

CANADA / JUDGMENT

## R. v. Adolph

2022 BCSC 2493

### COURT

Supreme Court of British Columbia

### DECIDED

23 September 2022

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2022 BCSC 2493 R. v. Adolph

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Adolph,

2022 BCSC 2493

Date: 20220923

Docket: 35905-2

Registry: Williams Lake

Rex

v.

Brent Myles Camille Adolph

Before: The Honourable Justice Fleming

Oral Reasons for Sentence

Counsel for the Crown:

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(All Days)

A.J. MacDonell

(February 10, 2022)

B. MacFarlane

(February 11, 2022)

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S.J. Clouston

(All Days)

K.B. Cronin, K.C.

(February 10-11, 2022)

T.E. La Liberte, K.C.

(August 24-25 and September 23, 2022)

Place and Date of Trial/Hearing:

Williams Lake, B.C.

February 10-11, and

August 24-25, 2022

Place and Date of Judgment:

Williams Lake, B.C.

September 23, 2022

[1] These Reasons for Sentence were delivered orally. They have since been edited for distribution.

## Introduction

[2] THE COURT: Charged with the attempted murder of Clayton Toop ("Mr. Toop") on May 15, 2016, during the trial, Brent Adolph ("Mr. Adolph") pleaded guilty to aggravated assault. The offence involved a brutal and unprovoked stabbing outside the Overlander Pub (the "Pub") in Williams Lake. Both Mr. Adolph and Mr. Toop were highly intoxicated or impaired at the time. Each remembers nothing or almost nothing about the events leading up to the stabbing or the stabbing itself.

[3] My task is to determine a just and appropriate sentence.

[4] The Crown seeks a sentence in the range of five to six years' imprisonment. The defence proposes a suspended sentence or, in the alternative, a conditional sentence order ("CSO"). Underlying their very different positions are disputes about mitigating and aggravating circumstances and the significance of systemic and background factors unique to Mr. Adolph as an Indigenous person. Also at issue is the role of sentencing ranges in determining an appropriate sentence.

[5] A substantial body of evidence was introduced by consent at the sentencing hearing including:

- a "partial statement of facts" introduced during the plea inquiry;
- victim impact statements from Mr. Toop and his mother, Angie Antrim;
- a JUSTIN conviction list for Mr. Adolph;
- recognizance of bail documents dated June 3, 2019, and 2020;
- a pre-sentence report that includes a Gladue component prepared by a probation officer, K. Ingram;
- a Gladue report prepared by Shiva Ghorban Pour of the BC First Nations Justice Council;
- eight character references or letters of support for Mr. Adolph;
- a letter to the court prepared by Mr. Adolph; and
- documentary evidence from the trial including:
  - admissions of fact;
  - copies of floor plans for the Pub floor;
  - several documents related to the surgical treatment of Mr. Toop's injuries;
  - treatment and assessment records prepared by occupational and physiotherapists who assisted in his rehabilitation; and
- transcripts of the testimony of general surgeon Dr. Wallace and neurosurgeon Dr. Omahen at the trial.

[6] During the sentencing hearing, the Crown and the defence also relied on other trial evidence without dispute. For example, the Crown relied on video footage of inside and outside the Pub on May 14 and 15, 2016, and the testimony of witnesses who identified various people shown in the footage. In addition, physiotherapist Tyler Judd testified both as a fact and as expert witness about his treatment of Mr. Toop and Mr. Toop's function and condition.

[7] Unless I state otherwise, my discussion of the circumstances of the offence, the impact on Mr. Toop and his family, and Mr. Adolph's circumstances, which follow, reflect findings of fact.

## Procedural History

[8] Mr. Adolph was charged with attempted murder on June 1, 2019. The Crown's case regarding the identity of the assailant was circumstantial and significantly complicated by the fact that Mr. Adolph's brother, Blaine, is his identical twin. Blaine was also living in Williams Lake at the time of the offence. For the purpose of DNA analysis, he and Mr. Adolph have the same DNA.

- [9] There is no dispute that plea discussions were ongoing during the trial and, once it became available to him, Mr. Adolph pleaded guilty to the lesser offence of aggravated assault.
- [10] After the guilty plea, the Crown took the position that a CSO was not available as a sentencing option, based on s. 742.1(e)(i) and (iii) of the Criminal Code, R.S.C. 1985, c. C-46 [Code]. Consequently, Mr. Adolph filed a notice of constitutional question seeking a declaration that the provision was invalid as it violated his rights under ss. 7, 12, and 15 of the Charter.
- [11] The parties agreed to a bifurcated process that required me to first determine if I was satisfied that a fit sentence mandated a jail sentence of more than two years, thus eliminating the option of a CSO. If not, then the constitutionality of the provision would be addressed at a further hearing.
- [12] Following the initial hearing, I determined a jail sentence of more than two years was not necessarily required.
- [13] The scheduling of the further hearing was adjourned, however, to await a decision in *R. v. Penner*, 2022 BCSC 1859, where the issues included whether s. 742.1(e) prohibited the option of a CSO for the offence of manslaughter, which carries a maximum sentence of life in prison. In his decision, Justice Schultes concluded that the subsection did not apply as a matter of statutory interpretation. The Crown then changed its position and the need for a further hearing fell away.
- [14] Further dates were scheduled, however, to receive additional submissions about the appropriateness of a CSO and/or a suspended sentence.

### Circumstances of the Offence

- [15] On the evening of May 14, 2016, Mr. Adolph was drinking "hard liquor" with a number of people including Sherry Hance, at the home of Xavier Stump. Mr. Adolph also recalls using cocaine and people have told him he was smoking "crack," which I accept.
- [16] Mr. Toop, his brothers, Tyler and Matthew, and Matthew's partner, Samantha Graves, were also drinking that night at Matthew's residence. The four of them went to the Pub at approximately 11:38 p.m.
- [17] Around 1:00 a.m. on May 15, 2016, Mr. Adolph arrived there with his younger brother Bryan, Ms. Hance, and Owen Alphonse. Mr. Adolph was in a relationship with Daryl Renai Johnny at the time, but she and Kori-Jo Stump came to the Pub separately about seven minutes later.

