

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. Gagne*, 2014 NSSC 453

**Date:** 2014- 12-17

**Docket:** *Sydney*, No. 422891

**Registry:** Sydney

**Between:**

Her Majesty the Queen

v.

Rene Leo Gagne

**Judge:** Justice Simon J. MacDonald

**Heard:** December 17, 2014

**Oral Decision:** December 17, 2014

**Written Release of** December 24, 2014

**Oral Decision:**

**Counsel:** D. Shane Russell for the Crown  
Patricia Fricker-Bates and  
Allan Nicholson for the Defence

**By the Court:**

[1] Before I begin, I would be remiss if I did not thank all counsel for the manner in which they dealt with this complicated matter. I am truly satisfied that they canvassed all avenues in coming to the conclusions that they did and the processing of the nature of the charges and I thank them for their briefs. In this case they supplied two sets of briefs which were detailed and adequately covered the subject in my view and showed preparation done by them in order to proceed accordingly. Secondly, there was an agreed Statement of Facts submitted as Exhibit 1 in this case (a copy is attached hereto) and they were read into detail the other day when we were here and I accept those as the agreed facts between counsel and the parties. They are on the record and I don't think that there is any need of my repeating them at this stage.

[2] In this particular case I have had the benefit of a Pre-Sentence Report ordered pursuant to S. 721 of the Criminal Code and prepared by Melissa McNeil and dated November 20, 2014. At the beginning of the Sentencing Hearing the other day there were certain changes made to the report in order to correct errors which it contained. I have read the whole report and Ms. Fricker-Bates has referred extensively to it in her remarks to the Court. I do not feel that it is

necessary to go through each of the headings for purposes of this decision, but I will refer to some of its contents as follows.

[3] It shows in the family background the difficult upbringing that Mr. Gagne had and his comments that he suffered abuse in foster care. As well, the Pre-Sentence Report indicates that there is no indication of any spousal abuse in his previous relationships. It shows how he continued his education, and in fact, while he was in the Correctional Centre he obtained and completed his General Education Diploma and is currently working towards a Microsoft Office Program Certificate. It also tells about his income and what little he has at the present time which was referred to and discussed the other day. It contains his expressions of regret to the writer of the report, Ms. McNeil, saying he wished it hadn't happened, he said he just snapped and he has to carry that with him the rest of his life. His plans when he gets released and during the course of his further incarceration are that he intends to pursue his further education and eventually obtain a safety officer position he hopes.

[4] I consider the report to be a positive report for Mr. Gagne. Against that positive report of course, I have the Victim Impact Statement with the comments by Ms. Kelly MacLeod, the victim here. During the Sentencing Hearing Kelly MacLeod read her Victim Impact Statement to the Court. It was obvious as I

listened to her and the details that she gave about her feelings, how the attack affected her, how she reacted during the attack and how she suffered greatly from a senseless act of the accused when he committed these attacks upon her.

[5] In reviewing my notes, the Victim Impact Statement and listening to Ms. MacLeod, there is no doubt that she suffered greatly, both physically and emotionally, at the hand of Mr. Gagne. There is no doubt, as she said, it was an extreme vicious and brutal attack upon her and that it also inflicted psychological and emotional devastation to herself, especially when her young daughter was upstairs looking out the window and saw part of this occurring. She said she thought she was going to die. She explains how the horrific actions and injuries she received on the day in question affected her, the hospitalization she had and the difficulties that she has in overcoming it and the psychological problems that she has in getting on with her life.

[6] I agree and accept her remarks when she says “I will never be able to accurately describe the extent of terror, panic and desperation that was so overwhelming to me”. Having listened to her describe what occurred I can certainly understand her view in that regard. She described the different locations of being stabbed by Mr. Gagne and her reaction to that. I also accept her comments when she says that it would impact on her daughter, who I said earlier,

was watching from an upstairs window. She says she is afraid to go anywhere where there are men involved. She says her daughter is afraid to be alone and that her daughter experiences anxiety and panic attacks.

[7] I conclude from the report that Ms. MacLeod has suffered greatly as a result of these injuries and she says that every aspect of her life has been ruined and she describes it as being physically, financially, emotionally and psychologically. I have taken those comments in general from her detailed and descriptive report which she gave the other day and in the written report submitted.

[8] Section 268 (2) provides for a maximum sentence in this matter to a term not exceeding 14 years for a person found guilty of aggravated assault. The principles of sentencing have been enunciated in the case of *R. v. Grady* (1971) 5 N.S.R. (2d) 264 where the Court of Appeal of our province said that the protection of the public should be achieved and it could be done either by (a) deterrence of; or (b) reformation and rehabilitation of the offender, or: (c) a combination of both deterrence and rehabilitation.

[9] The Parliament of Canada set forth the principles of sentencing in s. 718 of the *Criminal Code* and they state as follows:

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

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparation for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community.

