SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Norton*, 2025 NSSC 122

Date: 20250403
Docket: *Hfx* No. 521597
Registry: Halifax

Between:

His Majesty the King

v.

Kenneth Daniel Norton

SENTENCING DECISION

Judge: The Honourable Justice Christa M. Brothers
Heard: February 19, 2025, in Halifax, Nova Scotia
Decision: April 3, 2025, in Halifax, Nova Scotia
Counsel: Katharine Lovett, for the Crown
Patrick MacEwen, for the Defendant

By the Court:

[1] On June 17, 2024, the accused, Kenneth Daniel Norton, pled guilty to the following counts:

> 3. That he between the 1st day of September 2018 and the 28th day of February, 2021, at or near Tantallon, Nova Scotia did knowingly utter a threat to J.M. to cause death or bodily harm to J.M., contrary to Section 264.1(1)(a) of the *Criminal Code*;
>
> 4. AND FURTHER that he at the same time at or near Tantallon, Nova Scotia, did commit an assault on J.M., contrary to Section 266 of the *Criminal Code*; and,
>
> 5. AND FURTHER that he at the same time at or near Tantallon, Nova Scotia, did in committing an assault on J.M., use or threaten to use a weapon, or imitation thereof, to wit, ashtray, cold water and cord, contrary to Section 267(a) of the *Criminal Code*.

[2] Counsel provided the Court with a signed Agreed Statement of Facts. This agreement details five incidents of domestic violence:

> **Background**
>
> Kenneth Daniel Norton ("Mr. Norton") and J.M. met in the summer of 2018. They began dating shortly thereafter. J.M. moved into Mr. Norton's residence at [redacted], Upper Hammonds Plains, NS in October 2018. She continued to reside there with Mr. Norton until June 2019.
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> J.M. has a daughter from a previous relationship, M., who was born on September 3, 2016. At the time of these offences, M. was between the ages of two (2) and four (4) years old. Mr. Norton has a daughter from a previous relationship, K., who was born on October 13, 2012. At the time of these offences, K. was between the ages of six (6) and eight (8) years old. M. and K. both resided at [redacted] with Mr. Norton and J.M. on a week-on-week-off basis during this time period.
>
> As the relationship progressed, Mr. Norton became violent with J.M..
>
> **January 1, 2019**
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> On January 1, 2019, J.M. woke up and went downstairs to use the bathroom and smoke a cigarette. Mr. Norton became angry when he saw a text message on J.M.'s phone that she had sent to her ex-boyfriend.
>
> Mr. Norton came into the bathroom where J.M. was located, threw J.M.'s phone at her and slapped her, causing her to fall on the floor. Mr. Norton grabbed J.M. by her hair and dragged her throughout the house. He continued to strike J.M. with an open hand, and dragged her to the basement area, where he struck her with an

HDMI cord. While she was on the floor, Mr. Norton used his feet to stomp on J.M.'s stomach and chest.

J.M. was unable to get out of bed for several days and felt dizzy for two (2) weeks following the assault. J.M. sustained two (2) black eyes and bruising to her face.

July 20, 2019

On July 20, 2019, Mr. Norton and J.M. attended a party in Upper Hammonds Plains, close to Mr. Norton's residence. Mr. Norton's truck was parked at the location of the party.

J.M. left the party and walked back to Mr. Norton's house at [redacted]. After she arrived back at his residence, Mr. Norton pulled his truck into the driveway. He immediately exited the vehicle and kicked a side-view mirror off J.M.'s vehicle, which was parked in the driveway of his residence. Mr. Norton grabbed J.M. by her hair and dragged her into the middle of [redacted], where he kicked her.

J.M. was eventually able to escape from Mr. Norton. She ran into the backyard and hid behind Mr. Norton's pool. Mr. Norton continued to look for J.M.. J.M. ran to the front of the residence. While searching for her, Mr. Norton got back into his vehicle. J.M. hid in the bushes in the ditch of a neighboring property. She tried to conceal herself as she continued to run away from Mr. Norton, until there was enough distance between them for her to safely seek help.

J.M. eventually knocked on the door of a house approximately 250 metres down the street. A man named D. W. answered the door and allowed J.M. to enter his home. D.W. was a stranger to J.M..

D.W. estimated that J.M. arrived at his home around 4 o'clock in the morning. He described her as "crying, bleeding, and trying to catch her breath". D.W. told police that J.M. had cuts on her hands, arms, face, ears, and nose. D.W. drove J.M. to a safe location approximately 25 minutes away.

July 26, 2019

On July 26, 2019, Mr. Norton became upset with J.M. because of text messages he discovered on her phone. Mr. Norton forced J.M. to sit in one spot on his back deck for a lengthy period of time. Mr. Norton refused to let her move. J.M. eventually urinated herself.

J.M. was menstruating at the time of this offence. While unlawfully confining her, Mr. Norton forced J.M. to remove the tampon from her vagina and to put it in her mouth. Mr. Norton told J.M. to eat the tampon. Mr. Norton then took a garden hose and sprayed J.M. with freezing cold water. He repeatedly called her a "dirty bitch".

The next morning, on July 27, 2019, J.M. called 911 when Mr. Norton left the residence to go to the store. J.M. told the 911 operator that Mr. Norton had been physical with her the night prior and wouldn't let her leave the residence. Mr. Norton returned to the residence while J.M. was still speaking with the 911 operator. After Mr. Norton arrived home, J.M. put the phone down but did not

disconnect the call. J.M. can be heard saying, “you need to give me my car keys”, to which Mr. Norton replied, “you don’t have money to go nowhere”. Mr. Norton can also be heard demanding to know where J.M.’s phone is.

Police responded to the call and located J.M. and Mr. Norton at the residence. J.M. explained to police that Mr. Norton had taken her car keys and phone and was preventing her from leaving the residence. Mr. Norton refused to return J.M.’s phone when initially asked to do so by police but did eventually return the phone to her.