- [18] The Pub is located on what I will refer to as the north side of Broadway Avenue South and Highway 97. The Ramada Inn (the "Inn") is located next to the east side of the Pub. On the south side of the Pub and the Inn is a parking lot. The Pub's main exit is on the north side of the building. To reach the parking lot from the main exit, it is necessary to travel around the west side of the Pub and then south. The Pub also has an east exit that leads to an area just north of the parking lot.
- [19] The Crown relies on particular clips of video footage that show Mr. Adolph and Ms. Johnny not interacting with one another, and Ms. Johnny and Ms. Stump interacting with Mr. Toop and his brother at what is called the back bar, one of two bars in the Pub. Mr. Adolph can be seen walking past this same group on his way to and from the washroom.
- [20] Other video footage shows Ms. Johnny, Ms. Stump, Mr. Toop and his brother together on the dance floor. Mr. Adolph can be seen pacing some distance away with his back to the wall.
- [21] Video footage also shows Ms. Johnny and Ms. Stump leaving the Pub through the east exit around closing time. Mr. Toop leaves from this same exit about one minute later. A few seconds after that, Mr. Adolph moves toward the main exit located at the back or, as I have said, the north side of the Pub.
- [22] Video footage from outside the Pub then shows Mr. Adolph walking quite slowly as he trails and then catches up to Bryan, Ms. Hance, and Mr. Alphonse, before rounding the northeast corner of the Pub heading south at approximately 1:45:11.
- [23] About six minutes later, Ms. Johnny and Ms. Stump are walking north or away from the parking lot and then about two minutes later Mr. Alphonse does the same.
- [24] Mr. Adolph has no memory of the events that occurred after he left the Pub in the early morning hours of May 15, 2016. Despite his lack of memory, he admits to causing all of Mr. Toop's injuries. The stabbing occurred in an area of the parking lot located in front of the Inn. Mr. Adolph stabbed Mr. Toop in the neck and head, twice in the left arm, and several times in the torso with a weapon that was never found.
- [25] There is no question Mr. Toop's injuries were very serious and some of them life-threatening. After the stabbing, and accompanied by Tyler, Mr. Toop managed to make his way toward the east entrance of the parking lot, down an incline, and across Broadway Avenue before collapsing near the meridian separating Broadway Avenue from Highway 97.
- [26] The Crown asks me to find the stabbing was planned, in response to Mr. Toop's interactions with Ms. Johnny in the Pub that night. In support of the allegation, the Crown relies on Mr. Adolph's apparent lack of interaction with Ms. Johnny in the Pub and what the Crown asserts was Mr. Adolph looking at the two brothers or at Mr. Toop. The Crown also argues the viciousness and force of the attack shows Mr. Adolph was motivated by feelings of rage and jealousy. Disputed by the defence, the Crown is required to prove the aggravating circumstance beyond a reasonable doubt.

- [27] In my view, inferring that Mr. Adolph planned an attack would involve speculation and conjecture. Mr. Adolph and Mr. Toop did not know one another. Although Mr. Adolph and Ms. Johnny were in a relationship at the time, their relationship remained on-again/off-again until 2020. There could be a number of possible explanations for why Mr. Adolph and Ms. Johnny may not have approached one another in the Pub throughout the evening, if this was in fact the case, such as: the level and nature of his intoxication or a prior argument or a disagreement. As I have indicated, they were not together before or when they arrived at the bar. I would also note that the interactions between Ms. Johnny and the Toops inside the bar appeared friendly, but not particularly flirtatious. Assuming for the moment Mr. Adolph was, in fact, looking at the Toops and Ms. Johnny together or Mr. Toop on his own, I am not able to detect any signs of agitation or hostility. In other words, to the extent they can be made out in the video footage, Mr. Adolph's demeanour and his movements do not appear aggressive or menacing. Again, rather than following Mr. Toop out the east exit of the Pub, Mr. Adolph left through the main door taking him farther away while also appearing to move quite slowly.
- [28] What transpired in the parking lot leading up to the stabbing is unknown.
- [29] Like Mr. Adolph, Mr. Toop and Tyler were heavily intoxicated and have few, if any, reliable recollections. Mr. Toop testified at the trial that he could not remember leaving the bar. Apart from flashes of getting stabbed and quick glances at an attacker along with one or two other men, his next memory is of being at the hospital. Tyler was unable to recall anything after getting a drink at last call, until he was in the lower parking lot with an Indigenous man standing in front of him blocking him. After that, Tyler's next memory is of being with Mr. Toop as he was gasping for air and bleeding heavily on the lower part of the road.
- [30] Mr. Adolph left the scene in a taxi with his brother Bryan, and Ms. Hance. The taxi took them to an apartment complex a short distance away. Mr. Adolph recalls having blood on him when he woke up later that day.

## Impact of the Offence

- [31] I turn now to consider the impact of Mr. Adolph's offence on Mr. Toop and his family. There is no evidence dealing with the impact on the community apart from the Crown's submission there have been a high number of violent offences in Williams Lake.
- [32] As I have indicated, Mr. Toop suffered from a number of serious and some life-threatening injuries from the stabbing that included:
- a severe injury to his torso that lacerated a major artery located behind the breastbone and the liver causing internal bleeding;
  - two wounds to his flank, one of which was deep and lacerated his diaphragm;
  - a long, but superficial wound to the neck;

- a wound to the back of the left arm which cut the triceps muscle;
  - a wound to the forearm; and
  - an injury to the left temple that included a fracture of the temporal bone and subdural bleeding which caused pressure on the brain.
- [33] After the stabbing, Mr. Toop was hospitalized for an extended period. During that time he underwent surgical procedures that included a craniotomy and laparoscopies. Mr. Toop also required extensive rehabilitation services.
- [34] There are no hospital records that discuss Mr. Toop's condition or diagnosis when he was discharged on June 17, 2016. Subsequent treatment and assessment records refer to a brain injury, right-sided "hemibody weakness, fatigue, anxiety, short-term memory challenges, and mild PTSD-like symptoms."
- [35] A significant issue for Mr. Toop was neurological weakness in his right foot and ankle, as well as impaired balance. He participated diligently in frequent physiotherapy sessions and monthly occupational therapy for over a year. He also attended the gym regularly. Fortunately, Mr. Toop has made a very good, although not complete, recovery.
- [36] The report of occupational therapist Susan Woods dated June 19, 2017, indicates that, by then, Mr. Toop was not reporting problems with his cognitive function apart from his memory. Other documents state his short-term memory was weak, but gradually improving. Ms. Woods observed that Mr. Toop presented well cognitively. In terms of his physical function, she noted he had some right lower leg weakness that impacted his endurance and his ability to manage uneven terrain and balance tasks at heights or in complex terrain. She described his dynamic balance as still impaired, but improving. Ms. Woods had no concerns about Mr. Toop's sensory or psycho-emotional functioning. He reported good social interaction with family, friends, and his significant other. Mr. Toop also reported sleeping well and denied any concerns related to mood and anxiety.
- [37] Mr. Judd gave similar evidence about Mr. Toop's condition when his physiotherapy ended in September 2017. Mr. Toop still had some limitations with his balance and agility. When he got tired, his right foot would catch on stairs or climbing overtop of something.
- [38] Before the stabbing, Mr. Toop worked in the oilfields building scaffolding earning \$30 per hour. He had just completed his first year of an apprenticeship and was poised to receive a raise. After three more years, he expected to earn \$42 per hour.
- [39] Very physically active, Mr. Toop's interests included dirt-biking, mountain biking, hiking, snowboarding, and hunting.
- [40] After the offence, Mr. Toop did not work for a year. The ongoing effects of his injuries prevented him from returning to scaffolding. He had to stop riding dirt bikes and mountain bikes.

