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2025 BCPC 311

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Registry: Port Alberni

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA

REX

v.

**DAVID DANIEL BIRD, SHAE LEIGH ANN DOIRON, and
MEGHAN RENEE INGRAM**

BAN ON PUBLICATION
Pursuant to s. 486.5(9) of the *Criminal Code of Canada*

RE: ACCUSED, MEGHAN RENEE INGRAM

**REASONS FOR SENTENCE
OF THE
HONOURABLE JUDGE A. WOLF**

Counsel for the Crown:
Counsel for the Defendant:
Place of Hearing:
Date of Hearing:
Date of Sentence:

A. Taylor
C. Hodson
Port Alberni, B.C.
April 11, 2025
June 25, 2025

INTRODUCTION

[1] Meghan Renee Ingram is being sentenced for her role in breaking into a house and robbing the occupants.

THE CHARGE

[2] Meghan Renee Ingram, on or about the 26th day of December 2022, at or near Port Alberni, in the Province of British Columbia, did break and enter a dwelling house ... and commit an indictable offence therein, robbery, contrary to Section 348(1)(b).

[3] This is an extremely serious offence.

THE AGREED STATEMENT OF FACTS FILED WITH THE COURT – A Summary

[4] On December 26, 2022, the accused Ms. Ingram entered an apartment building with Ms. Doiron and Mr. Bird.

[5] Ms. Ingram walked up some stairs and knocked on the victim's apartment door. She entered without permission and she did not identify herself. She locked the door.

[6] The other two accused also entered the apartment without permission. Ms. Doiron carried a machete and Mr. Bird carried a two-hook bladed weapon with wooden handles.

[7] Ms. Doiron told the occupants in the apartment they were not allowed to leave. Money was demanded and several items had been thrown around the apartment.

[8] More specifically, with respect to Ms. Ingram's participation, she prevented one of the female occupants from leaving by knocking her to the ground and then struck her using her fists and feet. She also took that person's purse and car keys, which Ms. Doiron and Ms. Ingram took when they left the scene. The police recovered and returned the vehicle to the victim.

[9] The individual that the accused struck had injuries. There was "minor swelling and bruising as a result of Ms. Ingram's assault".

[10] The three individuals were inside the residence for approximately 10 minutes.

[11] Ms. Doiron and Ms. Ingram were part of the drug subculture, and they attended the residence over a dispute involving money. Ms. Ingram felt pressured to be part of the robbery by one of the other co-accused.

THE CROWN POSITION ON SENTENCE

[12] The Crown submits that a federal jail sentence in the range of two to four years is appropriate.

THE DEFENCE POSITION ON SENTENCE

[13] The defence submits that a two-year less a day conditional jail sentence is appropriate.

THE ISSUE

[14] I wish to adopt Justice Fenlon's framing of the one issue in the *R. v. Davis*, 2025 BCCA 113 case decided April 7, 2025, at paragraph 26. I acknowledge the charges were different and involved a punch that caused a skull fracture and severe brain injury. Assuming there are no statutory barriers to the imposition of a conditional sentence,

[26] I turn then to the challenging question facing this Court as we sentence anew: when the *Gladue* factors are given appropriate weight, does Mr. Davis's lessened moral culpability tip the scales sufficiently to warrant a conditional sentence despite the serious consequences of his actions, and the need to deter others and denounce such conduct?

CRIMINAL CODE SENTENCING PRINCIPLES

PURPOSE AND PRINCIPLES OF SENTENCING

Purpose

718 The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist 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 and to the community.

Fundamental Principle

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Other Sentencing Principles

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, there are a number of aggravating circumstances.
 - (i) ...
 - (ii) ...
- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) ...
- (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.

THE LAW – CONSIDERATIONS WHEN SENTENCING INDIGENOUS PERSON

[15] The key starting point of understanding how a judge should sentence an Indigenous person is to understand why we treat Indigenous offenders any differently than non-Indigenous offenders. The *Gladue* case below is a helpful starting point. However, before reminding myself of that case, I wanted to discuss the language used in these reasons.

THE USE OF THE WORD INDIGENOUS IN THESE REASONS

[16] In these reasons I am referring to Ms. Ingram as an Indigenous person. I appreciate that our *Constitution*, *Criminal Code*, and a lot of case law uses the word Aboriginal. My use of the word Indigenous is not meant to be disrespectful of the language others choose. In previous decisions, I have tried to explain why I prefer the word Indigenous. In *R. v. P.P.B.*, 2021 BCPC 28, the Honourable Judge Patterson is much more eloquent than my previous attempts to explain why I use the word “Indigenous” when sentencing an Indigenous offender. In *P.P.B.*, in a section titled “Indigenous Peoples”, starting at paragraph 16 he writes these comments, which I would invite other judges to consider:

Part 3. INDIGENOUS PEOPLES

[16] I note at the onset that although the term “Aboriginal,” for many years perhaps the least contentious and most inclusive general term used in Canada, is used in some of the case law and legislation that I will be referring to in these *Reasons for Judgment*, I will, unless I am quoting from case law or another source, be using the term “Indigenous.”

[17] I appreciate that terminology is a complex and sometimes-contentious issue and that definitions have legal implications; nevertheless, I believe that the term Aboriginal, at least in Canada, has now come to be supplanted by the word Indigenous.

[18] Furthermore, I will be using the term “First Nations” when referring the most populous of the three distinct groups of Indigenous peoples in Canada. I do so regardless of whether or not the Government of Canada considers the person “status” or “non-status” under the *Indian Act*, the person lives on reserve or off reserve, and whether or not they have a close connection to their First Nations’ culture.

[19] The other two distinct Indigenous peoples in Canada are the Inuit and the Métis.

[20] In coming to my determination as to the terminology I am using in these *Reasons for Judgment*, I rely upon:

- i. the common vernacular now in use here in the northwestern part of British Columbia,
- ii. the commentary of Judge Wolf in the decisions of *R. v S.R.*, 2020 BCPC 227 at paragraph 1 and *R. v. T.L.C.*, 2019, BCPC 314, at paragraph 1, and,
- iii. two primary sources:
 - a. *Aboriginal Identity & Terminology*, Dr. Linc Kesler, Associate Professor, Department of First Nations and Indigenous Studies, University of British Columbia at <https://indigenousfoundations.arts.ubc.ca/aboriginal_identity_terminology/> (February 10, 2020), and
 - b. *The Indigenous Peoples Language Guidelines*, Kevin Ward and Dr. Linc Kesler, 2018, Version 2.0, The University of British Columbia (UBC) in partnership with the First Nations House of Learning at UBC, at <https://assets.brand.ubc.ca/downloads/ubc_indigenous_peoples_language_guide.pdf> (February 22, 2021).

[21] According to the *2016 Statistics Canada Census of Population*, as of 2016, there were 1,673,785 Indigenous people in Canada, accounting for 4.9% of the total Canadian population. This was up from 3.8% in 2006 and 2.8% in 1996. Since 2006, the Indigenous population has grown by 42.5% -- more than four times the growth rate of the non-Indigenous population over the same period.

[22] Canada's First Nations population grew by 39.3% from 2006 to 2016, reaching a population of 977,230 people. In 2016, Canada's First Nations population was concentrated in the western provinces, with more than half of First Nations people living in western Canada: British Columbia (17.7%), Alberta (14.0%), Manitoba (13.4%) and Saskatchewan (11.7%). By comparison, in 2016, 30.3% of Canada's non-Indigenous population lived in the four western provinces.

[23] First Nations people possess a rich cultural heritage of diverse languages, histories, and homelands. In Canada, there are more than 600 unique First Nations Governments and more than 70 Indigenous languages, many of which are further diversified into distinct dialects.

GLADUE

[17] The headnote from the Supreme Court of Canada case is a useful reminder of how Canada's highest court expects judges to do better when sentencing Indigenous peoples. To be clear, I do not take the high court guidance to mean that judges must create lighter, softer, or less harsh sentences. It is not the 'end result' that we are trying to change. I believe over the last 25 years we have been trying to ensure that the process of achieving a demonstrably fit sentence reflects the very real and complicated history, as well as current social context, that Indigenous men, women, and children have.

