# PROVINCIAL COURT OF NOVA SCOTIA

**Citation:** *R. v. Mehaney*, 2026 NSPC 8

**Date:** 20260219
**Docket:** 8820498, 8820499
**Registry:** Dartmouth

**Between:**

His Majesty the King
v.
Aram Melvin Mehaney

**Restriction on Publication: s. 486.4 *Criminal Code* – Any information that could identify the complainant shall not be published in any document or transmitted in any way.**

**Judge:** The Honourable Judge Timothy G. Daley

**Heard:** August 5 and August 22, November 17, 2025, and January 23, and February 19, 2026, in Dartmouth, Nova Scotia

**Decision:** February 19, 2026

**Charge:** Sections 272.1(c) and 272(1)(c.1) of the *Criminal Code*, RSC 1985, c C-46

**Counsel:** Michael Blanchard, for the Crown
Brian Casey, KC, for the Accused

**By the Court:**

**Introduction**

[1] This is the sentencing decision respecting Aram Melvin Mehaney. At the trial of this matter, I found Mr. Mehaney guilty of the following offences under the *Criminal Code*, RSC 1985, c C-46 ("the *Criminal Code*"):

1. Sexual assault causing bodily harm contrary to section 272.1(c);
2. While committing a sexual assault did choke, suffocate or strangle [AA] contrary to section 272(1)(c.1).

***Kienapple* Principle**

[2] In this decision I must first address the Defence position that the *Kienapple* principle prevents the Court from entering multiple convictions against Mr. Mehaney.

[3] The Court found Mr. Mehaney guilty of two offences arising out of events that took place on April 15, 2024, in relation to the same victim.

[4] The origins of the principle are found in *Kienapple v R*, 1974 CanLII 14 (SCC), [1975] 1 SCR 729 in which the Supreme Court of Canada held that there ought not to be multiple convictions for the same "delict", "matter" or "cause".

[5] The Supreme Court of Canada provided further guidance in *R v Prince*, 1986 CanLII 40 (SCC), [1986] 2 SCR 480 [Prince]. The principle applies where offences have a factual and legal nexus. The following passages from *R. v. Prince supra* are of assistance:

> 35 It has been a consistent theme in the jurisprudence from Quon through Kienapple and Krug that the rule against multiple convictions in respect of the same cause, matter or delict is subject to an expression of Parliamentary intent that more than one conviction be entered when offences overlap: see, in particular, McGuigan v. R., [1982] 1 S.C.R. 284, 26 C.R. (3d) 289, 66 C.C.C. (2d) 97, 134 D.L.R. (3d) 625, 40 N.R. 499 [Ont.]. In Krug, La Forest J. was careful to explain that the presence of additional, distinguishing elements was in itself an expression of such an intent. No element which Parliament has seen fit to incorporate into an offence and which has been proven beyond a reasonable doubt ought to be omitted from the offender's accounting to society, unless that element is substantially the same as, or adequately corresponds to, an element in the other offence for which he or she has been convicted.
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> 36 … the requirement of sufficient proximity between offences will only be satisfied if there is no additional and distinguishing element that goes to guilt contained in the offence for which a conviction is sought to be precluded by the Kienapple principle.
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> …
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> 40 In general, the particularization in one offence of an element of another offence should not be regarded as a distinguishing feature that renders Kienapple inapplicable. Parliament may create offences of varying degrees of generality, with the objective (vis-à-vis the more general offence) of ensuring that criminal conduct will not escape punishment because of a failure of the drafters to think of each individual circumstance in which the conduct might be committed, or with the objective (vis-à-vis the more specific offence) of addressing with certainty particular conduct in particular circumstances. In the absence of some indication of Parliamentary intent that there should be multiple convictions or added punishment in the event of an overlap, the particularization of an element ought not to be taken as a sufficient distinction to preclude the operation of the Kienapple principle.
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> …
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> 43 I emphasize that in applying the above criteria it is important not to carry logic so far as to frustrate the intent of Parliament or as to lose sight of the overarching question whether the same cause, matter or delict underlies both

> charges. For example, there exist offences aimed at a particular evil which (in certain circumstances) contain as an element the commission of some other offence directed towards an entirely different wrong….

[6] The Nova Scotia Court of Appeal also provided a recent example of the application of the *Kienapple* principle in *R v Taylor*, 2024 NSCA 50:

> 68 In determining whether Kienapple applies to stay a conviction, it is necessary to first determine whether there is a sufficient factual nexus between the charges. This was no issue in the appellant's case: the factual nexus between the s. 423.1(1)(b) and s. 240 offences was accepted. …
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> 69 The controversy that led to the appeal of the trial judge's Kienapple ruling relates to the question of whether there was a legal nexus between the offences. Were the offences "two different matters", totally separate one from the other and not alternative one to the other"? There was one act of posting the disclosure to Facebook but were there distinct "delicts, causes or matters which would sustain separate convictions"?21
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> …
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> 73 …There are no additional elements to the s. 240 offence and I do not see how an accused, in the circumstances of this case, could be found guilty of one offence and not the other.
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> ….
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> 76 It cannot be said here that the appellant was "guilty of several wrongs" requiring that she be held accountable for multiple offences.27 Parliament has created different offences in enacting s. 240 and s. 423.1(1)(b). However, there is nothing to indicate Parliamentary intent "to add extra punishment when both offences can be proven".28 In the appellant's case, the same "cause, matter or delict" underpinned all three charges …

[7] Considering the applicable law, I find that the *Kienapple* principle is not applicable to Mr. Mehaney's two offences.

[8] In one sexual encounter with the victim, Mr. Mehaney committed two distinct offences with different legal elements.

[9] I am mindful of the direction in *R. v. Prince supra* that the requirement of sufficient proximity between offences "will only be satisfied if there is no additional and distinguishing element that goes to guilt contained in the offence for which a conviction is sought to be precluded by the *Kienapple* principle" (para 36).

