

CANADA / JUDGMENT

R. v. Dick

2025 BCSC 1414

COURT

Supreme Court of British Columbia

DECIDED

4 July 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 1414 R. v. Dick

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Dick,

2025 BCSC 1414

Date: 20250704

Docket: 187341-2

Registry: Victoria

Rex

v.

Wayne Michael James Dick

Restriction on Publication: A publication ban has been mandatorily imposed under s. 486.4 of the Criminal Code restricting the publication, broadcasting or transmission in any way of evidence that could identify a complainant or witness, referred to in this judgment by the initials M.R. This publication ban applies indefinitely unless otherwise ordered

Before: The Honourable Justice Majawa

Oral Reasons for Sentence

Counsel for the Crown:

T. Stokes

L. Ruzicka, KC

Counsel for the Accused:

G. Simair

Place and Date of Trial/Hearing:

Victoria, B.C.

June 19 and 20, 2025

Place and Date of Judgment:

Victoria, B.C.

July 4, 2025

Table of Contents

Introduction.. 3

Circumstances of the Offence. 3

Victim Impact Statement 5

Circumstances of the Offender.. 6

Principles of Sentencing Applicable to this Case. 11

Discussion.. 18

The Appropriate Range of Sentences. 18

Aggravating and Mitigating Factors. 20

Gravity and Responsibility. 21

The Appropriate Sentence. 24

Ancillary Orders and Victim Surcharge. 27

Should Mr. Dick be Exempted form a Firearms Probation?. 27

Other Ancillary Orders. 32

Introduction

- [1] THE COURT: On October 4, 2024, a jury convicted Wayne Michael James Dick of one count of sexual assault of M.R. pursuant to s. 271 of the Criminal Code, R.S.C. 195, c. C-46 [Code]. The conviction is in respect of an incident that occurred on January 27, 2023. The delay between Mr. Dick's convictions and his sentencing hearing can mainly be explained by the time it took for the overburdened report writing organization to prepare a Gladue report.

- [2] The Crown seeks a sentence of imprisonment of four to five years and related ancillary orders. Mr. Dick submits that the appropriate sentence is a conditional sentence order ("CSO") with strict conditions for a period of two years less a day followed by a period of three years of probation.
- [3] In respect of the ancillary orders, Mr. Dick seeks an exemption from the mandatory weapons prohibition provided for in s. 109 of the Code on the basis of his need for a firearm to hunt for purposes of sustenance as provided for in s. 113.
- [4] In the circumstances, it is mandatory that Mr. Dick comply with the obligations of the Sex Offender Information Registration Act, S.C. 2004, c. 10 [SOIRA] for life. However, Mr. Dick has filed an application challenging the constitutionality of the relevant provisions of the Code. With the consent of the Crown, that application will be heard at a later date and the imposition of a SOIRA registration order is adjourned.

Circumstances of the Offence

- [5] The Crown and the defence do not disagree about the facts arising from the jury's guilty verdict. Nonetheless, I am required to find the relevant facts pursuant to s. 724 of the Code. The principles applicable to find the facts for the purposes of a sentencing following a jury's verdict were distilled to five rules by the Nova Scotia Court of Appeal in *R. v. Landry*, 2016 NSCA 53 at paras. 48-49, with reference to the Supreme Court of Canada's decision in *R. v. Ferguson*, 2008 SCC 6:
1. The sentencing judge shall accept as proven all facts express or implied that are essential to the jury's guilty verdict.
 2. When the jury finding is ambiguous, the sentencing judge should not attempt to follow the logic of the jury. Instead, he or she must make their own independent determination as to the relevant facts.
 3. The sentencing judge should only find those facts necessary to permit the proper sentence to be imposed.
 4. The sentencing judge may not find as fact things that were rejected by the jury's verdict.
 5. For any aggravating fact, the sentencing judge must be satisfied that the evidence is sufficiently cogent to enable or to find it proved beyond a reasonable doubt.
- [6] In my view, the jury's findings in this case are unambiguous. I find the following facts to be essential to the jury's verdict and as being necessary to permit the proper sentence to be imposed.

- [7] On the date of the sexual assault, January 27, 2023, M.R. was 24 years old and Mr. Dick was 39. On that day, M.R. had met a friend in Downtown Victoria. I will refer to this friend by the generic initials of A.B. M.R. and A.B. had not seen each other for some time. In the course of the day, they caught up, ate, and had some alcoholic drinks together. M.R. drank three alcoholic coolers.
- [8] Later, M.R. and A.B. took the bus to A.B.'s residence. They each bought another six pack of alcoholic coolers at a store near the residence and M.R. drank at least six of them. At that time, A.B. and Mr. Dick were in a relationship and Mr. Dick came to A.B.'s residence that night and met M.R. for the first time.
- [9] M.R. was very intoxicated and Mr. Dick was aware of that. Mr. Dick was also drinking that night, but was not outwardly showing the same level of intoxication as M.R. was. At some point, M.R. went to sleep on the couch in the living room. Mr. Dick and A.B. later retired to a bedroom to go to sleep.
- [10] Later that night, M.R. awoke on the couch. She was lying on her back with her sweatpants down around her ankles. She had not pulled them down. She saw Mr. Dick overtop of her and felt his weight on her body. Mr. Dick had pushed his penis into her vagina fully penetrating her. M.R. was scared. She told him to stop, but he did not. Mr. Dick put his hand over her mouth and told her to "shut the fuck up". She went silent.
- [11] After penetrating her vagina for a period of time, Mr. Dick pushed his penis into M.R.'s anus causing her a lot of pain. She heard Mr. Dick sputter and groan and then he stopped and left the room.
- [12] M.R. did not consent to any of the sexual contact.
- [13] Afterwards, M.R. tried to message A.B. without success. She went to the fridge to look for alcohol and then began drinking some leftover drinks from that night before. M.R. called a crisis line and eventually met the police outside the residence and was taken by ambulance to Victoria General Hospital. She was then seen by a forensic nurse examiner who observed recent blunt force injuries to her vagina and anal regions.

Victim Impact Statement

- [14] M.R. prepared a victim impact statement that describes the long-lasting effects and devastating consequences of Mr. Dick's actions that night. In her statement, M.R. says that she has experienced nightmares and loss of sleep. She no longer feels safe or free to live her life. Many simple pleasures are gone and she describes being withdrawn from the world.
- [15] Following the assault, M.R. dropped out of her college program and has been unable to work. Although she has availed herself of counselling assistance, she still experiences anxiety to a level that impedes her ability to set goals and make plans.