The police assisted J.M. and her daughter, M., in collecting their belongings and leaving the residence. M. was two (2) years old at the time.

Police also located Mr. Norton’s daughter, K., in the residence, as well as the daughter of Mr. Norton’s friend. K. was six (6) years old at the time. Both M. and K. were present in the home on July 26, 2019, when Mr. Norton assaulted J.M. as described above.

After this incident, J.M. moved out of Mr. Norton’s home. She and Mr. Norton broke up for a period of time. Around September 2019, they continued to see each other periodically.

J.M. became pregnant around September 2019 and gave birth to a son, C., in May 2020. Mr. Norton is C.’s father.

January 2021

Around January 2021, Mr. Norton and J.M. were arguing when he flipped a table over. There was an ashtray sitting on the table, which hit J.M.’s right foot and caused a cut, several inches in length. Her foot was swollen for a lengthy period of time following the assault. There is a scar on J.M.’s foot from where the ashtray hit her.

J.M. took a photograph of the cut on her foot, which she sent to a friend named K.B. on January 21, 2021.

February 28, 2021

Mr. Norton again became angry with J.M. on February 28, 2021. Mr. Norton grabbed J.M. by her hair and dragged her into his daughter, K.’s bedroom.

J.M. was on the floor of K.’s bedroom when Mr. Norton began kicking her repeatedly. When she tried to get up, Mr. Norton would push her back down and continue to kick her.

Mr. Norton turned the light off in the bedroom and told J.M. not to move from where she was laying on the floor. J.M. could hear her son, C., crying in the other room. C. was nine (9) months old at the time. Mr. Norton refused to let J.M. get off the floor to go attend to her crying son. Mr. Norton continued to yell at J.M. and was yelling for the baby to “shut up”.

> Mr. Norton eventually left to smoke a cigarette and returned with their son approximately 10 minutes later. Mr. Norton told J.M., in front of their son, that they "don't need" J.M., they'd be "better off without her", and that Mr. Norton should "just kill her".
>
> J.M. sustained numerous bruises on her arms, shoulders, and back from Mr. Norton kicking her.
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> Mr. Norton and J.M.'s relationship ended after this incident.

[3] What follows are my reasons for sentencing Mr. Norton to 20 months' incarceration followed by 24 months of probation.

Victim Impact Statement

[4] In her Victim Impact Statement read into the record by the Crown, J.M. described the impact of the repeated incidents of domestic violence on her and her children. J.M. said she and her children endured "deep emotional, physical, and economic scars that continue to affect us daily." She feels like a shadow of her former self, trapped in a heightened state of alertness. She is always vigilant, afraid that Mr. Norton will appear. J.M. struggles to connect with people, feeling isolated and misunderstood. She has difficulty engaging in group settings due to social anxiety and the fact that she constantly replays the trauma in her mind. She noted that her children have been negatively affected by having witnessed Mr. Norton's violence against her. Both children are in counselling to help them cope with their experiences. J.M. stated:

> I see their anxiety in social situations, their reluctance to engage fully with others, and their struggles with trust.

[5] In addition to the ongoing emotional scars, J.M.'s physical injuries included a concussion, multiple bruises, and two black eyes. She had a scar on her foot from an ashtray that struck her. She said this scar reminds her of when she had to run barefoot through the woods to escape Mr. Norton, J.M. wrote in her statement:.

> I still feel the weight of those moments when I was forced to eat my own tampon under duress or when I was sprayed with a garden hose while being called derogatory names like "dirty dog" and "dirt mutt", told to clean myself because I was deemed unworthy. These experiences have left me not only with physical pain but with a deep sense of violation and degradation.

[6] J.M. has been in counselling for over a year. While she has made some progress, she believes that she needs more support to fully heal. She suspects that

she is suffering from PTSD as a result of these incidents. She said the impact of Mr. Norton's violence on her mental health has been "profound, leading to feelings of depression, hopelessness, and a pervasive sense of distrust."

Circumstances of the Offender and Impact of Race and Cultural Assessment ("IRCA")

[7] Mr. Norton is African Nova Scotian. Arriving at a fit and proper sentence that is proportionate to the gravity of the offences and his moral blameworthiness requires consideration of the systemic and background factors detailed in the Impact of Race and Cultural Assessment ("IRCA") placed before the court.

[8] The use of IRCAs by sentencing judges was extensively reviewed in *R v. Anderson*, 2021 NSCA 62, where the Nova Scotia Court of Appeal stated:

> 114 Taking account of IRCA evidence ensures relevant systemic and background factors are integrated in the crafting of a fit sentence, one that is proportionate to the gravity of the offence and the moral culpability of the offender. …
>
> 115 Sentencing is an inherently individualized process. It is a fundamental duty of a sentencing judge to pay close attention to the circumstances of all offenders in order to craft a sentence that is genuinely fit and proper. What is required in the sentencing of Indigenous offenders applies to offenders of African descent who are also entitled to "an individualized assessment of all of the relevant factors and circumstances, including the status and life experiences..."
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> 116 Sentencing judges play a significant role in how offenders are punished and rehabilitated through the criminal justice system. As in the case of Indigenous offenders, they decide whether an offender of African descent is incarcerated or receives a sentence that can play "a stronger role in restoring a sense of balance to the offender, victim, and community, and in preventing future crime". Notwithstanding that sentencing judges are far downstream from the forces that have contributed to bringing offenders before them, they are influential at a critical juncture: they determine if incarceration and separation from society is the course to be followed or if a remedial option can serve the objectives of sentencing and achieve a just outcome.
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> 117 The deference afforded sentencing judges by appeal courts is intended to respect the individualization of sentences "both in method and outcome". *Friesen* held that:
>
> [38] ...Sentencing judges have considerable scope to apply the principles of sentencing in any manner that suits the features of a particular case. Different methods may even be required to account properly for relevant systemic and

