**SUPREME COURT OF NOVA SCOTIA**
**Citation:** *R v. Crawford*, 2023 NSSC 317

**Dae:** 20230530
**Docket:** 510692 & 513969
**Registry:** Yarmouth

**Between:**

His Majesty the King

*Plaintiff*

v.

Wayne Richard Crawford

*Defendant*

**Restriction on Publication: Section 539(1) Criminal Code**

**Sentencing Decision - Second Degree Murder and Unlawful Storage and Transport of a Firearm**

| | |
|---|---|
| **Judge:** | The Honourable Justice Pierre L. Muise |
| **Heard:** | May 30, 2023, in Yarmouth, Nova Scotia |
| **Oral Decision:** | May 30, 2023, in Yarmouth, Nova Scotia |
| **Counsel:** | Robert Morrison and Saara Wilson, for the Plaintiff at Trial<br>William Ferguson and Chelsea Cottreau for the Plaintiff at Sentencing<br>Alexander Pink and Colin Fraser, for the Defendant |

**539(1) Order restricting publication of evidence taken at preliminary inquiry**

Prior to the commencement of the taking of evidence at a preliminary inquiry, the justice holding the inquiry
(a) may, if application therefor is made by the prosecutor, and
(b) shall, if application therefor is made by any of the accused,

make an order directing that the evidence taken at the inquiry shall not be published in any document or broadcast or transmitted in any way before such time as, in respect of each of the accused,

(c) he or she is discharged, or

(d) if he or she is ordered to stand trial, the trial is ended.

**By the Court:**

**Introduction**

[1] Wayne Crawford pled guilty to having committed second degree murder on Colton Cook and having unlawfully stored and transported a shotgun. Today he is being sentenced.

[2] I am rendering this decision orally, should it be reduced to writing, I reserve the right to edit it for grammar, structure, complete citations, organization and ease of reading, without changing the reasoning or the result.

[3] The maximum sentence for unlawful storage or transport of a firearm prosecuted by indictment, as in this case, is 2 years' imprisonment for a first offence. There is no indication of any prior conviction.

[4] Pursuant to s. 235 and s. 745 of the *Criminal Code*, the sentence for second degree murder is automatically life imprisonment without eligibility for parole for at least 10 years. However, pursuant to s. 745.4, the Court may extend parole ineligibility up to a maximum of 25 years.

[5] In assessing what the period of parole ineligibility should be, the Court has to look at many factors, including the personal circumstances of the offender. It

does so, knowing the tremendous loss and suffering Colton Cook's family and friends have experienced as a result of his senseless death. The Court must consider all the relevant factors and principles and make a determination that is fit in the circumstances as a whole, including the impact the offence had on them.

[6] It is also important to remember that eligibility for parole does not mean release on parole. An offender sentenced to life imprisonment will remain in prison unless and until the National Parole Board determines that it is safe and appropriate to conditionally release them, or they are granted clemency. Also, even if released on parole, that parole may be revoked.

**Parole Ineligibility**

[7] The Crown recommends a period of parole ineligibility of 13 to 15 years and emphasizes the following:

- the aggravating factors, which include the circumstances of the offence, disposal of the body, and a lengthy record which includes offences of violence;
- the mitigating factors, which include the guilty plea, confession, diminished responsibility, and rehabilitative potential; and,
- Gladue factors, which diminish moral blameworthiness.

[8] The Defence submits the minimum 10 years' parole ineligibility is appropriate and emphasizes the following:

- the multiple Gladue factors and healing recommendations in the Gladue report;
- the unprompted confession and guilty plea;
- reduced mental capacity;
- that Mr. Rogers initiated the tragic event;
- good rehabilitative potential; and,
- comparison with other cases.

[9] In ***R v. Sylliboy***, 2022 NSSC 213, Justice Hunt, at paragraphs 20 to 23, succinctly outlined the proper approach to determining parole ineligibility as follows:

> [20] To recap, the starting point is a 10-year period of parole ineligibility. To consider substituting a different number of years, the Court must consider the factors in section 745.4 (character of the offender; nature of the offence; circumstances surrounding the commission of the offence; and any jury recommendation made pursuant to section 745.2, …).
>
> [21] The Court must also weigh sections 718 - 718.2 of the Code. Having done so the judge will be in a position to assess where, within the range of acceptable periods of parole ineligibility, the specific offender should be placed, that is: in the 10 - 15 year range; the 15 - 20 year range; or the 20 - 25 year range.
>
> [22] I also want to note the following. Although sections 718 - 718.2 of the Code are relevant to this process (see Hawkins, supra, para 47), "specific deterrence" has no place in this decision (Hawkins, supra, para 39-41). Further "denunciation and deterrence" are not of "paramount significance" in cases of second-degree murder because the sentence provides for a minimum period of parole ineligibility (see Hawkins, supra, para 42).