- [16] The assault has also led M.R. to experience suicidal ideations and she was involuntarily committed to hospital for several weeks. Her suicidal thoughts are now not as prevalent and she appears to have strong family and social supports.
- [17] M.R.'s statement has assisted me to appreciate the impact the offence has had on her. I have no doubt that enduring the traumatizing experience of being sexually assaulted by Mr. Dick has significantly and negatively impacted almost every aspect of her life.

Circumstances of the Offender

- [18] Mr. Dick is a status member of the Mowachaht/Muchalaht First Nation. He was born in Campbell River in 1983. He has three full biological siblings and four half-siblings on his father's side.
- [19] Mr. Dick has a criminal record. He has one prior conviction for sexual assault that occurred in 2003 for which he received a six-month jail sentence followed by a two-year probation order. While that conviction is rather dated, it is worth noting the circumstances were that Mr. Dick, while intoxicated, had attacked the victim and started to choke her. He removed her pants and unsuccessfully attempted to force his fingers into vagina before the victim was able to flee.
- [20] Mr. Dick's criminal record also includes other more recent convictions for violence. In 2015 and 2017, he was convicted of assault of an intimate partner. Mr. Dick was convicted of assaulting and obstructing a police officer in 2023. I am told that the assault involved Mr. Dick spitting on the police officer.
- [21] Mr. Dick also has a recent conviction for impaired operation of a vessel and two convictions for uttering threats. He has four convictions for breaches that postdate the index offence. Two of those breaches involve the same incident where Mr. Dick was present at a place he was not permitted to be in and had contact with a person he was not permitted to have contact with. I am told that the subject of a no-contact order had consented to Mr. Dick's presence on that occasion. The last breach was for possessing a firearm and ammunition. Mr. Dick was found with a loaded shotgun on a couch nearby him and a number of shotgun shells on his person.
- [22] In addition to the above, Mr. Dick has six breach convictions between 2015 and 2017. Five of those are for possessing alcohol and the last was in respect of the breach of a no-contact order. He has two convictions for mischief in 2007 and one in 2019.
- [23] It appears that all of Mr. Dick's breaches involved circumstances in which he was consuming alcohol or was intoxicated. In fact, Mr. Dick was consuming alcohol the night of the index offence and, as I understand it, many if not all of his other convictions also involve alcohol in some respect. Given this, it should come as no surprise that Mr. Dick has struggled with an alcohol abuse problem for some time.

- [24] As referenced at the outset, a Gladue report was prepared for the purposes of this sentencing hearing. A presentence report and a psychiatric assessment were also prepared and submitted. Given Mr. Dick's previous convictions, a presentence report and psychiatric assessment prepared following his 2004 conviction for sexual assault was also provided to me. I find these more-than-20-year-old reports to be of some assistance, although the level of assistance is tempered given Mr. Dick's relatively young age at the time those reports were prepared.
- [25] The Gladue report provides a detailed account of Mr. Dick's background. I have considered the report in its entirety along with the other relevant reports and I will highlight some of the salient points below.
- [26] It is clear that Mr. Dick's personal life has been affected by a number of adverse factors which are, unfortunately, present in the lives of many Indigenous peoples of Canada. In Mr. Dick's case, these factors are particularly striking and can be quite appropriately described as heartbreaking.
- [27] Mr. Dick has been directly affected by generational cycles of substance abuse and addictions. He first began consuming alcohol at around age seven. He has abused alcohol for most of his life and also drugs for a period of time. His father, grandfather, and other family members all struggled with alcohol abuse problems. Mr. Dick witnessed rampant alcohol abuse in his community throughout his childhood.
- [28] Mr. Dick was the victim of sexual abuse through much of his childhood. This abuse was perpetrated by other young members of the community. His first sexual experience was at around age five when he was sexually abused by another child who was approximately five years older. Mr. Dick grew up in a highly sexualized environment where pornography was readily accessible to the children at a young age. He was also the victim of physical abuse perpetrated by those he should have been able to trust not to hurt him.
- [29] He has witnessed and experienced many premature deaths in his family and community, including the suicide of his brother at the age of 18 while his brother was under government care. Mr. Dick says he has lost over 200 family and community members who were close or significant to him.
- [30] Mr. Dick has family members who have attended residential schools and day schools. His mother was a victim of the Sixties Scoop. He has personally been the victim of overt and covert racism while attending elementary school. Mr. Dick struggled in school, was the subject of and the perpetrator of bullying, and did not progress beyond the ninth or tenth grade.
- [31] Notwithstanding Mr. Dick's troublesome upbringing, he has maintained a strong connection to his Indigenous community, culture, and history. As a child, Mr. Dick attended men's meetings and sat with elders regularly. He participated annually in summer canoe journeys for a number of years and he attended the North American Indigenous Games in 1997 as an

athlete. As will be discussed later, Mr. Dick has engaged in traditional hunting consistent with his nation's long-term connection to the same since he was a young child. Mr. Dick is knowledgeable about his community and its history and he is adamant that remaining connected to his Indigenous culture is critical for his wellbeing.

- [32] The presentence report prepared for the purposes of this sentencing has also provided me with insight into Mr. Dick's circumstances. Mr. Dick has had two long-term intimate relationships. The first relationship produced three children, all of whom are under the age of 15. That relationship ended due to intimate partner violence. Mr. Dick's last relationship was with A.B. and was impacted by intimate partner violence. As I understand it, that relationship has ended.
- [33] Mr. Dick's employment has mainly been in either construction or commercial fishing. He says that he is a Level 3 in carpentry and that he was employed as a carpenter prior to being remanded. As I understand it, Mr. Dick owns a fishing boat and has operated fishing charters. He earns enough income to support himself comfortably and to permit him to spend considerable time engaged in hunting during the fishing off season. He intends to continue with and expand upon this endeavour in the future.
- [34] The presentence report also speaks about the tumultuous childhood that Mr. Dick experienced and what was described in the Gladue report. In respect of his substance abuse, he has stated that he was able to stay sober for approximately 10 years while with his previous partner and while engaged in cultural fishing and hunting. Mr. Dick's mother confirms that, although alcohol is problematic for Mr. Dick, cultural activities assist him in his sobriety. Nonetheless, his current probation officer indicates that Mr. Dick has used alcohol since being released from custody. Mr. Dick has expressed the desire to attend residential treatment. In particular, he would like to attend a program called "Rebuilding the Circle" which provides treatment for those who have been harmed by sexual violence as well as those who have caused harm through sexual violence. He has participated in this program in the past, although he did not complete the program.
- [35] The psychiatric assessment prepared for the purposes of this sentencing was prepared by Dr. Tyler Oswald, a forensic psychiatrist. In preparing his report, Dr. Oswald had access to a large amount of information about Mr. Dick, including his previous presentence and psychiatric assessments.
- [36] Dr. Oswald opined that although Mr. Dick has completed treatment for sexual offending in the past he has continued to struggle with reoffending. Dr. Oswald notes that Mr. Dick has had serious problems with falling back to heavy substance abuse while under conditions of release.
- [37] When Mr. Dick has been asked about the index offence, he highlighted inconsistencies in M.R.'s testimony and repeated the version he told at trial. He told Dr. Oswald that he believed that the encounter with M.R. was consensual. However, he did prepare a letter of apology as part of his counselling in which he acknowledged the harm that his actions had

on M.R. that night. He also acknowledged that, on that night, he was concerned about being at the residence in light of his consumption of alcohol. He said that he was concerned that something was going to happen.