[10] I am also mindful of the direction in *R. v. Prince supra* that the rule against multiple convictions in respect to the same cause, matter or delict "is subject to an expression of Parliamentary intent that one or more conviction be entered where offences overlap" (para 40).

[11] I find that Parliament has legislated two separate and distinct sexual offences in ss. 272(1)(c) and 272(1) (c.1) that target different types of misconduct. While both offences require proof of sexual assault, they contain additional unique legal elements: one requires proof of bodily harm, and the other requires proof of choking.

[12] I also note that it is possible for an offender to be found guilty of one offence but not the other. More specifically, an offender may cause bodily harm in committing a sexual assault without choking the victim, just as a sexual assault by choking may not cause bodily harm. These are two distinct types of wrongdoing

identified by Parliament for criminalization. One is not a particularization of the other.

[13] Mr. Mehaney committed two distinct offences – two distinct wrongs - and he will be held accountable for both. The *Kienapple* principle does not apply.

**SOIRA Order**

[14] With respect to the Crown request for a SOIRA Order, Mr. Mehaney has been found guilty by this court of the offences of sexual assault causing bodily harm (s. 272(1)(c)) and sexual assault by choking, suffocation, or strangulation (s. 272(1) (c.1)).

[15] The Crown is seeking a SOIRA Order pursuant to s. 490.012 of the *Criminal Code* for a period of 20 years pursuant to s. 490.013(2)(b) of the *Criminal Code*.

[16] This would be an order under the *Sex Offender Information Registration Act* S.C. 2004 c.10 as amended (*SOIRA)* which, if granted, would require Mr. Mehaney to register with the National Sex Offender Registry. As noted by our Supreme Court of Canada in *R. v. Ndhlovu*, 2022 SCC 38 at paragraphs 45 to 47:

> [45] … the impact on anyone subject to SOIRA's reporting requirements is considerable. The requirements impact privacy and liberty, personal interests that are fundamental to society: liberty of movement and choice, mobility, and freedom from state monitoring or intrusion in our personal lives. The scope of the personal information registered, the frequency at which offenders are required to update

> their information, the ongoing monitoring by the state, and, of course, the threat of imprisonment make the conditions onerous. They simply cannot be compared to reporting requirements that "routinely occur as part of the everyday life" such as those associated with filing income tax forms, obtaining a driver's licence or a passport, or registering with banks or telephone companies (see Dyck, at para. 110).
>
> [46] Additionally, the cost of compliance varies from offender to offender based on their life circumstances. While SOIRA's reporting requirements are always serious, offenders whose job requires regular, prolonged travel will frequently need to take additional measures to remain in compliance. Even worse, offenders who experience homelessness, substance use issues, and cognitive or mental health challenges may find compliance extremely difficult (see, e.g., R. v. J.D.M., 2006 ABCA 294, 417 A.R. 186, at para. 9; R. v. Desmeules, 2006 QCCQ 16773, at paras. 25-27 (CanLII)). Quite simply, we must recognize the full scope of the restrictions that are imposed by SOIRA orders — both physical and informational — to properly assess the constitutionality of ss. 490.012 and 490.013(2.1).
>
> [47] The Act thus imposes numerous exacting obligations concerning initial registration, ongoing reporting, state monitoring and possible prosecution and imprisonment. ….

[17] These include compliance checks as per *R. v. Ndhlovu supra*, at paragraph 43:

> [43] Further, police officers conduct random compliance checks to verify the information on the registry. At a minimum, offenders are subject to at least one annual verification of their residential address. Det. Hove of the EPS also testified the current policy in Edmonton was to restrict compliance checks to the offender's primary residence, although SOIRA does not restrict where these checks are carried out. Nothing, as a result, prevents officers from showing up at an offender's place of employment. Thus, as the sentencing judge found, "offenders on the registry will be subject to further police interference due to the investigatory, and now preventative steps taken by police officers in relation to sex crimes" (ABQB reasons (2016), at para. 59).

[18] There is also potential for criminal liability and imprisonment for non-compliance (ss. 490.031, 490.0311).

[19] It is important to note that any decision respecting a *SOIRA* application is to be considered on its own merits as noted in *R v Huntley,* 2024 ABCJ at para 152:

> Each requested ancillary order has its own purpose and requirements that must be met for the Court to impose the particular ancillary order. Therefore, this analysis is distinct from the preceding analysis of the appropriate sentence…

[20] The two charges for which Mr. Mehaney has been found guilty do not fall within the provisions of s. 490.012 (1) or (2), and therefore a SOIRA order is not mandatory. Instead, these offences are included in the in the definition of "primary offence" under s. 490.011 (1), and therefore within the definition of "designated offence" under the same section.

[21] As set out in s. 490.012 (3) (a) and (b) of the *Criminal Code*:

> 490.012(3) Subject to subsection (5), when a court imposes a sentence on a person for a designated offence in circumstances in which neither subsection (1) nor (2) applies, or when the court renders a verdict of not criminally responsible on account of mental disorder for a designated offence, it shall make an order in Form 52 requiring the person to comply with the *Sex Offender Information Registration Act* unless the court is satisfied the person has established that
>
> > (a) there would be no connection between making the order and the purpose of helping police services prevent or investigate crimes of a sexual nature by requiring the registration of information relating to sex offenders under that Act; or
> >
> > (b) the impact of the order on the person, including on their privacy or liberty, would be grossly disproportionate to the public interest in protecting society through the effective prevention or investigation of crimes of a sexual nature, to be achieved by the registration of information relating to sex offenders under that Act.

[22] This section makes clear that the burden of proof is on Mr. Mehaney to establish the grounds to deny the *SOIRA* Order under subsections (a) or (b). (*R v*

*MKM*, 2024 BCSC 575 at para 133). For greater clarity, an offender may make arguments under one, or both pathways. I note that subsection (5) is not applicable in this matter.

