<u>SUPREME COURT OF NOVA SCOTIA</u>

Citation: *R. v. Beckett*, 2023 NSSC 145

Date: 20230516
Docket: *Hfx*, No. 504451
Registry: Halifax

Between:

His Majesty the King

v.

Stephen Alexander Beckett

Sentencing Decision

Judge: The Honourable Justice Christa M. Brothers

Heard: May 16, 2023, in Halifax, Nova Scotia

Counsel: Melanie A. Perry and Kim McOnie, for the Crown
Jonathan Hughes, for the Defendant

By the Court:

Overview

[1] Stephen Alexander Beckett was charged in a one-count indictment as follows:

> That he on or about the 2nd day of April, 2020, at or near Hammonds Plains, Nova Scotia did unlawfully cause the death of Tracey MACKENZIE, and did thereby commit second degree murder, contrary to Section 235(1) of the *Criminal Code.*

[2] On February 13, 2023, Mr. Beckett re-elected to proceed by judge alone and entered a plea of guilty. In a joint recommendation for sentencing, the Crown and defence propose that:

1. Mr. Beckett be sentenced to life imprisonment with the period of parole ineligibility set at 11 years;
2. Mr. Beckett be subject to a section 109 firearms prohibition order (mandatory) for a period of 15 years; and,
3. Mr. Beckett be ordered to provide a sample of his DNA (mandatory).

Background

[3] An Agreed Statement of Facts was exhibited in this sentencing. The Agreed Statement of Facts are as follows:

> On April 2, 2020, at 2:20 p.m., police were dispatched to 495 Glen Arbour Way in Hammonds Plains, Nova Scotia. Mr. Beckett had called 911 and reported to the 911 dispatcher that someone needed to come arrest him as he had killed his girlfriend. Mr. Beckett reported that his girlfriend was Tracy MacKenzie ("Ms. MacKenzie") and that she had been cheating on him with a drug dealer. Ms. MacKenzie was 35 years of age at the time.
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> When the police arrived at 495 Glen Arbour Way and confirmed that Ms. MacKenzie was deceased on the kitchen floor; they noted a large amount of blood and what appeared to be stab wounds to Ms. MacKenzie's neck. A bloody knife was located on the kitchen counter.
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> In his subsequent interview with the police, Mr. Beckett disclosed that he suspected that Ms. MacKenzie had been having an affair with her drug dealer and he confronted her about it; an argument ensured. Mr. Beckett said that at one point during the argument, Ms. MacKenzie threw an ashtray at him. Mr. Beckett stopped short of describing to the police the actual killing of Ms. MacKenzie; however, he told police that after he killed Ms. MacKenzie, he left the bloody knife on the

> counter, showered and put on fresh clothing. It was at that point that he called the police.
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> Dr. Erik Mont ("Dr. Mont") of the Medical Examiner's office conducted an autopsy on Ms. MacKenzie. Dr. Mont concluded that the cause of Ms. MacKenzie's death was stab wounds of the neck and thorax. Ms. MacKenzie suffered a total of 10 stab wounds to her left shoulder, her neck, her back and her thorax. She also suffered multiple superficial sharp force injuries of her wrists and hands which were consistent with defensive wounds.

[4] In this decision, I will review the applicable sentencing principles, the specific circumstances of this offence and offender, and the relevant case law.

Law and Analysis

[5] Section 235(1) of the *Criminal Code* dictates the punishment for second degree murder:

> 235 (1) Every one who commits first degree murder or second degree murder is guilty of an indictable offence and shall be sentenced to imprisonment for life.

[6] The offence of second degree murder carries an automatic sentence of life imprisonment. Mr. Beckett was arrested for the offence on April 2, 2020 and has consented to his remand since that time. Pursuant to section 746(a) of the *Criminal Code*, the calculation of the period of imprisonment to be served by Mr. Beckett should include the remand period from April 2, 2020 until the date parole ineligibility is set.

[7] By the Crown's calculation, as of today (May 16, 2023), Mr. Beckett has served a pre-sentence custodial period of 1,140 days.