> background factors (*Ipeelee*, at para. 59). Similarly, a particular combination of aggravating and mitigating factors may call for a sentence that lies...outside any range. (cites omitted)
>
> 118 The "method" employed for sentencing African Nova Scotian offenders should carefully consider the systemic and background factors detailed in an IRCA. It may amount to an error of law for a sentencing judge to ignore or fail to inquire into these factors. A judge does not have to be satisfied a causal link has been established "between the systemic and background factors and commission of the offence..." These principles parallel the requirements in law established by the Supreme Court of Canada in relation to *Gladue* factors in the sentencing of Indigenous offenders. As with Indigenous offenders, while an African Nova Scotian offender can decide not to request an IRCA, a sentencing judge cannot preclude comparable information being offered, or fail to consider an offender's background and circumstances in relation to the systemic factors of racism and marginalization. To do so may amount to an error of law.
>
> 119 As in Mr. Anderson's case, an IRCA can deliver the specific information relevant to the judge's obligation to determine an individualized sentence. However it is the content not the form that is critical. While the required information does not have to be presented in an IRCA, like *Gladue* reports for Indigenous offenders, IRCAs deliver the "indispensable" content comprehensively and efficiently. IRCAs have become a familiar method for placing systemic and individualized information about African Nova Scotian offenders before sentencing courts in Nova Scotia.
>
> 120 IRCAs can support the use of rehabilitation in sentencing, "One of the main objectives of Canadian criminal law..." and "one of the fundamental moral values that distinguish Canadian society from the societies of many other nations in the world...". IRCAs can provide a foundation on which to build alternatives to incarceration for Black offenders and reduce the over-reliance on imprisonment.

[9] The court noted that the social context information supplied by an IRCA can assist in:

- Contextualizing the gravity of the offence and the degree of responsibility of the offender.
- Revealing the existence of mitigating factors or explaining their absence.
- Addressing aggravating factors and offering a deeper explanation for them.
- Informing the principles of sentencing and the weight to be accorded to denunciation and deterrence.
- Identifying rehabilitative and restorative options for the offender and appropriate opportunities for reparations by the offender to the victim and the community.

> • Strengthening the offender's engagement with their community.
>
> • Informing the application of the parity principle. "Courts must ensure that a formalistic approach to parity in sentencing does not undermine the remedial purpose of s. 718.2(e)".
>
> • Reducing reliance on incarceration.
>
> (para. 121)

[10] The court explained that the use of IRCAs in the sentencing of African Nova Scotian offenders serves to enhance the credibility of the criminal justice system in the eyes of the public:

> [124] The role of IRCAs in the sentencing of African Nova Scotian offenders will serve to enhance the credibility of the criminal justice system in the eyes of a broad and diverse public by increasing the likelihood of the sentences imposed being seen as just and appropriate. Respect for the law and the maintenance of a just, peaceful and safe society is not achieved by putting disproportionate numbers of Black and Indigenous offenders behind bars having left unaddressed, in the context of sentencing, the deeply entrenched historical disadvantage and systemic racism that more than likely had a hand in bringing them before the courts.

[11] The IRCA in this case, dated November 27, 2024, was prepared by Dr. Patrina Duhaney. The Crown briefly referred to the IRCA in its discussion of mitigating factors, noting:

> Mr. Norton experienced racism at his junior high and high school, which led to his decision to leave school and enter the work force. He had obtained his GED when he was 17 years old.

[12] Dr. Duhaney described the purpose of the IRCA as being “to inform sentencing decisions for Mr. Norton by presenting socio-cultural context, identifying factors that have influenced his involvement with the legal system, and providing recommendations to guide sentencing outcomes” (p. 3). However, while the information that follows gives context to Mr. Norton’s early exit from high school despite his strong academic performance, it does not contextualize the gravity of the specific offences and his degree of responsibility, or offer a deeper explanation for the aggravating factors in this case. That said, the IRCA does provide important insight into Mr. Norton’s struggles and his experience of the world, his mental health issues, his lack of post secondary education, and the likely underemployment that has resulted.

[13] The IRCA contains a detailed family background. Mr. Norton is 48 years old born in Antigonish and raised in the community of Hammonds Plains. His mother was African Nova Scotian while his father was of mixed Black and Indigenous ancestry. Mr. Norton's parents were married for 35 years before his father's death in 2000. His father was diagnosed with cancer and died six months later. Twelve years later, Mr. Norton's mother was also diagnosed with cancer and also passed away six months after diagnosis. Importantly, Mr. Norton was his mother's caregiver from the time of her diagnosis until her death. The writer of the IRCA noted that the death of Mr. Norton's parents took an emotional toll on him that he continues to deal with.

[14] Mr. Norton described his father as an "outstanding man who was always there for his family and well-known in their community" (p. 10) He described his mother as a "lovely women" and a "good wife" who loved to cook, a passion he inherited from her (p. 10). Mr. Norton shared that his parents were both active in the Baptist church and community, that they "worked together as a team in parenting, and always presented as a united front" (p. 10). Mr. Norton has an older sister, Nicole, with whom he "share[s] a strong bond" (p. 10). He describes her as a good aunt to his children and one who is always present for all of them. Mr. Norton's family was of modest means, hardworking, caring, and well-respected within the community.

[15] Mr. Norton has two sons, aged 15 and four, and a 12-year-old daughter. Mr. Norton no longer has contact with his 15-year-old son, but maintains a relationship with the son he shares with the victim. He has had sole custody of his 12-year-old daughter since 2020 when her mother lost custody of her children. Mr. Norton enjoys a close relationship with both his youngest son and his daughter and continues to advocate for shared parenting with the victim in relation to their young son.

