respondent claimed he then relapsed "for a year straight"¹⁵⁹ in order to bond with Ms. Sack, who was pushing people away after the death of their infant daughter. But the respondent also acknowledged he was already taking illicit drugs (magic

¹⁵⁴ NSPC Decision, p. 30.

¹⁵⁵ Gladue report, p. 352.

¹⁵⁶ Transcript excerpt, January 30, 2023, p. 181-82.

¹⁵⁷ 672.11 report, p. 269, A.R., Tab 7; Gladue report, p. 357.

¹⁵⁸ 672.11 report, p. 270.

¹⁵⁹ Gladue report, p. 357. See also Gladue report p. 356; Sentencing Circle Recommendations, p. 368; Transcript excerpt, January 30, 2023, p. 182.

mushrooms) when the baby was born¹⁶⁰ and overdosed before the baby died.¹⁶¹ Further, the respondent “had stopped all of his drugs” on June 23, 2021 in honour of his daughter’s passing a year prior¹⁶² – mere days before this offence.

129. Given these facts, the sentencing judge was not convinced that a non-custodial sentence centred on a rehabilitative plan had sufficient prospects of success such that she could give greater weight to rehabilitation or find that long-term deterrence would be served by a non-custodial sentence.

130. The majority never grappled with how the sentencing judge’s finding on future dangerousness impacted the sentencing analysis. The majority did not consider the respondent’s troubling criminal record for violence, which included using a firearm, robbery with a knife, and stomping on a victim. The majority ignored the respondent’s history of not following through on addressing his addictions. The majority went so far as to order probation in the face of the sentencing judge’s concerns with community safety and a community-based sentence. The sentencing judge’s finding that the respondent was a danger was a fact discarded by the majority.

131. Further, the majority made its own factual finding in the absence of a palpable and overriding error. The majority determined that the respondent committed the offences “while in a profoundly dysregulated state”,¹⁶³ an inference the sentencing judge did not draw. The majority determined that the sentencing judge had not given enough weight to the respondent’s mental health, which was “much worse than the sentencing judge described”¹⁶⁴ and, therefore, reduced the respondent’s moral blameworthiness even more than the sentencing judge found.

132. The sentencing judge and the majority had the same information about the respondent’s mental health. The sentencing judge, while recognizing that the respondent lives with significant mental illness,¹⁶⁵ assessed the respondent’s mental health situation at the time of the offence in accordance with the information available to her. The sentencing judge noted that the respondent’s

¹⁶⁰ Gladue report, p. 356.

¹⁶¹ Transcript excerpt, January 30, 2023, p. 183.

¹⁶² 672.11 report, p. 270.

¹⁶³ NSCA Decision, para. 162.

¹⁶⁴ NSCA Decision, para. 162.

¹⁶⁵ NSPC Decision, p. 24.

mental health was poor at the time of the breaches. This accorded with the respondent's evidence that in the "summer" of 2021, his mental health was "not well".¹⁶⁶

133. There was no other information about the respondent's mental health on or around June 27, 2021. Instead, there was evidence that, when in custody between June 27-July 2, 2021, and again July 6-15, 2021, there were no notations on his chart related to mental health issues. Further, on July 27, the respondent was still able to problem solve. Only in August 2021, two months after the aggravated assault, was the respondent noted to be unstable by nursing and psychiatric staff.¹⁶⁷

134. The majority overstepped when it made a strong, mitigating finding of fact about the respondent's mental health. An appellate court can only make its own findings, or draw its own inferences, where the lower court made a palpable and overriding error, or made a finding that is clearly wrong, unreasonable, or unsupported by the evidence.¹⁶⁸ That standard was not met.

135. A deferential standard of review is justified, in part, because sentencing is a delicate task where "there is often more than one correct sentencing response".¹⁶⁹ Since different judges will assign different weight to different sentencing considerations, deference must be afforded to how those considerations are actually weighed in any given case.

136. A deferential standard of review is also justified because of the advantageous position that sentencing judges enjoy.¹⁷⁰ Sentencing judges are constantly called upon to assess the information before them – including the offender's prospects for rehabilitation, the need for protection of the public, the likelihood of recidivism – in order to situate a proportionate sentence.

137. Sentencing judges are best positioned to make those assessments as they have direct access to the parties and any evidence heard, as well as the experience from serving on the front lines of our justice system.

138. A sentencing judge's frontline vantage point is particularly prominent in a case like this for two reasons.

¹⁶⁶ NSCA Decision, para. 160

¹⁶⁷ Section 672.11 Report, p. 269-70.

¹⁶⁸ *H.L. v. Canada (Attorney General)*, [2005 SCC 25](#), [paras. 4](#), [55-58](#), [89](#).

¹⁶⁹ *Hills*, [para. 64](#).

¹⁷⁰ *M.(C.A.)*, [para. 91](#).

139. First, the sentencing judge had to assess the offender's explanations, offered through *viva voce* evidence and in various reports. The sentencing judge determined that she did not accept the respondent's explanation for why he returned to illicit drug use and why he committed the offence, both findings which impact prospects for rehabilitation.

140. Second, the sentencing judge was present for the discussion at the sentencing circle. Other than the circle's Recommendations, there is no recording of the circle's discussions for review. As such, the information gathered and shared, the questions asked and answered, the reasoning behind the recommendations, was all information within the scope of the sentencing judge's knowledge, but not available to the appellate court on review.