[23] In considering whether to grant such an order, and whether Mr. Mehaney has satisfied the burden on him, the court must consider the factors set out in s.490.012 (4), as set out below.

> **490.012(4) Factors**
> In determining whether to make an order under subsection (3) in respect of a person, the court shall consider
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> (a) the nature and seriousness of the designated offence;
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> (b) the victim's age and other personal characteristics;
>
> (c) the nature and circumstances of the relationship between the person and the victim;
>
> (d) the personal characteristics and circumstances of the person;
>
> (e) the person's criminal history, including the age at which they previously committed any offence and the length of time for which they have been at liberty without committing an offence;
>
> (f) the opinions of experts who have examined the person; and
>
> (g) any other factors that the court considers relevant.

[24] "The decision to exempt "an offender from SOIRA registration involves a highly fact-sensitive exercise of discretion. It requires a careful balancing of relevant competing interests, informed by the mandatory factors enumerated in s. 490.012(4), as well as any number of other factors that may arise in the specific circumstances of the case: *Wiens* at para. 57. No one factor can be said to be determinative." (*R v McLeod*, 2025 BCCA 364 at para 62).

[25] In *R. v. Ndhlovu*, 2022 SCC 38 the Supreme Court of Canada noted at para 79:

> …the purpose of mandatory registration is to capture information about offenders that may assist police prevent and investigate sex offences. Registering offenders who are not at an increased risk of reoffending bears no connection to this purpose. …

[26] Defence argues that the nature of the designated offences is a relevant consideration. Counsel notes this was not a position of trust and that the sexual activity between the parties began as consensual and became nonconsensual during the sexual activity. Counsel argues that this is different from circumstances where the accused intends to commit sexual assault at the time of the commencement of sexual activity.

[27] Defence also argues that in this matter, the victim was not a young person but an adult who consented to communication with and coming to the home of Mr. Mehaney which is contrasted with sexual offences against young persons or where all the contact and interaction is involuntary.

[28] Defence also argues that Mr. Mehaney, as reflected in the Pre-Sentence Report, has no criminal record and, prior to these offences, had led a prosocial life, including employment with the Canadian Armed Forces. Counsel also points to Mr. Mehaney's difficult childhood, with his mother dependent on drugs and

involved in casual relationships while keeping him away from his father and siblings throughout his childhood.

[29] Counsel argues that these factors, when considered collectively, satisfy the burden on Mr. Mehaney to establish that there is no connection between making the order and the purpose of helping police services prevent or investigate crimes of a sexual nature.

[30] In considering the nature of the designated offence, I find that this was a very violent sexual assault, which included choking and bodily harm. I also consider the Victim Impact Statement which makes clear that she was significantly harmed by these acts and they have had a long-term impact on her, both psychologically and emotional, leading her to become severely depressed and suicidal. At the time of the offences, she had recently given birth and felt very vulnerable as a new mother. Theses events changed in many ways how she interacts with those around her, and the world generally. This brief summary of the impact on the victim goes to the question of her personal characteristics and the seriousness of the designated offence.

[31] Respecting the nature and circumstances of the relationship between the two parties, it is true that they had no prior history of the relationship and only met

briefly online and in person before commencing sexual activity. I agree that this did not create a position of trust, and I also agree that the sexual activity began as consensual and became nonconsensual during the activity itself. While this is different from circumstances where the accused intends to commit sexual assault at the time of the commencement of the activity, I find it does not significantly alter the court's assessment of whether to grant the order requested. This argument goes to the issue of risk of reoffence.

[32] While Mr. Mehaney has had a difficult childhood and, as a member of the Canadian Armed Forces, has shown prosocial aspects to his life, I find that he presents a significant risk of reoffence. He has shown no acceptance of responsibility or remorse for his actions, other than a brief apology to the victim, and has demonstrated no concrete actions to address that risk in either his Pre-Sentence Report or at the sentencing hearing. Such actions could include counselling or therapy to address his aggressive sexual behavior or working with any service provider to support him in seeking change.

[33] Counsel also emphasizes that this order would have significant impact on Mr. Mehaney, including his privacy and liberty, that would be grossly disproportionate to the public interest under the *SOIRA* legislation. While I agree

that this order would have a significant impact on Mr. Mehaney's privacy and liberty, I do not find that it would be disproportionate.

[34] There is a very strict regime in place under the *SOIRA* legislation which prevents information about Mr. Mehaney being disseminated except to authorized agencies or individuals for the purpose of investigating sexual offences. There is a great public interest in protecting society through these means and, while I can appreciate that there will be an impact on Mr. Mehaney in having this order issued for 20 years and this would include all the reporting requirements set out in the legislation, this is not, in my view, "grossly disproportionate".

[35] I note that there was no expert opinion offered the matter.

[36] The purpose of the *SOIRA* legislation is to allow for timely investigation of sexual crimes such as those of which Mr. Mehaney has been convicted in this matter. It may be that he never commits another sexual offence, but the purpose of the legislation is to permit and assist police services to investigate those very crimes should they occur again.

[37] Thus, I find that his background of pro-social behavior and employment does not displace the risk of reoffence he presents nor the importance of the SOIRA Order in this matter. Due to his risk of reoffence I find that there is a

"connection between making the order and the purpose of helping police services prevent or investigate crimes of a sexual nature".

[38] I therefore find that he has not satisfied the burden of proof to deny the SOIRA order on either ground under s.490.012(3) (a) or (b) discussed herein. Thus, the SOIRA Order will be granted for a period of 20 years.

**Summary of the Facts**

[39] Moving now to the sentencing of Mr. Mehaney, the following is a summary of the facts contained in the trial decision of this matter in *R. v. Mehaney*, 2026 NSPC 3.