[16] Despite being raised within a loving family, Mr. Norton was exposed to difficult living conditions at home, with unreliable plumbing, lack of hot water and electricity (p. 12). Mr. Norton described his family home as follows:

> …it resembled a poorly maintained or disadvantaged residence, and explained that the toilet was non-functional, and there was no electricity, so they had to use candles for lighting. Mr. Norton added that they did not have access to hot water and had to go into town to fetch buckets of water from a well. He said that the house was in a predominantly black neighbourhood and that he felt safe there because his father was heavily integrated into the community.
>
> (p. 12)

[17] Later in 1983, the family moved to a home built by his parents in the same neighbourhood. He described the new home as a nice five-bedroom, two-bathroom house. The home had running water and a big backyard with swings. Mr. Norton said his father taught him "how to be a man" by involving him in household chores, including gardening (p. 12). Mr. Norton lived in that house with his family for over ten years.

[18] At 17 years old, Mr. Norton moved into his friend's trailer a few blocks away, where he lived until he was 20. He then moved to an apartment in Dartmouth with a girlfriend. He eventually moved to Sackville where he was in and out of a several different relationships. When he left Sackville at around 35 years old, he moved back to Hammonds Plains to care for his mother after she was diagnosed with cancer. He has lived there since she passed away, 12 years ago.

[19] When asked about his educational background. Mr. Norton said he experienced racism while attending Tantallon Junior High:

> He confided that he began experiencing racism here which often entailed racially motivated verbal assaults (e.g.., calling him the N-word) that sometimes led to physical altercations. Mr. Norton explained that he tried to not let the racism he suffered at the hands of his white schoolmates affect him. He mentioned that he did not want to get in trouble or have the principal involved so whenever fights broke out over racial charged comments, he did his best not to be caught as an involved party. He disclosed that while at the school, he was sent to the principal's office for behavioural issues unrelated to the racist encounters.
>
> (p. 14)

[20] Mr. Norton continued to experience racism when he entered high school. Mr. Norton recalls having very few, if any, teachers from within his community and was subjected to racial slurs by other students. Not surprisingly, the lack of role models in positions of power in school and the pervasive anti-Black racism caused profound emotional impacts and trauma that led him to leave school early. Despite having above-average grades in high school, Mr. Norton dropped out before grade 12 because he was "fed up" with the racism and constant need to physically defend himself from other students (p. 15). At the age of 17, Mr. Norton obtained his GED while surrounded by people from his community, which was a much more positive experience than his years in junior high and high school.

[21] Parenthetically, this court accepts that Mr. Norton's experiences in the educational system would have had a lasting and profound impact on a young Black

male trying to develop a sense of self and a sense of his place in the world. It is widely accepted by the educational institutions themselves that our system in Nova Scotia still does not provide sufficient support for Black learners.

[22] The Black Learners Advisory Committee was formed to provide services to the province in relation to the under-servicing of Black youth within the education system. The consequences of that under-service and recommendations for reform were outlined in a report entitled "The Black Learner's Advisory Committee Report on Education: Redressing Inequality, Empowering Black Learners." This report was provided to the then-Minister of Education in December 1995. The introduction to the report, by the chair, Castor Williams, stated:

> The report further demonstrates that racial discrimination, overt or covert, systemic or otherwise, has played a major part in denying African Nova Scotians equal opportunity to education. This in turn has had disastrous consequences in employment and access to other services. As a result, most African Canadian children are from birth trapped in vicious cycle of societal rejection and isolation, poverty, low expectations and low educational achievement.
>
> The question now is what has been the cost to the individual in terms of lost income, psychological damage, emotional pain and the personal humiliation of racial discrimination? What has been the cost to the black community in terms of employment and self-esteem? What has been the cost of generations of self-doubt?
>
> [Emphasis Added]

[23] This report was intended to stimulate public policy changes and corrective action. While it was not provided to me during the sentencing, I feel comfortable taking judicial notice of the report, which is well known and has provided the foundation for many changes in the educational system, including the institution of the African Nova Scotian Student Support Workers and the Director of African Canadian Education focusing on the under representation of Black teachers and administrators. This report would have been provided just as Mr. Norton was leaving the school system, and reflects his experiences in the school system.

[24] Mr. Norton attended Sir John A. MacDonald for grades 10 and 11, and his experience there is addressed at p. 14 of the IRCA:

> Mr. Norton said that he experienced the worst racism at this school; the school was predominately white and oftentimes the senior students called him the N-word. He said that this oftentimes led to physical altercations in which he acted out of self-defence. Mr. Norton stated that he did not report his experiences of racism to teachers or the principal because he preferred to handle it on his own.

[25] It is not surprising that Mr. Norton chose to leave school before his final year despite having done well in his courses. As noted earlier, he completed the GED program when he was 17 years old. That program took place in his community with classmates who were Black and had similar lived experiences. He was comfortable in that environment. He never considered pursuing any post-secondary education.

[26] Mr. Norton spoke very positively about both his mother and father who were significant figures and positive role models in his life. He spoke about how his father instilled values like strength, hard-work, and compassion, while also teaching him how to navigate manhood. His mother taught him essential life skills like cooking, cleaning, and remaining "calm and collected" (p. 15). He did not recount any negative experiences, family discord, or any type of domestic violence in his home life.

[27] Despite his traumatic experiences in the public school system, Mr. Norton appears to have remained gainfully employed on a nearly consistent basis since the age of 16. Mr. Norton owns his own home and vehicle and has accumulated some limited savings. He has expressed an interest in starting his own landscaping company.