[23] There is still a role for considering denunciation and to promote general deterrence. Denunciation can be considered under the criterion of "nature of the offence" and concerns over possible future dangerousness of the offender under the criterion of "character of the offender" within those section 745.4 factors (see *Hawkins*, supra. para 16).

[10] Sections 718 to 718.2 of the *Criminal Code* state:

**Purpose**

**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:

(a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;

(b) to deter the offender and other persons from committing offences;

(c) to separate offenders from society, where necessary;

(d) to assist in rehabilitating offenders;

(e) to provide reparations for harm done to victims or to the community; and

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

**Fundamental principle**

**718.1** A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

**Other sentencing principles**

**718.2** A court that imposes a sentence shall also take into consideration the following principles:

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, … ;

(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 and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[11] Chipman, J.A., in ***R v. Doyle*** (1991), 108 NSR(2d) 1 (CA), at page 11, stated:

> 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 counter productive. 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.

[12] The principle of parity still applies and the Court must strive for consistency. However, as this passage illustrates, parity is challenging to apply. That is because there are endless combinations of circumstances surrounding the same most serious offence of second-degree murder. In addition, sentencing remains an individualized process. That is a further reason why the comparison cases only provide a rough guide.

[13] The Court in ***R. v. Hawkins***, 2011 NSCA 7, at paragraph 67, cited with approval the comments in ***R v. Nash***, 2009 NBCA 7, regarding the three parole

eligibility categories or timeframes sentencing judges generally work with as starting points. Sentencing judges generally determine the appropriate timeframe, then determine where, within that timeframe a particular offender fits.

[14] The Court in ***Nash*** described the three timeframes as follows:

1. 10 to 15 years for "those offenders for whom the prospects of rehabilitation appear good and little would be served by extending the period of parole ineligibility other than to further the sentencing objectives of denunciation and retribution".

2. 15 to 20 years for "those who fall somewhere in between the first and third".

3. 20 to 25 years for the "worst of offenders" in the "worst of cases".

[15] In the circumstances of the case at hand, it would not be fit and appropriate to impose parole ineligibility in excess of that recommended by the Crown. It is clear that Mr. Crawford fits within the first timeframe. The real parole ineligibility issue is where, in the 10 to 15-year range he fits.

**Circumstances and Character of the Offender**

[16] Mr. Crawford is now 39 years of age. At the time of the offence, he was 36 years of age.

[17] The Gladue Report prepared outlined his personal circumstances, as well as the systemic or background factors which played a part in bringing him before the courts, including the following points.

[18] His biological mother was a member of the Acadia First Nation, a Mi'kmaw community. His non-Indigenous father was mentally disabled.

[19] The Acadia First Nation, like most, suffered the damages inflicted by colonization and government policies designed to assimilate Indigenous peoples, particularly the establishment of Residential Schools, which removed children from their families, language and culture, and subjected them to abuse and deprivation.

[20] The detrimental effects of those policies and centralization policies continue to plague the Nation. They are reflected in the unfavourable levels of education, employment, income, family disintegration, abuse, addictions, criminal history, and loss of identity, culture and language.

[21] Mr. Crawford's own personal background reflects many of these detrimental impacts.

[22] He and his brother were taken into care as very young children, then adopted by different non-Indigenous families. Mr. Crawford is of the understanding that his mother had mental health and substance abuse issues and had tried to drown them. Even when he and his brother visited her, in their 30's, she did not want anything to do with them.

[23] Some time after that, his brother attempted suicide by drinking gasoline and has been left with intestinal problems.

[24] Mr. Crawford himself was born with fetal alcohol syndrome disorder ("FASD"), which affects the brain and body.

[25] His adoptive family took in many children over the years. One of them sexually abused him from the age of 7 to the age of 11. He kept it a secret until then. He first reacted by withdrawing and behaving differently, then around the age of 10, turned to consuming alcohol, to cope with the abuse.