[8] Pursuant to sections 745(c) and 745.4 of the *Criminal Code*, the court must set Mr. Beckett's period of parole ineligibility from between 10 to 25 years. In doing so, the court has to consider the character of the offender, the nature of the offence, the circumstances surrounding its commission, and the recommendation of the jury, if any, made pursuant to section 745.2 of the *Criminal Code*. Sections 745(c) and 745.4 state:

> 745 Subject to section 745.1, the sentence to be pronounced against a person who is to be sentenced to imprisonment for life shall be
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> …

> (c) in respect of a person who has been convicted of second degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served at least ten years of the sentence or such greater number of years, not being more than twenty-five years, as has been substituted therefor pursuant to section 745.4;
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> …
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> 745.4 Subject to section 745.5, at the time of the sentencing under section 745 of an offender who is convicted of second degree murder, the judge who presided at the trial of the offender or, if that judge is unable to do so, any judge of the same court may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, and to the recommendation, if any, made pursuant to section 745.2, by order, substitute for ten years a number of years of imprisonment (being more than ten but not more than twenty-five) without eligibility for parole, as the judge deems fit in the circumstances.

[9] I start by reviewing the purpose and general principles of sentencing. The fundamental purpose of sentencing is found in section 718 of the *Criminal Code*:

> 718 The fundamental purpose of sentencing is to protect society and 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:
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> > (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
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> > (b) to deter the offender and other persons from committing offences;
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> > (c) to separate offenders from society, where necessary;
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> > (d) to assist in rehabilitating offenders;
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> > (e) to provide reparations for harm done to victims or to the community; and
> >
> > (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[10] A fundamental principle of sentencing, set out at 718.1, is that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Section 718.2 identifies other sentencing principles which must be considered, including:

1. The sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender (s. 718.2(a)); and,

2. The sentence should be similar to sentences imposed on similar offenders for similar offences, committed in similar circumstances (s. 718.2(b)).

[11] Every sentencing hearing requires a careful consideration of the unique circumstances of each offender and the offence. It requires a delicate balancing of the various sentencing objectives and principles.

[12] These principles, along with the factors identified at section 745.4, must guide the court in exercising its discretion to impose a period of parole ineligibility of at least 10 years but not more than 25 years.

[13] In *R. v. Shropshire*, [1995] 4 S.C.R. 227, the Supreme Court of Canada reviewed the factors and principles that should guide a trial judge in determining whether to extend the period of parole ineligibility in relation to a second degree murder conviction beyond the statutory minimum of ten years. The court rejected the British Columbia Court of Appeal's statement that there are only two factors to consider in justifying an enhanced period of parole ineligibility: (1) an assessment of future dangerousness, and (2) denunciation. After reviewing the statutory language of section 744 (now 745.4), the court noted:

> 18 The determination under s. 744 [now 745.4] is thus a very fact-sensitive process. The factors to be considered in fixing an extended period of parole ineligibility are:
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> (1) the character of the offender;
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> (2) the nature of the offence; and
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> (3) the circumstances surrounding the commission of the offence;
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> all bearing in mind the discretionary power conferred on the trial judge.

[14] The court clarified that deterrence is a relevant consideration in the s. 745.4 analysis:

> 19 "Deterrence" is also a relevant criterion in justifying a s. 744 [now 745.4] order. Parole eligibility informs the content of the "punishment" meted out to an offender: for example, there is a very significant difference between being behind bars and functioning within society while on conditional release. Consequently, I believe that lengthened periods of parole ineligibility could reasonably be expected to deter some persons from reoffending. Such is also the position of a variety of provincial appellate courts, from which the British Columbia Court of Appeal presently diverges: *R. v. Wenarchuk* (1982), 67 C.C.C. (2d) 169 (Sask. C.A.); *R. v. Mitchell* (1987), 39 C.C.C. (3d) 141 (N.S.C.A.); *R. v. Young* (1993), 78 C.C.C. (3d) 538 (N.S.C.A.); *R. v.*