- [41] In or about June 2017, Mr. Toop started working as a forestry technician collecting data to assist in the building of logging roads, earning significantly less than he did as a scaffolder. Three years later, he took a position with Telus which will ultimately pay him \$37 per hour, more than he was earning at the time of the offence, but less than he expected to earn had he continued with scaffolding.
- [42] During the sentencing hearing, Mr. Toop read his victim impact statement to the court. His statement describes the emotional and physical suffering and the economic loss he experienced as a result of the offence.
- [43] During the first few weeks of his hospital stay, he suffered extreme physical pain every day. He also suffered the emotional pain of not knowing if he would ever walk again. Later, he found almost anything could "set him off" because he could not stop his thoughts from straying. Mr. Toop continues to experience discomfort and is clumsier. He finds it much harder than it should be to remember dates and names.
- [44] Mr. Toop has been left with some loss of mobility in his right ankle and foot and the scars on his body are a constant reminder of what happened. Stating he "never fully understood who and why this was done to me," Mr. Toop describes still living in fear for his safety and the safety of those around him, especially his brothers.
- [45] His mother Ms. Antrim also prepared a statement. Although very brief, her distress and the distress of the family are palpable. She writes, "there are no words knowing every stab could have ended my son's life. My family and I will never forget the feeling of seeing Clayton lying in the hospital with a machine breathing for him and for Tyler finding his brother bleeding out on the side of the road, him trying to stop the blood, that will never leave us."
- [46] Of course, no sentence I impose can erase the pain and suffering caused by Mr. Adolph's offence, but I wish Mr. Toop and his family to know that I take into account the harm done to him and to them in sentencing Mr. Adolph.

### Circumstances of the Offender

- [47] The very helpful presentence and Gladue reports, the many reference/support letters, and Mr. Adolph's own letter, provide fulsome accounts of his background and current circumstances. In preparing the presentence report, the probation officer interviewed Mr. Adolph, his partner, Ms. Johnny, and family members.
- [48] I will review the evidence regarding Mr. Adolph in some detail given the legal significance of the systemic and background factors unique to him as an Indigenous offender to the sentencing process.

- [49] Born in Williams Lake, Mr. Adolph is a member of the Stswecem'c Xgat'tem First Nation. His mother, Marilyn Camille is also a member. His deceased father, Lenny Adolph was a member of the Xaxli'p First Nation. Now 35, as I have indicated, Mr. Adolph has two brothers, his identical twin, Blaine, and a younger brother, Bryan. Mr. Adolph also had an adopted sibling who joined the family in 2005.
- [50] More than 10 family members including his father Lenny, his paternal uncles Larry, Sam, Allen, Bobby, and Norman Leech; his maternal aunts, Rose Adolph, and Tamara Ned; his paternal grandparents, Roger Adolph and Donna Dickinson-Leech; and Mr. Adolph's paternal great grandparents, were forced to attend residential school which, for most of them, was the infamous Kamloops Indian Residential School.
- [51] In her letter of support, Ms. Dickinson-Leech describes the effect of residential school on her parents, Mr. Adolph's great grandparents, stating they lived in a world of silence and her father committed suicide when she was 12. Addressing her own experience of residential school, Ms. Dickinson-Leech states she grew up hating the colour of her skin and being an "Indian". She was sexually abused at the Kamloops Indian Residential School for nine years before leaving at 16. When she was 16 and 17, Ms. Dickinson lost two children to the child protection authorities. After Lenny was born, she placed him in the care of his grandmother, but at the age of five, he too was taken to the Kamloops Indian Residential School where he, also was sexually abused. He was also sexually abused by older relatives.
- [52] Mr. Adolph's grandfather Roger, also describes his own truly horrific experiences at the Kamloops Indian Residential School. Taken away from his parents at the age of seven, Roger remembers being stripped when he and the other children arrived, washed down with chemicals sprayed from a big hose, and scrubbed with a brush that was used to clean the floor. Roger was physically, sexually, and verbally abused. He recalls being aware of where children who had died were buried and babies being disposed of in other ways. Beaten up for speaking their Indigenous language, Roger said his father would not allow him and his siblings to speak it at home because he feared how much they would be beaten when they returned to school. Commenting he knows now that they were all brainwashed, Roger stated at the time they thought all of this was normal. He also states that half of the family members are still impacted by the effects of Indian Residential School and many have passed away from their addictions.
- [53] Although neither Ms. Camille nor her parents attended residential school, all of her cousins did and her family was significantly disadvantaged in other ways. Ms. Camille's father had no formal education at all and was an alcoholic. Her mother dropped out of school in Grade 9. At the same time, both of her parents played leadership roles in their community. Ms. Camille was the first person in her family and the second person in her community to graduate from high school. She also attended university and other postsecondary programs. During her career, she has held many positions of significant responsibility within First Nations communities. A self-described workaholic, Ms. Camille never drank after she became pregnant for the first time.

- [54] Mr. Adolph's father, Lenny, however, suffered from alcohol and drug addiction. Ms. Camille would not allow him to drink in the home. So his addiction took him away from the family on and off, and was the cause of separations. Ms. Camille describes her relationship with Lenny as dysfunctional and always in chaos, but never violent. Ms. Camille identifies herself as an angry mother who coped by using silence. There was never any communication, good or bad, she says, let alone any sharing of emotions. She recognizes that her unstable relationship with Lenny, Lenny's addiction, and the absence of communication had a negative impact on Mr. Adolph and his brothers.
- [55] As a child, Mr. Adolph spent a lot of time with his maternal grandparents, reports Ms. Camille, because she was away working and Lenny would be gone "on a drinking binge." At the same time, Ms. Camille states that both she and Lenny tried their best.
- [56] Ms. Camille and Lenny separated for the last time when Mr. Adolph was 18. He tried to live with Lenny, but could not stand watching his father abuse drugs and alcohol. Tragically, Lenny died of a drug overdose in Vancouver's downtown eastside in 2010 after receiving a financial settlement related, as I understand it, to his forced attendance at residential school. Before his death, Lenny attempted to recover from his addiction and attended treatment programs at least a few times.
- [57] Mr. Adolph describes his upbringing as all right and there was much that was positive. He and his brothers were always involved in their Indigenous culture. Mr. Adolph has happy memories of living in Dog Creek and fishing with his father before he was old enough to go to school. Talented hockey players, he and his brothers played minor hockey for many, many years. Lenny devoted himself to coaching their teams and the family spent much of their time travelling for games, tournaments, and tryouts.
- [58] Ms. Camille and others observe that an understanding of the trauma experienced by residential school survivors and its connection to addiction, other significant health issues, and difficult life circumstances has only emerged more recently. Roger and Ms. Camille view Lenny's death as having a profound effect on Mr. Adolph who was the closest to him of the three children. Mr. Adolph also understands there is a link between his grief over Lenny's death or his failure to grieve, as Ms. Camille and Roger put it, and his own addiction.
- [59] Mr. Adolph started using marijuana when he was 12 or 13, drinking alcohol at 16, and using cocaine as well as other hard drugs at 16 or 18. He reports that he drank more casually at first, but then to the point of intoxication and blacking out sometimes. Similarly, for a time, he used cocaine once in a while and when he drank, but eventually he became seriously addicted and used it every day.