[10] Section 718.1 states that sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. As well, one must look at s. 718.2 which deals with other sentencing principles and it says:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
  - (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or any other similar factor,
  - (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,
    - (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

- (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
- (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
- (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization, or
- (v) evidence that the offence was a terrorism offence

shall be deemed to be aggravating circumstances:

[11] And several of those factors are present in this case to which I will refer to later on.

- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

[12] I have considered all of these principles in arriving at my decision on sentence today.

[13] As acknowledged by the Nova Scotia Court of Appeal in *R. v. Muise* (1994), 94 C.C.C. (3d) 119 at para. 83: “..sentencing is not an exact science; it is anything

but. It is the exercise of judgement, taking in to consideration relevant legal principles, the circumstance of the offence and the offender.”

[14] In this case both the Crown and Defence have argued several cases and provided copies of same to me to review in preparation of an appropriate sentence in this matter. The Crown has submitted the following cases for my consideration:

*R. v. Bryan* [2008] N.S.J. No. 569 NSCA

*R. v. Al-Rabie* [2009] N.S.J. No. 220 NSCA

*R. v. Aukaj* [2013] B.C.J. No. 76 BSCC

*R. v. Carelse* [2013] S.J. No. 40 SKQB

*R. v. Carrington* [2002] O.J. No. 2818

*R. v. Lee* [2014] A.J. No. 1318

*R. v. Fulton* [2012] O.J. No. 6569

*R. v. Wishlow* [2013] M.J. No. 129

[15] The Defence has submitted the following cases as well which I have also considered:

*R. v. Safarzadeh-Markhali* [2014] O.J. No. 4194

*R. v. Carrington* [2002] O.J. No. 2818



*R. v. McAndrews* [2012] O.J. No. 4251

*R. v. Pitkeathly* [1994] O.J. No. 546

*R. v. Young* [2014] N.J. No. 353

*R. v. Tarr* [2009] N.S.J. No. 25

*R. v. Bowers* [2010] N.S.J. No. 260

*R. v. Wright* [2004] N.S.J. No. 612

*R. v. Wei Chen*, April 3, 2009 NSCC unreported

[16] These cases were submitted to the Court to allow the Court to see the various range of sentencing provided for sentences such as currently before me. Each case of course, has its own particular set of facts and reasons for sentence and they vary from case to case , as is the situation here. These cases are provided as assistance and guidance to the sentencing judge. For example, in the *Bowers* case referred to above, there was an attempted murder charge, as here, and it was reduced to aggravated assault and a plea of guilty with a joint recommendation of 8 years. The Court accepted such a sentence. In that case the accused shot the injured party but did not quite kill him and the bullet rested near his spine, which in turn rendered him a quadriplegic. He was confined to a wheelchair for the rest of his life. There were other factors involved, but I mention this case to show that

serious repercussions to an injured person can still lead to a justifiable charge of aggravated assault where in the first instance it was a charge of attempted murder.

[17] In this case there was a brutal horrific stabbing and injury to Ms. MacLeod. It is obvious from her Victim Impact Statement and listening to her speak about the horrific impact this has had upon her and her life. It is also a case where her young daughter was able to watch what was going on from an upstairs window. Mr. Gagne himself attempted to end his own life by stabbing himself and by trying to set fire and burn himself.

[18] As I review the sentences for the serious offence of domestic aggravated assault as here, I find the sentence here is individualistic and each case turns on its own particular facts in a combination of aggravating and mitigating circumstances. I find as well that I must consider the aggravating circumstances that are present in this case and I do so now.

[19] The main aggravating factor in this case I find lies in the nature of the offence, the circumstances under which it was committed and the harm caused to Ms. MacLeod. I find this to be a case of extreme domestic violence. The fact that a knife was used in the commission of this offence also adds to the aggravating

circumstances. I am considering as an aggravating circumstance the fact that Ms. MacLeod suffered extensive life threatening injuries which is shown from the medical reports submitted to the Court and from her Victim Impact Statement which she read. Furthermore, as an aggravating circumstance is the fact that her 12 year old daughter was present at the time and saw the goings on outside from an upstairs window.

[20] As to mitigation I consider in this case, firstly, that Mr. Gagne comes before the Court with no prior criminal record, in fact the Court has been advised he has not been involved in any kind of violent domestic behaviour with other partners he had during his life. Secondly, and importantly, Mr. Gagne has entered a meaningful plea of guilty. In so doing he has spared Ms. MacLeod the difficulty of attending to Court, having the matter contested, going through a trial and having to relive the whole of these traumatic events through testimony on one, if not two, occasions and being subject to cross-examination on what occurred. I also believe that Mr. Gagne accepts that his relationship with Ms. MacLeod is over and he no longer plans to cause her any more harm or fear. I also accept as a mitigating factor and believe Mr. Gagne when he tells the Court about his remorse and sorrow about what happened during the course of this incident resulting in the injuries to

Ms. MacLeod. He said this personally, to the Pre-Sentence writer and as well through his counsel.