[28] Mr. Norton began working as a "car stripper" at his uncle's car salvage yard when he was 16. He subsequently worked at the Halifax Parks Trails and Gardens cutting grass, and then for his father's company, Planes Trucks and Trailer Parks, as a full-time delivery and pick-up worker. Following his father's death, when Mr. Norton was 27 years old, he found full-time work as a labourer and finisher at Friday's Concrete Limited. His job entailed working with concrete to make driveways, sidewalks and other structures. He held that job for 20 years before he left due to "unfair treatment from a supervisor toward his co-workers" (p. 17). Since November 2024, he has worked as a labourer at 365-Yard Maintenance where he performs tasks such as lawn care, junk removal, building decks, and renovations. He expressed his desire to start his own grass and lawn care business within the next two to three years. He enjoys lawn care and finds its financially rewarding.

[29] Mr. Norton reported struggling with mental health issues for the past 10 years, which have been exacerbated by the current legal proceedings. Mr. Norton feels a great degree of shame and embarrassment as the allegations – including some that the Crown has chosen not to pursue – have been reported in the local news. Mr. Norton feels that this information has significantly changed the community's view of him and he has withdrawn because he feels judged in relation to his legal matters.

Mr. Norton is struggling with both stress and depression, although he has not been formally diagnosed with any mental health condition.

[30] Mr. Norton reported that the issues with his ex-girlfriend, the victim of the offences for which he has pled guilty, have been stressful and traumatic. At page 18 of the IRCA, Mr. Norton seemed to walk back some of his accountability, expressing how stressful his relationship with the victim was, and how "this situation is one of the worst experiences he has endured" (p. 19). In court, however, he expressed remorse and took accountability, which I have taken into account. Page 20 of the IRCA states:

> While he admitted that he may have slapped J.M. once or twice, he emphasised that it was never his intention to assault her. He clarified that he has never forced himself on her and would rather leave a relationship than engage in such behavior.
>
> …
>
> While he may have made mistakes, he does not condone assault. He expressed remorse for any harm caused and stated that he believes no one deserves to be assaulted. He clarified that he does not believe in hitting women or anyone, as it is illegal and wrong.

[31] Mr. Norton disclosed that he has used substances in the past, including hashish, cannabis, and alcohol. Substance use has been a part of his life since childhood. He currently smokes hashish and cannabis but said his use has declined significantly since his teenage years. He does not believe that he has any addictions or that he requires substance abuse counselling.

[32] Mr. Norton provided the names of three collaterals: Pastor Lennett Anderson, Ms. Nicole Norton, and Mr. Robert Leek. These individuals were interviewed and offered detailed insights into Mr. Norton's character, his strong familial bonds, the enduring effects of racial discrimination he has faced, and the potential impact of his incarceration on his children and wider family.

[33] Pastor Anderson was friends with Mr. Norton when they were in school. He described Mr. Norton as stoic, outgoing, and funny during that time. He observed Mr. Norton's compassionate nature when he stepped up to care for his parents during their illnesses. Pastor Anderson was forthright in saying that the two grew apart during high school and have not spent much time together over the last 30 years. It is clear, however, that Pastor Anderson is supportive of Mr. Norton. The IRCA states at pp. 22-23:

> Pastor Anderson communicated that he hopes he will have a chance to reconnect with Mr. Norton. He explained that he would also love to get to know his children. He shared that it is important for Mr. Norton to feel as though he belongs and matters, so he believes getting involved in the community center and the church will help him form more connections in his community. Pastor Anderson expressed that he would like Mr. Norton to pursue "restoration" and realize that every day is a new opportunity to fight for what is right and put his past behind him. He mentioned that while he is not certain if Mr. Norton needs counselling, he said that it may be beneficial. In addition, he mentioned that having a mentor or life coach who identifies as African Nova Scotian to help him find his path and support him may help him.

[34] Nicole Norton, Mr. Norton's older sister, is very supportive of him. She indicated that she believes the death of their parents had a "very large negative impact on him" (p. 23).

[35] Mr. Robert Leek is Mr. Norton's former psychotherapist. He had 18 sessions with Mr. Norton between December 12, 2023 and July 13, 2024. This counselling was directed by the Department of Community Services. Mr. Leek believes that Mr. Norton was misunderstood or falsely accused in the court proceedings. Mr. Leek maintains this view despite Mr. Norton having pled guilty to three of the charged offences. Mr. Leek shared that he does not believe that Mr. Norton has anger management issues. Mr. Leek commented that

> …therapy is good for everyone and he thinks that Mr. Norton would like to restart counselling at some point with a Black therapist/counsellor.
>
> (p. 25)

[36] Importantly, Mr. Leek advised Mr. Norton that he could opt out of his counselling but Mr. Norton chose to engage with therapy in the hope that he could learn strategies to improve his anger management and overall mental health. This is a positive step toward rehabilitation.

[37] The IRCA states at page 27:

[38] However, this statement is not provided nor described as context for the offences. Finally, at page 23 of the IRCA, it states:

> Given his experiences with discrimination and racism within the educational system, it is likely that these experiences have had a negative impact on Mr. Norton's life.

[39] However, this statement is not provided nor described as context for the offences. Finally, at page 23 of the IRCA, it states:

> Mr. Norton has faced significant barriers throughout his life, including racism, economic hardship, and the loss of key family members. These challenges have shaped his worldview and influenced his interactions with others, including his involvement in the criminal justice system. His past experiences, compounded by the stress of his ongoing legal situation, has had a profound impact on his mental health and well-being. Despite these challenges, Mr. Norton has demonstrated resilience and a strong desire to improve his circumstances. He has shown commitment to his children and has made efforts to care for his family, particularly after the deaths of his parents. While he has made mistakes in the past, including substance abuse and legal infractions, Mr. Norton expressed remorse for his actions and is committed to making amends. Based on the findings of the IRCA, the following recommendations are made to support Mr. Norton's rehabilitation and reintegration into society …

[40] The first recommendation in the IRCA is that Mr. Norton participate in ongoing mental health counselling to address trauma from family losses, legal challenges, and past experiences. The second recommendation is that Mr. Norton participate in a substance use treatment program. The third recommendation is that Mr. Norton actively engage in his community through programs designed for Black men or individuals with past involvement in the criminal justice system, like the Nova Scotia Brotherhood Initiative. The last recommendation is that Mr. Norton engage with an organization like the Black Business Initiative to access vocational and educational opportunities in relation to business development and financial literacy.