> *Able* (1993), 65 O.A.C. 37 (C.A.); *R. v. Ly* (1992), 72 C.C.C. (3d) 57 (Man. C.A.), *per* Twaddle J.A. (Scott C.J.M. concurring), at p. 61: "Parliament's purpose in adding a minimum period of parole ineligibility to a life sentence was, in my view, twofold. It was to deter and denounce the crime".
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> …
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> 23 The only difference in terms of punishment between first and second degree murder is the duration of parole ineligibility. This clearly indicates that parole ineligibility is part of the "punishment" and thereby forms an important element of sentencing policy. As such, it must be concerned with deterrence, whether general or specific. The jurisprudence of this Court is clear that deterrence is a well-established objective of sentencing policy. In *R. v. Lyons*, [1987] 2 S.C.R. 309, La Forest J. held at p. 329:
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>> In a rational system of sentencing, the respective importance of prevention, deterrence, retribution and rehabilitation will vary according to the nature of the crime and the circumstances of the offender. No one would suggest that any of these functional considerations should be excluded from the legitimate purview of legislative or judicial decisions regarding sentencing.
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> Section 744 [now 745.4] must be concerned with all of the factors cited in *Lyons*. In *R. v. Luxton*, [1990] 2 S.C.R. 711, the importance of structuring sentences to take into account the individual accused and the particular crime was emphasized. This is also a factor that any order made pursuant to s. 744 [now 745.4] ought to take into consideration.

[15] The court in *Shropshire* explained the standard to be met before a period of parole ineligibility longer than ten years is warranted:

> 27 In my opinion, a more appropriate standard, which would better reflect the intentions of Parliament, can be stated in this manner: as a general rule, the period of parole ineligibility shall be for 10 years, but this can be ousted by a determination of the trial judge that, according to the criteria enumerated in s. 744, the offender should wait a longer period before having his suitability to be released into the general public assessed. To this end, an extension of the period of parole ineligibility would not be "unusual", although it may well be that, in the median number of cases, a period of 10 years might still be awarded.
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> 29 Section 742(*b*) of the *Code* provides that a person sentenced to life imprisonment for second degree murder shall not be eligible for parole "until he has served at least ten years of his sentence or such greater number of years, not being more than twenty-five years, as has been substituted therefor pursuant to section 744". In permitting a sliding scale of parole ineligibility, Parliament intended to recognize that, within the category of second degree murder, there will be a broad range of seriousness reflecting varying degrees of moral culpability. As a result, the period of parole ineligibility for

> second degree murder will run anywhere between a minimum of 10 years and a maximum of 25, the latter being equal to that prescribed for first degree murder. The mere fact that the median period gravitates towards the 10-year minimum does not, *ipso facto*, mean that any other period of time is "unusual".
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> …
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> 31 If the objective of s. 744 is to give the trial judge an element of discretion in sentencing to reflect the fact that within second degree murder there is both a range of seriousness and varying degrees of moral culpability, then it is incorrect to start from the proposition that the sentence must be the statutory minimum unless there are unusual circumstances. As discussed *supra*, a preferable approach would be to view the 10-year period as a minimum contingent on what the "judge deems fit in the circumstances", the content of this "fitness" being informed by the criteria listed in s. 744. As held in other Canadian jurisdictions, the power to extend the period of parole ineligibility need not be sparingly used.

[16] In *R. v. Hawkins,* 2011 NSCA 7, the court noted that following the release of *R. v. Shropshire, supra*, Parliament amended the *Code* by introducing sections 718 – 718.2 codifying many of the principles established by decades of caselaw but also clarifying an approach to be taken by courts in exercising their discretion in imposing a sentence.

[17] In *Hawkins*, *supra*, the court noted that specific deterrence is not a relevant factor requiring extension of the parole ineligibility period where there is no indication of persistent danger to re-offend to justify extension. An increased period of parole ineligibility may serve to express denunciation and the community's revulsion over the offence. It may also provide some scope for general deterrence, but this factor should not be overemphasized. General deterrence is not the overwhelming imperative of an increased period of parole ineligibility.

[18] In setting the period of parole ineligibility, my consideration of the factors in section 745.4 will be informed by the statutorily mandated principles of sentencing, including the principles of restraint (s. 718.2(d)) and parity (s. 718.2(b)). Decisions on parole ineligibility with respect to similar offenders who committed similar offences in similar circumstances can serve as a rough guide in identifying relevant aggravating and mitigating circumstances.