[21] I am satisfied that this is a case where the Court has to denounce and deter this type of behavior. Society expects the courts to impose serious sentences on persons who commit an offence against their domestic partner or spouse, as the case may be. Society as well expects that individuals that want to leave romantic relationships should be free to get on with their lives without fearing they will become the subject of violence and abuse at the hands of their former partner or lover. Society further expects that the Courts will provide protection to injured parties in this regard.

[22] In *R. v. Bryan* [2008] N.S.C.A. 119 Justice Saunders speaking on behalf of our Court of Appeal said the following at para 59 and I quote:

“Accordingly, sentences imposed in cases involving domestic violence must reflect the seriousness of the offence, the community’s unequivocal denunciation of such conduct, and lead to a sufficiently lengthy period of imprisonment as well provide a specific deterrent to the offender and a general deterrent to other persons who may be similarly disposed”.

[23] There is no doubt in this case that Ms. MacLeod will remember this assault and it will haunt her for a long period of time if not for the rest of her days. That coupled with the fact she knew her young daughter was able to see what was

happening at such a young age also impacts on her suffering. These injuries were vicious and horrific to be viewed by an older person, let alone a person of a young age as Ms. MacLeod's daughter. It would be very traumatic for an adult to witness such a vicious and horrific attack but to have her young daughter see it, to me, is even more horrific.

[24] Both counsel have submitted before me a joint submission relative to sentence. The law is clear on this in that the Court should not reject a joint submission unless it is demonstrably unfit or unreasonable. The Nova Scotia Court of Appeal in the case of *R. v. Brian*, 2008 NSCA 91, Hamilton, J.A. spoke about this when she said in her oral judgement at paragraphs 2 and 3, the following:

[2] The procedure to be followed by a judge faced with a joint recommendation on sentence negotiated in connection with a guilty plea has been set out by this Court numerous times; **R. v. Cromwell**, [2005] N.S.J. No. 428, ¶ 20 and 21, **R. v. MacIvor**, [2003] N.S.J. No. 188, ¶ 31 and 32, and **R. v. G.P.**, [2004] N.S.J. No. 496, ¶15.

[3] In **R. v. MacIvor** Justice Cromwell stated:

[31] ... This requires the sentencing Judge to do more than assess whether it is a sentence he or she would have imposed absent the joint submission: . . .It requires the sentencing Judge to assess whether the jointly submitted sentence is within an acceptable range – in other words, whether it is a fit sentence. If it is, there must be sound reasons for departing from it: . . .

[32] Even where the proposed sentence may appear to the judge to be outside an acceptable range, the Judge ought to give it serious consideration, bearing in mind that even with all appropriate disclosure to the Court, there

are practical constraints on disclosure of important and legitimate factors which may have influenced the joint recommendation.

[25] As well, Beveridge, J.A., in the Nova Scotia Court of Appeal case of *R. v.*

*Fudge* 2013 BSCA 149 said the following at para. 23:

“On September 21, 2012 the trial judge gave an oral decision. He correctly cited the law about joint recommendations. He recognized that it was the Court’s obligation to arrive at the appropriate sentence; a joint recommendation should only be rejected if it would be contrary to the public interest or bring the administration of justice into disrepute”.

[26] I use this decision to show that it is still the law relative to joint recommendations in this province. Counsel for both sides in this case have recommended to the Court a global sentence of 11 years of imprisonment, less credit for pre-sentence custody.

[27] I am satisfied this is well within the range of sentences involved in penalties for a conviction of aggravated assault. It is also, I am satisfied, within the range of attempted murder convictions. I note in *R. v. Brian* supra, that the Court of Appeal in this province said that the starting point upon conviction for attempted murder in a domestic relationship will be 8 years. As I said, the sentence here is 11 years globally.

[28] I am satisfied here after listening to counsel and giving the matter careful consideration that the joint recommendation of a global 11 year sentence is an appropriate sentence in this case.

**STAND UP MR. GAGNE PLEASE**

For these reasons I accept the joint recommendation and I sentence you on Count # 2 to jail for a period of nine (9) years on the aggravated assault (s. 268 of the *Criminal Code*) plus two (2) years consecutive to that sentence in jail on Count # 3 for the arson charge (s. 434 of the *Criminal Code*) offence for a total sentence of incarceration of eleven (11) years, less time spent on remand calculated at one and one-half days for each day of remand. Mr. Gagne has been on remand since June 6, 2012 for a total of 30 months and 11 days. Calculated at one and one-half days for each day of remand, that period of time would amount to 3 years, 9 months, 16 days, pursuant to counsels' calculations as of the last day and my addition of the days from Monday until today. I thus reduce the global sentence by that amount.