[40] The victim, AA, and Mr. Mehaney began communicating by a dating app and shared some personal information before deciding to get together in person.

[41] Mr. Mehaney picked up AA in his vehicle, and they travelled to the Nova Scotia Liquor Commission store nearby. He purchased a 12 pack of Bush Light beer, and she purchased two coolers known as "Mike's".

[42] They then travelled to his home located at the Shearwater Air Force Base, entered the residence and met his roommate. Mr. Mehaney place some beer in the fridge and took some upstairs with him. He and AA went to his bedroom on the

second floor, began watching a television show and drank some alcohol. This was followed by consensual kissing and commencement of sexual activity.

[43] At trial, I found that what began as consensual sexual activity turned to non-consensual shortly thereafter. Mr. Mehaney forced AA to perform rough oral sex on him, holding her hair and forcing her to take his penis in her throat, causing her to almost throw up.

[44] AA described beginning to disassociate at that time. She agreed the sexual interaction was consensual initially but quickly became non-consensual during the rough oral sex when she began to indicate she was not consenting, but he continued.

[45] They then moved to missionary position sexual intercourse, and she found it to be too rough, telling Mr. Mehaney several times to stop. He did not. The intercourse became rougher and rougher. She put her hands on Mr. Mehaney several times and told him to stop 10 or more times and that it was too rough for her. He simply repeated "this is how I like it".

[46] At one point during missionary position sex Mr. Mehaney was penetrating her fast and roughly with his penis and gripped her hair and throat as she was moving her head back-and-forth to avoid looking at him. She described the

choking as starting lightly, but then became rough, she thought she would suffocate and her eyes rolled back. She struggled for air and almost became unconscious, suffering bruising on her neck for several days. This took place over approximately five minutes and was most serious in the last 20 seconds. He finally stopped choking her when her eyes rolled back in her head.

[47] Mr. Mehaney described a different sequence of sexual behaviour but agrees it did include fellatio and intercourse. He denied any of the activity as nonconsensual. He said that when AA was moaning and groaning and then went silent, he took this as a change in her demeanour and, despite this, said, "I'm about to come", did not ejaculate and stopped intercourse shortly thereafter.

[48] The SANE ("Sexual Assault Nurse Examination") Report and testimony of the Sexual Assault Nurse Examiner made clear that AA had suffered significant bodily injury, including tenderness to her neck, along the sides of neck and collarbone area, petechiae, and abrasion to the left side of her neck with bruising developing underneath the skin, significant bruising to her left hip and several bruises or tenderness noted on different regions of her body including her hip, neck, back, mons pubis and inner thighs.

[49] In describing the petechiae injury, the nurse testified that this consisted of small bruises from burst blood vessels to the inner throat and oral cavity soft tissue consistent with strangulation.

[50] AA attended the emergency room again 24 hours later. The doctor who saw her observed similar injuries to those reported by the SANE nurse. The doctor diagnosed her with a concussion and neck pain.

[51] In an Agreed Statement of Facts, it was confirmed that the doctor found that, as a result of the assault and choking, AA had symptoms consistent with concussion including head and neck pain, nausea and vomiting. The diagnosis made was consistent with what was reported including choking or strangling and aggressive head movement. It also confirmed that concussions do not require physical blows but can be caused by aggressive head movement.

**Positions of the Parties**

[52] The Crown recommends a sentence as follows:

> 1. A term of incarceration of five years for each offense to be served concurrently;
>
> 2. A mandatory DNA order pursuant to section 487.04 (a) of the *Criminal Code*;

3. A 10-year weapons prohibition pursuant to section 109 (1) (a) of the *Criminal Code*;

4. A SOIRA order for 20 years pursuant to section 490.013 (2) (b) of the *Criminal Code*;

5. An order that Mr. Mehaney be prohibited from communicating with AA while he is in custody pursuant to section 743.21 of the *Criminal Code*.

[53] The Defence recommends the following:

1. A term of incarceration between two to three years followed by a period of probation;

2. A denial of a SOIRA order;

3. There is consent with respect to the DNA, weapons, and the non-communication orders.

**Summary of the Law**

[54] The purpose and principles of sentencing are set out in s. 718 to 718.2 of the *Criminal Code*. The Supreme Court of Canada provided the following helpful guidance on the application of these provisions in *R v Nasogaluak*, 2010 SCC 6:

> [39] …Judges are …directed in s.718 to consider the fundamental purpose of sentencing as that of contributing, along with crime prevention measures, to "respect for the law and the maintenance of a just, peaceful and safe society". This purpose is met by the imposition of "just sanctions" that reflect the usual array of sentencing objectives, as set out in the same provision: denunciation, general and specific deterrence, separation of offenders, rehabilitation, reparation, and a recent addition: the promotion of a sense of responsibility in the offender and acknowledgement of the harm caused to the victim and to the community.

…

[41] It is clear from these provisions that the principle of proportionality is central to the sentencing process…

[42] …it requires that a sentence not exceed what is just and appropriate, given the moral blameworthiness of the offender and the gravity of the offence. In this sense, the principle serves a limiting or restraining function. However, the rights-based, protective angle of proportionality is counter-balanced by its alignment with the "just deserts" philosophy of sentencing, which seeks to ensure that offenders are held responsible for their actions and that the sentence properly reflects and condemns their role in the offence and the harm they caused… Understood in this latter sense, sentencing is a form of judicial and social censure… Whatever the rationale for proportionality, however, the degree of censure required to express society's condemnation of the offence is always limited by the principle that an offender's sentence must be equivalent to his or her moral culpability, and not greater than it. The two perspectives on proportionality thus converge in a sentence that both speaks out against the offence and punishes the offender no more than is necessary.