Prior Criminal Record

[41] Mr. Norton has a limited and dated criminal record consisting of four prior convictions:

1. Theft – s. 334(b) – Offence date December 30, 1995.
2. Break and Enter with Intent – s. 348(1)(a) – Offence date December 30, 1995.
3. Impaired Driving – s. 253(a) – Sentencing date June 23, 2000.
4. Blood Alcohol Exceeds .08 – s. 253(b) – Offence date October 13, 2007.

None of the these prior convictions are for violent offences generally or domestic violence specifically. The Crown acknowledged that although Mr. Norton has four convictions, his criminal record is limited and dated.

Mitigation

[42] The Crown says Mr. Norton's guilty pleas, his acceptance of responsibility, and the fact that the victim did not need to testify are all mitigating factors. The Crown also refers to Mr. Norton's employment since November 2024 with 365 Yard Maintenance as a mitigating factor. I agree that these are all mitigating factors. Mr. Norton accepted responsibility. Although that acceptance appeared to be attenuated by comments reported in the IRCA, his comments in court, along with his guilty pleas, are solid expressions of remorse and accountability. For the past three years, Mr. Norton has complied with his release conditions while being subject to a curfew.

Aggravating Factors

Number of Assaults

[43] This was not an isolated incident of violence. Mr. Norton has pled guilty to intimate partner violence that occurred on five separate occasions, over a two-year period. There was clearly ongoing and repeated violence perpetrated by Mr. Norton against the victim, J.M.

[44] The repeated cycle of intimate partner violence was recently considered by the Honourable Judge Russell (as he then was) in *R. v. S.R.M.*, 2023 NSPC 33. In that case, the accused was found guilty of assaulting his intimate partner on six occasions over a 16-month period. Judge Russell noted:

> 133 …Most often each event arose during a separate interaction... These events arose out of various contextual interactions within their relationship on any given day. The offences were not part of a continuous transaction over a short period. The accused had plenty of time to step away. He had days, weeks, and months between some offences. He had time to not only reflect on his previous actions but also on the earlier harm he had caused. He had plenty of time to recalibrate and navigate a different path forward between each incident…

[45] Mr. Norton also had plenty of time to step away, to reflect and consider his actions and the harm he caused before committing another offence. He did not do so. Instead, he continued to inflict violence on his partner, J.M.

Presence of Children during the Assaults

[46] J.M.'s daughter was present during the July 26, 2019, assault. She was two years old at the time of that offence. Mr. Norton's daughter was also present during that assault. She was six years old at the time. J.M. and Mr. Norton's son was present during the February 28, 2021 assault. He was nine months old at the time of that offence.

Weapons

[47] It is aggravating that Mr. Norton used three different weapons during the course of three separate assaults:

- He struck J.M. with an HDMI cord during the January 1, 2019, assault;
- He sprayed J.M. with cold water during the July 26, 2019, assault, after forcing her to remove the tampon from her vagina and put it in her mouth; and,
- He flipped a table over during the January 2021 assault, causing an ashtray to hit J.M.'s foot. The ashtray cut her foot and caused a scar.

Physical Injuries

[48] J.M. suffered physical injuries during four of the five assaults:

- She was unable to get out of bed for several days and felt dizzy for two weeks following the assault on January 1, 2019. She also suffered from two black eyes and bruising to her face;
- She suffered from cuts on her hands, arms, face, ears, and nose as a result of the July 20, 2019, assault;
- Her foot was cut during the January 2021 assault when Mr. Norton caused an ashtray to hit her. The cut was several inches in length and caused her foot to swell for a lengthy period of time. J.M. still has a scar on her foot from this assault; and
- J.M. sustained numerous bruises on her arms, shoulders, and back from Mr. Norton repeatedly kicking her during the February 28, 2021, assault.

Impact on the Victim J.M.

[49] Evidence that these offences had a significant impact on the victim is statutorily aggravating pursuant to s. 718.2(a)(iii.1) of the *Code*.

[50] In her victim impact statement, J.M. described the physical, psychological, and economic impacts these offences have had on her and her children. In addition to her physical injuries, J.M. suffers from fear and anxiety, and believes that she has post-traumatic stress disorder. She described feelings of depression, hopelessness, isolation, distrust, and a "deep sense of violation and degradation." It is clear that these offences have significantly impacted her physical and psychological wellbeing.

[51] Mr. Norton used more than physical violence to maintain dominance and control over J.M. He forced her to sit in one spot on the back deck for a lengthy period of time, resulting in her urinating on herself. He also forced her to remove a tampon from her vagina and put it in her mouth. He told her to eat the tampon. He refused to let her have her keys or tend to her crying nine-month-old, and said he should "just kill her" in front of their young son.

Intimate Partner Violence

[52] Section 718.201 of the *Criminal Code* provides:

> **Additional consideration — increased vulnerability**
>
> 718.201 A court that imposes a sentence in respect of an offence that involved the abuse of an intimate partner shall consider the increased vulnerability of female persons who are victims, giving particular attention to the circumstances of Aboriginal female victims.

[53] Sections 718.2 (a)(ii) and 718.201 require this court to consider that Mr. Norton's crimes involved the abuse of an intimate partner.

[54] In *R. v. Butcher*, 2020 NSCA 50, the court noted that offences involving intimate partner violence require "emphatic denunciation":

> [136] Parliament's inclusion of domestic violence as an aggravating factor on sentencing codified what the common law already took into account. Whether it is through the application of statutory or common law principles, violence perpetrated in the context of intimate relationships requires emphatic denunciation.