[29] In addition, this is a primary designated offence pursuant to s. 487.04 of the *Criminal Code* and thus, pursuant to s. 487.051(1), I make an order in Form 5.03

authorizing the taking of the number of samples of bodily substances from Mr. Gagne that are reasonably required for the purpose of DNA analysis.

[30] Furthermore, I also make an order pursuant to s. 109 of the *Criminal Code* prohibiting Mr. Gagne from possessing any firearm, other than a prohibited firearm or restricted firearm and any cross-bow, prohibited weapon, restricted weapon, ammunition and explosive substance for a period of time commencing today and ending 10 years after his release from custody; and any prohibited firearm, restricted firearm, prohibited weapon, prohibited device and prohibited ammunition for life.

[31] The Crown as well asks the Court for an ancillary Restitution Order pursuant to s. 738 of the *Criminal Code* providing for:

1. The payment of \$1500.00 to Kelly MacLeod to reimburse her for the loss of deductions that she had to pay as a result of the damage caused to her property by Mr. Gagne when he set the place on fire.
2. The Crown also asks for a Restitution Order to Intact Insurance in the amount of \$20,740.73 pursuant to a Proof of Loss for the building which Mr. Gagne burnt and for which he was convicted by way of the arson charge. This is the amount Intact Insurance paid to Kelly MacLeod for the loss of the building.

[32] Crown counsel requesting the above orders has not provided any legal arguments in support of same except for its reliance on s. 738 of the Code.



[33] Ms. Fricker-Bates, Defence Counsel, has agreed with payment of the sum of \$1500.00 to Ms. MacLeod for the loss that she has incurred as a result of the accused's conduct in this matter and it is so ordered.

[34] Ms. Fricker-Bates objects strenuously to the payment of \$20,740.73 to Intact Insurance. Her argument is based on the decision of the Ontario Court of Appeal in *R. v. Popert* [2010] O.J. No. 401. E.E. Gillese, J.J.A., speaking on behalf of the Court said the following at paragraphs 41 and 42:

[41] In this case, the sentencing judge erred in failing to consider the appellant's ability to pay. While the reasons suggest that the sentencing judge was alert to the appellant's inability to pay, there was no attempt to address why that fact was irrelevant in imposing the order. The court was faced with a 22-year-old young man with no employment history, no assets and no employable skills, who was surviving on social assistance and the charity of others. In the circumstances, the appellant did not have the means to pay a restitution order in excess of \$40,000 and it seems unlikely that he ever will be in such a position. It also appears likely that an order of this magnitude would place such a burden on the appellant that it will likely impair his chances of rehabilitation.

[42] Furthermore, when more than one person is involved in the commission of an offence, other considerations must be taken into account in order to ensure that imposition of a restitution order on a given offender does not "work an unfairness as between the perpetrators". In the present case, those considerations include that the insurance company's loss is primarily attributable to the Doucets, who initiated the arson scheme, pursued the insurance claim and received the benefit of the insurance money; apparently no restitution order was made against the Doucets; and, the appellant received no money for his role in the offence.

I find, after reading this, that the Court has to entertain the evidence before it in order to determine whether or not Mr. Gagne acted alone and whether or not he might have the ability to repay and what impact it might have on he and his life when he is released. That evidence I find from the Pre-Sentence Report and as well the remarks of Counsel reveal that Mr. Gagne will have a very limited income when he is released from jail. He will, as I see it in all likelihood, be receiving a pension. The amount of pension as supplied to the Court is of such a low figure that I do not feel that he will be in a position to have the means to pay a Restitution Order in excess of \$20,000.00. As in *R. v. Popert*, could impact on his rehabilitation. The Court also feels that Mr. Gagne has adequately been punished for his role in the offence by the sentence he received.

[35] I conclude considering all the facts and the arguments of Counsel that the imposition of the Restitution Order would be an unfairness to him and I decline to grant the order of repayment to Intact Insurance.

[36] To conclude, I once again thank Counsel for the very capable and detailed arguments they put forward. I extend to Ms. MacLeod the Court's best wishes for the future, that hopefully she will overcome her injuries and the loss that she has sustained as a result of the terrible actions of Mr. Gagne on the day in question. The Court hopes that she will be able to move on with her life now that this matter

is behind her. The Court also hopes that she will accept the regret of Mr. Gagne as to what occurred. It must always be remembered by the length of this sentence that domestic abuse of partners will not be condoned by the courts.

[37] As a result of his actions, Mr. Gagne is going to be serving a global amount of eleven (11) years in jail. This is a fairly lengthy sentence for a first time offender and should serve notice to others who are so inclined that this could be the result upon conviction in similar circumstances.

MacDonald, J.