[19] In *R. v. Doyle*, 2003 NLSCTD 20, affirmed at 2004 NLCA 64, Chief Justice Green outlined a number of relevant considerations in applying the factors under s. 745.4. Along with the principles of sentencing which I have just outlined, he said at paragraph 31:

> The factors under section 745.4 can be further broken down into the following relevant considerations:
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> (a) Character of the Offender:
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> (i) general background;
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> (ii) previous criminal record and lifestyle;
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> (iii) medical and psychiatric history;
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> (iv) capacity for future dangerousness;
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> (v) attitude, including remorse and victim empathy;
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> (vi) motivation;
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> (vii) mitigating circumstances, such as the entry of a guilty plea, and cooperation with the investigation,
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> (b) Nature of the Offence
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> (i) nature of the crime,
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> (ii) victim impact,
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> (c) Circumstances surrounding the commission of the offence
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> (i) the manner in which the death was caused, including the infliction of any gratuitous, excessive or sadistic violence,
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> (ii) explanation by the offender, or any lack of explanation,
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> (iii) planning and deliberation,
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> (iv) influence, if any, of alcohol or drugs.

[20] I will review the section 745.4 factors below.

Circumstances of the Offender

Pre-Sentence Report

[21] A pre-sentence report was ordered with regards to Mr. Beckett. He is 48 years of age and is the oldest of his parents' three children. His father is retired from a career in sales and his mother is a retired childcare provider. They are both 73 years of age.

[22] Mr. Beckett was interviewed for the pre-sentence report and indicated that his parents have been married for 48 years and that he has always had an "excellent" relationship with both of them. Mr. Beckett was born in Moncton, New Brunswick, and moved with his family to Nova Scotia when he was one year old. He acknowledged that he had an exceptional childhood, noting that he and his brothers

"had what other kids would dream of." He said his father frequently took them to parks and museums. They also went camping and on lots of other "outings". He denied witnessing any form of abuse within his household.

[23] Mr. Beckett disclosed that he was sexually assaulted by an older kid in his neighborhood and it was not reported to the police. He left home at the age of 19, residing with friends for approximately three years. He then moved in with his girlfriend, who later became his wife. His marriage lasted for 15 years and ended in divorce in 2011. He has never remarried and has no children. His last relationship lasted ten months and was with the victim, Tracy MacKenzie. He met Ms. MacKenzie in 2019 and she subsequently moved in with him. They were residing together at the time of the offence.

[24] Mr. Beckett graduated from high school in 1992 and completed three years of a four year university degree in computer sciences/arts. He has a significant employment history which appears to have been interrupted at some point as a result of a substance abuse issue. He has previously been diagnosed with depression and attention deficit hyperactivity disorder. He noted that he takes four prescribed medications and was waiting to be seen by a psychiatrist at the Northeast Nova Scotia Correctional Facility.

[25] Mr. Beckett disclosed a history of substance use and abuse. He began struggling with cocaine addiction eight years prior to this offence. In 2017, he attended a 30-day treatment program at Crosby House. He had "slips" after that time, and his cocaine use increased after he met Ms. MacKenzie. He stated that he and Ms. MacKenzie were both snorting and smoking cocaine at times. Mr. Beckett reported using cocaine four times per week before the offence.

[26] Mr. Beckett did not take the opportunity to provide collateral resources for the pre-sentence report, stating, "My parents are elderly and their health is not good. I have not seen them in so long, they would be of no help".

[27] During the interview, Mr. Beckett became emotional while discussing the murder, stating, "I didn't mean for it to happen." He said he "blacked out" and does not recall stabbing Ms. MacKenzie. He acknowledged that he called 911 after he realized what happened.

[28] Mr. Beckett has a prior criminal history. In 2016, he was convicted of impaired driving and breach of recognizance. In 2017, he was convicted of two failures to comply with a recognizance and undertaking, a failure to stop at an

accident, impaired driving and also possession of cocaine. His probation officer was contacted and indicated that Mr. Beckett appeared to follow the conditions placed on him, had paid over $5,000 towards his court fines, and reported maintaining self-employment and attending Narcotic Anonymous meetings.