- [60] In terms of education, Mr. Adolph dropped out of school in Grade 9. In his 20s, he tried to obtain his Dogwood Diploma, but was unsuccessful. From the ages of 19 to 25, he worked full-time in the logging industry with an uncle. After that, he worked as a labourer until he was 30. More than five years ago, he started a welding program, but was unable to complete his first year due to his drug and alcohol misuse.
- [61] Mr. Adolph has one prior criminal conviction for two counts of assaulting a peace officer and one count of possession of a controlled substance related to a single incident that occurred in 2014. I am told he was released on conditions of no substance use at the time of this offence. In July 2016, he was sentenced to a three-month CSO and fined \$300. Without intending to diminish the potential seriousness of the offence of assaulting a peace officer, the sentence indicates the underlying incident was relatively minor. The offences are also consistent with someone struggling with addiction.
- [62] After his arrest for this offence, Mr. Adolph was subject to a release order granted June 3, 2019, and varied on November 16, 2020. There are 15 conditions in both orders. The original order included a strict curfew along with several conditions that prohibited the use of illicit drugs and alcohol and imposed a "no-go" within 50 kilometres of Williams Lake. The amended order contains much the same conditions, but replaced the curfew with house arrest. In my view, the bail conditions are onerous and constituted a significant restriction on Mr. Adolph's liberty.
- [63] The evidence establishes that Mr. Adolph stopped using alcohol and illicit drugs when he learned he was having a child, close to four years ago now. He states, "[i]t was like an awakening. Before that, I didn't give a shit, but because of my son, I didn't want him around alcohol and drugs so I quit and I haven't looked back since." Mr. Adolph reports that he has continued to use marijuana occasionally for "pain management" and that he found it helpful in stopping his illicit drug use.
- [64] Mr. Adolph reports being drug tested when he was hired by his current employer, Dent Construction ("Dent"), and he has to be tested again if or when his jobsite changes.
- [65] Mr. Adolph now lives in Kamloops with Ms. Johnny and their children Lenny born in 2019 and Clara born in early 2022. Ms. Camille identifies Ms. Johnny as a positive support for Mr. Adolph. She has been attending university to complete her qualifications as a teacher.
- [66] Before the pandemic, Mr. Adolph and Ms. Johnny attended couple's counselling to learn how to communicate better. He has also been working on his communication skills and how to handle his emotions on his own through various online resources. Mr. Adolph practices meditation and uses breathing exercises to calm himself.
- [67] Both Mr. Adolph and Ms. Johnny describe their current relationship as respectful and healthy. She states that Mr. Adolph has transformed himself since he became sober and started his traditional healing journey.

- [68] Ms. Camille expresses the same view. Always quiet and someone who would shut down as a way of coping, she says Mr. Adolph is totally different now. I accept he is a patient, active, and attentive father. In addition to supporting his immediate family, he also helps other family members.
- [69] After Lenny was born, Mr. Adolph stayed at home to care for him for a year. Mr. Adolph then worked as a labourer for a company building housing for their community. Once that job ended, he completed a six-week training program for heavy duty equipment operators. Since then, Mr. Adolph has been employed as a heavy equipment operator. He has been driving a rock truck working for Dent since in or about January 2022. Mr. Adolph's job takes him away from home. His current work schedule, as I understand it, is 14 days on and seven days off. His employer describes him as a keen and mindful worker who is a pleasure to have on site.
- [70] Quite immersed in his Indigenous culture growing up, Mr. Adolph has been attending sweat lodges and pow wows, gathers traditional medicines with his maternal grandmother and participates in other spiritual and cultural practices.
- [71] Mr. Adolph has attended some, although not many, individual sessions with a counsellor in his community and expresses an interest in continuing. He told the Gladue report writer he wants to address his addiction issues through counselling and treatment and recognizes the link between his addictions and his criminal involvement and is committed to maintaining his sobriety.
- [72] Mr. Adolph is willing to attend residential treatment. When he met with the probation officer in the fall of 2021, he said he was looking for a family treatment program, but acknowledged it would be hard for the family to attend while Ms. Johnny is at school full-time. The Gladue report indicates that Mr. Adolph also believes a trauma program focused on loss would be helpful to him. The report identifies a particular Indigenous treatment program that offers both substance abuse treatment and a grief program.
- [73] Significantly, Mr. Adolph no longer associates with people who drink. Mr. Adolph's grandfather identifies Mr. Adolph's abstention from alcohol and drugs as a major factor in his life change.
- [74] Mr. Adolph has the support of his immediate and large extended family as well as his community including the current chief, Hank Adam, who has also provided a letter of support. All of the letters convey much strength, wisdom, and understanding. Importantly, none of them attempt to diminish the seriousness of Mr. Adolph's crime against Mr. Toop, but they do indicate that violence was not something they would ever have expected of him and the offence was entirely out of character.
- [75] Mr. Adolph's own letter, which I accept is a sincere apology to Mr. Toop and his family, expresses feelings of remorse for all the pain and trauma he caused. He also writes:

I want to tell Tyler Toop that I am sorry and willing to take responsibility for my actions, the pain I have caused you physically and emotionally. Knowing this event has changed your life drastically and how things could never be the same, I want to change my life around and move forward positively. To do that, I need to admit that what I have done to you was wrong. I want to say again how truly sorry I am for the pain and trauma I have not only caused you, but your family, also. I accept full responsibility for my actions and understand it is a severe crime. I regret doing it and fully understand that no one has the right to assault another person. Since then, I have quit drinking and doing drugs for three years and counting. I feel great shame for what I have done.

- [76] Mr. Adolph conveyed the same remorse and profound regret to the probation officer and the Gladue report writer.
- [77] The Gladue report also indicates that Mr. Adolph is willing to accept restorative justice options, although the only option identified includes the Indigenous treatment programs and centres referred to in the Gladue report.