Exhibit No.: 1

Date: Dec 15, 2014

Case No.: 422891

Name of Case:

v. Rene Gagne

Entered by:

Court:  Supreme  Provincial

Family  
Clerk: Deborah McNeill

PART 2

D. Shane Russell  
Patricia Tucker-Bates

PREED STATEMENT OF FACTS

1. The accused, Rene Gagne, was born on March 30, 1947. He has no prior criminal record. Currently, he is 67 years of age. On June 6, 2012, Mr. Gagne was 65 years old. He suffers from Paget's disease (diagnosed while working in Alberta in 2011), from hypertension, has had several surgeries, and takes multiple medications for high blood pressure, osteoporosis, cholesterol, and depression.
2. Kelly Anne MacLeod (DOB: 1965/09/29 - 49 years) resided at 739 Mill Pond Road in Millville, Cape Breton Regional Municipality with her three children: Megan MacLeod; 18 years, Joseph MacLeod, 13 years; and Katherine MacLeod "Katie", 12 years. In 2007, Kelly MacLeod met the accused, Rene Gagne (DOB: 1947/03/30 67 years) at a motorcycle rally and a relationship soon developed between both the victim and the accused. Both parties shared a passion for motorcycles and attended several rallies and gatherings related to that common interest.
3. The relationship between the accused and victim developed and over time became an intimate dating relationship by 2009. The accused was at times employed in the western provinces and would sometimes stay at the victim's residence with her children. The accused did not reside at the victim's residence on a regular basis and three month's prior to the ~~alleged~~ offence had moved in with his son, Jessie Gagne at 2591 MacKinnon's Harbour in Iona.
4. The relationship between the accused and victim began to deteriorate and according to the victim, she indicated to Mr. Gagne that she wanted to remain friends and that it was not his fault. Approximately a week before the June 6, 2012 ~~allegations~~, the accused had removed the remainder of his belongings from the victim's residence in Millville. It was an emotionally difficult period for both

Mr. Gagne and Ms. Kelly MacLeod as, in the previous four (4) months they struggled to maintain their relationship. According to Mr. Gagne he felt as though Ms. MacLeod had been pushing him away by ending the relationship then other times calling him for help.

5. On the day before the incident, Mr. Gagne states that Ms. MacLeod had contacted him by telephone asking if he was mad and staying away. However, the next day she wouldn't return his phone calls and he ended up going to her home. In the Consultation Report of Yvonne E. Libbus, MD, FRCPC, Psychiatry, relative to a consult with Mr. Gagne on June 7, 2012, she writes:

He was able to describe going over to his girlfriend's home, and I believe it was in the Millville area when she didn't answer the phone in the morning; and he said sometimes she just doesn't do that, so he drove down there. This was typical behaviour. He denied that he was experiencing any major concerns at that time, but when he went into the home the dynamic between the two became more tense. At one point in time, she turned her back to him, and he says he just "lost it". He says "I saw black". The next event he talked about was stabbing himself with the knife in the stomach and neck in an attempt to die. He also put gasoline on his head. He could describe seeing the blood all over his body when he was walking out to the shed or his garage to put gasoline on himself. He tried to light himself on fire after he had taken several pills that he had access to in order to numb some of the pain or to knock himself out.

6. At the time of the incident on June 6, 2012, Mr. Gagne had a prescription for Oxycodone. The prescription had been issued by Dr. Roland Genge and was filled on April 10, 2012, for 100 5mg/325 mg of Oxycodone to be taken three times a day as needed. At 11:36 a.m. on June 7, 2012, Cst. R. Morrison seized an empty pill bottle with no lid from the driver's seat of the red Dodge Ram pickup parked at the crime scene, having been driven there by Mr. Gagne on June 6, 2012. Also seized from the crime scene was a folding knife with a silver frame and a three-inch blade.
7. On June 6, 2012, the accused left his residence after telling his son that he was going to town to pay the insurance bill. The accused drove directly to the residence of the victim and parked in the driveway at approximately 10:00 a.m.

The accused then proceeded to the door of the victim's residence. At this time, there were two individuals inside the home at 739 Mill Pond Road. The victim, Kelly MacLeod and her 12 year old daughter, Katherine "Katie" MacLeod who was home because she had missed the school bus that morning. When Katie advised her mother that the accused was at the door, the victim requested that she go upstairs. The victim was not expecting to see the accused on this date and had ignored his calls earlier that morning. When the accused entered the residence, the victim was seated on a couch. The accused stated "I'm here" to which the victim replied "I see that". The accused said something to the effect of "are we going to talk" at which time the victim stood up to get a cup of coffee. This prompted the accused to ask "is this it then?" The victim responded to the accused "I guess so". It was at this moment in time that the accused took a knife from his pocket, grabbed the victim and stabbed her. The victim then struggled with the accused at which point she was stabbed a second time. The victim yelled to her 12 year old daughter to call 911 and managed to kick the accused down a few steps inside the residence.

8. The Complainant, Ms. MacLeod, described the initial June 6, 2012, encounter at page 10 of her June 26, 2012 statement.