[43] The language in ss. 718 to 718.2 of the Code is sufficiently general to ensure that sentencing judges enjoy a broad discretion to craft a sentence that is tailored to the nature of the offence and the circumstances of the offender. The determination of a "fit" sentence is, subject to some specific statutory rules, an individualized process that requires the judge to weigh the objectives of sentencing in a manner that best reflects the circumstances of the case… No one sentencing objective trumps the others and it falls to the sentencing judge to determine which objective or objectives merit the greatest weight, given the particulars of the case. The relative importance of any mitigating or aggravating factors will then push the sentence up or down the scale of appropriate sentences for similar offences. The judge's discretion to decide on the particular blend of sentencing goals and the relevant aggravating or mitigating factors ensures that each case is decided on its facts, subject to the overarching guidelines and principles in the Code and in the case law.

[44] The wide discretion granted to sentencing judges has limits. It is fettered in part by the case law that has set down, in some circumstances, general ranges of sentences for particular offences, to encourage greater consistency between sentencing decisions in accordance with the principle of parity enshrined in the Code. But it must be remembered that, while courts should pay heed to these ranges, they are guidelines rather than hard and fast rules. A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. Regard must be had to all the

> circumstances of the offence and the offender, and to the needs of the community in which the offence occurred.

[55] During this decision, I firmly keep in mind the fundamental principle of sentencing set out in s. 718.1 which states that a "sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender."

[56] Section 718.2 sets out other principles that the sentencing court is mandated to take into consideration, including aggravating and mitigating factors and the principles of parity (a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances), totality, and restraint.

[57] The individualized nature of sentencing was nicely articulated by then Chief Justice Lamer in *R v C.A.M.*, [1996] SCJ No 28 beginning at para 91:

> …The determination of a just and appropriate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offense, while at all times taking into account the needs and current conditions of and in the community...
>
> …It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime… Sentencing is an inherently individualized process and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. As well, sentences for a particular offense should be expected to vary to some degree across various communities and regions of this country as the 'just and appropriate' mix of accepted sentencing goals will depend on the needs and current conditions of and in the particular community where the crime occurred…

[58] In a rational system of sentencing the respective importance of restraint, prevention, deterrence and rehabilitation will vary according to the nature of the crime and the circumstances of the offender. There is no easy test that a judge can apply in weighing these factors.

[59] I also keep in mind the fundamental purpose of sentencing in s. 718, and the numerous objectives listed in that section. For example, the objective of denunciation in s. 718(a) represents the communication of society's condemnation of the offender's conduct. A sentence with a denunciatory element represents a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantial criminal law.

[60] As noted by our Court of Appeal in *R v E.M.W.*, 2011 NSCA 87 at para 35, rehabilitation is a much greater consideration for a sentencing judge when the offender has accepted responsibility.

[61] I am also mindful of *R v Grady*, (1973) 5 NSR (2d) 264 (NSCA) where the Court confirmed that the primary focus was on the protection of the public and how best to achieve that whether through deterrence or rehabilitation, or both.

Protection of the public includes both protection of society from the particular offender as well as protection of society from this particular type of offence.

[62] In *R v Fifield*, [1978] NSJ 42 (CA), the Court also provided the following helpful guidance at para 11:

> We must constantly remind ourselves that sentencing to be an effective societal instrument must be flexible and imaginative. We must guard against using… the cookie cutter approach. …

**Victim Impact Statement**

[63] A Victim Impact Statement was received and read into the record by AA. In it, she describes the very serious and significant impact that the sexual assault has had on her to this that day. She says that she is haunted by the details of every moment of the assault when she lies awake at night. She believes that the events will follow her for the rest of her life.

[64] After the assault, she describes falling into a dark place where she stopped eating, lashed out at others and became severely depressed and suicidal. She relapsed to an eating disorder and turned to alcohol and cannabis to cope with panic attacks and overwhelming fear. For nearly 2 months she was unable to leave her home.

[65] She described the assault as not just hurting her but breaking her. She described that for months following, she was physically present but emotionally gone. She was disconnected from her life and her role as a parent of a young child, and it took some time to return to the present in her life.

[66] She reflected on the impact of the diagnosis of the concussion and that she must remain vigilant for any signs of permanent brain damage. This means that the sign of even the smallest symptoms will send her to the emergency room out of fear that something serious might be happening.

[67] The assault caused her to change her physical appearance through exercise, not out of a desire of health but out of desperation, because she felt she needed to be stronger.

[68] She described a change in her personality from being bubbly, loving and open to a more guarded presentation, being hypervigilant and being afraid of being hurt again.

[69] She has engaged with extensive therapy to work through this trauma. She does say that she has reclaimed her voice and she will never be silenced again. Finally, she offers Mr. Mehaney forgiveness "not because what he did was acceptable, but because I refuse to let his actions control the rest of my life."

**Pre-Sentence Report**

[70] The court has the benefit of a Pre-Sentence report respecting Mr. Mehaney. It describes a difficult upbringing.

[71] He is one of four children, born in Oshawa, Ontario where they lived until he was eight years old, at which time his parents separated. He and his siblings moved with their mother to Corner Brook, Newfoundland, and he father to another town in the same province.

[72] He described his childhood as "not very good" due to his mother's dependence on drugs and her "hook-ups" with random men. His mother attempted to keep his father away from him and his siblings throughout their childhood, and therefore there was not a lot of contact.

[73] He described living with his father at the age of 16 for time, but were his father lived was a very small community and he was an unable to find work so he returned to his mother's home. He said he got along well with his father during that time and only returned to his mother's home because of the lack of employment opportunity.

[74] On returning to his mother's, he lived in an apartment in her backyard until he was 19 and then returned to live with his father for about six months.

[75] He describes not having any contact with his mother, explaining that her drug use increased after the death of his brother three years ago. He does continue a relationship with this father.

[76] He reports having had three previous relationships, one of two years and another at six months. The latter ended largely because of him being stationed in Ontario, and the difficulty of maintaining a long-distance relationship. His most recent relationship lasted one year, but they determine they were incompatible. He is currently single and has no dependants.