[18] To me the reality is that *most of the time but not always*, moral blameworthiness is significantly lessened as a result of what we refer to as '*Gladue* factors'. As well, *most of the time but not always*, a sentence in the end might be shorter, less harsh or more creative.

[19] Here is what I consider to be the basic building block of law on the topic of sentencing an Indigenous person who is before the court. Sometimes I think it is good to get back to the basics. This is in the headnote of *R. v. Gladue*, 1 S.C.R. 1999:

The considerations which should be taken into account by a judge sentencing an aboriginal offender have been summarized at para. 93 of the reasons for judgment. The following is a reflection of that summary.

Part XXIII of the Criminal Code codifies the fundamental purpose and principles of sentencing and the factors that should be considered by a judge in striving to determine a sentence that is fit for the offender and the offence. In that Part, s. 718.2(e) mandatorily requires sentencing judges to consider all available sanctions other than imprisonment and to pay particular attention to the circumstances of aboriginal offenders. The provision is not simply a codification of existing jurisprudence. It is remedial in nature and is designed to ameliorate the serious problem of overrepresentation of aboriginal people in prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing. There is a judicial duty to give the provision's remedial purpose real force. Section 718.2(e) must be read in the context of the rest of the factors referred to in that section and in light of all of Part XXIII. In determining a fit sentence, all principles and factors set out in that Part must be taken into consideration. Attention should be paid to the fact that

Part XXIII, through certain provisions, has placed a new emphasis upon decreasing the use of incarceration.

Sentencing is an individual process and in each case the consideration must continue to be what is a fit sentence for this accused for this offence in this community. The effect of s. 718.2(e), however, is to alter the method of analysis which sentencing judges must use in determining a fit sentence for aboriginal offenders. Section 718.2(e) directs judges to undertake the sentencing of such offenders individually, but also differently, because the circumstances of aboriginal people are unique. In sentencing an aboriginal offender, the 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. In order to undertake these considerations the sentencing judge will require information pertaining to the accused. Judges may take judicial notice of the broad systemic and background factors affecting aboriginal people, and of the priority given in aboriginal cultures to a restorative approach to sentencing. In the usual course of events, additional case-specific information will come from counsel and from a pre-sentence report which takes into account the systemic or background factors and the appropriate sentencing procedures and sanctions, which in turn may come from representations of the relevant aboriginal community. The offender may waive the gathering of that information. The absence of alternative sentencing programs specific to an aboriginal community does not eliminate the ability of a sentencing judge to impose a sanction that takes into account principles of restorative justice and the needs of the parties involved.

If there is no alternative to incarceration the length of the term must be carefully considered. The jail term for an aboriginal offender may in some circumstances be less than the term imposed on a non-aboriginal offender for the same offence. However, s. 718.2(e) is not to be taken as a means of automatically reducing the prison sentence of aboriginal offenders; nor should it be assumed that an offender is receiving a more lenient sentence simply because incarceration is not imposed. It is also unreasonable to assume that aboriginal peoples do not believe in the importance of traditional sentencing goals such as deterrence, denunciation, and separation, where warranted. In this context, generally, the more serious and violent the crime, the more likely it will be as a practical matter that the terms of imprisonment will be the same for similar offences and offenders, whether the offender is aboriginal or non-aboriginal.

Section 718.2(e) applies to all aboriginal persons wherever they reside, whether on- or off-reserve, in a large city or a rural area. In defining the relevant aboriginal community for the purpose of achieving an effective sentence, the term "community" must be defined broadly so as to include

any network of support and interaction that might be available, including one in an urban centre. At the same time, the residence of the aboriginal offender in an urban centre that lacks any network of support does not relieve the sentencing judge of the obligation to try to find an alternative to imprisonment.

MISTAKES AND MYTHS AND STEREOTYPES

[20] Over the last 25 years sentencing judges have wrestled with how to apply the *Gladue* case.

[21] Over the years, some judges said *Gladue* does not apply because:

- The offender or their parents did not go to residential school;
- The offender does not know anything about their heritage;
- The offender has never lived on First Nations Land (a 'reserve');
- *Gladue* is not a 'get out of jail free card';
- The offender may have a tragic background but the offence is extremely serious so jail is the only thing that matters;
- There is no link between the offending behaviour and the offenders cultural heritage so *Gladue* does not apply;
- Being disconnected from the culture means that *Gladue* plays less of a role in the sentencing process;
- The offender grew up in a non-Indigenous family and therefore was not exposed poverty or generational trauma;
- The offender has no interest in their cultural background so why should we consider *Gladue* factors in the sentencing process;
- The offender has completed their education, is employed and comes from a family that had no history of problems and cannot therefore rely on their cultural heritage to excuse their offending behaviour;
- Deterrence and denunciation prevail over any considerations of *Gladue*;
- The offence [insert type of offence] is so serious that the only fit sentence is a lengthy jail sentence so there is no real purpose or value in considering *Gladue* factors
- {1}
- {2}
- {3}

- {4}
{5}

[22] I have intentionally left the last five bullets blank as a reminder that the list of mistakes and myths and stereotypes is endless. We are still learning from our mistakes. We are still busting the myths. I hope that in time, a better understanding of the social context of Indigenous Peoples in the Justice system will help us break free from unhelpful stereotyping.

[23] There are many cases that help me with understanding some of these complicated issues.

[24] *R. v. Kreko*, (2016) 349 OAC 227 (ca) is a case where the offender was raised by non-Aboriginal adoptive parents and only learned about his heritage closer to the time of his sentencing.

[25] The original sentencing judge wrote this in their reasons:

Although a direct, causal link is not required, there is no such tie in this case. Mr. Kreko may very well suffer and feel abandoned by his adoptive mother and his biological mother. I can sympathize with him in this, even as his father was doing his best to raise his son to be well-educated, involved in sports, supported in music and recording, and pro-social. There was nothing tied to his Aboriginal genetic heritage, let alone considerations in Gladue and Ipeelee, that led the accused, Mr. Kreko, to the negative side of hip-hop, including its fascination with guns. Perhaps, as the Gladue report suggests implicitly, his desire to drive a Jaguar like a big shot, not turn in his drug associates, and possess a gun on behalf of a criminal associate, relates to a need to belong. These things relate to gang culture and do not relate to his Aboriginal background.

[26] The Court of Appeal overturned the 13-year sentence and imposed a 9-year sentence and held that:

The sentencing judge erred by effectively requiring a causal link between the accused's aboriginal heritage and the offences. The accused's aboriginal heritage was part of the context of the offences. His dislocation and loss of identity could be traced to systemic disadvantage and impoverishment extending back to his great-grandparents. The sentencing judge erred by failing to consider the intergenerational, systemic factors

that were part of the accused's background and which bore on his moral blameworthiness.

[27] More close to my judicial home of British Columbia, the BC Court of Appeal has provided some very straightforward guidance on some of the above myths and mistakes.

***R. v. Hamer*, August 3, 2021 BCCA 297 - What to do with a tenuous connection?**

[28] The accused was designated as a dangerous offender after being convicted for aggravated assault. His mother told him his father was part Cree, but his father played no role in his life. The *Gladue* report was not able to provide any comment on self-identification or community of origin. The appeal court found that “there is nothing ... to show that systemic or background factors operated in any way in the appellant’s life or affected his moral culpability.”

[29] Later in another case called *R. v. Kehoe*, mentioned below, the BCCA wrote:

Hamer is a clear example of the principle that Gladue principles do not apply simply because an offender is Indigenous. Indigeneity is not related to criminality. Rather, it is the adverse impact of Canada’s colonial history and assimilationist policies, if any, on a particular Indigenous offender that matters.

***R. v. Mero*, October 25, 2021 BCCA 399 – Once raised, what should we do?**

[30] The accused was charged with firearm and drug trafficking charges. He self-identified as Indigenous and the possibility of a *Gladue* report was raised, but no information about heritage was provided to the judge. Specifically, no written document was provided setting out any *Gladue* factors and no submissions were made by counsel. The offender received a 48-month jail sentence.

[31] The appellate court held that “sentencing judges have a duty to consider *Gladue* factors. Failure to do so is an error in principle and renders the sentence unfit.” ... “Without an understanding of the full context ..., the judge was not in a position to properly analyse moral culpability.” The appeal court accepted fresh evidence,

including a *Gladue* report. They concluded that the *Gladue* factors significantly reduced his moral blameworthiness. They changed the four year federal penitentiary jail sentence to a two year less a day conditional sentence.