- [38] When Mr. Dick was convicted of the sexual assault that occurred in 2003 he accepted responsibility. However, when Dr. Oswald asked him about that for the preparation of the current report, Mr. Dick denied having sexual intentions when he committed his previous sexual assault. This caused Dr. Oswald to have concerns with respect to Mr. Dick's self-awareness and insight and led Dr. Oswald to conclude that a significant risk factor for Mr. Dick is his minimization or denial of sexual violence and his lack of insight.
- [39] In Dr. Oswald's opinion, Mr. Dick's level of risk for further sexual offending is relatively low in the short term (i.e., months) if he maintains sobriety. However, in the long term (i.e., years), Dr. Oswald is of the view that Mr. Dick's risk will be elevated to a moderate to high risk. This risk is particularly magnified if he relapses to substance abuse. In respect of the earlier psychological assessments administered to Mr. Dick in respect of his earlier conviction for sexual assault, the mental health professionals had found his risk level to be in the moderate to high range for reoffending. While there is limited utility in this earlier report in some respects, the risk assessment is noteworthy in light of Mr. Dick's present conviction on the index offence.
- [40] It appears clear that Mr. Dick's sexual offending and offending in general is correlated to his use of alcohol. Moreover, having considered Mr. Dick's background and other circumstances, I am satisfied that there is a link between the systemic and background factors related to Mr. Dick's Indigenous heritage and his offending. The Crown concedes as much.

Principles of Sentencing Applicable to this Case

- [41] I will turn now to the principles of sentencing applicable to this case. The principles of sentencing are found in s. 718 of the Code. That section states that the fundamental purpose of sentencing is to "protect society and to contribute 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":

- to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- to deter the offender and other persons from committing offences;
- to separate offenders from society, where necessary;
- to assist in rehabilitating offenders;
- to provide reparations for harm done to victims or to the community; and

· to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

- [42] Secondary sentencing principles are provided for in s. 718.2 of the Code and include the requirements that I consider aggravating and mitigating circumstances and the principles of parity and totality. It also instructs that an offender should not be deprived of liberty if less restrictive sanctions would be appropriate and that I must consider all available sanctions other than imprisonment that are reasonable in the circumstances. Thus, I am to exercise restraint in the use of imprisonment.
- [43] Section 718.1 of the Code emphasizes the fundamental requirement that a sentence be proportional to the gravity of the offence and the degree of responsibility of the offender. The principle of proportionality in s. 718.1 remains fundamental and interacts with the other sentencing objectives set out by Parliament. In *R. v. Ipeelee*, 2012 SCC 13 at para. 37, Justice LeBel emphasized that proportionality is the essential component of a just sanction:
- [37] Proportionality is the sine qua non of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principle serves a limiting or restraining function and ensures justice for the offender. In the Canadian criminal justice system, a just sanction is one that reflects both perspectives on proportionality and does not elevate one at the expense of the other.
- [44] As discussed above, pursuant to s. 718.1 of the Code, the fundamental principle of sentencing is that a "sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender". The court in *Ipeelee* also held that a sentence that properly reflects the degree of responsibility of the offender ensures it does not exceed what is appropriate given their moral blameworthiness; it serves a restraining function and ensures justice for the offender.
- [45] The way in which the gravity of the offence and the degree of responsibility of the offender relate to a proportionate sentence was discussed in *Ipeelee*. There, the court held that a sentence that properly reflects the gravity of the offence is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. In cases involving sexual assault, the objectives of denunciation and deterrence are at the forefront.
- [46] The relevant factors that are engaged in the assessment of an offender's moral blameworthiness were recently discussed by the Court of Appeal in *R. v. C.K.*, 2023 BCCA 468. At para. 71, Justice DeWitt-Van Oosten held that the assessment of an offender's personal responsibility must consider their state of mind at the time of the offence. A non-exhaustive list of relevant factors are provided:

- 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 (both immediate and long-term); and
- their persistence in perpetrating the offence despite that awareness.

[47] In C.K., the Court of Appeal reminded us that sentencing judges must engage in a close examination of moral blameworthiness consistent with the harm-focused framework established by the Supreme Court of Canada in *R. v. Friesen*, 2020 SCC 9 (C.K. at paras. 58 and 73). Although those cases involved sexual offences against children, I am of the view that these comments are equally applicable to sexual assaults involving adults. In *Friesen* at para. 89, the court described the high level of moral blameworthiness of those committing sexual offences including those against adults:

All forms of sexual violence, including sexual violence against adults, are morally blameworthy precisely because they involve the wrongful exploitation of the victim by the offender -- the offender is treating the victim as an object and disregarding the victim's human dignity

[48] As with sexual offences against children, close consideration and proper effect must be given to the significant harm caused to the victim while not paying undue attention to the offender's personal mitigating circumstances. A court that does not do so risks failing to give effect to the moral blameworthiness that is correlated with the current understanding of the profound physical and psychological effects of sexual violence on all people: *Friesen* at para. 188.

[49] That being said, Mr. Dick's personal circumstances play a different role in this case than for non-Indigenous offenders. Given Mr. Dick's status as an Indigenous person, s. 718.2(e) of the Code and the Supreme Court of Canada's decision in *R. v. Gladue*, [1999] 1 S.C.R. 688 play an important role in sentencing. Section 718.2(e) provides:

- (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.

[50] In *Gladue* at para. 37, the Supreme Court interpreted this section as requiring sentencing judges to pay particular attention to the circumstances of the Aboriginal offenders when considering an appropriate sentence:

The next question is the meaning to be attributed to the words "with particular attention to the circumstances of aboriginal offenders". The phrase cannot be an instruction for judges to pay "more" attention when sentencing aboriginal offenders. It would be unreasonable to assume that Parliament intended sentencing judges to prefer certain categories of offenders over others. Neither can the phrase be merely an instruction to a sentencing judge to consider the circumstances of aboriginal offenders just as she or he would consider the circumstances of any other offender. There would be no point in adding a special reference to aboriginal offenders if this was the case. Rather, the logical meaning to be derived from the special reference to the circumstances of aboriginal offenders, juxtaposed as it is against a general direction to consider "the circumstances" for all offenders, is that sentencing judges should pay particular attention to the circumstances of aboriginal offenders because those circumstances are unique, and different from those of non-aboriginal offenders. The fact that the reference to aboriginal offenders is contained in s. 718.2(e), in particular, dealing with restraint in the use of imprisonment, suggests that there is something different about aboriginal offenders which may specifically make imprisonment a less appropriate or less useful sanction.