And the main door is there, so he had to come in and then so he had his hip and his hand to the back of the sofa, of the little one. When he got in the door he was just standing there, he says, well I'm here. I'm trying not to be saucy cause when I'm tired and I'm not, really I'm just not in the mood and I just sort of said I see that. And I mean there wasn't any discussion for him to come but there wasn't any discussion about him not coming. We just hadn't had any discussion. I'd been avoiding his phone calls too, just because I don't have the energy to deal with anything. I'm having my own personal health issues on top of which I just can't defend myself and that and then have to try to deal with Rene and his feelings and everything else on top. ... So, like I said, I was going to go get my coffee. ... [A]nd he said well, and I said to him I said well, he said well is this it? And I didn't have a clue what he was talking about and I said well I guess so. And, like I said, I don't know what he was talking about. I didn't know if he meant I was just in one of my moods cause I've been in many moods. My thyroid's out of whack. I'm having a lot of pain. I've got a herniated disk from a workplace injury. So everything of myself, personally, is out of whack. I'm, I think he was meaning more deeper, is this it? Are we finished? Are we through? But at that point I really honestly didn't know and I was just like, yeah, I guess so but there

was no clarification as to what he was really, truly meaning. Is this it, meaning is it over or is this it that this is the mood I'm going to be in?

I must have instinctively was thinking that maybe he was talking it over because I was sort of, we were babbling back and forth whether or not, we were trying to make it work. I wasn't trying to dump him. I wasn't trying, I was just trying to be healthy myself and to be normal.

And he said well is this it, then? This is it then. I was like yeah I guess so. Not really knowing exactly what he was meaning by this is it then, but I think maybe instinctively I did know like we are over.

But I didn't say yes we were over. I'm just being saucy because I didn't have the energy and I didn't have the patience. I was like yeah I guess, I guess it is, or something along that saucy line. And then, before I know it, he stood up and said okay then and grabbed a hold of me.

9. The victim then ran outside and was chased by the accused who caught her near the end of her driveway. The accused was able to get on top of her and continued stabbing her with the knife in the back, arms, and chest. Ultimately, her throat was slashed. The accused then started to stab himself at which point the victim was able to stumble towards her neighbour's residence. The victim, upon entering the neighbour's residence lay on the floor bleeding profusely until 911 was called. Some of this occurrence was witnessed by the 12 year old daughter Katie MacLeod from an upstairs window. Katie MacLeod had locked herself in an upstairs bedroom after hearing her mother's screams from inside the residence.
10. At approximately 10:26 a.m., Cst. Wayne Lewis of the Cape Breton Regional Police Service attended the scene. Upon arrival, Cst. Lewis observed a young female, later identified as Katie MacLeod upstairs looking out a window and also observed a male person later identified as the accused, Rene Gagne. Cst. Lewis noted that the accused was walking into a barn located next to the residence and that this barn was on fire. It was at this point Cst. Lewis shouted on two occasions for him to come out and the accused replied "leave me alone, I want to die". Ultimately, Cst. Lewis stepped inside the burning barn and physically removed the accused from the burning barn. Cst. Lewis noted that the accused

appeared to drop an object inside the burning barn which he believed to be a knife.

11. It was at this point that the accused was advised that he was under arrest for assault and provided with his Charter Rights. Cst. Lewis observed that the accused had a large cut to his own throat and a puncture wound to his chest. While lying on the ground, the accused spontaneously uttered to Cst. Lewis that he "wanted to die" and for Cst. Lewis to "take his gun out and shoot him because his life was ruined". Cst. Lewis asked the accused what had happened and he responded "I did it; I stabbed her and then myself". Cst. Terry Pearcey who was also at the scene and had some interaction with the accused. Cst. Pearcey indicated that the accused spontaneously uttered that "he just wanted to die".
12. The accused was transported to the Cape Breton Regional Hospital at which time he was treated for various self-inflicted injuries. These injuries included a series of lacerations to his neck and chest area as well as a drug overdose.
13. Cst. Pearcey discovered the victim lying on the living room floor of the neighbour's residence with large lacerations to her throat, below her left breast and under her left arm. The victim was transported to the Cape Breton Regional Hospital and treated for an extensive number of stab wounds. In summary, her injuries consisted of (1) a slash to her throat deep enough to expose her trachea; (2) extensive and deep stab wounds and lacerations to her left arm, hands, back and chest; and (3) stab wounds to her abdominal area resulting in resection of a piece of her liver. The victim had to be intubated and required a feeding tube. For several days, the victim was kept in the ICU Unit on a ventilator. [Tab 1 medical records] The victim was left with permanent scarring as a result of her stab wounds. The scarring is in several areas including her neck, back, stomach, chest and arms. [Tab 2 photographs]



14. During the transport to the hospital, the victim advised Cst. Pearcey that she was in a relationship with the accused for a period of three years. She advised that the accused wanted to know if the relationship was over, put his hands in his pocket, retrieved a knife and began stabbing her. She confirmed that she was able to push him down the stairs and run outside. The accused chased after her, stabbed her again several times and continued to do so while sitting on top of her. Finally, the victim indicated that Mr. Gagne turned the knife on himself, eventually got up off her and walked away. She confirmed that she was eventually able to make her way to the neighbour's residence in an effort to get help.
  