***R. v. Kehoe*, January 3, 2023 BCCA 2 – What if disconnected from heritage?**

[32] *Kehoe* was a Metis offender sentenced to five years for aggravated assault. The Appeal Court reduced sentence to four years. The offender was not very attached or familiar with his cultural heritage.

[33] The sentencing judge erred by accepting, without analysis, the crown submission that *Gladue* principles ought to play a limited role because he was disconnected from his Metis heritage.

[34] The Court of Appeal made this point.

Disconnection is one of the very harms associated with Canada's colonial history ...

In many cases ... assimilationist policies have been so successful that the offender may be largely or completely disconnected from their Indigenous culture ..."

THE APPLICATION OF *GLADUE* ON INDIGENOUS OFFENDERS GENERALLY

[35] In my respectful view, over the last twenty-five years judges are trying to move past our myths and mistakes when it comes to sentencing Indigenous Offenders. Yet statistics seem to suggest that incarceration rates of Indigenous offenders are still getting higher and higher in comparison to non-Indigenous offender's incarceration rates that appear to be getting lower and lower.

[36] In this journey of focusing on the offence and offender, often the voice of the Indigenous female victim can be accidentally lost in the sentencing process. Why is this important? As we see from the basic sentencing principles, not only are denunciation and deterrence important considerations but also reparations for harm done to victims and promoting a sense of responsibility in offenders and acknowledgement of harm done to victims and the community are important sentencing considerations.

SENTENCING AN INDIGENOUS FEMALE OFFENDER

[37] Sentencing is said to be a *highly individualized process*. To put it another way, there are many different variables in designing an appropriate sentence. On the one hand there are rarely ever two cases that are exactly the same. Aggravating and mitigating factors are often different in every case.

[38] I agree that the sentence imposed on Ms. Ingram needs to be similar to sentences imposed on similar offenders for similar offences. However, I find applying this parity principle particularly difficult when it comes to sentencing Indigenous females.

[39] I agree that denunciation and deterrence are guiding principles when sentencing an offender for a home invasion.

[40] I agree that the fundamental principle of proportionality requires a consideration of not only the gravity of the offence, but also a consideration of the offender's moral culpability.

[41] At the risk of overstating an obvious point, the social context of Indigenous women is different from non-Indigenous women. Also, at the risk of overstating an obvious point, the social context of Indigenous women is different from Indigenous men.

[42] In the decision *R. v. T.L.C.*, 2019 BCPC 314 at paragraph 72, I wrote this with respect to giving people criminal records:

[72] It is my experience, however, that courts are too quick to give accused people criminal records, and we should *stop and think* before we do it. When the accused is an Indigenous female, we need to *stop and think twice* before we potentially effect the rest of her life. On the surface, this approach may look like that would be giving Indigenous women special treatment in the sentencing process. I am fine with that – and I would say it is about time. On a deeper level, it is not really a preferred treatment, but rather a recognition of the *Gladue* factors that are specific to being an Indigenous woman in this country.

[43] To be clear, I do not want to start another myth and stereotype train of sayings that suggests there are 'automatic discounts' or 'gender discounts' for being Indigenous

and female or that there is some sort of ‘get out of jail free’ card associated with being an Indigenous female offender. I find using these sorts of catch phrases do not do justice to the horrifying reality that our jails are filled up with Indigenous offenders. The largest category of inmates is Indigenous women and girls.

[44] In British Columbia, Provincial Court Judges are responsible for criminal matters and we are also responsible for other court matters, such as Ministry matters. When I refer to ‘Ministry’ matters I am referring to the Ministry of Children and Family Development. Their primary focus is to support all children and youth in British Columbia to live in safe, healthy and nurturing families, and be strongly connected to their communities and culture. Their website confirms that “The ministry supports the well-being of children, youth and families in British Columbia by providing services that are accessible, inclusive and culturally respectful.”

[45] While statistics never really do a topic justice, it appears that as of January 31, 2024, there were 4,835 children in care in British Columbia. Of that number, 3,331 – or 68% - were Indigenous. Numbers aside, studies seem to indicate that Indigenous children are significantly overrepresented in the child welfare system in Canada. Some information suggests that an Indigenous child is seven more times likely to be apprehended than non-Indigenous children.

[46] No doubt the national crisis of Indigenous children in care is intricately linked to the number of Indigenous mothers and fathers we put in jail.

[47] I would invite others to adopt the stop and think twice approach before sending another Indigenous female offender to the penitentiary. Once more, I acknowledge that sometimes a fit sentence, in some circumstances, for some people, for some offences, might be a penitentiary sentence, whether Indigenous or not.

[48] Equally, perhaps a shorter sentence, or a restorative based sentencing option may not be appropriate. Even when jail is the appropriate sentence, the length of the term of imprisonment must always be carefully considered.

[49] I know that even in this case, after considering the gravity of the offence, balancing the principles of sentencing and assessing her moral culpability that a penitentiary sentence may be the appropriate and necessary sentence.

[50] *R. v. A.D.*, 2024 ABCA 178 is a 2024 decision of the Alberta Court of Appeal that reminds trial judges that when sentencing an Indigenous male offender, we must be aware of their *Gladue* factors, but we must also consider the “vulnerability of the victim as an Indigenous woman.” While the decision makes these comments about Indigenous women as victims of crime, I also think many of these comments are applicable to understanding the circumstances of an Indigenous females as an offender as well.

[23] A goal of criminal law is to protect vulnerable victims, including those who are Indigenous and female: *R v LP*, 2020 QCCA 1239 at para 80 [*LP*]; *R v Kolola*, 2021 NUCA 11 at para 34. However, the goal of protection has not always been achieved.

[24] Canadian Indigenous women and girls continue to be significantly impacted by violence. More than six in ten Indigenous women have experienced physical or sexual assault in their lifetime, with more than four in ten being physically or sexually abused by an adult during childhood: Statistics Canada, *Violent victimization and perceptions of safety: Experiences of First Nations, Métis and Inuit women in Canada*, by Loanna Heidinger, Catalogue No 85-002-X (Ottawa: Statistics Canada, 26 April 2022). The disproportionate effect of violence on Indigenous women and girls was highlighted by this Court in *R v AD*, 2019 ABCA 396 [*AD 2019*] at paras 25–26, a prior case involving the respondent:

... Unfortunately, there is clear and overwhelming evidence that, when it comes to protecting Aboriginal women from violence and discrimination, more needs to be done. The homicide rate for Aboriginal women is six times that of non-Aboriginal women, and higher than the rate for non-Aboriginal men... Aboriginal women are almost three times more likely to experience violent victimization than non-Aboriginal women... Compared with non-Aboriginal women, Aboriginal women are almost three times more likely to report being the victim of spousal violence and, compared with non-Aboriginal victims of spousal violence, Aboriginal women are more likely to have experienced spousal violence on more than one occasion...

The sad fact is that Aboriginal women are disproportionately affected by domestic violence and violence in general...

[25] This Court in *AD 2019* concluded that the disproportionate effect of violence on Indigenous women and girls “should inform the sentencing process if there is to be any hope of achieving the fundamental purpose of sentencing and meeting the objectives set out in section 718 of the Criminal Code, which include denunciation and deterrence”: *AD 2019* at para 26.

[26] The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls, released June 3, 2019, came to a similar conclusion. It found the criminal justice system was failing “to effectively hold accountable those who commit violence against Indigenous women, girls, and 2SLGBTQQIA people” with the result being that such violence was often “met with impunity”. It emphasized a failure of the Canadian justice system to protect Indigenous women and girls: *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (Ottawa: 2019) vol 1a at 717 [MMIWG Report]. According to a review of homicide cases between 2009 and 2021, for example, perpetrators received on average three years less jail time when the victim was an Indigenous woman or girl as compared to when the victim was non-Indigenous: Statistics Canada, *Court outcomes in homicides of Indigenous women and girls, 2009 to 2021*, by Marta Burczycka and Adam Cotter, Catalogue No. 85-002-X (Ottawa: Statistics Canada, 4 October 2023).