## Legal Framework

- [78] The offence of aggravated assault, as I have indicated, carries a maximum penalty of 14 years in prison. There is no minimum sentence. The principles that govern the determination of a sentence within this wide range, are set out in s. 718 of the Code and the surrounding sections as discussed and developed in the caselaw.
- [79] Section 718 identifies the fundamental purpose of sentencing as the protection of society and contribution to respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions that have one or more of the following objectives:
- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
  - (b) to deter the offender and other persons from committing offences;
  - (c) to separate offenders from society, where necessary;
  - (d) to assist in rehabilitating offenders;
  - (e) to provide reparations for harm done to victims or to the community; and
  - (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.
- [80] The fundamental principle of sentencing, found in s. 718.1, is proportionality. It requires sentences to be proportionate to the gravity or seriousness of the offence and to the degree of responsibility or moral blameworthiness of the offender. In *R. v. Ipeelee*, 2012 SCC 13, para. 37, Justice LeBel explained proportionality as follows:

Proportionality is the sine qua non of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system .

Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender.

[81] The court is also required to consider a number of secondary sentencing principles set out in s. 718.2 of the Code. Among them is the parity principle, which requires similar offenders who commit similar offences in similar circumstances to receive similar sentences. In *R. v. Pham*, 2013 SCC 15, para. 9 Justice Wagner, as he then was, described the parity principle as a corollary to an individualized sentence. Noting the emphasis on the value of individualization, he remarked, "if the personal circumstances of the offender are different, different sentences will be justified."

[82] Justice Wagner returned to the principles of proportionality and parity in the case of *R. v. Lacasse*, 2015 SCC 64, para. 53 where he explained that proportionality is determined both on individual basis, that is, in relation to the offender and the offence, but also by comparison with sentences imposed for similar offences committed in similar circumstances. In other words, he concluded the concepts of "[i]ndividualization and parity of sentences must be reconciled for a sentence to be proportionate."

[83] Other secondary principles include the requirement to increase or decrease a sentence to account for aggravating and mitigating circumstances that relate to the offence or to the offender.

[84] There is also a requirement for restraint in the use of imprisonment, meaning an offender must not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances.

[85] Of particular importance here is s. 718.2(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.

[86] Introduced in 1996, s. 718.2(e) mandates a consideration of the unique circumstances of an Indigenous offender. *R. v. Gladue*, [1999] 1 S.C.R. 688, para. 68, identified Indigenous offenders as different from others because they have been victimized by systemic and direct discrimination.

[87] Both *Gladue* and *Ipeelee* tell us that s. 718.2(e) is remedial. Its purpose is to ameliorate the crisis of overrepresentation of Indigenous people in Canada's criminal justice system and prison in particular. As Justice Marchand, then of this Court, observed in *R. v. Harry*, 2018 BCSC 2069 at para. 22, the crisis is one driven by alienation, poverty, substance abuse, lower educational attainment, lower rates of employment, and bias as a result of Canada's colonial

history and policies of cultural destruction such as the operation of residential schools. Unfortunately, the rate of overrepresentation in Canada's criminal justice system is far worse today than it was in 1996.

- [88] In sentencing an Indigenous offender, Gladue and Ipeelee require a sentencing judge to consider two factors:
- (a) the unique systemic or background factors which may have played a part in bringing the particular offender before the court; and
  - (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances.
- [89] With respect to the first factor, Gladue and Ipeelee make it clear that the unique systemic or background factors that may have played a part in bringing the particular offender before the court speaks to their moral blameworthiness, the second half of the fundamental principle of proportionality.
- [90] The court must take judicial notice of the history of colonialism, displacement, and residential schools, and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and higher levels of incarceration for Indigenous Peoples. These factors provide the requisite context for considering the case-specific information. The offender is not required to establish a causal link between the systemic and background factors and the offence, but a link may be important or helpful in finding a fit sentence.
- [91] The Supreme Court of Canada has repeatedly stated that determining a fit sentence for all offenders is a highly individualized process that requires a delicate balancing of the multiple and often in-conflict principles and objectives. Consistent with the emphasis on individualization and the proportionality principle, the Court has reiterated time and again that sentencing ranges are guidelines only, identifying them as just one tool among others. In the Lacasse, para.57, the reasons of Wagner J. include:

Sentencing ranges are nothing more than summaries of the minimum and maximum sentences imposed in the past they should not be considered "averages", let alone straitjackets, but should instead be seen as historical portraits for the use of sentencing judges, who must still exercise their discretion in each case.

[92] The point was made even more forcefully in *R. v. Parranto*, 2021 SCC 46, para. 36:

1. Starting points and ranges are not and cannot be binding in theory or in practice
2. Ranges and starting points are "guidelines, not hard and fast rules", and a "departure from or failure to refer to a range of sentence or starting point" cannot be treated as an error in principle

3. Sentencing judges have discretion to "individualize sentencing both in method and outcome", and "[d]ifferent methods may even be required to account properly for relevant systemic and background factors"
- [93] The Court in Parranto also observed that denunciation and deterrence, the punitive objectives, are generally built into starting points and ranges. They reflect a judicial consensus on the gravity of offence-based considerations only, or the objective seriousness of the offence, not the personal characteristics of the offender, potentially mitigating circumstances, or Gladue factors. Referring to Indigenous offenders in particular, Parranto clarified that, while the gravity of the offence may dictate a custodial sentence, the offender's individual circumstances must also support the sentence imposed.
- [94] Citing Parranto very recently, *R. v. Ellis*, 2022 BCCA 278, made it clear that exceptional circumstances are not required to justify a sentence below the bottom end of the range, emphasizing the task is to fashion a proportionate sentence and again, ranges are tied to the gravity of the offence.

### Suspended Sentences and CSOs

- [95] In light of Mr. Adolph's position, I now turn to consider the principles that apply to suspended sentences and CSOs, meaning jail sentences served in the community.
- [96] Section 731 of the Code allows the court to "suspend" the passing of sentence and direct the offender's release on conditions prescribed in a probation order for an offence with no minimum sentence, having regard to their age, character, and the nature and circumstances of the offence. The criteria for a CSO are set out s. 742.1(a). In addition to a jail sentence of less than two years, the court must be satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 and 718.2.
- [97] *R. v. Proulx*, [2000] 1 S.C.R. 61, remains the leading authority on the approach to CSOs. Proulx explains that after determining imprisonment for less than two years is the appropriate range of sentence, the Court must be satisfied the safety of the community will not be endangered by the offender serving their sentence in the community, focusing on the risk posed by the individual offender. In making this determination, the risk of reoffending, including the gravity of the damage that could result and the ability of conditions to reduce the risk to an acceptable level, are considered.
- [98] Addressing the requirement for consistency with the fundamental purpose and principles of sentencing, Proulx emphasized that a CSO can provide significant denunciation and deterrence, although there may be circumstances where the need for denunciation is so pressing that incarceration will be the only suitable way to express society's condemnation of the offender's conduct. The same qualification was made regarding general deterrence, depending on whether the offence is one for which incarceration is likely to have a real deterrent effect, as well as, the circumstances of the community in which the offence was

committed. In discussing general deterrence Proulx also cautioned against placing too much weight on the objective when choosing between a CSO and incarceration, noting empirical evidence suggests that the deterrent effect of incarceration is uncertain. Further, a CSO can provide significant deterrence if sufficiently punitive conditions are imposed and the public is made aware of the severity of these sentences.