15. Cst. James Sophocleous of the Cape Breton Regional Police Service also attended the scene and observed the garage next to the residence fully engulfed in flames. Cst. Sophocleous noted that after reading the accused his secondary caution, he stated that he sliced his own throat and stabbed himself in the chest. The accused also indicated that he took 14 Oxycotin pills and wanted to kill himself. The accused further advised Cst. Sophocleous that in an effort to kill himself he poured gasoline all around the garage and over himself. He advised that he set the garage on fire and the knife he used was lying next to the motorbike inside this garage. The accused confirmed to a psychiatrist that he took the Oxycotin pills at some point after stabbing the victim and himself.
  
16. The accused advised several attending paramedics that his injuries were self-inflicted, that he stabbed the victim before he stabbed himself, and that he tried to kill himself as "he wanted to die".
  
17. The Crown accepts that Mr. Gagne did not intentionally go to Ms. MacLeod's residence that morning with the intent of harming her. However, the intent to harm her came about during the course of the discussions while inside Ms. MacLeod's residence. The Crown further accepts that although Mr. Gagne

intended to inflict serious bodily harm to Ms. MacLeod which endangered her life  
he did not formulate the intent to murder.

Exhibit No.: 1

Date: Dec 15, 2014

Case No.: 422891

Name of Case:

v. Rene Gagne

Entered by:

Court:  Supreme  Provincial

Family  
Clerk: Deborah McNeill

PART 2

D. Shane Russell  
Patricia Tucker-Bates

PREED STATEMENT OF FACTS

1. The accused, Rene Gagne, was born on March 30, 1947. He has no prior criminal record. Currently, he is 67 years of age. On June 6, 2012, Mr. Gagne was 65 years old. He suffers from Paget's disease (diagnosed while working in Alberta in 2011), from hypertension, has had several surgeries, and takes multiple medications for high blood pressure, osteoporosis, cholesterol, and depression.
2. Kelly Anne MacLeod (DOB: 1965/09/29 - 49 years) resided at 739 Mill Pond Road in Millville, Cape Breton Regional Municipality with her three children: Megan MacLeod; 18 years, Joseph MacLeod, 13 years; and Katherine MacLeod "Katie", 12 years. In 2007, Kelly MacLeod met the accused, Rene Gagne (DOB: 1947/03/30 67 years) at a motorcycle rally and a relationship soon developed between both the victim and the accused. Both parties shared a passion for motorcycles and attended several rallies and gatherings related to that common interest.
3. The relationship between the accused and victim developed and over time became an intimate dating relationship by 2009. The accused was at times employed in the western provinces and would sometimes stay at the victim's residence with her children. The accused did not reside at the victim's residence on a regular basis and three month's prior to the ~~alleged~~ offence had moved in with his son, Jessie Gagne at 2591 MacKinnon's Harbour in Iona.
4. The relationship between the accused and victim began to deteriorate and according to the victim, she indicated to Mr. Gagne that she wanted to remain friends and that it was not his fault. Approximately a week before the June 6, 2012 ~~allegations~~, the accused had removed the remainder of his belongings from the victim's residence in Millville. It was an emotionally difficult period for both

Mr. Gagne and Ms. Kelly MacLeod as, in the previous four (4) months they struggled to maintain their relationship. According to Mr. Gagne he felt as though Ms. MacLeod had been pushing him away by ending the relationship then other times calling him for help.

5. On the day before the incident, Mr. Gagne states that Ms. MacLeod had contacted him by telephone asking if he was mad and staying away. However, the next day she wouldn't return his phone calls and he ended up going to her home. In the Consultation Report of Yvonne E. Libbus, MD, FRCPC, Psychiatry, relative to a consult with Mr. Gagne on June 7, 2012, she writes:

He was able to describe going over to his girlfriend's home, and I believe it was in the Millville area when she didn't answer the phone in the morning; and he said sometimes she just doesn't do that, so he drove down there. This was typical behaviour. He denied that he was experiencing any major concerns at that time, but when he went into the home the dynamic between the two became more tense. At one point in time, she turned her back to him, and he says he just "lost it". He says "I saw black". The next event he talked about was stabbing himself with the knife in the stomach and neck in an attempt to die. He also put gasoline on his head. He could describe seeing the blood all over his body when he was walking out to the shed or his garage to put gasoline on himself. He tried to light himself on fire after he had taken several pills that he had access to in order to numb some of the pain or to knock himself out.