[27] The National Inquiry called “upon the federal government to consider violence against Indigenous women, girls, and 2SLGBTQQIA people as an aggravating factor at sentencing, and to amend the Criminal Code accordingly”: *MMIWG Report*, vol 1b at 185.

[28] Shortly following the release of the *MMIWG Report* in June 2019, Parliament amended the Criminal Code by adding sections 718.04 and 718.201, underscoring the importance of ensuring that vulnerable victims, including those who are Indigenous and female, are protected:

Objectives – offence against vulnerable person

718.04 When a court imposes a sentence for an offence that involved the abuse of a person who is vulnerable because of personal circumstances – including because the person is Aboriginal and female – the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

Additional consideration – increased vulnerability

718.201 A court that imposes a sentence in respect of an offence that involved the abuse of an intimate partner shall

consider the increased vulnerability of female persons who are victims, giving particular attention to the circumstances of Aboriginal female victims.

[29] The federal Department of Justice explained that these amendments were intended to “strengthen the criminal law’s response to intimate partner violence as well as violence against Indigenous women and girls, as called for by the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls”: Department of Justice Canada, News Release, “Government of Canada announces *Criminal Code* reforms to modernize the criminal justice system and reduce delays” (June 21, 2019); See also *House of Commons Debates*, 42-1, No 435 (17 June 2019) at 29245 (Hon David Lametti). One purpose of the amendments was to ameliorate the situation faced by Indigenous women and girls in the community and before the courts.

[30] Section 718.04 is clear that courts must give “primary consideration” to the objectives of denunciation and deterrence where the victim is vulnerable on account of being an Indigenous woman or girl. Parliament “has indicated which sentencing objectives are to receive priority”, being denunciation and deterrence, such that it is not “open to the judge to elevate other sentencing objectives to an equal or higher priority”: *Friesen* at para 104.

[31] The statement of priority in section 718.04 does not conflict with section 718.2(e), which provides restraint in sentencing should be shown to the extent it is “consistent with the harm done to victims or to the community”: *AD 2019* at para 27; *LP* at para 81. Section 718.2(e) specifically identifies Indigenous offenders because Parliament recognized the cycle of intergenerational trauma and the dysfunction it has created in too many families. Section 718.04, applied in these circumstances, aims to break that same cycle.

[32] The language of section 718.201 essentially parallels that of section 718.2(e): while the latter requires the court to pay “particular attention to the circumstances of Aboriginal offenders”, the former requires “particular attention to the circumstances of Aboriginal female victims”. As this Court instructed with respect to section 718.2(e), application of section 718.201 “includes assessing whether one’s instinctive reaction to that conduct would be the same, given the circumstances, if the [victim] were of a different race, culture, or background. This analysis involves empathy, imagination, and introspection, among other things”: *R v Rabbit*, 2023 ABCA 170 at para 47. The new sentencing provisions “serve to remind courts that acts of terror and violence should not be minimized because they occurred on the backroads of Janvier to a vulnerable Indigenous woman, rather than in an urban setting to a more privileged victim”: *R v McDonald*, 2021 ABCA 262 at para 28.

[33] Although this Court in *AD 2019* did not consider sections 718.04 and 718.201 (because those provisions did not come into force until after that appeal was heard), it nevertheless explained at paragraphs 27 to 29 how consideration of the circumstances of the victim who is Indigenous and female can and must coexist with consideration of the circumstances of the Indigenous offender:

Consideration of the victim, in this case the fact that she was an Aboriginal female, does not negate or otherwise trump the necessity of courts, when sentencing offenders, paying particular attention to the circumstances of Aboriginal offenders (s 718.2(e)). Rather, it requires 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* (*R v Whitehead*, 2016 SKCA 165 at para 83, [2017] 5 WWR 222, citing Sanjeev Anand, “The Sentencing of Aboriginal Offenders, Continued Confusion and Persisting Problems: a comment on the decision in *R. v. Gladue*” (2000) 42 Can J Crim 412 at 418). The appropriateness of considering not only the nature of the victim, but the broader community, was recognized in *R v Williams*, 2011 BCCA 194 at para 9, 303 BCAC 236, where the Court of Appeal, in upholding the sentence imposed on an Aboriginal offender who sexually assaulted an Aboriginal girl, observed that “[t]here is much to be said for the sentencing judge’s concern for the protection of Aboriginal victims such as this child, and for the role of deterrence in the Aboriginal community.”

Considering the circumstances of the victim and the effects of the offence on the community does not mean that the circumstances of the offender, in particular the circumstances of Aboriginal offenders, are disregarded or, as was argued by the appellant in *R v Johnny*, 2016 BCCA 61, that consideration of the victim’s circumstances effectively disentitles the offender from a meaningful *Gladue* analysis under s. 718.2(e). What it does mean is that, in arriving at a fit sentence, judges must take into account the circumstances of the offender, the circumstances of the victim and the effect of the crime on the community in which it took place. The fact that a sentencing judge is required to consider one set of circumstances does not mean other circumstances are ignored (see *Johnny* at para 21).

Taking the circumstances of Aboriginal victims into account in sentencing is consistent with the principles of sentencing,

and arguably necessary in order to meaningfully achieve the fundamental purpose of sentencing, namely the protection of the public. The circumstances of both the victim and the offender must be considered as relevant factors and, along with other relevant factors (e.g. aggravating and mitigating), be considered by the sentencing judge to arrive at a fit sentence.

[Emphasis in original]

VICTIMIZED INDIGENOUS WOMEN AND GIRLS AS OFFENDERS

[51] Has Ms. Ingram been a victim in her life? And should this reduce her degree of responsibility or moral blameworthiness? Should her sentence be reduced because of these considerations?

[52] I conclude that yes, she has been a victim, this does lessen her degree of responsibility, and her sentence should be reduced. To be clear, being an Indigenous female offender is only one consideration. It is not the fact that she identifies as an Indigenous woman that mitigates her blameworthiness. I accept that there may be an Indigenous woman who is free from *Gladue* factors. Although I am not certain I have ever met one.

[53] I appreciate as well, that there are other mitigating and aggravating factors considered later in these reasons and that being an Indigenous female is only one consideration. Whether any Indigenous female is impacted by *Gladue* factors is the other layer of analysis.

[54] I have intentionally created this section and placed it upfront in these reasons to let the reader know that I have considered the circumstances of Ms. Ingram, particularly how being an Indigenous female may have played a role in why she is before the court being sentenced for this serious crime. One way or the other, even though she is the offender in this sentencing, her circumstances as an Indigenous female and her *Gladue* factors allow me to conclude that she is a member of a vulnerable population.

[55] In *R. v. T.L.C.*, 2019 BCPC 314 at paragraphs 62 to 68 I discussed the some of the issues when sentencing an Indigenous woman and information from the *Gladue* report in that case.

[62] The report has a section that I want to highlight. At page 11:

Indigenous Women, *Gladue* Factors and the Criminal Justice System

According to Elspeth Kaiser-Derrick:

As the histories of victimization generally overlap with elements of *Gladue* factors, often concepts related to the victimization-criminalization continuum lens and *Gladue* factors will be intertwined. However, while both the continuum and the *Gladue* analysis often share information about Indigenous women's lives in the form they are presented to the courts, the analytical focus of each differs: the victimization-criminalization continuum most directly focuses on gendered vulnerabilities and responses to victimization, where the *Gladue* analysis most directly focuses on reverberations of colonization (and how that should impact sentencing).

Some judges also articulate women's pathways to criminalization by recognizing the constrained choices in Indigenous women's lives where they contend with victimization ... Victimization is often then reproduced as violence.

(Kaiser-Derrick, Elspeth (2019). *Implicating the System: Judicial Discourses in the Sentencing of Indigenous Women* (p.87-91)).

[63] Also contained in the *Gladue Report* is that "TLC reported she had many unresolved traumas and social problems prior to her involvement with men. She reported growing up with violence in her home as normal. She related many examples where she witnessed domestic violence and experienced abuse, all in the context of her family. She conveyed that she thinks her early experiences have not been fully resolved and has been taking active steps since summer of 2018, through both trauma counselling and counselling for descendants of IRS survivors. She reported she never felt she could get full-time employment and make friends in the wider community once she moved ... due to the failure of her

relationship with her ex-boyfriend and need to manage her personal life. She has completed training in the area of tourism and hopes to pursue employment in the tourism industry.