- [51] There is no doubt that in all cases involving an Indigenous offender, the sentencing judge must take judicial notice of the systemic or background factors that may affect the particular offender. Assessing the moral culpability of Indigenous offenders requires special consideration of the unique historical, systemic, or background factors that may have played a part in their offending conduct: *R. v. Sellars*, 2018 BCCA 195 at para. 30. Merely mentioning or paying lip service to them is insufficient. There is an obligation to consider the mitigating impact of an offender's experience of cultural dislocation and abuse in the assessment of moral culpability: *R. v. G.F.*, 2018 BCCA 339 at paras. 39-41.
- [52] In my view, it is a complicated task to determine a sentence that assesses the appropriate level of moral blameworthiness, which must take into account an Indigenous offender's personal and systemic background factors, while at the same time recognizes the current understanding of the harms experienced by victims of sexual violence. As the Supreme Court of Canada said in *Friesen*, a court must not disregard relevant factors that may reduce an offender's culpability, including the systemic and background factors that may have played a role in bringing an Indigenous person before the court. Those factors may have a significant mitigating effect on the offender's moral blameworthiness which, as discussed above, is usually considered to be high in matters involving sexual violence:
- [92] Likewise, where the person before the court is Indigenous, courts must apply the principles from *R. v. Gladue*, [1999] 1 S.C.R. 688, and *Ipeelee*. The sentencing judge must apply these principles even in extremely grave cases of sexual violence against children (see *Ipeelee*, at paras. 84-86). The systemic and background factors that have played a role in bringing the Indigenous person before the court may have a mitigating effect on moral blameworthiness (para. 73). Similarly, a different or alternative sanction might be more effective in achieving sentencing objectives in a particular Indigenous community (para. 74).

- [53] In *R. v. M.K.M.*, 2024 BCSC 575, at paras. 46 to 47, Justice Donegan discussed the approach to be taken in sentencing Indigenous offenders with reference to Justice Marchand's decision, as he then was, in *R. v. Kehoe*, 2023 BCCA 2:
- [46] In *R. v. Gladue*, 1999 CanLII 679 (SCC), [1999] 1 S.C.R. 688 and *R. v. Ipeelee*, 2012 SCC 13, the Supreme Court of Canada made it clear that s. 718.2(e) is remedial and is intended to deal with this continuing crisis. It is a crisis driven by the alienation, poverty, substance abuse, lower educational attainment, lower rates of employment and prejudice experienced by Indigenous people in Canada: *R. v. Kehoe*, 2023 BCCA 2 at para. 36.
- [47] Justice Marchand, now Chief Justice of British Columbia, discussed the principles that animate the application of s. 718.2(e) and how *Gladue* and *Ipeelee* transformed the approach to sentencing Indigenous offenders recently in *Kehoe*. He wrote, in part:
- [37] Sentencing judges are to take judicial notice of how Canada's colonial history and post-colonial assimilationist policies have translated into these terrible outcomes: *Gladue* at para. 83; *Ipeelee* at para. 60. These systemic and background factors do not excuse or justify criminal conduct. Rather, they provide the necessary context for understanding and evaluating case-specific information during the sentencing exercise: *Ipeelee* at para. 83.
- [38] Systemic and background factors affect the incidence of crime and recidivism for all offenders. However, as the Supreme Court recognized, the circumstances of Indigenous offenders are different from other offenders because many Indigenous people are "victims of systemic and direct discrimination" and "dislocation" and are "substantially affected by poor social and economic conditions": *Gladue* at para. 68.
- [39] The over-representation of Indigenous people in Canada's prison population is tied to broad societal issues. Nevertheless, the Supreme Court in *Gladue* and *Ipeelee* recognized that culturally attuned sentencing for Indigenous offenders has a role to play in addressing this crisis: *Gladue* at para. 65; *Ipeelee* at paras. 64-70; *R. v. Mero*, 2021 BCCA 399 at para. 68.
- [40] Accordingly, *Gladue* and *Ipeelee* transformed the approach to sentencing Indigenous offenders. As with all offenders, a judge sentencing an Indigenous offender must take a holistic approach to imposing a fit sentence that is proportionate to the seriousness of the offence and the moral blameworthiness of the offender: *Ipeelee* at para. 37. However, since the circumstances of Indigenous offenders are "significantly different" from those of non-Indigenous offenders, the judge must pay particular attention to two factors:
1. The unique systemic or background factors that may have played a part in bringing the particular Indigenous offender before the courts; and
 2. The types of sentencing procedures and sanctions that may be appropriate for the offender in the circumstances given their particular Indigenous heritage or connection.

See *Gladue* at para. 66; *Ipeelee* at para. 59.

- [41] In considering systemic and background factors, the judge must take account of all the surrounding circumstances, including "the unique circumstances of the offender as an aboriginal person," and display sensitivity to and understanding of the "difficulties aboriginal people have faced with both the criminal justice system and society at large": Gladue at para. 81; Ipeelee at paras. 59-60, 75.
- [42] It is not necessary to establish a direct causal link between systemic and background factors and the offence at issue. How the complex interplay of historical factors impacted a particular Indigenous offender may be difficult or impossible to establish. Nevertheless, the specific systemic or background factors at play are critically important. They may help the court assess the moral blameworthiness of the offender or identify appropriate sentencing objectives: Ipeelee at paras. 81-83; Hamer at para. 98.
- [43] As for the appropriate sanctions, while restorative sentences may be more appropriate for Indigenous offenders, applying Gladue principles will not necessarily lead to a reduced sentence. There is no automatic heritage-based discount: Gladue at para. 88; Ipeelee at paras. 71, 75; Mero at para. 73. Generally, the more serious or violent the crime, the more likely it will be, as a practical matter, that the terms of imprisonment will be the same for an Indigenous and a non-Indigenous offender: Gladue at para. 33; R. v. Wells, 2000 SCC 10 at paras. 42-44; Ipeelee at paras. 84-85; Mero at para. 73.
- [44] That said, no offence is so serious that it negates the need for a sentencing judge to consider s. 718.2(e) of the Code and Gladue principles: Ipeelee at paras. 84-85. In fact, absent an informed waiver, sentencing judges have a duty to consider s. 718.2(e) and Gladue principles in every case involving an Indigenous offender: Gladue at para. 82. As the Court explained in Ipeelee at para. 87, a failure to do so constitutes an error in principle justifying appellate intervention:
- [87] The sentencing judge has a statutory duty, imposed by s. 718.2(e) of the Criminal Code, to consider the unique circumstances of Aboriginal offenders. Failure to apply Gladue in any case involving an Aboriginal offender runs afoul of this statutory obligation. As these reasons have explained, such a failure would also result in a sentence that was not fit and was not consistent with the fundamental principle of proportionality. Therefore, application of the Gladue principles is required in every case involving an Aboriginal offender, including breach of an LTSO, and a failure to do so constitutes an error justifying appellate intervention.
- [54] Finally, as explained by the Supreme Court in R. v. Lacasse, 2015 SCC 64, to ensure that a sentence for Mr. Dick is proportionate, I must consider proportionality as it relates to Mr. Dick himself and the offences he has committed as well as by comparison with sentences imposed for similar offences committed in similar circumstances.