[26] Between the ages of 11 and 17 he ran away from home a lot, because he would not accept his mother's discipline.

[27] He ended up hanging with the wrong crowd.

[28] As an adolescent, he witnessed the traumatic death of a friend, having tried to save him.

[29] He was diagnosed with ADHD and got in trouble a lot for being disruptive in school.

[30] He became addicted to alcohol and drugs and missed a lot of school because of that. The last grade he completed was grade 10.

[31] He has had difficulty getting work and maintaining employment because of his lack of education and addiction issues.

[32] His alcohol abuse as a youth landed him in multiple youth facilities. He has also served adult time, the longest being 2 years less a day. (However, that does not appear to be an accurate report. The longest sentence on the Bail Report is 155 days.)

[33] In the interval leading up to the offence, they had been drinking heavily, smoking marijuana and taking a lot of dilaudid. They were heavily under the influence of drugs and alcohol.

[34] He does not know why it happened. He has nightmares and difficulty sleeping because of it.

[35] He wishes he had not been there that night or tried to help as much as he could. He only chose to live at the location of the offence because he could feed his addictions there. He could not do so at this parents' home, where he had been offered a place to stay.

[36] The Gladue report connects Mr. Crawford's personal situation to the adverse impacts suffered by Indigenous people generally and highlights the following positive healing factors.

- He takes responsibility for his actions and intends on addressing the underlying factors to avoid future offences.
- There is strong community support and culturally appropriate programming available for him.
- That includes personal counselling to address the underlying traumas and abuse he faced throughout his life, as well as rehabilitation programming to deal with the substance abuse that has been at the root of his conflicts with the law.
- He plans to continue making positive changes in his life.
- By connecting to an elder he may reconnect with his community, language and identity.

[37] The extent of Mr. Crawford's alcohol problem was revealed in his statement to Cst. Garden-Cole. When his father, who was brought in, asked him whether he had been drinking, he replied that he was always drinking, and that his father knew that. His father agreed.

[38] His propensity to act impulsively, without thinking of the consequences, is revealed by his comments that he broke his foot jumping off a trailer after seeing a boy do it on a video and that he became sick after eating a toad on a dare. They may be related to his FASD or ADHD.

[39] These personal circumstances and their connection to the Gladue factors are significant because of the following directives of the Supreme Court of Canada.

[40] ***R v. Ipeelee***, 2012 SCC 13, at paragraphs 59 and 60, stated:

> 59 … [S]. 718.2(e) of the Code is a remedial provision designed to ameliorate the serious problem of overrepresentation of Aboriginal people in Canadian prisons, and to encourage sentencing judges to have recourse to a restorative approach to sentencing. … When sentencing an Aboriginal offender, a judge must consider: (a) the unique systemic or background factors which may have played a part in bringing the particular Aboriginal offender before the courts; and (b) the types of sentencing procedures and sanctions which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection (Gladue, at para. 66). Judges may take judicial notice of the broad systemic and background factors affecting Aboriginal people generally, but additional case-specific information will have to come from counsel and from the pre-sentence report (Gladue, at paras. 83-84).
>
> 60 … To be clear, courts must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples. These matters, on their own, do not necessarily justify a different sentence for Aboriginal offenders. Rather, they provide the necessary context for understanding and evaluating the case-specific information presented by counsel. Counsel have a duty to bring that individualized information before the court in every case, unless the offender expressly waives his right to have it considered. In current practice, it appears that case-specific information is often brought before the court by way of a Gladue report, which is a form of pre-sentence report tailored to the specific circumstances of Aboriginal offenders. …

[41] It is recognized that systematic and background factors may bear on an offender's culpability, to the extent that they shed light on their level of moral blameworthiness. Failure to take into account these circumstances violates the fundamental principle of proportionality.

[42] Courts must take judicial notice of the impact of colonialism and residential schools upon Aboriginal peoples. I have done so.

**The Nature of the Offence and the Circumstances Surrounding Its Commission**

[43] Murder is clearly the most serious offence in the Criminal Code.

[44] On January 2, 2023, during the guilty plea comprehension hearing, and in the Agreed Statement of Facts filed today, the following facts relating to the nature of the offence and the circumstances surrounding its commission were agreed to.