The writer of the report also writes: "According to Professor Parkes"

Indigenous women now account for an astonishing 38 per cent of women in federal prisons, despite comprising less than four per cent of the general population. These realities are evidence of the extent to which we overuse criminal law to address social problems, at great human and fiscal cost. We persist in pursuing punishment over more productive ways of dealing with harm and anti-social behaviour. We ignore the social determinants of crime. And we have become complacent about the deep inequalities throughout the criminal justice system. These conditions cry out for fundamental reform of our criminal law.

(Parkes, D. (2019), "Punishment and Its Limits", The Supreme Court Law Review: Osgoode's Annual Constitutional Cases, Vol. 88, Article 16).

...

According to the Battered Women Support Services of BC:

When women experienced domestic violence and are arrested, there may be social, economic, legal and emotional consequences for women, including but not limited to exclusion from transition houses and victim services programs (community and police based), being unable to develop a safety plan to prevent future harassment and violence, the inability to find employment with a criminal conviction.

...

Report on the Missing and Murdered Indigenous Women and Girls 2019

(The Report)

[64] The Inquiry had a broad mandate and made it clear that violence experienced by Indigenous females amounts to a genocide.

[65] The Introduction of the inquiry indicates that:

The National Inquiry has come to the conclusion that violence experienced by Indigenous women, girls, and 2SLGBTQIA people amounts to genocide based on the results of the Truth-Gathering Process, which includes the National Inquiry's entire body of work. Beginning its work in

September 2016, the federal government and the 13 provincial and territorial governments mandated the National Inquiry into Missing and Murdered Indigenous Women and Girls to report on:

- i. Systemic causes of all forms of violence – including sexual violence – against Indigenous women and girls in Canada, including underlying social, economic, cultural, institutional and historical causes contributing to the ongoing violence and particular vulnerabilities of Indigenous women and girls in Canada, and
- ii. Institutional policies and practices implemented in response to violence experienced by Indigenous women and girls in Canada, including the identification and examination of practices that have been effective in reducing violence and increasing safety.

[66] At page 38 of the Report, the Inquiry found that:

Outside of these forms of intergenerational experiences of colonial violence and the mistrust that comes with them, the social and economic marginalization of Indigenous people also puts up significant barriers for First Nations, Métis, and Inuit women that make accessing protections difficult. This includes being criminalized due to poverty.

[67] The Report makes a “Call to Justice” at page 53 of the Executive Summary:

The steps to end and redress this genocide must be no less monumental than the combination of systems and actions that has worked to maintain colonial violence for generations. A permanent commitment to ending the genocide requires addressing the pathways explored within this report, namely:

- historical, multigenerational, and intergenerational trauma;
- social and economic marginalization;
- **maintaining the status quo and institutional lack of will**; [emphasis mine]

Incorporating knowledge of trauma into all policies, procedures, and practices of solutions and services is crucial to the implementation of the Calls for Justice.

[68] The points raised in this decision are not new topics of debate. Most recently, Justice Burstein in *R. v. Luke*, 2019 ONCJ 514 at paragraph 1 writes:

More than 20 years ago in *R. v. Gladue*, recognizing that Indigenous people have long suffered disproportionate consequences at the hands of the criminal justice system, the Supreme Court of Canada issued a clarion call for “responses to alleviate it”. Just over a decade later, in *R. v. Ipeelee*, the Supreme Court lamented the fact that little had been accomplished to reverse the steady growth of Aboriginal overrepresentation in the criminal justice system since *Gladue*. Most recently, in the face of continued systemic apathy, the Court in *R. v. Barton* reminded all justice system participants of the need to take meaningful steps towards remedying the discriminatory impact of colonialism, particularly colonialism’s adverse impact on Indigenous women.

Indigenous persons have suffered a long history of colonialism, the effects of which continue to be felt. There is no denying that Indigenous people – and in particular Indigenous women, girls, and sex workers – have endured serious injustices, including high rates of sexual violence against women ... Furthermore, this Court has acknowledged on several occasions the detrimental effects of widespread racism against Indigenous people within our criminal justice system ... With this in mind, in my view, our criminal justice system and all participants within it should take reasonable steps to address systemic biases, prejudices, and stereotypes against Indigenous persons – and in particular Indigenous women ... – head-on.

CROWN AUTHORITIES

[56] *R. v. Dhaliwal and Leonardo De Micheli* 2007 BCSC 1936 is a 2007 BC Supreme Court decision where Justice Groberman sentenced the two accused for a break and enter and robbery.

[57] The Crown sought a two year less a day jail sentence and the defence sought a two year less a day sentence, but to be served conditionally, in the community with strict conditions.

[58] These are the circumstances of that offence. The two 23-year-old male accused entered into a marihuana grow operation. They were armed with tasers. A lone occupant was stunned about ten times, kicked in the head three times and ordered to take off some clothes and close his eyes. The two accused took the victims cell phone and \$425.

[59] Neither of the two accused had a substance abuse problem. Neither had spent any time in pre-trial custody. The sentencing judge was satisfied that there was a degree of impulsivity and that both accused were remorseful.

[60] The Court emphasized that home invasions are a particularly serious type of offence and points out that in other jurisdictions when a person plans and does enter a dwelling and confines the occupant while armed with a weapon and robs them, eight years, even for a first time offender could be an appropriate sentence.

[61] The Court found that all the criteria for a conditional sentence was met, except for one. In other words, the judge held that there was no minimum term of imprisonment, the sentence was less than two years, and the safety of the community was not endangered by the accused serving the sentence in the community.

[62] However, the Court held that a conditional sentence *was not* consistent with the fundamental purpose and principles of sentencing. In other words, he found that such a sentence was not consistent with denunciation or deterrence, given the gravity of the offence.

[63] With respect to *Dhaliwal* case. It was decided nearly 20 years ago. Nevertheless, the principles of sentencing are almost the same.

[64] Notably, neither accused had a substance misuse problem. With respect to the case before me, Ms. Ingram had a significant substance misuse problem, which in my view attenuates her moral blameworthiness.

[65] In my opinion it is also extremely important to highlight that in *Dhaliwal* neither of the accused were Indigenous. More importantly, for our purposes today, they are not Indigenous women. In my respectful view, when we talk of 'parity', we have to be careful not to look at one precedent and apply it without considering the very unique social circumstances of Indigenous women.

[66] *R. v. Main*, 2023 BCSC 530 is another Crown authority. The Crown submits that this case has some similar facts. In that case, the accused had a trial and was found

guilty of a break and enter of a dwelling house and robbing the occupant. The accused and another person had broken into the victim's room, struck him a number of times and took the victim's wallet and some drugs. The offenders were masked.

[67] The Crown sought a seven-year sentencing minus 13 months' time served. The defence sought a two-year sentence minus 13 months' time served.

[68] The Court sentenced the accused to a two year less a day sentence. This was in addition to the 13 months credit of pre-trial time served.

[69] *R. v. Dang* BCCA 304 is a 2002 BC Court of Appeal case where the Court overturned the sentencing judge's sentence. In that case the 19-year-old accused had plead guilty to a number of charges, including a break and enter with his face masked.

[70] The Court of Appeal found that the sentence of approximately one year jail was unfit for the 'home invasion'. They found that the sentence was outside the five-to-eight-year range. They imposed a three-and-a-half-year sentence. The circumstances of the offence were more serious and handguns were involved.

[71] *R. v. Laramee* BCSC 1799 is a September 19, 2017, BC Supreme Court decision. In that case, the 20-year-old accused invaded the victim's home. Laramee was masked and the co-accused he was with was armed with a hammer and struck the victim with it.

[72] Laramee did not use a weapon on anyone in the home, but he did restrain two of the occupants and punched one of them.

[73] The Crown sought a seven-to-nine-year jail sentence. The defence argued that the 218 days of pre-trial custody along with a lengthy period of probation was an appropriate sentence.

[74] The Court in *Laramee*, at paragraph 37, acknowledges the BC Court of Appeal decision in *R. v. Vickers* 2007 BCCA 554 where the Court confirms that deterrence and denunciation are the primary factors in sentencing for violent crimes, particularly when these crimes violate the safety and security of a person's home.