Discussion

The Appropriate Range of Sentences

- [55] In *R. v. G.M.*, 2015 BCCA 165, the Court of Appeal established a range of two to six years' imprisonment for sexual assaults involving intercourse: *M.K.M.* at para. 48. Sentencing ranges are guidelines, not hard and fast rules. A sentence must be determined to reflect the gravity of the offence, the offender's degree of responsibility, and the offender's unique circumstances. It is appropriate to depart from a range when doing so is required to achieve proportionality and exceptional circumstances are not required to do so: *M.K.M.* at para 49 citing *R. v. Parranto*, 2021 SCC 46 and *Lacasse*.
- [56] Recently, the Court of Appeal in *R. v. Maslehati*, 2024 BCCA 207 commented on the range established in *G.M.*, and I note that *Maslehati* was decided after Justice Donegan's decision, *M.K.M.*, was released. In *Maslehati*, the court suggested that the range established in *G.M.* does not appropriately reflect society's more recent deeper appreciation of the impact of sexual violence upon victims:
- [79] The *G.M.* range of two to six years' imprisonment has been cited by this Court post-Friesen, but with recognition of the fact that it was established before society's better understanding of the seriousness of all forms of sexual assault and the associated harms: *R. v. S.S.*, 2023 BCCA 207 at para. 25 [S.S.].
- [57] The Crown submits that a proportionate sentence in this case is four to five years of incarceration. In the Crown's submission, such a sentence appropriately reflects the significant need for a denunciatory term of imprisonment in light of the aggravating factors present in this case. Such a sentence, the Crown submits, reflects the harm done to the victim and the importance of deterring the offender and others from committing such an offence proportionate to his moral blameworthiness even when taking into account the offender's Gladue factors. The Crown submits that a CSO is not available given that an appropriate sentence is greater than two years. If an appropriate sentence for Mr. Dick is less than two years, then the Crown says that a CSO would not meet the primary sentencing objectives of denunciation and deterrence in a case of penetrative sexual assault with a vulnerable victim.
- [58] Mr. Simair, on behalf of the offender, acknowledges that this is a serious offence. However, in his submission, Mr. Dick's moral blameworthiness is reduced significantly given the connection between his offending and systemic and personal circumstances arising from his background as an Indigenous person. He submits that a two-year-less-a-day CSO followed by three years of probation is the appropriate sentence. He notes that Mr. Dick is willing and able to engage in various substance-abuse-related programs including attendance in residential treatment. He says that the objectives of sentencing can be met with the imposition of a CSO.
- [59] Both parties have identified several authorities in support of their position:

• Crown Authorities

- o R. v. Maslehati
- o R. v. T.H., 2024 BCCA 123
- o R. v. Bear, 2022 SKCA 69
- o R. v. Hawco, 2024 BCSC 1307
- o R. v. Hurley, 2024 BCCA 259
- o R. v. Hurley, 2024 BCPC 87
- o R. v. Wedzin, [2025] N.W.T.J. No. 16
- o R. v. Tom, [2024] B.C.J. No. 1199
- Defence Authorities
- o R. v. M.K.M.
- o R. v. T.H.
- o R. v. J.J., 2023 BCSC 2342
- o R. v. O.R.R., 2023 BCSC 1683
- o R. v. Townsend, 2024 BCSC 1313

[60] I have reviewed these authorities, but I will not summarize them here. Counsel summarized them thoroughly in their written and oral submissions and I find them to be of some assistance, particularly in respect of a description of the general principles. However, many of them have distinguishing features from the case at bar.

[61] In any event, the Court of Appeal in Maslehati at para. 5, recently commented on the limited use that other cases have in crafting a fit sentence even where there are similarities between the cases:

[5] However, what amounts to a fit sanction is determined case-by-case and informed by the circumstances surrounding the offence, the personal circumstances of the offender, relevant aggravating and mitigating factors, the community context in which the offence occurred, and the judge's application of various legal principles that govern the sentencing process. The individualized and contextual nature of sentencing means that no two cases will ever be exactly alike and importantly, even where there are similarities between cases, the outcomes may be different.

Aggravating and Mitigating Factors

[62] I will now address the aggravating and mitigating circumstances, both of which are informative of the offender's moral blameworthiness.

- [63] Mr. Dick has a criminal record that includes a prior conviction for sexual assault, albeit a dated conviction from some 20 years ago. However, he also has prior convictions for more recent offences involving violence.
- [64] M.R.'s victim impact statement describes her personal experience of the very same effects of sexual assault discussed in Friesen and Maslehati such as emotional trauma, mental anguish, isolation, and suicidal ideation. It is beyond a reasonable doubt that the sexual assault has had a long-lasting and significant impact upon her and that impact is an aggravating factor pursuant to s. 718.2(a)(iii.1).
- [65] The Crown submits that M.R. was a vulnerable person given that she was intoxicated and asleep when Mr. Dick sexually assaulted her. Mr. Dick was aware that she was both intoxicated and asleep. The Crown says that, pursuant to s. 718.04, given M.R.'s state at the time of the offence, I should give primary consideration to the objectives of denunciation and deterrence in this case. Mr. Simair, on behalf of Mr. Dick, says that the reference to vulnerable persons in the circumstances does not refer to someone who was vulnerable because of a transitory state such as being asleep or intoxicated. I disagree. In my view, a victim may be vulnerable given a transitory state such as being asleep or intoxicated: *R. v. Bear* at para. 126, *R. v. Hawco* at para. 34, *R. v. Wedzin* at paras. 33-34. On the facts of this case, M.R. was a vulnerable victim.
- [66] I will now turn to the mitigating factors.
- [67] Clearly, Mr. Dick's background as an Indigenous person is a mitigating factor in the circumstances. As the Crown concedes and as I find, there is a connection between Mr. Dick's systemic and background factors and his offending behaviour which does have an impact on his moral blameworthiness. I will discuss this further in my discussion below.
- [68] Mr. Simair submits that Mr. Dick's longstanding alcoholism and alcohol abuse is a mitigating factor on its own. While alcoholism and its connection to the offence may be a mitigating factor in some circumstances, in my view, given the connection between Mr. Dick's alcoholism and his Indigeneity, this is better addressed as part of the assessment of his moral blameworthiness in consideration of the Gladue factors as opposed to a standalone mitigating factor.
- [69] I agree with both parties that Mr. Dick's ability to maintain stable and positive employment in the community and his access to positive community supports provides some mitigation here.