[45] September 25, 2020, Mr. Rogers and Mr. Crawford were at the residence where the offence occurred. It was a residence they were renting from Keith Siscoe Junior, who arrived there around 10:30 PM.

[46] Later, around 11:20 PM, Mr. Cook arrived looking for Judy Cann. He had been there before with her. Ms. Cann was in a relationship with Greg Bright, an

associate of Mr. Rogers, Mr. Crawford and Mr. Siscoe. Mr. Bright took exception to her associating with Mr. Cook.

[47] Mr. Siscoe invited Mr. Cook in for a drink, even though he did not know Mr. Cook before that encounter with him. They engaged in friendly arm wrestling.

[48] Mr. Rogers and Mr. Crawford were watching TV and drinking.

[49] A short while later, Mr. Rogers and Mr. Cook engaged in an argument.

[50] Mr. Rogers retrieved a shotgun and shot Mr. Cook in the head. He then proceeded to stab him repeatedly in the head, face and neck.

[51] Following that, Mr. Crawford heard a gurgling sound which prompted him to stab Mr. Cook in the chest.

[52] At approximately 4:00 or 4:30 AM, on September 26, a neighbour heard a chainsaw, in the yard of the residence. At approximately 4:45 AM, he heard loud male voices.

[53] Mr. Rogers, Mr. Crawford and Mr. Siscoe left the residence in Mr. Cook’s truck. Mr. Siscoe was driving.

[54] They dumped Mr. Cook's body in a wooded area at the East end, which is the Tusket end, of the Saunders Road.

[55] They then abandoned the truck near the Pitman Road in South Ohio. After that, the three of them were observed walking towards the residence.

[56] They later burned the truck and discarded a severed leg.

[57] The three of them burned clothing, including some of their own, and other items in a fire pit at the residence. They also burned a blood-soaked mattress.

[58] In addition, all three cleaned the residence.

[59] The burning truck was located the morning of September 26.

[60] In the afternoon of September 26, Keith Siscoe Senior drove Keith Siscoe Junior, Mr. Rogers and Mr. Crawford to a local store with an ATM, then dropped them back off at the residence.

[61] On September 27, Mr. Cook's severed leg was located near where his burning truck had been found.

[62] On September 30, Mr. Cook's body was located at the other end of the Saunders Road by a passerby.

[63] The cause of death was determined to be a homicide, including by stab wounds to the face, neck and chest. There were multiple other injuries. The right leg was completely severed. The left leg was mostly severed. A rope ligature was tied around the neck.

[64] On September 30, the police executed a search warrant at the residence in question. In the yard, they found Mr. Cook's cell phone and other pieces of identification.

[65] Inside the residence, they located blood later matched to Mr. Cook's blood. They also found birdshot embedded in the wall.

[66] October 1, police recovered a note from Keith Siscoe Senior's residence. It read: "My name is Bobby Rogers. I am responsible for Colton Cook's death."

[67] That same day, Mr. Rogers and Mr. Crawford were arrested for the murder of Mr. Cook. Both provided inculpatory statements.

[68] In his statement, Mr. Crawford stated the following. He saw Mr. Rogers shoot Mr. Cook in the head with a shotgun that Mr. Rogers had retrieved from the kitchen. Then, Mr. Rogers stabbed Mr. Cook repeatedly. Then, Mr. Crawford himself stabbed Mr. Cook in the chest as Mr. Cook was making a gurgling sound and he wanted to stop the gurgling. After dropping off the body

and burning the truck, they, at the residence, destroyed as much of the evidence as they could, burning their own clothes and some of Mr. Cook's possessions.

[69] I agree with the Crown that this was a brutal and unprovoked attack, without any real explanation.

[70] I also agree that the dismemberment and disposal of the body, following the killing, added a layer of distress to the family. Mr. Crawford did participate in the disposal. However, the evidence at Mr. Rogers' trial revealed that it was Mr. Rogers who dismembered Mr. Cook and disposed of the severed leg, not Mr. Crawford.

[71] Nevertheless, the post-murder efforts to dispose of the body are aggravating. It was dumped in the woods and left to decompose. That prevented Mr. Cook's family from being able to say goodbye as they would have wanted.

[72] Dumping the body in the woods to be found by a passerby also showed a lack of concern for how that person might be impacted by such a gruesome discovery.