- [99] Proulx further provided that where both punitive and restorative objectives are to be achieved, a CSO will likely be more appropriate than incarceration, identifying the offender's prospects for rehabilitation, and whether they have acknowledged their wrongdoing and expressed remorse, as important considerations in determining the "achievability" of restorative objectives.

### Positions of the Parties

- [100] Despite the Supreme Court of Canada and our Court of Appeal's clear directives, the Crown's position that a five or six-year prison term should be imposed depends on the sentencing range for aggravated assault in British Columbia.
- [101] Several cases identify that range as between 16 months and six years' imprisonment. Sentences at the lower end of the range tend to be imposed in "fight" situations that escalate and result in injuries to the victim. Sentences at the higher end have been imposed where the victim is attacked with a weapon without provocation and without any opportunity to defend themselves.
- [102] The Crown also relies heavily on the seriousness of Mr. Adolph's offence, the sentencing objectives of denunciation and deterrence, and a number of aggravating circumstances, most of which he acknowledges, along with the suggestion of a planned attack, which I have rejected.
- [103] Despite reciting the correct principles, in addressing the effect of Gladue factors, the Crown characterizes them as providing context and "not mitigating", rather than addressing their impact on Mr. Adolph's moral blameworthiness. The Crown also attempted to minimize their significance, arguing that unlike many other Indigenous offenders, Mr. Adolph was not subjected or exposed to family violence or his father's addiction growing up. Further, and despite the substantial body of undisputed evidence to the contrary, the Crown argued there are few, if any, mitigating circumstances here.
- [104] In contrast, the defence asserts that balancing the gravity of Mr. Adolph's admittedly serious violent offence with his "exceptional circumstances" and "collateral consequences" for his family, viewed through the lens of Gladue, a sentence in the provincial range is fit. Further, says the defence, the fundamental principle of proportionality would also be met by imposing a suspended sentence or, in the alternative, a CSO.

- [105] Acknowledging the importance of the objectives of denunciation and general deterrence but also emphasizing rehabilitation and restraint, the defence originally proposed strict conditions. By the end of the sentencing hearing, however, Mr. Adolph's counsel took the position that strict conditions, such as house arrest, were no longer necessary to effect a sufficiently punitive sentence, in light of the strict bail conditions that Mr. Adolph has complied with since 2019.
- [106] Each of the parties relied on a number of cases, all of which I have considered, but do not intend to discuss case by case.
- [107] Some of the Crown's authorities involved the use of a weapon and sentences at the higher end of the range. In *R. v. Adamec*, 2021 BCSC 1832, for example, a sentence of five years and four months was imposed. The offender had been invited to the victim's apartment by his girlfriend. After a brief argument with the victim who was intoxicated, the offender retrieved a large knife from the kitchen and stabbed him deep in the chest before fleeing the scene. The victim also left the apartment and collapsed on the street, striking his head. He required emergency surgery to repair the life-threatening stab wound and a craniotomy due to bleeding to the brain caused by the blow to his head. The victim made a partial recovery, but continued to suffer from pain, PTSD symptoms, and other physical consequences.
- [108] Not Indigenous, the offender was a young adult with a serious criminal record that included convictions for violence, threats of violence, and weapons that began when he was only 14 years old. There were several aggravating circumstances. Based on his lack of remorse and insight, the Court also found he posed an increased risk to members of the public.
- [109] The Crown's authorities include appellate decisions involving very violent, unprovoked aggravated assaults where sentences at the lower end of the range were substituted for sentences well below the range. In *R. v. Slizak*, 2017 BCCA 279, for example, a 16-month prison sentence was substituted for a 90-day intermittent jail sentence followed by three years' probation, which was found to be demonstrably unfit for failing to give effect to the seriousness of the offence. The aggravated assault involved a vicious attack in a bar. Although the offender did not use a weapon, he "sucker" punched the victim causing him to lose consciousness and then stomped on his head with great force. The victim suffered serious injuries that included fractures to the bones of his face, hemorrhaging, a traumatic brain injury, and ongoing short-term memory loss. He also suffered from depression and ongoing headaches. Unlike Mr. Adolph, Mr. Slizak was not Indigenous. Nor was he intoxicated at the time of the offence.
- [110] In *R. v. Quash*, 2019 YKCA 8, a 10-month prison sentence plus 30 months' probation was overturned and replaced by a sentence of two years' imprisonment less time served followed by the same probation order. The majority found the sentencing judge had erred in finding the offender's moral blameworthiness was reduced by his cognitive limitations, absent an assessment of the degree to which those limitations played a role in the offence.

- [111] The offence itself involved a stabbing that cut the victim's face open. He was left with considerable permanent nerve damage, which caused pain, discomfort, and other effects, as well as a large visible scar. Like Mr. Adolph, Mr. Quash was an Indigenous offender, but he also had a much more serious and lengthy criminal record.
- [112] The defence relies on cases where suspended sentences were imposed for the much more serious offence of manslaughter and aggravated assault. In *R. v. Alphonse*, 2018 BCSC 2045, for example, Mr. Alphonse stabbed the victim causing his death. An Indigenous offender, Mr. Alphonse received a suspended sentence with stringent terms of probation for three years. The sentencing judge found the stabbing occurred during an alcohol-fueled physical fight that the victim was clearly winning. The circumstances were also described as a near self-defence situation.
- [113] After the offence, Mr. Alphonse stopped drinking. Following his arrest, he also spent almost six months in custody before being released to a residential treatment program. Like Mr. Adolph, Mr. Alphonse was then subject to strict bail conditions that included virtual house arrest for over two years. Mr. Alphonse had a good work history, no prior history of violence, and a strong support system. In terms of Gladue factors, he, too, had been impacted by intergenerational trauma.
- [114] In *R. v. Nakamura*, 2012 BCSC 327, two very young adult offenders received suspended sentences for aggravated assault. After enticing the victim to a meeting place, Mr. Nakamura stabbed him in the face and stomach. The other offender clubbed him with a baseball bat. The victim suffered life-threatening injuries. However, Mr. Nakamura was only 18 and still in high school at the time, making the principal consideration his "reformation and rehabilitation".