Gravity and Responsibility

- [70] In Maslehati, the court emphasized the importance of focusing on the specific factors present in the index offence as opposed to artificially defining the offence as a serious sexual assault or something less serious. At para. 73 the court stated:

[73] Accordingly, rather than describe some sexual assaults as "serious" and other sexual assaults as something other than that, I consider it constructive when distinguishing between cases for purposes of sentencing to focus on the circumstances surrounding the offence at issue, including the nature of the sexual contact, its duration, the context in which it occurred, and the actual and reasonably foreseeable harms that flowed from it. The more aggravating the circumstances, the objectively graver the offence.

[71] At para. 74, the court provided a non-exhaustive list of circumstances that may elevate or aggravate what is already an inherently serious crime:

[74] Circumstances that may be found to elevate the already-inherent seriousness of a sexual assault (and are therefore aggravating), include:

- highly invasive, violative and/or demeaning sexual conduct;
- prolonged duration and/or repeated occurrences;
- additional physical violence and/or physical injury;
- administering drugs or alcohol to incapacitate the victim, or taking advantage of incapacity;
- threats and/or the use of a weapon;
- persistence in the face of communicated non-consent, or acts intended to overcome resistance;
- more than one offender involved;
- sexual assault in the presence of children;
- the violation occurs in the victim's home;
- planning and/or steps taken to facilitate the offence;
- attempts to prevent disclosure or avoid detection;
- age of the victim;
- a particularly vulnerable victim;
- actual and reasonably foreseeable harms that flowed from the offence, including significant impact on the victim; and,
- breach of trust.

See also, s. 718.04 of the Criminal Code, the "aggravating circumstances" enumerated in s. 718.2(a), and s. 718.201. A helpful discussion of relevant aggravating features can also be found at para. 78 of *R. v. Bear*, 2022 SKCA 69, albeit within the context of a starting point (as opposed to ranges) approach to sentencing.

- [72] I have also been guided by the Court of Appeal's decision in C.K. with respect to the various relevant factors to be considered in assessing an offender's moral blameworthiness.
- [73] When looking at the circumstances of the offence itself, I find the sexual assault of M.R. had the hallmarks of a serious assault and that Mr. Dick has a very high level of moral responsibility. While the sexual assault appears to have been a spontaneous and unplanned event, Mr. Dick's anal and vaginal penetration of M.R. was highly invasive, violating, and extremely demeaning conduct. While it is not clear for how long the assault lasted, it was not for a matter of seconds; it took place over the course of many minutes. Furthermore, Mr. Dick took advantage of a particularly vulnerable victim, one who was intoxicated and sleeping at the time he began the sexual assault.
- [74] Furthermore, when she awoke, Mr. Dick persisted with the sexual assault in the face of M.R.'s communicated non-consent and he ultimately behaved in a manner that was intended to overcome her resistance by placing his hand over her mouth and telling her to "shut the fuck up".
- [75] Mr. Dick should have been aware of the actual and reasonably foreseeable harms that flowed from his actions that night. Any reasonable person should have been, but Mr. Dick should have been, in particular, given his previous conviction for sexual assault and participation in sexual offender programs in the past. Moreover, Mr. Dick was not a young man when this occurred. He was a middle-aged person who certainly should have been aware of the seriousness of his actions. This, too, adds to Mr. Dick's high level of moral blameworthiness.
- [76] Nonetheless, I accept that Mr. Dick's Indigenous heritage requires that special importance be given to s. 718.2(e) of the Code. In addition to the judicial notice that I undertake of the systemic factors contributing to his offending, I have no doubt that Mr. Dick's systemic and background factors play a large part in bringing him before the court for this offence.
- [77] As mentioned earlier, Mr. Dick has experienced the normalization of alcohol abuse as well as the normalization of sexual abuse in his home and in his community. Mr. Dick was himself the victim of sexual abuse at a young age and throughout a significant portion of his childhood. His alcoholism is clearly related to his background and connected to his Indigeneity and his offending is also related to his alcohol abuse. In my view, Mr. Dick's moral culpability for what is undoubtedly a very serious and grave offence is somewhat mitigated by his systemic background factors. I agree with Mr. Simair that, in particular, the normalization of sexual abuse and the oversexualized environment within his family and community is particularly relevant to him being before the court today.

The Appropriate Sentence

- [78] A proportionate sentence for Mr. Dick must reflect the gravity of the offence that he has been convicted of. The gravity of the offence is, in turn, closely tied with one of the primary objectives of sentencing in this case, denunciation and deterrence: R. v. G.M. at para. 58. A proportionate sentence will promote justice for victims in general and M.R. in particular, as

well as the public's confidence in the justice system itself. Mr. Dick's moral blameworthiness in committing the offences is an important factor to be considered to ensure that his sentence does not exceed what is appropriate. And, as discussed, his moral blameworthiness is to be assessed in light of the systemic and individual circumstances that affected Mr. Dick given his Indigenous background. I am cognizant that Gladue principles apply to a serious and violent offence such as the one that Mr. Dick was convicted of. A fit, just, and proportionate sentence for Mr. Dick must reflect all these considerations.