[55] I have taken all of these factors into consideration.

Positions of the Parties

[56] The Crown submits that a fit and appropriate sentence in this case is a global sentence of three years in custody. The Crown respectfully suggests the following allocation:

- Count 3, which reflects the threats uttered by Mr. Norton during the February 28, 2021 incident: three months custody, concurrent;
- Count 4, which reflects the assaults committed on July 20, 2019, and February 28, 2021: 12 months custody, consecutive (the equivalent of six months custody for each assault); and
- Count 5, which reflects the assaults with a weapon committed on January 1, 2019 (HDMI cord), July 26, 2019 (cold water), and January 2021 (ashtray): 24 months custody, consecutive (the equivalent of eight months custody for each assault with a weapon).

[57] The Crown argues sentence of three years custody appropriately addresses the paramount principles of denunciation and deterrence, both general and specific. In addition, the Crown seeks the following ancillary orders:

1. DNA Order (mandatory pursuant to 487.051, as section 267(b) is a primary designated offence);

2. Firearms prohibition for 10 years (mandatory pursuant to section 109(a) in relation section 267(b)); and

3. An order pursuant to section 743.21 prohibiting Mr. Norton's communication with J.M. during his custodial sentence (discretionary).

[58] The defence does not object to the ancillary orders sought by the Crown. The defence concedes that when sentencing an offender for intimate partner violence, the primary objectives are denunciation and deterrence. However, the defence states that a court must balance these primary objectives with the remaining purposes and principles of sentencing outlined in s. 718 through 718.2, including rehabilitation and restraint.

[59] The defence submits that an appropriate disposition for the offences is an 18-month conditional sentence order, followed by 30 months of probation.

[60] The defence submits that this custodial sentence, to be served in the community, would satisfy the principles and purposes of sentencing and is not contrary to the public interest in these circumstances.

[61] The defence emphasizes that Mr. Norton is a 48-year-old gentleman with a limited and dated criminal record who has never spent time in custody, nor been accused of previous violent offences. They submit that a conditional sentence would allow Mr. Norton to continue raising his daughter and remain gainfully employed while also satisfying the principles of denunciation and deterrence.

Rehabilitation

[62] At 48 years of age, with a dated and unrelated criminal record, Mr. Norton's prospects of rehabilitation are good if he can address his underlying anger management issues. I have taken the principle of rehabilitation into account. While denunciation and deterrence are primary sentencing principles, rehabilitation too remains an important principle to be considered in fashioning this sentence.

Availability of a Conditional Sentence

[63] Section 742(1) of the *Criminal Code* governs the availability of conditional sentences. It sets out the requirements that must be satisfied for a conditional sentence to be available:

1. the sentence is less than two years in duration;
2. the safety of the community would not be endangered;
3. the sentence upholds the objectives and principles articulated in s. 718-718.2 of the *Criminal Code*;
4. the offence does not carry a mandatory minimum sentence of imprisonment; and
5. the offence does not fall within the offences articulated in s. 742.1(c)-(d).

[64] None of the offences for which Mr. Norton has pled guilty is punishable by a minimum term of imprisonment or is a numerated offence pursuant to s. 742.1(c) or (d).

[65] In *R. v. Proulx*, 2000 SCC 5, Lamer C.J. said the following about the nature of a conditional sentence:

> 22 The conditional sentence incorporates some elements of non-custodial measures and some others of incarceration. Because it is served in the community, it will generally be more effective than incarceration at achieving the restorative objectives of rehabilitation, reparations to the victim and community, and the promotion of a sense of responsibility in the offender. However, it is also a punitive sanction capable of achieving the objectives of denunciation and deterrence. It is this punitive aspect that distinguishes the conditional sentence from probation, and it is to this issue that I now turn.
>
> [Emphasis in original]

[66] Lamer C.J. went on to summarize the proper approach for determining whether a conditional sentence is available:

> [58] ... In my view, the requirement that the court must impose a sentence of imprisonment of less than two years can be fulfilled by a preliminary determination of the appropriate range of available sentences. Thus, the approach I suggest still requires the judge to proceed in two stages. However, the judge need not impose a term of imprisonment of a fixed duration at the first stage of the analysis. Rather, at this stage, the judge simply has to exclude two possibilities: (a) probationary measures; and (b) a penitentiary term. If either of these sentences is appropriate, then a conditional sentence should not be imposed.
>
> [59] In making this preliminary determination, the judge need only consider the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 to the extent necessary to narrow the range of sentence for the offender. ...
>
> [60] Once that preliminary determination is made, and assuming the other statutory prerequisites are met, the judge should then proceed to the second stage of the analysis: determining whether a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2. Unlike the first stage, the principles of sentencing are now considered comprehensively. Further, it is at the second stage that the duration and venue of the sentence should be determined, and, if a conditional sentence, the conditions to be imposed.

[67] In *R. v. Anderson*, *supra*, the court described the process as follows:

> [127] Before a conditional sentence can be imposed, both a penitentiary sentence and probation must be eliminated as appropriate dispositions. This requires the judge to undertake "a preliminary determination of the appropriate range of available sentences". The sentencing judge has to be satisfied the range for a fit and proportionate sentence includes incarceration of two years less a day. This threshold intended by Parliament to "identify the type of offenders who could be entitled to a conditional sentence". Judges are entitled to expect their determinations of who qualifies for a conditional sentence to be accorded

> significant deference on appeal absent an error in principle or the imposition of a clearly unfit sentence.

[68] At the first stage of the analysis, and considering the purposes and principles of sentencing, I must determine whether probationary measures or a penitentiary term can be excluded as appropriate sentences in this case. If either is appropriate, a conditional sentence is not available.