**The Jury Recommendations**

[73] There was no trial in relation to Mr. Crawford and, therefore, no jury recommendation on parole ineligibility.

**Impact on the Victims**

[74] The impact on the victims is relevant in the sentencing process.

[75] The impacts in the case at hand were to be expected, but, they are still an aggravating feature of this case. They are revealed in the victim impact statements filed by Colton Cook's sister, Ashley Cook, and his mother, Stacey Cook, who also read hers. They include deep-seated, debilitating and far-reaching effects, which are expected to be long-lasting.

[76] Ashley Cook described the impacts the offences committed by all three co-accused had on her and her child. They included the following types of impacts:

- Causing her to now have severe anxiety and depression, looping thoughts, difficulty sleeping, panic attacks, and bouts of crying, which she has to try to manage so she can look after her daughter.
- These have manifested in physical symptoms such as: difficulty keeping food down; tension headaches; stress rashes; and heart palpitations.
- They now require her to take medication and undergo counselling.
- The costs associated with medical appointments and prescription medications have drained their financial resources, making it such that she will not likely be able to afford to travel home from Australia to see her family.

- She has had to grieve on her own without the support of her family in Nova Scotia.
- In addition to losing her brother she has lost her sense of security, feeling unsafe no matter where she is, and constantly waking up to check on her daughter and to ensure the doors are locked.
- Her daughter will never be able to meet her uncle.

[77] Stacey Cook described the impacts on her of what Mr. Crawford did to her son, including the following:

- She wonders how she can still be living with all the pain she is feeling.
- Not knowing why her son was savagely murdered exacerbates that pain. She lays awake at night, and is going crazy, wondering why and begs Mr. Crawford to answer the question for her.
- Despite what Mr. Crawford did, she sees some good in him, and hopes he finds it in his heart to provide an explanation that will ease some of the pain.
- She wonders whether he wanted to stop the sounds her son was making because he felt mercy for him.
- She thanks him for pleading guilty, owning up to his actions and sparing her and her family from a lengthier trial.

[78] Mr. Crawford, though he had not intended to say anything in the course of his sentencing, did his best to explain to Colton Cook's family why he did what he did and to apologize for it.

**Aggravating and Mitigating Circumstances in the Case at Hand**

**Aggravating Circumstances**

[79] The case at hand involves the following aggravating circumstances relevant to parole ineligibility:

- Mr. Crawford used a weapon, ie. a knife, in the commission of the offence.
- The murder was committed in a brutal fashion.
- The victim was rendered vulnerable and defenseless by the fact that Mr. Rogers shot him and attacked him with the machete before he had any chance to flee or fight back.
- Then Mr. Crawford joined in the offence.
- It was a random and senseless murder without any provocation.
- They dumped the body in the woods to get rid of the evidence. That rendered Colton Cook's already disfigured corpse even more gruesome, robbing his family of the ability to properly say their goodbyes.
- They also disposed of other evidence by burning.
- As noted in ***R v. Garnier***, 2020 NSCA 52, "[a]ttempts to cover up a homicide have long been considered an aggravating factor when a court is required to fix the appropriate period of parole ineligibility".
- He lied to the police regarding Keith Siscoe Jr's presence and involvement, thereby obstructing their investigation.
- The offence had debilitating impacts on Mr. Cook's family which are expected to last a long time.
- Mr. Crawford does have a Criminal Record. The Crown, in its brief, described it as being of a relatively minor nature and reflective of a lifetime of substance abuse. In its oral submissions it revised its position, stating it was a significant record, which included offences of violence. It is a significant record and includes assaults on peace officers and break and enters which are considered offences of violence.

[80] His Criminal Record includes:

- 20 breaches of probation or other court orders
- 10 breaches of release conditions
- 5 break and enters
- 1 possession of stolen property
- 1 forgery
- 4 assault peace officer
- 5 resist or obstruct peace officer
- 2 causing a disturbance
- 3 mischief offences
- 1 possession of drugs

[81] The sentences imposed on him, starting with the most recent, include:

- September 2015 -1 year of probation
- January 2014 - 67 days' custody and 6 months' probation
- February 2013 - 30 days' custody and 1 year probation
- January 2012 - 19 days' custody
- November 2011 - 60 days' custody and 12 months' probation
- February 2009 - 155 days' custody and 18 months' probation
- June 2005 - 2 months' custody and 12 months' probation
- November 2003 - 7 months' custody and 12 months' probation
- April 2003 - 2 months' custody and 12 months' probation
- June 2000 - 4 months' custody
- April 2000 - 6 months' custody and two years' probation

[82] It is noteworthy that the most recent offence date on his record is April 11, 2014. He went from then until September 2020 crime free. That almost 6 ½ year hiatus diminishes the aggravating effect of his criminal record.