- [79] In Maslehati, our Court of Appeal endorsed the decision of the Saskatchewan Court of Appeal in Bear. The Saskatchewan Court of Appeal considered the offender's Gladue factors and concluded that his experience as an Indigenous person had reduced his level of moral culpability. Ultimately, a sentence of 30 months' imprisonment was imposed on Mr. Bear for a sexual assault that involved digital penetration of an intoxicated and asleep victim when the assault began. Unlike Mr. Dick, the Indigenous offender in that case was a first-time offender and had been assessed as a low risk to reoffend.
- [80] I note that Mr. Dick has demonstrated some remorse when he wrote a letter of apology as part of his therapy. However, he appears to minimize his responsibility for the current offence and also with respect to the earlier sexual assault for which he was convicted of. I am concerned about Mr. Dick's ability to have insight in respect to the responsibility for his actions. However, I note that this is not an aggravating factor.
- [81] After its review of sentencing cases involving sexual assault, the Court of Appeal in Maslehati concluded that post-Friesen cases generally support a sentence of at least two years' imprisonment for cases of sexual assault with aggravating circumstances:
- [102] This cross-jurisdictional canvas is not exhaustive and I have no doubt that because of the individualized nature of sentencing, one could find cases post-Friesen with a sentence lower than the ones cited here. However, these cases generally support the proposition I have endorsed in these reasons, namely, that an indictable adult sexual assault with aggravating circumstances charged under s. 271 of the Criminal Code (as opposed to ss. 272(1) or 273(1), which carry higher penalty ranges), appropriately attracts a sentence of at least two years' imprisonment, even for a first-time offender. The more aggravating the circumstances, the higher the sentence, subject to a factual finding of diminished moral blameworthiness and/or compelling mitigation.
- [82] As mentioned, I have no doubt that Mr. Dick's experiences as an Indigenous person have had a significant bearing on his offending and that this reduces his moral culpability. However, this must be weighed in light of the very high degree of intrusion and violation of M.R.'s sexual integrity by virtue of this assault. I have considered whether it would be appropriate to depart from the range by imposing a sentence of less than two years. However, in my view, such a sentence would not be a proportionate one. The aggravating factors that I have identified above as well as the factors relevant to the gravity of the offence weigh heavily in favour of a penitentiary sentence for Mr. Dick, notwithstanding my

consideration of his Gladue factors.

- [83] I accept the Crown's submission of a period of four or five years incarceration would likely be an appropriate sentence for this offence in some circumstances.
- [84] In Kehoe, the Court of Appeal recognized the difficulty in crafting an appropriate sentence for offenders who have committed serious offences but who have a reduced level of moral blameworthiness. Considering what I have found to be the aggravating factors of Mr. Dick's offences, his past criminal record, his risk level, and his reduced level of moral blameworthiness attributable to his systemic and background factors, I find that a just and proportionate sentence in this case is three-and-a-half years' imprisonment less time served.
- [85] Mr. Dick, please stand.
- [86] I sentence you to three-and-a-half years' or 42 months' imprisonment on the single count of sexual assault on the indictment. The parties agree that you have spent 253 actual days in custody in respect of this matter between August 14, 2024, and April 23, 2025. With credit at 1.5 to one, that equates to 380 days of credit for pretrial custody. Consequently, you are sentenced to two years, five months, and 17 days' imprisonment.
- [87] You may be seated.
- [88] In my view, this sentence reflects the significant harm done to the victim and the importance of deterring the accused and others from committing this offence in the future. It also reflects Mr. Dick's reduced level of moral blameworthiness arising from the systemic and personal background factors connected to his Indigenous background. At the same time, this sentence does not allow Mr. Dick's personal circumstances to overtake the court's consideration of the impact that the sexual assault had on M.R.
- [89] Although a CSO is available for those convicted of sexual assault, given that I have found the appropriate sentence for Mr. Dick is not less than two years, a CSO is unavailable pursuant to s. 742.1 of the Code and, even if Mr. Dick's credit for pretrial custody operated to reduce his period of incarceration to one that was less than two years, a CSO would still be unavailable because dead time cannot serve to make a CSO available if it would otherwise be unavailable: R. v. Fice, 2005 SCC 32, and R. v. Jaramillo, 2025 BCCA 77 at paras. 33-34.

Ancillary Orders and Victim Surcharge

Should Mr. Dick be Exempted from a Firearms Probation?

- [90] The Crown seeks that Mr. Dick be subject to a 10-year firearms prohibition pursuant to s. 109(1)(a) of the Code:

Mandatory prohibition order

109(1) Where a person is convicted, or discharged under section 730, of

- (a) an indictable offence in the commission of which violence against a person was used, threatened or attempted and for which the person may be sentenced to imprisonment for ten years or more,

the court that sentences the person or directs that the person be discharged, as the case may be, shall, in addition to any other punishment that may be imposed for that offence or any other condition prescribed in the order of discharge, make an order prohibiting the person from possessing any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, firearm part, ammunition, prohibited ammunition and explosive substance during the period specified in the order as determined in accordance with subsection (2) or (3), as the case may be.

[91] Mr. Simair submits that hunting is a significant part of Mr. Dick's Indigenous identity. Given Mr. Dick's long history of sustenance hunting, he seeks an exemption from the firearms prohibition pursuant to s. 113, the relevant parts of which read:

Lifting of prohibition order for sustenance or employment

113(1) Where a person who is or will be a person against whom a prohibition order is made establishes to the satisfaction of a competent authority that

- (a) the person needs a firearm or restricted weapon to hunt or trap in order to sustain the person or the person's family, or
- (b) a prohibition order against the person would constitute a virtual prohibition against employment in the only vocation open to the person,

the competent authority may, notwithstanding that the person is or will be subject to a prohibition order, make an order authorizing a chief firearms officer or the Registrar to issue, in accordance with such terms and conditions as the competent authority considers appropriate, an authorization, a licence or a registration certificate, as the case may be, to the person for sustenance or employment purposes.

Factors

- (2) A competent authority may make an order under subsection (1) only after taking the following factors into account:
 - (a) the criminal record, if any, of the person;
 - (b) the nature and circumstances of the offence, if any, in respect of which the prohibition order was or will be made; and
 - (c) the safety of the person and of other persons.

- [92] There is an evidentiary burden on a person seeking an exemption under s. 113: *R. v. Alloo*, 2010 NWTCA 7 at para. 16. Mr. Dick provided viva voce evidence at the sentencing hearing in respect of his claim for an exemption. The Crown agrees that I can also rely upon information found in the Gladue and presentence reports that are relevant to this issue.
- [93] Mr. Dick has been hunting since he was a very young child. He testified that he first went hunting with his father at around three to four years of age and the first time he personally used a rifle for hunting was at age 10.
- [94] Mr. Dick has traditionally hunted for elk and deer. He explained that the origin of the name of his nation is People of the Deer. Mr. Dick explained that his people have hunted elk from the very beginning of time and that stories of such hunting have formed a significant part of his nation's oral traditions. There is clearly a significant connection between hunting elk and deer and Mr. Dick's Indigenous heritage.
- [95] Mr. Dick explained that he has hunted elk and deer on his own every year since he was approximately 16 years of age. The only year he did not was the year that his brother died by suicide. His income-earning ability permits him to spend a considerable amount of time hunting for elk and deer each year.
- [96] Mr. Dick explained that he harvests elk and deer in a sustainably and respectful way and uses every part of the animal that he can. He follows traditional harvesting practices and some practices that are unique to himself. Mr. Dick is one of the more successful hunters in his nation. His uncle gave him the name Learned to Track Elk Young. In addition to his own allocation, he will often hunt using others' allocated tags at their request and sometimes he travels to other traditional territories to hunt if he has obtained permission from those nations.
- [97] Mr. Dick testified that approximately 80% of his diet comes from harvest of land or sea animals. When Mr. Dick harvests an elk or deer, he always uses a firearm and he never sells or gives the meat to non-Indigenous people. He testified that he consumes a significant portion himself and that he has trouble digesting other forms of meat such as beef. He testified that, if he is unable to harvest elk himself, he will not be able to consume it to the level he currently does.
- [98] Section 113 requires the competent authority, in this case, this court, to conduct a two-part analysis in determining whether an exemption should be granted.
- [99] The first part is to determine whether Mr. Dick needs a firearm in order to sustain himself or his family. Upon consideration of the relevant authorities, I am satisfied that this part of the test has been satisfied by Mr. Dick. While the decision of this court in *R v. Conley*, 2010 BCSC 1092, at para. 39 suggests that an exemption should not be granted to part-time hunters or cultural or social hunters, it is not clear from that decision that the offender in that case was Indigenous.