6. At the time of the incident on June 6, 2012, Mr. Gagne had a prescription for Oxycodone. The prescription had been issued by Dr. Roland Genge and was filled on April 10, 2012, for 100 5mg/325 mg of Oxycodone to be taken three times a day as needed. At 11:36 a.m. on June 7, 2012, Cst. R. Morrison seized an empty pill bottle with no lid from the driver's seat of the red Dodge Ram pickup parked at the crime scene, having been driven there by Mr. Gagne on June 6, 2012. Also seized from the crime scene was a folding knife with a silver frame and a three-inch blade.
7. On June 6, 2012, the accused left his residence after telling his son that he was going to town to pay the insurance bill. The accused drove directly to the residence of the victim and parked in the driveway at approximately 10:00 a.m.

The accused then proceeded to the door of the victim's residence. At this time, there were two individuals inside the home at 739 Mill Pond Road. The victim, Kelly MacLeod and her 12 year old daughter, Katherine "Katie" MacLeod who was home because she had missed the school bus that morning. When Katie advised her mother that the accused was at the door, the victim requested that she go upstairs. The victim was not expecting to see the accused on this date and had ignored his calls earlier that morning. When the accused entered the residence, the victim was seated on a couch. The accused stated "I'm here" to which the victim replied "I see that". The accused said something to the effect of "are we going to talk" at which time the victim stood up to get a cup of coffee. This prompted the accused to ask "is this it then?" The victim responded to the accused "I guess so". It was at this moment in time that the accused took a knife from his pocket, grabbed the victim and stabbed her. The victim then struggled with the accused at which point she was stabbed a second time. The victim yelled to her 12 year old daughter to call 911 and managed to kick the accused down a few steps inside the residence.

8. The Complainant, Ms. MacLeod, described the initial June 6, 2012, encounter at page 10 of her June 26, 2012 statement.

And the main door is there, so he had to come in and then so he had his hip and his hand to the back of the sofa, of the little one. When he got in the door he was just standing there, he says, well I'm here. I'm trying not to be saucy cause when I'm tired and I'm not, really I'm just not in the mood and I just sort of said I see that. And I mean there wasn't any discussion for him to come but there wasn't any discussion about him not coming. We just hadn't had any discussion. I'd been avoiding his phone calls too, just because I don't have the energy to deal with anything. I'm having my own personal health issues on top of which I just can't defend myself and that and then have to try to deal with Rene and his feelings and everything else on top. ... So, like I said, I was going to go get my coffee. ... [A]nd he said well, and I said to him I said well, he said well is this it? And I didn't have a clue what he was talking about and I said well I guess so. And, like I said, I don't know what he was talking about. I didn't know if he meant I was just in one of my moods cause I've been in many moods. My thyroid's out of whack. I'm having a lot of pain. I've got a herniated disk from a workplace injury. So everything of myself, personally, is out of whack. I'm, I think he was meaning more deeper, is this it? Are we finished? Are we through? But at that point I really honestly didn't know and I was just like, yeah, I guess so but there

was no clarification as to what he was really, truly meaning. Is this it, meaning is it over or is this it that this is the mood I'm going to be in?

I must have instinctively was thinking that maybe he was talking it over because I was sort of, we were babbling back and forth whether or not, we were trying to make it work. I wasn't trying to dump him. I wasn't trying, I was just trying to be healthy myself and to be normal.

And he said well is this it, then? This is it then. I was like yeah I guess so. Not really knowing exactly what he was meaning by this is it then, but I think maybe instinctively I did know like we are over.

But I didn't say yes we were over. I'm just being saucy because I didn't have the energy and I didn't have the patience. I was like yeah I guess, I guess it is, or something along that saucy line. And then, before I know it, he stood up and said okay then and grabbed a hold of me.

9. The victim then ran outside and was chased by the accused who caught her near the end of her driveway. The accused was able to get on top of her and continued stabbing her with the knife in the back, arms, and chest. Ultimately, her throat was slashed. The accused then started to stab himself at which point the victim was able to stumble towards her neighbour's residence. The victim, upon entering the neighbour's residence lay on the floor bleeding profusely until 911 was called. Some of this occurrence was witnessed by the 12 year old daughter Katie MacLeod from an upstairs window. Katie MacLeod had locked herself in an upstairs bedroom after hearing her mother's screams from inside the residence.

10. At approximately 10:26 a.m., Cst. Wayne Lewis of the Cape Breton Regional Police Service attended the scene. Upon arrival, Cst. Lewis observed a young female, later identified as Katie MacLeod upstairs looking out a window and also observed a male person later identified as the accused, Rene Gagne. Cst. Lewis noted that the accused was walking into a barn located next to the residence and that this barn was on fire. It was at this point Cst. Lewis shouted on two occasions for him to come out and the accused replied "leave me alone, I want to die". Ultimately, Cst. Lewis stepped inside the burning barn and physically removed the accused from the burning barn. Cst. Lewis noted that the accused

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