[77] His grandmother was contacted and was aware of the charges against him, saying this is not the type of behaviour he had ever displayed in the past and could not see him hurting anyone. She believed his denial of the charges and described her grandson as helpful, considerate, fun-loving and loyal to his friends and family. She did not describe his consuming any substances to excess.

[78] Mr. Mehaney has a grade 11 education, was never diagnosed with learning disabilities, and although he was suspended for smoking marijuana, he was never expelled. He chose to leave school in grade 11 and refused to return. He explained that due to his mother's addiction issues, he was forced to deal with her regularly, which affected his education.

[79] He appears to always have been employed since leaving school. He has been a member of the Canadian Armed Forces on a full-time basis for two years as an Aircraft Structures Technician. He confirms he will be released from that employment after his sentencing.

[80] A previous employer, who is also a friend, was contacted and commented that he was surprised by the charges and "kind of heartbroken". He stated he has known Mr. Mehaney most of his life and that Mr. Mehaney was friends with both of the employer's sons. He had hired him to work in his carpentry business in Newfoundland for two years and described him as a strong-minded individual, a hard worker who will always strive to do better. He never witnessed any issues with Mr. Mehaney and described him as a "level-headed kid".

[81] A retired Sergent and former supervisor of Mr. Mehaney in the military was contacted and reported being very surprised upon hearing of the incident as it was "totally out of character". He had known Mr. Mehaney since he began with the military and described him as reliable, calm, team oriented, and a nice person. He worked alongside women in the unit and there was never any misconduct or disrespectful behaviour. He describes him as family oriented.

[82] Mr. Mehaney is in good physical health and not prescribed any medication. He has no diagnosis for any mental health disorders, though he is experiencing a great deal of stress and anxiety respecting these offences. He does not describe any addiction or substance issues.

[83] In the report, Mr. Mehaney denies committing the offences and will never agree to the incidents as described by AA. This is his right. He described being shocked by what was happening to him.

**Aggravating Factors**

[84] As to aggravating factors, these include the that the sexual assault was very violent, causing significant bodily harm to the victim. The level of violence not only resulted in the physical injuries identified in the SANE Report but also resulted in the victim nearly losing consciousness when being choked and suffering a concussion.

[85] It is also aggravating that the sexual assault resulted in long-term consequences for the victim including on-going vigilance respecting symptoms of any concussion as well as the immense trauma suffered by her which has affected every part of her life and for which she is engaged in therapy.

[86] It is also aggravating how the sexual activity progressed in this matter. Though the sexual encounter began as consensual, it quicky became non-consensual when the victim expressed on many occasions and in several different ways that she no longer consented to the sexual activity. It is aggravating that Mr. Mehaney did not cease the sexual activity despite these repeated verbal and physical indications of lack of consent.

[87] This circumstance connects with the duration of the assault as well. On either the victim's or Mr. Mehaney 's version of events, the sexual activity lasted for approximately 30 minutes and involved several sexual positions, all of which, except for the initial sexual intercourse, were nonconsensual.

[88] Defence notes correctly that none of the aggravating factors identified under sections 718.2 or 272 of the *Criminal Code* are present in the matter.

**Mitigating Factors**

[89] There are several mitigating factors present as well. The first among the these is that Mr. Mehaney has no prior criminal record.

[90] He is also a young person, 24 years of age, and there is, therefore, some opportunity for rehabilitation, particularly in the absence of a prior record.

[91] It is somewhat mitigating that the sexual activity initially was consensual. But, as noted, this is significantly offset by his failure to respect the indicators of non-consent and the physical harm done to the victim because of the sexual assault.

[92] The Defence argues that the time involved was significantly mitigating in that it is brief, approximately 30 minutes. It is true when compared to the most violent and vial of sexual assaults, some of which can last for hours, this is briefer. But, as noted in the discussion regarding aggravating factors, there were multiple indicators of non-consent during the time which Mr. Mehaney did not respect.

[93] The Defence also notes that collateral consequences of the conviction and sentencing should be considered as part of the parity analysis. Specifically, that the same sentence will have a much more severe consequence for Mr. Mehaney that it might be for someone with different employment. In this matter, Mr. Mehaney will lose his employment with the Canadian Armed Forces and will be unable to return to work in that capacity ever again.

[94] Counsel cites *Ruby on Sentencing* (10th Ed) where it reads:

> When determining the appropriate sentence for an individual offender, a court may take into account the collateral consequences of the sentence or the underlying conviction. As long as the sentence imposed is proportionate to the gravity of the

> offence and the degree of responsibility of the offender, collateral effects may figure in the imposition of a fit sentence.

[95] In that citation, it goes on to discuss the comments of the Supreme Court of Canada in *R. v. Pham,* 2013 SCC 15 which cites Alan Manson *The Law of Sentencing* at paragraph 12, the latter of which points out:

> As a result of the commission of an offence, the offender may suffer physical, emotional, social, or financial consequences. While not punishment in the true sense of pains or burdens imposed by the state after a finding of guilt, they are often considered in mitigation…
>
> … People lose jobs; families are disrupted; sources of assistance disappear. Notwithstanding a need for denunciation, indirect consequences which arise from stigmatization cannot be isolated from the sentencing matrix if they will have bearing on the offender's ability to live productively in the community. The mitigation will depend on weighing these obstacles against the degree of denunciation appropriate to the offense.

**Other Sentencing Considerations**

[96] Under section 718 of the *Criminal Code*, I must consider several factors including that the fundamental purpose of sentencing "is to protect society and contribute, along with crime prevention initiatives, respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions ….”