[83] In addition, the Crown has not revised its position that his record is reflective of a lifetime of substance abuse. The probation orders have conditions related to substance abuse counselling and abstinence, as well as mental health-related counselling. One has a condition for counselling regarding FASD. In that way his record is reflective of the effects of systemic and background Gladue factors which also diminish the aggravating effect.

**Mitigating Circumstances**

[84] The case at hand involves the following mitigating circumstances:

- Mr. Crawford provided an unprompted confession regarding his involvement in Mr. Cook's killing. The interviewing officer had made it clear to him that he was not suspected of being involved except in the post-murder disposal and clean-up. They had played a video-statement from Mr. Rogers to him, in which Mr. Rogers told him he had accepted responsibility and that Mr. Crawford only helped clean-up afterwards and was probably scared. The police were only seeking further detail on what they believed had been done solely by Mr. Rogers, when Mr. Crawford told them he, himself, had stabbed Mr. Cook to stop the gurgling sound.
- Then Mr. Crawford entered a guilty plea, sparing the family the agony of a more prolonged trial.

- His emotional reaction to his father, in the police interview room, his nightmares and trouble sleeping indicate he feels genuine remorse for his actions.
- He apologized to Colton Cook's family.
- As I indicated during Mr. Rogers' sentencing, the offence would not have occurred but for Mr. Rogers' actions. Mr. Crawford reacted impulsively to the bizarre and disturbing situation created by Mr. Rogers.
- That impulsivity is consistent with his ADHD and FASD.
- That he would act without thinking is also in keeping with the cognitive delay the Crown described him as having, and which the Defence referred to.
- Those factors, and the Gladue factors discussed, which continued, in an unbroken chain, to detrimentally impact Mr. Crawford, reduce his level of moral culpability.
- As stated by the Defence,

> "[A] common thread can be connected from Mr. Crawford's role in the murder of the victim all the way back through his disenfranchised youth, back through childhood traumas, back through his relationship with his mother and back into her own addictions. In taking this vantage, one can see that Mr. Crawford is an unfortunate example of a cycle which continues to repeat itself across the Canadian landscape. This cycle has its roots in the systemic oppression of Indigenous Peoples and serves to show the lasting effect trauma can have from generation to generation."

- To the extent that his high level of intoxication emanated from Gladue factors and may have reduced his level of moral culpability, it is a mitigating factor. However, the fact of intoxication itself is not a mitigating feature.
- He suffered abuse as a child and witnessed a traumatic death as an adolescent.
- He has decent rehabilitation or healing potential because of his desire to address his underlying traumas, childhood abuse and substance abuse issues, and further his education, because of the culturally appropriate supports and resources in place, and because his still relatively young age is conducive to rehabilitation.

- The Crown submits that his rehabilitative potential is a poor because he has already been put on probation five times with conditions to address his substance abuse and underlying issues, and still found himself consuming alcohol and drugs, and involved in this murder. The past can be a good indicator of the future. However, Mr. Crawford has never served federal time before. As submitted by the Defence, there are rehabilitative resources and programs in federal institutions which Mr. Crawford has not yet had the benefit of. Plus, even without that, he managed to remain crime free from April 2014 to September 2020. Also, he did not resist arrest or assault the officers who arrested him on October 1, 2020. In addition, as highlighted by the Defence, he is unlikely to be granted parole unless and until he has addressed his substance abuse problem and underlying issues. Despite his past difficulties with rehabilitation, his current circumstances still leave him with decent potential for rehabilitation.
- One factor which somewhat reduces that potential is his cognitive impairment. However, again, that appears to be linked to Gladue factors.
- A further mitigating feature is that, despite what he has done, his adoptive father continues to offer him support and express his love for him.

**Proportionality and Parity**

[85] Applying the principle of parity helps inform and guide the application of the principle of proportionality, a fundamental principle of sentencing. Looking at comparison cases can help arrive at a proportionate determination, even if, as noted in ***R v. Doyle***, they only serve as a rough guide in determining parole ineligibility.