## Analysis

- [115] I start by addressing the seriousness of Mr. Adolph's offence which requires a focus on the "normative wrongfulness" of the conduct and the harm it caused. Along with the wrongfulness and dangerousness inherent in assaulting a person with a knife or sharp object, the gravity of Mr. Adolph's offence includes the fact that he inflicted multiple stab wounds during an entirely unprovoked attack on Mr. Toop. Whether considered as part of the gravity of the offence or as an aggravating factor, the harm caused to Mr. Toop was very serious. He suffered serious and some life-threatening injuries that required significant and prolonged medical intervention including surgeries and intensive rehabilitation therapy. Further, the nature of the harm was not only physical, but also emotional and financial.
- [116] There are other aggravating factors. Mr. Adolph's offence has also had a lasting impact on Mr. Toop and, I accept, on Mr. Toop's family.
- [117] After the offence, Mr. Adolph fled the scene in a taxi without calling for help.

[118] The mitigating factors in this case, however, are both numerous and significant. I have already made a number of findings about Mr. Adolph and his circumstances since the offence, but in summary, they include:

- Addicted to alcohol and cocaine at the time of the offence, Mr. Adolph stopped drinking and using illicit drugs almost four years ago and he is fully committed to remaining sober;
- Along with overcoming his substance misuse issues, Mr. Adolph has made significant improvements to virtually every aspect of his life;
- In addition to improving himself emotionally, he has taken steps to strengthen his relationship with Ms. Johnny and their communication through counselling;
- Mr. Adolph cared for his son, Lenny, during that critical first year of life;
- Since then, Mr. Adolph has also supported Ms. Johnny and their children financially;
- After successfully completing a training program, something he was not able to do before his sobriety, he has been employed full-time operating heavy equipment;
- Mr. Adolph has been compliant with very strict terms of bail since 2019;
- Mr. Adolph has a very strong support system that includes Ms. Johnny, his other immediate and extended family members, and members of his community. Their support is made more meaningful, as I have said, because they are aware of his background, his offence, and the changes he has made since then.
- It is clear Mr. Adolph is genuinely remorseful for the trauma and pain he inflicted on Mr. Adolph and his family.
- He recognizes the severity of his crime and, I accept, the destructive impact of his addiction on his actions; and
- Lastly, Mr. Adolph pleaded guilty. Although the timing of the plea did not spare Mr. Toop from having to testify, there is no dispute that Mr. Adolph chose to plead guilty to aggravated assault as soon the option became available to him.

[119] Turning next to assess Mr. Adolph's degree of responsibility for the offence, which requires me to consider his moral fault for the acts committed and the harm done, I start with my conclusion that his level of moral blameworthiness was significantly reduced or attenuated because of his circumstances. Those circumstances include what I accept was a state of intense intoxication from a combination of alcohol, cocaine, and perhaps another intoxicating substance, if not a different form of cocaine, at the time of the offence, and the particularly compelling unique and systemic of background factors for Mr. Adolph as an Indigenous person.

- [120] Although I am required to take judicial notice of Gladue factors, the evidence clearly establishes that Mr. Adolph has been significantly impacted by profound intergenerational trauma. Mr. Adolph's father, his paternal grandmother, grandfather, aunts, uncles, and great grandparents were taken from their homes, some of them as very young children, and forced to attend residential school. There, many experienced and witnessed horrific abuse. All were subjected to sustained efforts to destroy their Indigenous identities. While some managed to overcome their devastating experiences, others lost their lives to addiction and suicide, including Mr. Adolph's father, Lenny. It is apparent that Ms. Camille and her family were also, significantly disadvantaged as Indigenous peoples, although she and her parents escaped being forced to attend residential school.
- [121] The simple truth is Mr. Adolph grew up surrounded by many traumatized survivors. The absence of physical violence and substance abuse in the home, which the Crown has emphasized, does not detract from the weight of his direct and ongoing exposure to their trauma. Mr. Adolph's departure from school in Grade 9, failed attempts at completing his high school education and job training as a young adult, and his significant addictions are emblematic of the poor outcomes that drive the crisis of overrepresentation of Indigenous people in the criminal justice system. Although he is not required to demonstrate a causal link between his unique systemic and background factors and the offence, I find there is a connection between his intense intoxication at the time of the offence, his addictions to alcohol and cocaine, and his experience of intergenerational trauma.
- [122] Looking alone at the gravity of Mr. Adolph's offence and the harm it caused to Mr. Toop and his family along with the paramount objectives of denunciation and deterrence, I would have concluded that a substantial prison sentence within the range would have been required. However, the proportionality principle requires me to also consider Mr. Adolph's moral blameworthiness which I have assessed as significantly attenuated.
- [123] Further, along with the aggravating factors, I must also take into account the significance and breadth of his many mitigating circumstances.
- [124] In addition to the primary objectives of denunciation and general deterrence, s. 718.2(e) and Mr. Adolph's circumstances demand that the restoration and rehabilitation objectives play a substantial role in determining an appropriate sentence. Mr. Adolph's expressions of remorse, his understanding of the link between his addictions and the offence, and his demonstrated commitment to sobriety establish that a sense of responsibility for the offence he committed and the harm he has done have already been instilled in him. Based on these same considerations, as well as the other positive changes Mr. Adolph has made to establish an entirely prosocial life, his long-term compliance with onerous bail, and the absence of any other history of violent behaviour aside from what may have underlay the 2014 incident and his minor criminal record, satisfy me that any risk of him reoffending, let alone offending violently, is extremely low and the objective of specific deterrence has been met.

- [125] Applying the paramount principle of proportionality in this context, subject to my further analysis, I conclude that a sentence of imprisonment in the range of 22 months to two years less a day would be proportionate. In my view, the circumstances moderating Mr. Adolph's moral blameworthiness mean that the punitive objectives of denunciation and general deterrence can be readily achieved without a longer period of imprisonment.
- [126] Addressing next with the suspended sentence proposed by Mr. Adolph, I am not satisfied that a probation order would be sufficient to meet these same objectives, although I recognize that terms of probation may be imposed not only to facilitate an offender's successful reintegration into the community, but also to protect society. The public is protected when an offender is rehabilitated and other offenders are deterred by the sentence imposed.
- [127] House arrest is a particularly onerous condition that is often included in conditional sentences, but it is only appropriately included in a probation order where "very special circumstances" are present. Although Mr. Adolph's circumstances have many of the features of the very special circumstances identified in *R. v. Voong*, 2015 BCCA 285, the differences between a probation order and a CSO discussed in Proulx are also significant here. They include the power to order an offender to undergo treatment regardless of consent, the wider scope of the residual clause governing the imposition of optional conditions under a CSO, and the reality that a CSO is a prison sentence that will result in "real jail time" in the event of a breach of a condition, making it more punitive than a probation order.
- [128] Turning to consider a CSO, Proulx tells us the question of whether imposing such an order would endanger the community must focus on the danger posed by the particular offender and consider both, the risk of reoffending bearing in mind the ability of conditions to reduce that risk to an acceptable level, and the gravity of the damage that would result if reoffending were to occur.
- [129] Clearly, the consequences of Mr. Adolph reoffending in the same way that he did when he stabbed Mr. Toop would be grave. I have already found, however, that the risk of Mr. Adolph offending, let alone violently, is extremely low. The imposition of strict conditions, I am satisfied, would serve to reduce that risk from a very low possibility to nearly nil.
- [130] With respect to the requirement that a CSO be consistent with the purpose and principles of sentencing, again, Proulx established that if both punitive and restorative objectives are to be achieved, a CSO will likely be more appropriate than incarceration. To be clear, I am satisfied restorative objectives can be satisfied here because Mr. Adolph has acknowledged his wrongdoing and expressed remorse and his significant efforts at rehabilitation over an extended period of time have already been very successful.
- [131] The real question is whether the punitive objectives of denunciation and general deterrence can be sufficiently met by a CSO and whether such a sentence would be proportionate. Balancing the gravity of the offence with Mr. Adolph's much attenuated moral