[97] The first objective is denunciation. I must consider the unlawful conduct and the harm done to the victim or the community or both that is caused by the unlawful conduct. In this circumstance, the focus is on denunciation of the conduct by Mr. Mehaney, and specifically the harm done to the victim. This was a

violent sexual assault which took place over approximately 30 minutes, and which caused significant bodily injury to the victim, including a concussion and long term emotional and psychological harm. It is essential that an appropriate and fit sentence denounce the conduct of Mr. Mehaney in committing this sexual assault and recognize that harm.

[98] I must next consider the issue of deterrence. This applies to both Mr. Mehaney and other persons in the community. In this circumstance, Mr. Mehaney has maintained his innocence which is his right. But in this context, I find that his behaviour during this sexual assault gives rise to a significant concern of risk of re-offense.

[99] I certainly consider the comments in the Pre-Sentence Report by all of those who support Mr. Mehaney and his own comments regarding his history and lack of criminal record. That said, a fit and appropriate sentence must send the message of deterrence to Mr. Mehaney regarding any potential future offences, and to the community at large to deter others from committing similar offences in the future.

[100] I must consider whether it is appropriate to separate Mr. Mehaney from society. Both Defence and Crown agree that this is necessary in the circumstance given the gravity of the offences.

[101] This addresses the issue of restraint reflected in section 718.2 (d) and (e) of the *Criminal Code* which require the court to consider that Mr. Mehaney should not be deprived of liberty if less restrictive sanctions may be appropriate, and that all available sanctions other than imprisonment that are reasonable in the circumstances should be considered.

[102] I will be brief on this issue. Given the severity and duration of the sexual assault and the harm done to the victim by these acts, I conclude that there is no less restrictive sanction appropriate having considered all the available sanctions other than imprisonment in this matter.

[103] I must consider rehabilitation in this sentencing. Mr. Mehaney is young and has a clear history of prosocial behaviour both through his employment, his interactions with his employers and fellow employees, his family, his work ethic and his desire to improve himself. Thus, the opportunity for rehabilitation must be taken into consideration by this court in arriving at a fit and proper sentence. While he has not begun any efforts respecting addressing his role in the offences before the court, I find I cannot dismiss rehabilitation as a significant factor given his prior and current circumstances.

[104] I must also consider a sentence which promotes a sense of responsibility and Mr. Mehaney and others, and an acknowledgement of the harm done to the victim. In this matter, there was no acknowledgement of the harm done to the victim by Mr. Mehaney, but that still imposes upon the court the responsibility to arrive at fit and proper sentence which promotes this principle.

[105] I must also consider under section 718.1 that "a sentence must be proportionate to the gravity of the offense and the degree of responsibility of the offender." In this matter, the gravity of the offences is quite serious. Though there are many injuries that have healed, the sexual assault was quite violent and of significant duration. Moreover, the victim has confirmed that there had been long term consequences to her emotional and mental health that she continues to grapple with. As well, there may be long-term consequences to the concussion suffered, and she must be on constant alert to any indicators of problems that might arise from that. I find that all of this leads to a finding of high gravity for theses offences.

[106] As to the degree of responsibility of Mr. Mehaney, despite his denials, I have found as fact that he had multiple opportunities to cease his sexual activity with the victim when she, on many occasions, both physically and verbally,

indicated her lack of consent. This raises the degree of responsibility of Mr. Mehaney, even though it began as a consensual sexual interaction.

[107] I must also consider the principle of parity captured in section 718.2 (b) which identifies that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances."

[108] Each counsel has provided a series of cases for the court to consider on this issue as follows:

> *R. v. Alas* 2019 NSSC 68 - A 30-year-old accused plead guilty to sexual assault causing bodily harm and uttering threats to cause death or bodily harm. He punched the victim in the face, then engaged in non-consensual vaginal and anal intercourse and uttered death threats while in the victim's home. There was no criminal record and the Accused expressed remorse. The court imposed a sentence of seven years for the sexual assault and 3 years concurrent for the uttering threats count.
>
> *R. v. Hoggard* 2020 ONSC 5919 - A 32-year-old accused was convicted of sexual assault causing bodily harm. The assault was against a 22-year-old victim and took placed over four hours. All the sex was nonconsensual and included anal intercourse, choking with both hands, bleeding from the vagina and anus and calling the victim a slut. The court imposed a sentence of five years.
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> *R. v. Clase* 2017 ONSC 2484 – A 36-year-old Accused was convicted of sexual assault and attempting to choke to assist in sexual assault. The sexual assault took place over 15-20 minutes and involved vaginal penetration on two occasions. The victim was choked and was unable to breathe. She repeatedly told him to stop. The victim was 22 years old and menstruating. The injuries were bruising to both wrists and small bruises to both sides of her neck. There was no prior record. The court imposed a sentence of five years.
>
> *R. v A.J.K.* 2022 ON CA 487 – The Accused was convicted of sexual assault which took place in a circumstance of a position of trust involving an intimate partner. The Accused drove them to a secluded area and forced vaginal penetration involving chocking and punches to the victim's head. The victim suffered a concussion, bruising, swelling and significant psychological impacts. The Accused expressed no remorse or responsibility. The Accused was on probation

for communicating for the purpose of prostitution with someone underage. The court imposed a sentence of five years, which was upheld on appeal.

*R. v. Percy* 2020, NSSC 138. A 31-year-old Accused was convicted of sexual assault causing bodily harm. The victim was 19 years old and intoxicated. The assault included nonconsensual oral sex, anal and vaginal intercourse, slapping and biting resulting in bite marks bruising of the victim and lasting psychological harm. There was a expression of responsibility but this was undermined by an expert report. The court imposed a sentence of five years.