[86] In cases involving co-accused persons, courts often try to achieve parity as amongst co-accused persons. However, as noted in ***R v Purvis***, 2021 NSSC

241, an accused is entitled to a reduction for a guilty plea. The period of parole ineligibility imposed on Mr. Rogers was 19 years. However, he did not plead guilty. He was the instigator and primary actor. He dismembered the body. He directed the dumping of the body. Therefore, this is not a situation where parity requires a similar period of parole ineligibility for Mr. Crawford.

[87] The parties provided the following comparison cases involving guilty pleas for 2nd degree murder:

- ***R. v. MacAusland***, 2019 PESC 54; and,
- ***R. v. Beckett***, 2023 NSSC 145.

[88] In ***MacAusland***, the Court accepted a joint recommendation of 10 years' parole ineligibility, stating, at paragraph 65, that "in most cases where the court imposed a sentence of parole ineligibility of more than 10 years (for example, 12 – 13 year range), the offender had not pleaded guilty". Mr. MacAusland was a 19-year-old Indigenous offender who beat the victim and stabbed him 7 or 8 times, after he ran with the drugs the two of them were about to sell. Both were intoxicated. He and some friends cleaned up the blood. He had had a difficult and traumatic upbringing from an early age. He was addicted to alcohol and drugs. At the time of the murder, he had spiraled out of control, was doing

drugs and was experiencing massive paranoia and rages. Unlike Mr. Crawford, he did not dispose of the body. However, also unlike Mr. Crawford, it is not noted that he had FASD, ADHD or cognitive delay. In addition, he was the initiator, and sole perpetrator, of the murder.

[89] In ***Beckett***, the court found a joint recommendation for 11 years of parole ineligibility to be reasonable. The 48-year-old offender brutally and repeatedly stabbed his 35-year-old live-in girlfriend, including in the throat and back. She tried to defend herself and sustained defensive stab wounds to her hands. He admitted killing her, having actually called the police himself to come and arrest him, without trying to cover anything up, and showed remorse for his actions. He had previously lived a mainly prosocial life and, unlike Mr. Crawford, lacked prior offences of violence. Like Mr. Crawford, he had been sexually assaulted by an older child, moved out in his late teens, had experienced mental health difficulties, including ADHD, and had a history of substance abuse which continued up to the time of the offence. Unlike Mr. Crawford, he had been able to complete three years of a four-year university degree and had a significant employment history. Thus, he did not have the same cognitive impairment. He was significantly older than Mr. Crawford, diminishing the potential for rehabilitation. He was not Indigenous. Therefore,

the Gladue factors were inapplicable. The offence involved domestic violence and a breach of trust, both highly aggravating features that do not exist in the case at hand.

[90] Balancing the mitigating and aggravating features of the case at hand with those in ***MacAusland*** and ***Beckett***, supports a 10 to 11 year period of parole ineligibility as being reasonable in the case at hand.

[91] ***R v. Tan***, 2011 BCSC 595, and ***R. v. Pattinson***, 2011 BCSC 1603, are cases in which the Court did not increase the period of parole ineligibility above the 10 years even without a guilty plea.

[92] The Crown is correct that Mr. Tan had no record for violence, while Mr. Crawford does. That is a distinguishing mitigating feature. However, Mr. Tan had been sentenced to a total of one year of imprisonment for property offences committed in Europe after the murder. In addition, Mr. Crawford entered a guilty plea. Mr. Tan did not. That more than counteracts Mr. Crawford's record for violence, which is noted as being linked to substance abuse. I take that as meaning that he assaulted peace officers trying to arrest him while he was intoxicated and broke into places to get money for drugs or alcohol.

[93] As submitted by the Defence, such offences of violence are far different from offences like the attempted murder that the co-accused, Mr. Rogers, had been convicted of, and had been released in relation to, a relatively short time before the murder.

[94] The Crown highlighted that Mr. Pattinson had led a prosocial life, a mitigating feature distinguishing that case from Mr. Crawford's situation. However, there were no Gladue factors in Mr. Pattinson's case and he did not plead guilty. Those are both very significant mitigating features that do apply to Mr. Crawford.