[75] Before sentencing the accused to four years, the Court in *Laramée*, reviews many authorities that provide guidance as to a general range of five to eight years for many home invasion cases. However, at paragraph 41, referring to *R. v. Moore*, 2008 BCCA 129 the actual fit sentence needs to account for the degree of violence involved, the offences committed in the invaded premise, and the extent of the offender's involvement.

[76] There are countless other considerations.

[77] Another Crown authority was the January 8, 2024, *R. v. Cazes*, 2024 BCPC 27 decision of the Honourable Judge Fleck from Fort St. John. Judge Fleck describes the circumstances in paragraph 2. The offences of unlawful confinement, aggravated assault break and enter and threats "took place in the context of a home invasion style break and enter robbery, during which a group of assailants, looking for a safe and money, broken into a residential trailer" The victim was forced to the ground, tied up and hit on the head. The Crown sought a six-year sentence and defence sought a four-year sentence.

[78] Judge Fleck considered the nature of the offences, sentencing principles and some very helpful case law. He sentenced the offender to four years. I am not clear on what *Gladue* information, if any, the Court had the benefit of. Nor do I know whether any rehabilitative steps had been taken prior to the sentencing.

[79] *R. v. Davidson*, 2025 BCCA 111 is an April 9, 2025, decision of the BC Court of Appeal where the Court considered the application of *Gladue* factors. In that case the accused was an Indigenous female and had been sentenced for the crime of contempt of court. The trial judge acknowledged the presence of *Gladue* factors but commented that the offending conduct did not 'arise' from the *Gladue* factors. The trial judge then said that leniency based on the offenders Indigeneity could potentially undermine the important principles of denunciation and deterrence in contempt proceedings. The Court of Appeal considered whether the trial judge erred in their application of the *Gladue* principles.

[80] I note that counsel referred me to paragraphs 72 through 74. These paragraphs remind me that “reduced moral culpability does not automatically flow from the presence of *Gladue* factors. Instead, before making a finding to this effect, a sentencing judge must assess the extent to which *Gladue* factors actually impacted the offender’s personal responsibility for their unlawful conduct” I also find paragraphs 73 to 76 helpful reminders of my duty in sentencing Ms. Ingram.

[73] As aptly stated in *R. v. Chanalquay*, 2015 SKCA 141:

[52] A sentencing judge should not simply stack up all of the *Gladue*-type considerations at play in a case and, if the list is long or severe, automatically proceed on the assumption such factors have had a substantial limiting effect on the offender’s culpability. The required analysis is more demanding than that. To determine the extent to which *Gladue* factors impact on an offender’s moral culpability, a sentencing judge must examine both the nature of the relevant factors and the particulars of the crime in issue. He or she should then consider the extent to which the unique circumstances of the offender “bear on his or her culpability” (*Ipeelee* at para 83) in the specific context of the case at hand. As mandated by the Supreme Court, the search here is not for a cause-and-effect relationship but for circumstances that cast light on the degree of the offender’s blameworthiness for the specific offence in issue. It might be that the *Gladue* considerations impact the offender’s culpability a great deal, not at all, or only to some intermediate extent.

[74] The Supreme Court of Canada provided helpful guidance on how to assess an offender’s moral culpability in *R. v. Hills*, 2023 SCC 2:

[58] ... [An] offender’s moral culpability or degree of responsibility should be measured by gauging the essential substantive elements of the offence including the offence’s *mens rea*, the offender’s conduct in the commission of the offence, the offender’s motive for committing the offence, and aspects of the offender’s background that increase or decrease the offender’s individual responsibility for the crime, including the offender’s personal circumstances and mental capacity ...

[Internal references omitted.]

[75] In *R. v. C.K.*, 2023 BCCA 468, this Court took the same approach, emphasizing that any assessment of moral culpability must account for:

[71] ... the offender’s state of mind and acts at the time of the offence: *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500 at para. 79, 1996 CanLII 230. Relevant factors include: the level of planning and/or intentionality brought to the crime; the degree, nature and extent of the offender’s personal participation in the offence; the means or method by which the crime was committed; the motive or

reasons for the offender's participation; the offender's awareness of the legal and moral wrongfulness of their conduct; their awareness of the actual or reasonably foreseeable harms flowing from their conduct (immediate and long-term); and their persistence in perpetrating the offence despite that awareness ...

[Internal references omitted.]

See also *R. v. Maslehati*, 2024 BCCA 207 at paras. 133–135; leave to appeal to the SCC ref'd, 2024 CanLII 125015.

[76] *Gladue* factors necessarily form part of an offender's personal circumstances, and consequently, they are relevant to assessing moral culpability. But, they are not determinative, and importantly, they are not assessed in isolation. Instead, *Gladue* factors are considered along with all other factors that realistically arise in the case and logically inform an assessment of personal responsibility for the offence. In light of the holistic nature of the analysis (*Kehoe* at para. 40), *Gladue* factors may carry more or less weight, depending on the particulars of the case, including the substantive elements of the offence in question and factual findings made about the offender's state of mind and the way the offence was committed.

DEFENCE AUTHORITIES

[81] *R. v. McCargar* [2020] O.J. No. 3857 is a 2020 case. In that case, the Indigenous female accused was sentenced to a 24-month conditional jail sentence for her participation in a robbery where the 67-year-old victim had her pain medication stolen from her. The Indigenous female accused was Metis, had many relevant *Gladue* factors and had managed to “rehabilitate herself from her drug addiction and posed no risk of re-offending. The offence was planned; the victim was vulnerable and Ms. McCargar had a prior criminal record.

[82] Paragraphs 33 to 42 are helpful reminders of the principle of restraint and consideration of the circumstances of Indigenous offenders while also recognizing how serious home invasions are.

[83] The *McCargar* case notes that “even in cases where deterrence and denunciation are paramount sentencing objectives, a conditional sentence may be appropriate ...”

[84] *R. v. Davis*, 2025 BCCA 113 is a decision from the BC Court of Appeal. The accused had plead guilty to aggravated assault when he injured the victim, causing devastating and life changing injuries. He received a jail sentence of 21 months. He appealed the decision arguing that the sentence of a conditional jail sentence was an available and appropriate sanction that should have been imposed.

[85] The appellate court at paragraph 36 confirms that courts must do more than “pay lip service to *Gladue* and *Ipeelee*, mindful that section 718.2(e) creates a judicial duty to give its remedial purpose full force: *Gladue* at para. 34.”

[86] The Court also wrote this at paragraph 37

[37] Incarceration rates for Indigenous offenders will not be reduced significantly if sentencing judges simply reduce the term of imprisonment they would otherwise have imposed in order to account for *Gladue* factors. Serious consideration should always be given to the imposition of a conditional sentence in all cases where the statutory prerequisites are satisfied: *R. v. Proulx*, 2000 SCC 5 at para. 90 [*Proulx*]. If a CSO cannot be considered a fit sentence in the circumstances of this case, I cannot help but ask whether a CSO could ever be imposed on an Indigenous offender for a serious offence.

[87] The Court concluded that a conditional sentence could sufficiently address denunciation and deterrence in that case. Once more I note the facts in that case involved a punch and a resulting lifelong brain injury.

[88] The Court concluded that, in addition to other factors, “that significant weight should be placed on the lessened moral culpability of the offender given his circumstances as an Indigenous person” and the Court imposed a conditional sentence.

[89] Justice Fenlon reminds trial judges that sometimes a conditional jail sentence, when crafted carefully, can sufficiently address denunciation and deterrence and that it would not be appropriate to automatically rule out the possibility of a conditional jail sentence just because certain aggravating features might be present. [See: *R. v. Proulx* [2000] 1 S.C.R. 61].

[90] I appreciate that Justice Riley provided a different view in their reasons starting at paragraph 48. Justice Riley concluded that the 21-month jail sentence was fit and properly took into consideration the use of significant violence, the fact the assault was unprovoked and against a defenceless victim and the serious impacts on the victim. I note that the dissenting comments seem to focus on the idea that the aggravated assault in that case was life altering and life threatening.