[29] The author of the pre-sentence report, probation officer Keeler, noted that the subject's main area of concern appears to be substance abuse. His areas of strength include that he is educated and has held steady employment in the past. Mr. Beckett also has had struggles with depression and ADHD which can be significant impairments for some. While in custody. I trust he will be given access to supports for both of these conditions.

Victim Impact Statements

[30] There have been no victim impact statements submitted to the court for consideration. I appreciate and understand that Ms. MacKenzie's family has chosen not to file Victim Impact Statements. However, her mother, sister, aunt and two uncles are in the courtroom. I have not been afforded the privilege of hearing from those who were close to Ms. MacKenzie and who have been affected by this unfathomable crime. I do not have any information about Ms. MacKenzie, who she was and what she meant to her family and friends. But, I do know this. Her life mattered. At 35 years of age she had a lot of life left to live. Mr. Beckett took that away. Now, she will not have the opportunity to realize whatever goals and dreams she may have had. As I render this sentence, I acknowledge any period of parole ineligibility will be cold comfort to Ms. MacKenzie's loved ones. It will not assuage their pain. Sentencings are not meant nor can they accomplish that.

Aggravating Factors

[31] Mr. Beckett does have a criminal record which includes prior convictions for impaired driving, failure to stop at the scene of an accident, and several breaches. He also has a conviction pursuant to s. 4(1) of the *Controlled Drugs and Substances Act*. However, it is important to note that Mr. Beckett has no prior convictions for crimes of violence, domestic or otherwise.

[32] There is no evidence that alcohol or drugs were a factor in this offence. However, he has struggled with substance abuse in the past.

[33] This was an offence of domestic violence. The attack on Ms. MacKenzie was brutal, both in terms of the sheer number of stab wounds that Mr. Beckett inflicted

upon her and the locations of those wounds, which included her throat and back. Ms. MacKenzie had defensive stab wounds to her hands, indicating that she tried to defend herself from the attack. The brutality of the attack is an aggravating circumstance on sentencing.

Mitigating Factors

[34] Mr. Beckett has admitted to killing Ms. MacKenzie. His acceptance of responsibility and his guilty plea came months before the trial date, saving the court a month of trial time. This allowed other matters to be scheduled during that month. The early plea also saved witnesses from having to testify at trial or at the *voir dire*. It ensured her family and friends did not have to attend court for a prolonged trial.

[35] Mr. Beckett has clearly shown remorse for his actions. The Crown has acknowledged his expression of sincere remorse. Mr. Beckett's remorse, his early guilty plea, and his lack of a related, violent criminal record can all be considered as mitigating factors on this sentencing.

[36] Today Mr. Beckett acknowledged this "major tragedy". He expressed his "heartfelt" remorse and expressed his sympathy to all of those who have been affected by his actions. His wish is for Ms. MacKenzie to be "remembered for all the good she was".

Nature of the Offence

[37] It is acknowledged that this was a crime of domestic violence. Section 718.2 of the *Criminal Code* recognizes intimate partner violence as an aggravating factor on sentencing. Ms. MacKenzie was in an intimate relationship with Mr. Beckett. She had every right to be able to trust him and to trust that he would not hurt her. The nature of the offence, including that it was committed within a domestic context, is an aggravating factor on sentencing.

[38] Considering Mr. Beckett's previously mainly pro-social life, a positive pre-sentence report (although very limited individuals were interviewed), his lack of any prior violent offences and his early guilty plea and remorse, he falls into the first category described in *R. v. Nash*, 2009 NBCA 7, that is a 10 – 15 year range of parole ineligibility.

Principles in *R. v. Anthony-Cook*

[39] A joint sentencing recommendation has been submitted by the parties. In reviewing the joint recommendation, the court takes into account the mitigating circumstances of the early acceptance of responsibility, no related criminal record, and Mr. Beckett's sincere expression of remorse. The aggravating circumstance of the offence are noted. The crime was a brutal attack perpetrated in the context of an intimate domestic relationship.