- [100] Other courts have held that an Indigenous person can be considered to hunt for sustenance even if it is part-time or that their survival or sustenance of the family does not depend on their hunting: *Allooloo* at para. 16. In *R v. P.P.B.*, 2021 BCBC 28, at paras. 131-135, the provincial court judge recognized that, for an Indigenous offender, what would constitute a sustenance hunter ought not to be viewed from the lens of a traditional settler, but rather through the lens of a reasonable person fully informed as to the history of Canada's Indigenous peoples.
- [101] I agree with the provincial court judge's approach. Applied to this case, I am led to conclude that Mr. Dick needs a firearm for sustenance hunting as that term is properly interpreted in the context of an Indigenous person with a significant history and ongoing practice of hunting for some sustenance. Hunting for elk and deer is a core part of Mr. Dick's nation's identity and his personal identity.
- [102] In my view, approaching the exemption in this manner gives the proper consideration of Gladue factors in respect of Mr. Dick's overall sentence. I agree with Mr. Simair that Gladue principles apply to all aspects of sentencing for Indigenous people and, since firearm prohibition orders flow from the conviction and in respect of sentencing, those principles are applicable to an Indigenous person seeking an exemption under s. 113. I find the Ontario Court of Justice's comments in *R. v. Shobway*, 2017 ONCJ 476, to be particularly instructive, and I endorse them entirely:

If we have learned anything from the travesty of colonialism and the Residential Schools, it is that the culture, language and traditions of Indigenous people are as integral to their existence as is the air they breathe, the water they drink, and the food they eat. To understand what it means to sustain an Indigenous person requires an understanding of the culture and traditions that are bound up in the concept of sustenance hunting for Indigenous people. The failure to consider the cultural context of sustenance hunting for an Indigenous person would, I believe, perpetuate the approach to their culture that is rooted in colonialism and the Residential Schools. That approach would amount to an injustice. Gladue requires an approach that is respectful of First Nations' tradition and cultures.

- [103] I must now consider the second part of the test under s. 113(2) which requires me to consider Mr. Dick's criminal record, the nature and circumstances of the offence in respect of which the s. 109 order would be made, and the safety of Mr. Dick and other persons.
- [104] As described above, Mr. Dick has a criminal record. However, his criminal record, which does include some crimes of violence, does not include the use of a weapon. Similarly, the index offence did not include the use of a weapon. I also note that Mr. Dick was granted an exemption from a firearm prohibition in October 2015 when he was convicted of assault.
- [105] The Crown raises a concern with respect to the third consideration, that being the safety of Mr. Dick and others. The Crown points to an incident in July 2024 when Mr. Dick was found with five 12-gauge shotgun shells on his person and a loaded shotgun on a couch nearby him. At the time, Mr. Dick was intoxicated. Mr. Dick explained that this was a period of time

leading up to trial where he was very despondent and depressed. He suggested that he was having suicidal thoughts at or around this time, although he did not admit that he planned to use the gun to suicide that day. When Mr. Dick was found with this loaded weapon, it was in contravention of the condition of his release and he was living in a residence with his mother. Quite rightly, the Crown is concerned for Mr. Dick's safety and the safety of others should he be in possession of a firearm, particularly when intoxicated.

[106] During his testimony, Mr. Dick explained that he never consumes alcohol while hunting. He explained the mental focus that is required to track and harvest elk and deer in the manner that he does and he explained how being in nature and engaged in a harvest is a special and serene place for him, one where he feels at peace and does not need alcohol. The reports filed in this proceeding echo this. Mr. Dick also explained that the only firearms that he uses for hunting are bolt action rifles. He has no need for the use of restricted weapons.

[107] In my view, the concerns for Mr. Dick's and others' safety can be reduced to an acceptable level by the imposition of conditions on the exemption. In the circumstances of this case, Mr. Dick is granted an exemption from the firearms prohibition pursuant to s. 113. However, Mr. Dick is only permitted to possess non-restricted firearms when he is engaged in hunting and travelling directly to or from a hunting expedition. To be clear, that means Mr. Dick is not permitted to possess or store firearms in his residence. He is prohibited from possessing restricted firearms at all times. Furthermore, when Mr. Dick is in possession of a non-restricted firearm for the purposes of hunting, he must not be in the presence of alcohol or under the influence of any intoxicant. Pursuant to s. 113, Mr. Dick's exemption is subject to any further conditions that may be imposed by the Chief Firearms Officer or Registrar.

Other Ancillary Orders

[108] The count on the indictment is a primary designated offence. Pursuant to s. 487.051 of the Code, I make an order in Form 5.03 authorizing the taking of samples of bodily substances from you for the purpose of registration in the DNA national databank. The samples will be taken from you while you are in prison and you must submit to the taking of those samples.

[109] You must pay a victim surcharge in the amount and at the time prescribed by the Code.

[110] Pursuant to s. 743.21 of the Code, you must not have any direct or indirect contact with M.R. during the custodial portion of your sentence.

[111] Pursuant to ss. 490.012(2)(a) and 490.013(6), it is mandatory that Mr. Dick comply with the obligations of SOIRA for life. However, as referenced at the outset of these Reasons, Mr. Dick is mounting a challenge to the constitutionality of that provision. For a number of reasons, that challenge cannot take place at this time and therefore, with the consent of the Crown, the imposition of a SOIRA order is adjourned pending the hearing and outcome of that constitutional challenge.

[112] As stipulated in s. 743.2 of the Code, these Reasons for sentencing are to be forwarded to the Correctional Service of Canada.

"Majawa J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/14/2025BCSC1414.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-dick-2025>

Prepared on 29 October 2026 · Esheria