*R. v. S.F.M.* 2002 NSSC 90 – The Accused was convicted of two counts of sexual assault and one count of assault on the victim, his wife. This was a position of trust. The court found there were more than 10 incidents of sexual assault over 4 years. The sentencing involved an IRCA Report and counsels referred the court to the decisions of *R. v. Anderson* 2021 NSCA 62 and *R. v. Morris* 2021 ONCA 680 which clearly address how IRCA Reports are to be used by courts in addressing moral blameworthiness of African Nova Scotians. The court imposed a sentence of 39 months.

*R. v. Fardy* 2024 NSSC 211 – The Accused was convicted of one count of sexual assault for vaginally penetrating S.M., either with his fingers or his penis, while she was intoxicated and asleep. He was convicted of one count of common assault of R.B. for grabbing and pushing her by the throat/neck, and one count of sexual assault by attempting to force R.B. to perform oral sex on him. The Accused was convicted of one count of sexual assault for vaginally penetrating J.M. without consent. They were in an intimate relationship. The court imposed a sentence of 3 years for the sexual assault on J.M., 11 months for the sexual assault on S.M., and1 month for the common assault and 10 months for the sexual assault on R.B. to be served consecutively for a total sentence on 48 months. The sentence was reduced for a Charter violation.

*R. v. Campbell* 2022 NSCA 29 - The accused was convicted of two counts of sexual assault involving two different victims committed approximately a week apart. The second sexual assault involved anal intercourse. He was sentenced to two years custody and three years probation for the first offence. He was sentenced to two years custody and two years probation for the second offence to be served concurrently. The latter sentence was subject to appeal. The Court of Appeal overturned the second sentence and imposed a sentence of three years consecutive to the first offence.

[109] When reviewing assessing these decisions for the principle of parity, I first note that Defence counsel presented several other cases which I conclude should be set aside because they involve convictions for single incidents of sexual assault,

not sexual assault causing bodily harm or sexual assault involving choking. I therefore set aside from my consideration the decisions in *R. v. S. L.* 2020 NSSC 381, *R. v. J.A.M*. 2018 NSSC 285, *R. v. Burton*, 2017 NSSC 181 and *R. v. Preston*, 2021 NS SC 316.

[110] I do not consider *R. v. Fardy supra*, similar in circumstance or offence. There were multiple sexual assaults, only one involving violence, specifically choking. The level of violence is in no way comparable to the present case.

[111] The decision in *R. v. S.R.M. supra* involves an African Nova Scotian Accused and the court's consideration of an IRCA Report. Given our Court of Appeal's direction on the use of IRCA Reports in *R. v. Anderson, supra*, I find that this case is not one where the two Accused are in similar circumstances and it will not be considered.

[112] With respect to the remaining decisions, I do find each instructive and helpful in establishing a range of sentence of between 3 to 7 years "… imposed on similar offenders for similar offences committed in similar circumstances."

[113] In this matter, I find that if it an appropriate sentence for Mr. Mehaney is a term of imprisonment of five years. I arrive at this decision considering that he is a younger man with no criminal record and a prosocial background. He has the

support of his community and family and has an opportunity to rehabilitate himself should he choose to take the necessary steps.

[114] I also consider carefully the gravity of the offences, particularly the duration and the physical and emotional damage visited upon the victim, both short and long-term.

[115] I find Mr. Mehaney's level of moral culpability to be high. While the sexual interaction began as consensual, I found that it quickly turned to non-consensual and the victim repeatedly, and in various ways, indicated her lack of consent and a desire to stop the activity. Mr. Mehaney ignored those indications and continued his pursuit of sexual pleasure. The result was not only a sexual assault, but one that caused significant bodily harm, including the use of choking. His denial of responsibility only reinforces his moral culpability for these offences.

[116] I have also considered that there will be substantial collateral consequences to Mr. Mehaney which should be considered in this decision. He will lose his employment and will no doubt find it difficult to find employment in the field in which he is trained in in the future. While the sentence does recognize the need for denunciation, it also addresses the collateral impact on Mr. Mehaney as a result of this sentence.

[117] I have also carefully considered the issues of denunciation and deterrence. It must be brought home to Mr. Mehaney that he is responsible for these acts, and he must be deterred from engaging in similar acts in the future. His absence of acceptance of responsibility has led me to conclude that he is at risk of reoffending in the future as he has no insight into his role in these offences and the impact on the victim.

[118] Again, reflecting on the issue parity, I find that this sentence is in the range of those reflected in the decisions discussed earlier. No two matters are identical and as has been pointed out repeatedly in the jurisprudence, sentencing is a highly individualized process that considers many factors. Parity is one and I find that this sentence falls within the range of similar sentences.

[119] With respect to restraint, I have carefully engaged with that principle as well. While a sentence of higher than five years is within the range, I find that there is opportunity for Mr. Mehaney to move forward and rehabilitate himself in the future, and he should be given that opportunity.

[120] This sentence reflects the necessity of separating him from society and that there are no other sentencing options available to the court that would satisfy the purpose and principles of sentencing.

[121] Therefore, I sentence you, Aram Melvin Mehaney, to of term of incarceration of five years for each of the offences of sexual assault causing bodily harm contrary to section 272.1(c) and while committing a sexual assault did choke, suffocate or strangle AA contrary to section 272(1)(c.1) of the *Criminal Code*.

[122] Considering the principles of totality and restraint, I order that these sentences will run concurrently.

[123] I will grant the ancillary orders well as follows:

1. A mandatory DNA Order pursuant to section 487.04 (a) of the *Criminal Code*.
2. A SOIRA Order for 20 years pursuant to s. 490.013(2)(b) of the *Criminal Code*.
3. A 10-year Weapons Prohibition Order pursuant to section 109(1)(a) of the *Criminal Code*.
4. An Order that Mr. Mehaney be prohibited from communicating with AA while he is in custody pursuant to section 743.21 of the *Criminal Code*.
5. The Victim Fine Surcharge will be waived as to pay same would be a hardship on Mr. Mehaney who has considerable debt and will be incarcerated.

Timothy G. Daley, JPC