141. This Court has repeatedly emphasized the deferential standard of review on sentencing. "Unreasonable" weighing of sentencing factors is not the same as a mere difference of opinion in weighing sentencing factors. Using a sentencing range as a guideline is not an automatic error. Findings of fact – including drawing inferences from facts – are the domain of the sentencing judge. In light of the sentencing judge's findings of fact, and her supportable decision to weigh relevant sentencing factors as she did, there was no avenue to justify appellate intervention.

(d) The five-year sentence was fit and appropriate

142. The respondent committed a serious, very violent offence against a vulnerable victim. The gravity of the offence is reflected in the high maximum penalty for aggravated assault, the intimate partner relationship between the parties, the significant injuries suffered by the victim, and the victim's vulnerabilities as both an Indigenous person and a woman. The respondent beat and kicked the victim. He gave multiple explanations for his behaviour, none of which satisfied the sentencing judge that he had true insight into his conduct.

143. The sentencing judge was statutorily required to put primary emphasis on denunciation and deterrence – factors that tend to require harsher sentences.

144. At the same time, the sentencing judge accounted for the mitigating factors:

- The guilty plea (albeit on the day of trial);
- The respondent's remorse and acceptance of responsibility; and

- The respondent's *Gladue* factors, mental health challenges, and addictions issues.¹⁷¹

145. Without these factors, the gravity of the offence would have called for a six-year sentence.¹⁷²

146. The sentencing judge considered – as s. 718.2(e) required – whether alternatives to incarceration were appropriate in the circumstances:

- While the respondent's *Gladue* factors did mitigate his moral blameworthiness, it did not do so to the extent of bringing the sentence into the reformatory range.
- The respondent continued to present a “danger to society”.¹⁷³ Dangerousness here correlated to the respondent's use of illicit substances and failure to treat his mental health.¹⁷⁴ The respondent had not followed through on a past rehabilitation plan.¹⁷⁵
- The sentencing judge expressed concerns about the respondent's ability to follow through with the proposed non-custodial sentence.¹⁷⁶
- The sentencing judge also had evidence that the respondent had some difficulty following prior court orders.¹⁷⁷

All of which confirmed that a lengthy custodial sentence was required to meet the sentencing objectives in these circumstances.

147. In contrast, the majority's sentence reflects a hierarchy of considerations both inconsistent with the facts and the current state of the law.

- The majority imposed a sentence that gave primary emphasis to rehabilitation, contrary to s. 718.04 and despite the sentencing judge's assessment of the respondent's rehabilitative prospects.

¹⁷¹ NSPC Decision, p. 31.

¹⁷² NSPC Decision, p. 31.

¹⁷³ NSPC Decision, p. 31.

¹⁷⁴ NSPC Decision, p. 30-31.

¹⁷⁵ NSPC Decision, p. 25.

¹⁷⁶ Transcript excerpt, January 30, 2023, p. 233-34.

¹⁷⁷ Criminal record, p. 277, 280, 282, 283, 284.

- The majority imposed a sentence that “expressed” *Gladue* principles through a minimal custodial sentence, without giving equal consideration or expression to s. 718.201.
- The majority imposed a sentence that emphasized the respondent’s background circumstances, but not the gravity of the offence.
- Their analysis was “informed by the principles that govern the sentencing of Indigenous offenders, and the reality of their grossly disproportionate representation in Canadian prisons”,¹⁷⁸ without proportionately balancing ss. 718.04 and 718.201.

148. There is no question that the respondent bears the tragic consequences of intergenerational trauma and colonialism. This should – and did – weigh in the sentence imposed. But there is also no question that the victim bears those same consequences *in addition to* the harms of violence generally and intimate partner violence in particular because she is a woman and because she is an Indigenous woman. This, too, weighed in the sentence imposed by the sentencing judge. Just as Parliament directed.

149. Sections 718.04 and 718.201 are “reminders to sentencing courts to recalibrate and to overcome the underreaction to family violence cases that might result from familiarity. Family violence, like violence in any context, should be shocking every time”.¹⁷⁹

150. In this case, reconciliation was best achieved through separation of the offender. Rehabilitation was considered but was necessarily secondary to denunciation and deterrence. Nothing in the sentencing judge’s analysis warranted appellate intervention.

PART IV– SUBMISSION ON COSTS

151. The appellant does not seek costs and requests that no costs be ordered against it.

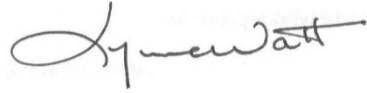
¹⁷⁸ NSCA Decision, para. 85.

¹⁷⁹ *AD* (2024), [para. 57](#).

PART V – ORDER SOUGHT

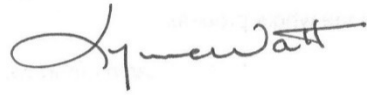
152. The appellant requests that the appeal be allowed and the sentence imposed at the respondent's sentencing be restored.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of June, 2025.



for:

Erica Koresawa
Counsel for the Appellant



for:

Jennifer A. MacLellan, K.C.
Counsel for the Appellant

PART VI – SUBMISSIONS ON CONFIDENTIALITY INFORMATION

153. There are no publication bans, sealing orders, or other confidentiality orders that restrict public access to information in the file.

PART VII – TABLE OF AUTHORITIES & LEGISLATION

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