blameworthiness, in light of the aggravating circumstances and the many mitigating circumstances leads me to conclude the answer is yes. I have already indicated that both of the punitive objectives, that is, denunciation and general deterrence, must be emphasized for this very violent and harmful offence, but as Proulx tells us, that does not mean they cannot be achieved by a conditional sentence.

[132] Given the totality of the circumstances here, including the fact that Mr. Adolph's liberty has been very significantly restrained by a curfew and house arrest conditions since June 2019, I conclude that a CSO of maximum length that contains a number of restricted and punitive conditions would give sufficient weight to society's condemnation of Mr. Adolph's criminal conduct and have a meaningfully deterrent effect on others.

[133] Accordingly, the sentence will be as follows: Mr. Adolph, I sentence you to a CSO of 24 months less one day.

[134] Pursuant to s. 742.3(1), the compulsory conditions of the conditional sentence order are as follows:

1. You will keep the peace and be of good behaviour;
2. You will appear before the court when required to do so by the court;
3. You will report to a conditional sentence supervisor within two working days of the making of this conditional sentence order and thereafter when and in the manner required by the supervisor;
4. You will remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the supervisor; and
5. You will notify the court or the supervisor in advance of any change of name or address and promptly notify the court or the supervisor of any change of employment or occupation.

[135] Before imposing the additional conditions, I wish to advise counsel that I will be inviting further submissions on Term 10.

[136] Pursuant to s. 742.4(2), the additional conditions are, subject to further submissions:

6. Mr. Adolph, you will provide your supervisor with the address of your residence, your telephone number, and the name and telephone number for your current and any subsequent employers;
7. You must not change your place of residence or your telephone number without written permission from your supervisor;
8. You will have no contact or communication directly or indirectly with Clayton Toop or his immediate family members, the names of whom will be included in this term;

9. You will not go to any residence, workplace, or school of Clayton Toop or his immediate family members, again, whose names will be listed in this term;
10. You will abstain from possessing or consuming any alcohol or any other intoxicating substance, except in accordance with a medical prescription;
11. You will not enter any liquor store, bar, pub, nightclub, or other premises that minors are prohibited from attending by the terms of a liquor licence;
12. You will attend, participate in, and successfully complete any intake, assessment, counselling, or program related to alcohol and drug addiction and misuse, grief and trauma, including the impact of intergenerational trauma, as directed by the supervisor who will make efforts to accommodate your request for culturally appropriate services;
13. You will not possess any firearm, crossbow, prohibited weapon, restricted weapon, prohibited device, ammunition, or explosive substance, or anything that resembles a firearm or a weapon, excepting as provided in Term 14;
14. You will abstain from possessing or using any knife, except for the purpose of immediately preparing and eating food or for purposes directly and immediately related to your employment;
15. After completing the necessary documentation in relation to this sentence in the court registry, you will travel directly to your residence and remain there or on the property of your residence at all times for the next 18 months, except when travelling directly to and from the following activities:
  - (a) reporting to the supervisor or attending court;
  - (b) working for your current employer, Dent Construction, or any subsequent employer;
  - (c) attending medical, dental, or other health-relating appointments for yourself, including counselling or other appointments required by the supervisor based on the terms of this order, or attending a hospital in the case of a medical emergency for you, Ms. Johnny, or your children;
  - (d) for any other compelling reason such as to attend specific cultural and family activities with the prior written approval of your supervisor which you must carry with you and provide to any peace officer who make inquiries about it while you are engaged in the authorized activity; and
16. Starting 18 months from today's date to the end of this sentence, you must remain in your residence from 7:00 p.m. to 7:00 a.m. each and every day, except when travelling directly to and from the following activities:
  - (a) reporting to the supervisor or attending court;
  - (b) working for your current employer, Dent Construction, or any subsequent employer;

- (c) attending medical, dental, or other health-relating appointments for yourself, including counselling or other appointments required by the supervisor based on the terms of this order, or attending a hospital in the case of a medical emergency for you, Ms. Johnny, or your children; or
  - (d) for any other compelling reason such as to attend specific cultural and family activities with the prior written approval of your supervisor which, again, you must carry with you and provide to any peace officer who make inquiries about it while you are engaged in the authorized activity;
17. You must present yourself immediately at the door of your residence or answer the telephone when any peace officer or conditional sentence supervisor attends or calls to check on your presence.

[137] In addition, I grant the ancillary orders sought by the Crown which include:

1. You are prohibited from possessing any firearm and other weapons as set out in s. 109(2)(a) and (b) of the Criminal Code for life;
2. Because aggravated assault is a primary designated offence, pursuant to s. 487.051, you will provide the number of samples of bodily substance as are reasonably required for the purposes of forensic DNA analysis.

[DISCUSSION BETWEEN COURT AND COUNSEL]

[SUBMISSIONS ON CSO CONDITIONS]

(PROCEEDINGS ADJOURNED)

PROCEEDINGS RECONVENED)

[SUBMISSIONS ON CSO CONDITIONS CONTINUING]

(PROCEEDINGS ADJOURNED)

(PROCEEDINGS RECONVENED)

[DISCUSSION BETWEEN COURT AND COUNSEL]

[138] THE COURT: Condition 6 of the conditional sentence order will read, "[y]ou will provide your supervisor with the address of your residence, your telephone number, and the name and telephone number for your current and any subsequent employer as well as the details of your employment including the location and schedule of your work. Your work schedule may include working in locations that require you to stay in temporary accommodation other than your residence for the duration of your work schedule if required by your employer." Condition 15(b) will now read, "[w]orking for your current employer, Dent Construction, or any subsequent employer which may include working in locations that require you to stay in temporary accommodations other than your residence for the duration of your work schedule if required by your employer.: Condition 16(b) will read the

same, "[w]orking for your current employer, Dent Construction, or any subsequent employer which may include working in locations that require you to stay in temporary accommodations other than your residence for the duration of your work schedule if required by your employer."

[139] Thank you, counsel, and Mr. Adolph, I wish you the best of luck.

[140] THE ACCUSED: Thank you.

"Fleming J."

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