[91] *R. v. Boyde*, 2021 NLSC 28 is a March 4, 2021, decision of the Honourable Justice Burrage out of Newfoundland and Labrador. In that case the accused broke into a residence, found her former intimate partner with another woman and assaulted both of them.

[92] The encounter was described as brief, injuries were minor and substance misuse was a factor.

[93] The accused took active steps towards rehabilitation with counselling and medication and had been clean and sober for two years.

[94] The accused had been convicted after a jury trial but expressed remorse at the sentencing and she had a related criminal record with some assaults.

[95] Before imposing a 23-month conditional jail sentence and one year probation, the Court at paragraph 133 writes:

Offenders such as Ms. Boyde, who have taken positive measures to turn their lives round, are all too uncommon in the judicial system. When they do present, the Court can and should take notice.

[96] *R. v. Hirata*, [2023] B.C.J. No. 2562 is a decision of the Honourable Judge Menger from August 25, 2023. The accused in that case plead guilty to breaking and entering an occupied residence with his face masked with the intent to commit an indictable offence. The Crown sought a two-year jail sentence, and defence sought a conditional jail sentence of less than two years.

[97] He had no criminal record, supportive friends and family, had cut off contact with pro-criminal individuals and found some employment. It was a guilty plea; he was cooperative with the police and was doing well.

[98] The Honourable Judge Mengerling at paragraph 19 says this about how serious the offence is when you break into somebody's home and commit a crime.

[19] Sentences for such offences often, but not always, fall in the range of five to eight years. Ranges are, of course, mere guidelines: sentencing is always an individualized process. But it is a grave offence to enter someone else's home without permission, in the middle of the night, and violate the occupant. In addition to the effect on the occupants of the home, home invasions make the entire community feel unsafe.

[99] The Court sentenced him to a two year less a day conditional jail sentence plus one year of probation.

[100] *R. v. Weetaluktuk*, [2024] Q.J. No. 9396 is a decision of Justice Brassard from the Quebec criminal division. The accused pleaded guilty to breaking and entering, uttering threats, assault causing bodily harm, forcible confinement and choking. He and a co-accused entered the victims' home and attacked him, threatened him with a hammer, prevented him from leaving and punched him in the face several times.

[101] The accused in that case was an Indigenous man, had no record for violence and was willing to undergo treatment.

[102] Both Crown and defence submitted that a jail term of less than two years was appropriate. However, they differed as to whether that sentence should be a conditional jail sentence or an actual jail sentence.

[103] The Court imposed a 15-month conditional jail sentence.

DEFENCE SUPPORTING MATERIALS – Letters of Support

[104] Ms. Ingram has done extraordinarily well in her recovery. I note this because not everyone does. It has been nearly two and a half years since the offence was

committed. So, her liberty has been restrained by bail conditions. She should receive some credit for doing well.

[105] What has she done in the last two years? She is currently in a recovery home. She is clean and sober and has been for a long time. One letter confirms that she “has been consistently attending all programming” and that for nearly a year she “has taken on the role of co-monitor, a testament to her dedication and progress. In this role, she has shown great responsibility and leadership, contributing positively to the community.” The author of the letter described Ms. Ingram as being “committed to her own growth and is given credit for assisting others in their recovery.”

[106] Another letter confirms that she has “worked tirelessly at rebuilding her relationships with family and friends” and that the changes in her are described as “remarkable”. The writer of this letter confirms that she is unwavering in her commitment to recovery and that her “transformation is an inspiring example of what can be achieved with determination, support and desire to change.”

[107] The resident manager of the recovery facility where she is currently residing at says that Ms. Ingram maintains a daily schedule that includes a regimented daily number of recovery-based programs, including group and individual counselling.

[108] Other letters from professionals and professional agencies describe Ms. Ingram as respectful, responsible, law abiding, thoughtful, affable, and as a person who “stands out to me as a success in her path for a meaningful future.”

[109] Her sponsor describes Ms. Ingram as dedicated, and whose commitment is responsible for remarkable achievements. Her sponsor says this.

Meghan’s exceptional character traits shine through in:

- Unwavering love and dedication to her children
- Honesty, integrity, and accountability
- Empathy and compassion towards others
- Humility and gratitude.

[110] Perhaps most remarkably, if I can even use this phrase after the high praise of the other individuals supporting Ms. Ingram, is a letter from the stepmother of Ms. Ingram's two children. This writer confirms that Ms. Ingram has "made remarkable strides over the past year, having achieved over one year of sobriety from substances. As a family, we have seen first-hand the dedication and commitment she has shown in her recovery journey The steps Meghan has taken to better herself are substantial."

[111] I note that Ms. Ingram's steps to recovery and remarkable changes is why she is able to better develop her relationship with her family, and children.

THE PRESENTENCING REPORT (PSR)

[112] The probation officer that wrote the presentencing report interviewed a number of collateral contacts, including her current bail supervisor and individuals that have been working with Ms. Ingram in her recovery.

[113] I am sensitive to the reality that by raising some of these personal circumstances, Ms. Ingram can be further traumatized. A courtroom is not very conducive to sensitivity and does not deport a feeling of safety, especially when you are being sentenced for a serious crime.

[114] Normally, I might simply point to a page or paragraph in a report in an attempt to lessen the trauma that reliving some of these life experiences trigger. However, in this particular case, I provide this information so that if other similar Indigenous females are being sentenced for similar crimes in similar circumstances, we might have a proper authority to consider under the principle of parity.

[115] The Report confirms that Ms. Ingram has had a complicated life. I pause here to make a very important point. The trauma she has suffered is not her fault. In fact, I would go so far as to say that it is dangerous to attach fault to trauma. For example, the PSR confirms that "both her parents struggled with addiction to crack. As a result, Ms. Ingram and her sisters were neglected and would be left at home for several days at a time."

[116] Alcoholism “is prevalent on her mother’s side of the family.” As such, often her parents were unable to care for the children. As a result, sometimes there was Ministry involvement. As well, sometimes she and her siblings would end up living with extended family.

[117] Ms. Ingram was exposed to violence by men. For example, she has witnessed her father choking her mother.

[118] Her great grandfather was so abusive to her grandmother that her grandmother fled from Manitoba to escape the violence.

[119] Her father was “verbally and physically abusive towards the children,” including Ms. Ingram.

[120] It is important to note that this is part of her background, her history, and her trauma. I am pleased to hear that familial illicit substance misuse issues that have strained her relationship with her parents have been addressed. I am pleased to know they are in a better place and “she identifies them as positive supports her life.”

[121] Ms. Ingram “reports that *all* her intimate relationships have been with people she has met while in addiction and have been abusive.”

[122] Periods of sobriety were interrupted when she fell into unhealthy relationships where she was abused by her male intimate partners.

[123] She has also been *abused and victimized by many males*. All of her relationships have been abusive.

[124] She explains that her use of illicit substances really began when she was around 15 years old when she started dating a 25-year-old. She was in grade nine and dropped out of school as a result of this unhealthy and abusive relationship.

[125] Ms. Ingram has three children. Her 14-year-old daughter lives with her parents. Her two other children live with their father and stepmother in Alberta. As indicated

above, she *has worked hard on strengthening the relations to her children and their guardians.*

[126] As to *attitude and understanding regarding the offence*, the PSR author writes:

Ms. Ingram *expressed remorse for her actions and acknowledges the trauma* the victims may face from this incident. Ms. Ingram recalls feeling terrified to participate in these events but felt pressured to do so. She recognizes that her addiction, co-dependence, lifestyle and choices at the time were how she ended up in this situation. She is not proud of her actions and cannot believe she “stooped that low”.

[127] The PSR confirms that Ms. Ingram is a Metis female that comes from a complicated traumatic upbringing. She has either been victimized, abused or taken advantage of by men for almost all of her life.

[128] She is *now clean and sober* and has “*disconnected* from her negative associates”. For example, she used to live in the residence that she broke into with a number of others, including males that remain in addiction. Now she is in a supportive and established recovery facility.

[129] She has no criminal record.

[130] She now “appears to be abiding by her conditions.”

[131] She has community supports and has access to a family doctor who is able to provide assistance with respect to a generalized anxiety disorder and depression.

[132] She is “motivated to live a conventional lifestyle as she wants to have her children back in her life.”