[40] In considering this joint recommendation, I have also considered the principles set forth in *R. v. Anthony-Cook*, 2016 SCC 43. I am mindful that a trial judge should not depart from a joint recommendation unless the proposed sentence would bring the administration of justice into disrepute or if the sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system.

[41] Counsel is obliged to give a full description of the facts and circumstances of the offence and the offender and explain why the proposed sentence is not contrary to the public interest. Counsel has done so today. There must be a thorough justification of the sentence put on the record so that justice may be seen to be done. The justice system benefits from appropriate joint recommendations in terms of use of resources and certainty of outcomes in cases where the result following trial is unclear. In particular, I quote from *R. v. Anthony-Cook, supra*:

> 32 Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest. But, what does this threshold mean? Two decisions from the Newfoundland and Labrador Court of Appeal are helpful in this regard.
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> 34 In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold — and for good reason, as I shall explain.
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> …
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> 42 Hence, the importance of trial judges exhibiting restraint, rejecting joint submissions only where the proposed sentence would be viewed by reasonable and

> informed persons as a breakdown in the proper functioning of the justice system. A lower threshold than this would cast the efficacy of resolution agreements into too great a degree of uncertainty. The public interest test ensures that these resolution agreements are afforded a high degree of certainty.
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> 44 Finally, I note that a high threshold for departing from joint submissions is not only necessary to obtain all the benefits of joint submissions, it is appropriate. Crown and defence counsel are well placed to arrive at a joint submission that reflects the interests of both the public and the accused (Martin Committee Report, at p. 287). As a rule, they will be highly knowledgeable about the circumstances of the offender and the offence and the strengths and weaknesses of their respective positions. The Crown is charged with representing the community's interest in seeing that justice is done (*R. v. Power*, [1994] 1 S.C.R. 601, at p. 616). Defence counsel is required to act in the accused's best interests, which includes ensuring that the accused's plea is voluntary and informed (see, for example, Law Society of British Columbia, Code of Professional Conduct for British Columbia (online), rule 5.1-8). And both counsel are bound professionally and ethically not to mislead the court (ibid., rule 2.1-2(c)). In short, they are entirely capable of arriving at resolutions that are fair and consistent with the public interest (Martin Committee Report, at p. 287).

[42] The Crown recognizes at the outset that making comparisons between various second-degree murder cases is a challenge. In *R. v. Doyle*, 1991 CarswellNS 268 (C.A.), Chipman J.A. stated at para. 43:

> …. comparisons with other cases is a difficult exercise. Attempts to seek similarities with or differences from other murders committed by other people can be very frustrating and counterproductive. We are not dealing with an exercise of reviewing "comparables" such as is done in a property appraisal. In exercising the discretion under s. 744 of the Code, other cases are no more than a rough guide for the sentencing judge in identifying the types of aggravating or mitigating circumstances that other courts have relied on as relevant in applying the guidelines.

[43] Counsel has commended me to the following cases and, as discussed in *Hawkins, supra*, I am to ensure that similar situated offences, offenders and circumstances are dealt with in a similar fashion.

[44] In *R.* v. *Cross*, 1998 CarswellNS 325 (S.C.), Crown and defence counsel made a joint recommendation for the mandatory sentence of life imprisonment with no parole ineligibility for 12 years. The accused pleaded guilty to second degree murder after stabbing his wife to death while his children were at home. The accused had previously assaulted the victim, but had no criminal record and showed some remorse. Psychiatric reports described a troubled marriage. The reports also described the accused's problems with alcohol abuse, compulsive spending, his

problem with anger management and his difficulties in interpersonal communication. The offence had a profound and devastating impact on the victim's family. Sentencing factors to be considered were denunciation, general and specific deterrence, separating the offender from society for protection of society, and assisting in the rehabilitation of offender. It was considered an aggravating factor that the murder was committed in a domestic context. The court found that parole ineligibility for 12 years would reflect society's condemnation of the offence while maintaining some hope that the accused could be rehabilitated.