[95] In ***R. v. Cromwell***, 2019 NSSC 144, the Court imposed 11 years of parole ineligibility where the accused was found guilty of second-degree murder . The victim, who was intoxicated, had been hurling mild insults at Mr. Cromwell and his girlfriend from 12 to 15 feet away as they walked down the street. He posed no danger to them. Mr. Cromwell pulled a bread knife from his backpack, ran at the victim, and stabbed him in the heart. He ran away from the scene and later resisted arrest. The offender had a positive upbringing, and no Gladue factors. But he had been diagnosed with paranoid personality disorder, depression and anxiety. He was on probation at the time with a condition not to carry weapons. The impulsivity feature is similar to the case at hand, but Mr. Cromwell was the

sole actor. Given that Mr. Crawford entered a guilt plea, balancing the multiple factors supports an equal or lower parole ineligibility period in the case at hand.

[96] These cases collectively support a period of parole ineligibility for Mr. Crawford in the 10 to 11-year range.

[97] Applying the principle of restraint, which I am directed by the *Criminal Code* to do, I agree with the Defence that the appropriate period of parole ineligibility in the case at hand is 10 years. Thus, there is no reason to increase it.

[98] It satisfies the principle of proportionality. It still provides denunciation and general deterrence, which are not to be considered paramount factors. It still ensures separation of Mr. Crawford from society for at least 10 years, and, thereafter, until he has shown sufficient rehabilitative progress, thus providing protection for the public. It may also promote a further sense of responsibility in Mr. Crawford and an acknowledgement of the harms he has caused.

[99] I highlight again, that even after 10 years, it will still be up to the Parole Board to decide whether it is safe to release him.

**Sentence for Murder**

[100] As I noted at the outset, the mandatory sentence for murder is life imprisonment.

[101] Therefore, I sentence Mr. Crawford to life imprisonment.

[102] He must serve 10 years of that sentence before being eligible to apply for parole.

**Ancillary Orders**

[103] I also grant the absolutely mandatory DNA order, and a lifetime firearms Prohibition order pursuant to section 109 of the *Criminal Code*, which is also mandatory.

[104] The knife seized was obviously used in the commission of the offence. Therefore, I order forfeiture of that item.

**Sentence for Unlawful Transport and Storage of a Firearm**

[105] The facts related to the offence of unlawful transport and storage of a firearm are as follows.

[106] On September 29, 2020, Mr. Rogers and Mr. Crawford were stopped while travelling together in a vehicle, at least ostensibly because the plate did not

match the vehicle. Mr. Rogers was arrested for refusal of a breath demand. Mr. Crawford was seated in the front passenger seat. He was asked twice to show his hands. On the second request, he did. That is when the officer who had stopped the vehicle saw the end of a gun and yelled “gun” to alert the second officer who had come to assist him. Mr. Crawford had been trying to hide the gun from the police. It was a 12gauge shotgun. They seized it, along with ammunition for it. Mr. Crawford was arrested for this firearm offence. The gun was not properly secured. It had no trigger lock. It was completely open, not wrapped in anything. It met the definition of a firearm.

[107] There is a joint recommendation for a period of imprisonment of 15 days to be served concurrently, for that offence.

[108] As Mr. Crawford has already been sentenced to life imprisonment, the sentence must be concurrent.

[109] The Supreme Court of Canada, in ***R v. Anthony-Cook***, 2016 SCC 43, confirmed that the public interest test is the proper legal test to be applied in determining whether to accept a joint recommendation. Under that 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 would otherwise be contrary to the public interest".

[110] The jointly recommended sentence is clearly within an acceptable range of sentences. As such, it would not bring the administration of justice into disrepute or otherwise be contrary to public interest to accept it.

[111] Therefore, for this offence, I impose a sentence of 15 days' imprisonment, to be served concurrently.

[112] I also impose the mandatory s. 491 weapons forfeiture order in relation to the shotgun and ammunition.

**Victim Surcharge**

[113] The parties agree the victim surcharges should be waived, as Mr. Crawford would be unable to pay them. So, I waive them.

**Indignity to Human Remains Charge**

[114] The indignity to human remains charge is withdrawn by the Crown.

**Conclusion**

[115] I arrive at these sentencing conclusions, based on the circumstances and the legal principles I must apply. I am fully aware the sentence will not help Mr. Cook's family and friends make sense of their tragic and profound loss, nor provide the solace they need to live with the pain it is causing. No sentence could.

Pierre L. Muise, J.