[133] There are appropriate and advanced programming alternatives *that can be* accessed in the community. For example, the “Thinking Leads 2 Change Program is a program based on the understanding that a gender-responsive, trauma-informed and cognitive-behavioural approach is fundamental to improved outcomes for women under the supervision of the Corrections Branch.” This program may be accessed in jail or in the community.

[134] The probation officer lists seven conditions that could be used in a community-based sentence. The conditions would require a high degree of supervision, continued attendance for counselling and treatment for rehabilitative purposes, protective conditions for the victims, and conditions that would help ensure that the community is not endangered by another relapse.

THE *GLADUE* REPORT

[135] I put this section last intentionally. Visually, if it was first, one might be left with the impression it was the single most important factor. By putting it last, I hope the message is that it is one of the many factors that I have considered.

[136] As a basic reminder, Crown, defence, an unrepresented individual or the judge all could request that *Gladue* information be provided in order to help the judge in creating a proper sentence. With the permission of the client, this information can be accessed in many ways, one of them is in written form.

[137] In Ms. Ingram's case, the *Gladue* Report has been provided by the BC First Nations Justice Council (FNJC). This Council has *Gladue* report writers and can provide a long version of *Gladue* information in a *Gladue* Report, or a shorter version of *Gladue* information in a *Gladue* letter. Both types of documents contain valuable insight into the client's narrative and personal life, community options, details around healing plans, and information on all *Gladue* factors. I cannot emphasize enough how important these written materials are. They should never be mixed up with presentencing reports or psychiatric assessments. They provide independent, objective information on the individual before the court. They provide an important context in which the offender is being sentenced. They cover every aspect of the individual's life.

[138] I would encourage members of the public and anyone in the legal system that deals with Indigenous clients that might be before the criminal court to reach out to the BCFNJC to learn more about *Gladue* information. Their website also has important information with respect to other information for Indigenous peoples and the justice system located on their website which is gladueservices@bcfnjc.com .

[139] In an unpublished document provided to me by the FNJC there are some categories with bullet points that remind me that generally speaking “*Gladue* Factors” are not the same for all individuals. Nor is there any one case that lists what they are. But different factors and principles could include things such as:

GLADUE FACTORS

- The direct and/or intergenerational impacts of residential schools or day schools that included exposure to violence, sexual abuse, and neglect to collective impacts on Indigenous languages, legal traditions, and parenting;
- The direct and/or intergenerational impacts of the child apprehension system and/or disconnection from family and culture that included exposure to violence, sexual abuse, and neglect to collective impacts on Indigenous languages, legal traditions, and parenting or family cohesion;
- The direct and intergenerational impacts of the Indian Act and related policies and laws, including loss of status and membership, and collective impacts on autonomy and economic participation;
- Individual, familial, and collective experiences of discrimination, colonization, and racism;
- Challenges from remoteness and community isolation, and poverty.

GLADUE PRINCIPLES

- To treat Indigenous persons fairly requires attention to differences;
- There is a duty to consider each Indigenous person’s circumstances;
- Indigenous persons’ unique circumstances may affect sentence length, or the relevance and weight given to sentencing objectives;
- Judges must take judicial notice of underlying causes of Indigenous over incarceration, including how colonialism and displacement have translated into lower rates of formal education, lower incomes, etc.;
- Counsel on both sides should adduce individualized information and courts must make further inquiries if the record is insufficient.

FAKING INDIGENEITY

[140] I am often asked whether I come across individuals who claim to have Indigenous heritage in hopes of obtaining a less severe sentence. It has been 35 years since I started law school. Much of that time has been practicing criminal law as a Crown prosecutor and a criminal defence lawyer. The last ten years have been sitting

as a judge in busy British Columbia Provincial courtrooms. I can say without hesitation that not once have I come across anyone being sentenced who I believed was trying to somehow assert that they were Indigenous to somehow get a lighter sentence.

[141] I almost added this concept of ‘faking for a lighter sentence’ under the myth and stereotype categories. However, I expect somewhere along the way there may have been the occasional person who thought committing a cultural fraud for their gain at a sentencing hearing was a good idea. If such a cultural fraud was to take place in a sentencing hearing where I was the judge, I suspect it would be considered an aggravating factor.

[142] I balance the slight possibility of cultural dishonesty with the broader idea that as a matter of fact, when a person does self-identify as being indigenous, chances are they will actually get a harsher or lengthier sentence, with longer periods of bail or probation, laden with more conditions than a person who did not indicate they were Indigenous.

[143] What should be clear, because it is not true, you do not get lighter sentences simply because you are Indigenous. As well, the question of ‘how Indigenous are you really?’ is really one that covers many of the stereotypes mentioned above. Sadly, I often hear this question in the context of individuals who identify themselves as ‘Metis’, as Ms. Ingram does.

[144] In the scenario where a person might accidentally (I have seen this) or intentionally (I have not seen this) mis-identify themselves as Indigenous and their heritage cannot be confirmed, then the BCFNJC *Gladue* writer will write a letter to the Court, Crown and defence advising that they are not in a position to provide a *Gladue* report. This systemic check is useful and makes sense because if you cannot identify the Indigenous heritage, we cannot ascertain how *Gladue* factors may have impacted the client’s life and played a role in what brought them to court or what options might assist in the long-term rehabilitation of the individual offender.

[145] For our purposes, and in order to create a precedent that might be used for future parity purposes I do not think I need to detail all the particular personal circumstances of Ms. Ingram.

GLADUE FACTORS PRESENT

[146] *Gladue* factors present are: addiction and substance misuse, housing and homelessness, childhood instability, loss of identity, history of complicated mental health and severe victimization. The report is nearly 20 pages and provides very detailed information on each of these topics.

[147] With respect to loss of identity, Ms. Ingram stated “that many of her family members, including her mother, carried internalized shame about their Metis heritage and, as a result, she did not grow up being connected to Metis culture, community or teaching’s. She learned about her Metis identity when she was 28. She shared she is interested in connecting more with her Metis culture.”

RECOVERY – What Has She Done Since The Offence?

[148] With respect to recovery, the *Gladue* report confirms that she has attended treatment three times and has been residing at a recovery facility since June 2024. In other words, she has now been in a residential recovery treatment centre for over a year. She has surrounded herself with recovery support programs and cultural healing activities. I have already covered some of this information contained in her support letters. So, she has been on bail and done well on bail.

CONCLUSION

[149] The offence is extremely serious. Understandably, this is one reason why the Crown seeks a sentence of two to four years, which would be a federal sentence.

[150] Defence is not far off the Crown’s lowest starting point of two years. They argue that a sentence of two years less one day is appropriate. This would make the sentence a provincial jail sentence, and the jail would not be in a federal penitentiary.

[151] Defence further submits that if the jail sentence is two years less a day, then I should at least consider whether the provincial jail sentence could be served by way of a conditional jail sentence.

[152] I have considered the nature of the offence, the degree of participation of the accused, the relevant sentencing principles and the many different case authorities.

[153] I will not list the aggravating and mitigating factors. They have been clearly laid out by Crown and defence, and I have covered many of the points earlier in these reasons.

[154] Justice Burrage's general words in the *Boyde* case mentioned in these reasons ring particularly true to me, that offenders who have taken positive measures to turn their lives around are all too uncommon in the judicial system, and that when they do present themselves, the court can and should take notice.

[155] I would say this is particularly true when sentencing an Indigenous female, who has pled guilty, accomplished so many steps in her recovery, has so many *Gladue* factors present, and who is so remorseful for her actions and has no criminal record.

[156] I sentence you to two years less one day. I have considered whether the jail sentence could be shorter. Your degree of participation in the crime and the fact that you were with two individuals with weapons weighs against a shorter jail sentence.

[157] I am satisfied that there is no danger to the public to allow you to serve this sentence of jail in the community. I also conclude that the sentence is consistent with the principles of sentencing.

[158] I conclude that a conditional jail sentence is an available option that is reasonable in your circumstances with respect to the offence you have committed.

[159] I have considered whether probation would also assist in your rehabilitation. Considering the extensive work you have already done, and that I expect you to continue with, I decline to impose any probation.

[160] All mandatory ancillary orders are granted.

The Honourable Judge A. Wolf
Provincial Court of British Columbia