[45] In *R. v. Butcher*, 2018 NSSC 194, aff'd 2020 NSCA 50, the accused, after discovering that his common law partner wanted to break up with him, stalked her, found her at another man's house in his bed and brought her home. Once she fell asleep, the accused stabbed her repeatedly in her neck and throat, killing her. The accused then attempted suicide by cutting his arm, stabbing himself in the neck multiple times and cutting off his hand. The accused was tried and convicted of second-degree murder. He was sentenced to life imprisonment without eligibility for parole for a period of 15 years. Mitigating factors included that the accused had a positive pre-sentence report and that he was a law school graduate with no prior record. In terms of aggravating factors, the court noted that there was some indication of forethought on the part of the accused prior to the murder. The court further noted that "[t]he nature of his offence and the circumstances surrounding its commission, the actions of Mr. Butcher in stalking Ms. Johnston during the evening he murdered her, and murdering his common-law partner while she was at her most vulnerable, in her own home and in her own bed, warrant a significant increase beyond the 10 year minimum" (para. 97). This case includes a thorough review of similar caselaw.

[46] In *R.* v. *Irving*, 2015 NBQB 70, the accused was tried and convicted of second-degree murder in the death of his wife. He had been arguing with the victim when she told him that she did not love him anymore and wanted a divorce. The accused then proceeded to choke her manually and later with an extension cord. The accused then slept in bed with the victim's body and called 911 the next day to report the crime. The court found the domestic nature of the offence was an aggravating factor, as was the accused's post-offence conduct, including not rendering aid to the victim. The use of an extension cord in the murder was also aggravating. Mitigating factors included a sincere apology, the lack of a criminal record, and his cooperation with the investigation and prosecution of the case, even though he did not accept ultimate responsibility by pleading guilty. The court set the period of parole ineligibility at 12 years.

[47] These cases show a range of 12-15 years for similar offences. However, only one of the accused in these cases entered an early guilty plea. Mr. Beckett has accepted responsibility and thereby saved the witnesses from testifying, sparing family and friends a prolonged court process, and allowing the court to use the time for other matters. In all of the circumstances, the proposal for 11 years of parole ineligibility is reasonable. The acceptance of this joint recommendation would not bring the administration of justice into disrepute and is not contrary to the public interest. I accept counsel's submissions that this was a truly negotiated recommendation for sentence.

Conclusion

[48] Any offender convicted of second degree murder is sentenced to life imprisonment. The only way an offender will be released into the community is by the National Parole Board. The court decides when parole eligibility can be considered. I cannot state it better than Justice Beveridge in *R. v. Hawkins*, 2011 NSCA 7, at para. 98:

> It must be remembered that the appellant will forever be subject to a sentence of imprisonment. He may never be released on parole. Whether his risk of re-offending is such that he be permitted to be released conditionally will be up to the Parole Board. If he is released, it is only on his satisfactory compliance with whatever conditions the Board places on him to ensure his respect for a peaceful and safe society.

[49] Murder is perhaps the most serious offence in the *Criminal Code*. Ms. MacKenzie's life was needlessly and brutally taken on April 2, 2020. Ms. MacKenzie should have been able to trust she was safe with Mr. Beckett. His actions on April 2, 2020, were brutal and incomprehensible. It is necessary to express society's condemnation for Mr. Beckett's actions and to protect society from such offences. I must impose a fit sentence in view of all the circumstances of the case, together with the sentencing principles and objectives mandated by Parliament.

[50] Mr. Beckett, please stand. For the second degree murder of Ms. MacKenzie, I sentence you to life imprisonment with parole ineligibility set at 11 years. I also impose a mandatory section 109 firearms prohibition order for a period of 15 years and a mandatory primary DNA order. The Crown has agreed to waive the victim fine surcharge pursuant to section 737 the *Criminal Code*.

[51] The sentence of life imprisonment carries a significant element of denunciation and general deterrence. Mr. Beckett may never be released on parole. He may spend the rest of his natural life in prison. The National Parole Board will determine~~s~~ whether he can return to society at some future time, but not until he completes his 11 year period of parole ineligibility. If the Parole Board does allow Mr. Beckett to leave prison, he will continue to be subject to conditions and supervision. While parole ineligibility of 11 years for second degree murder committed in the context of a domestic and intimate partner relationship is at the lower end, in all of the particular circumstances of this case, it is neither unfit nor contrary to the public interest.

Brothers, J.