First Stage

Principles of Sentencing

[69] Sections 718 to 718.2 of the *Code* contain the fundamental purpose and principles of sentencing. The Crown submits that the following statutory provisions are relevant to the Court's sentencing decision in Mr. Norton's case:

> **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.

[70] Appellate courts have repeatedly held that the primary sentencing objectives for offences of intimate partner violence are denunciation and deterrence: *R. v. Bryan*, 2008 NSCA 119; *R. v. Pitkeathly*, (1994), 29 C.R. (4th) 182 (Ont. C.A.); *R. v. Boucher*, (2004), 186 C.C.C. (3d) 479 (Ont. C.A.); *R. v. Edwards*, (1996), 105 C.C.C. (3d) 21 (Ont. C.A.); *R. v. Campbell*, (2003), 170 O.A.C. 282 (Ont. C.A.); *R.*

v. Denkers, (1994), 69 O.A.C. 391 (Ont. C.A.); *R. v. MacDonald*, (2003), 173 C.C.C. (3d) 235 (N.S.C.A.); *R. v. Brown* (1992) 73 C.C.C. (3d) 242 (Alta. C.A.); and *R. v. Bates*, (2000), 146 C.C.C. (3d) 321 (Ont. C.A.)).

[71] In *R. v. Chirimar*, 2007 ONCJ 385, Troller J. stated:

> 18 …Courts have since recognized that, while all of the objectives of sentencing now found in ss. 718 to 718.2 of the Criminal Code are important in fashioning an appropriate sentence, when sentencing offenders for crimes of domestic violence, judges must emphasize the sentencing objectives of general deterrence, specific deterrence and denunciation…

[72] While the defence concedes that the paramount purposes of sentencing in intimate partner violence offences are denunciation and deterrence, they submit that these principles can be satisfied with the imposition of a custodial sentence to be served within the community.

[73] In arguing that a conditional sentence is not appropriate, the Crown relied primarily on the follows authorities.

[74] In *R. v. L.K.M.*, 2024 NSSC 189, Justice Rosinski provided helpful instruction with respect to the modernized view of the impacts of intimate partner violence.

[75] In that case, the offender was found guilty of one count of assaulting his intimate partner, one count of assaulting his partner's child, one count of uttering threats to his intimate partner, one count of theft of his partner's motor vehicle, and one count of resisting arrest. These five offences occurred within an eight-month period.

[76] During the first incident of assault, the offender repeatedly slapped the victim across the face, broke a mirror and lamp, and called her a pig. She had two black eyes as a result of that assault. He also punched her in the chest, punched her leg and grabbed her hair, threatening to kill her. Her two children were present in the house when this occurred. During the second incident, the offender struck his partner's seven-year-old daughter across the face, and then uttered a threat to his partner. The offender later stole the victim's motor vehicle and resisted arrest when he was eventually apprehended by police.

[77] While the victim did not file a victim impact statement, the court accepted that the victim's children experienced trauma by their presence in the home at the time of these incidents, and associated times when the residual effects of their mother's

trauma, "whether physical, psychological or emotional, would have been apparent to them" (para. 64). The PSR indicated the offender suffered from alcohol abuse and ADHD. He had a lengthy criminal record.

[78] Before conducting an extensive review of the case law to determine a range of sentence, Rosinski J. stated:

> [126] The modernized view of the impacts of intimate partner violence bears some similarities to the modernized view of sentencing sexual abuse of children offences, as set out in the reasons of the court in *R. v. Friesen*, 2020 SCC 9.
>
> [127] To the extent that this is accurate, it suggests that older precedents may have not fully appreciated the breadth of intimate partner violence and harmful effects thereof on affected adults and children, and correspondingly under-estimated the deterrent value of the sentences that were typically meted out. This reasoning suggests that some of those older sentencing ranges may need to be increased for a modern equivalent set of factual circumstances.

[79] Justice Rosinski also noted that setting a range for these kinds of offences is challenging:

> [166] It is difficult due to the variable circumstances in each of these cases to discern a precise range of sentence for the offences committed by LM.
>
> [167] However, the Court of Appeal has consistently stated that sentences for violent offences committed against intimate partners, require primary emphasis on deterrence - specific and general.

[80] After applying totality, Justice Rosinski sentenced the offender to two years in a federal institution, followed by two years' probation.

[81] In *R. v. S.(S.)*, 2021 CarswellNfld 427 (Prov. Ct.), referenced in *R. v. L.K.M.*, *supra*, the offender assaulted his former partner by striking her arms; grabbing her face with his hand and forcing her to look at him by squeezing her cheeks; pushing her onto a couch and hitting her on the top of her head; placing his hand on her throat and squeezing it; and pushing her onto the floor and striking her legs. These assaults caused significant bruising to numerous parts of the victim's body.

[82] The offender was 29 years of age and had no prior record. The parties were married and had a young child together. The offender faced immigration consequences as a result of the conviction.

[83] The court reviewed sentencing precedents for intimate partner violence that ranged from 30 days to 10 months. The offender was sentenced to six months' imprisonment and two years' probation for the count of assault. The court found that a conditional sentence would not be capable of satisfying the principles of sentencing that ought to be given priority, nor would it reflect the seriousness of the offence committed.

[84] The court stated:

> 9 …I would suggest that the turning of new page from the past in relation to our approach to sentencing for offences involving violence in intimate relationships is also required.
>
> 10 This does not mean that the imposition of a period of incarceration will be appropriate in every case regardless of the circumstances… but it does mean that sentences imposed for such offences must not only reflect the inherent seriousness of these offences, but they must also include an element that seeks to provide meaningful future protection for the victims of such offences…

[85] In *R. v. Herritt*, 2019 NSPC 62, the offender pled guilty to assault causing bodily harm and one breach of recognizance. In that case, the offender choked the victim to such a degree that she lost consciousness three separate times over a two-to-three hour timeframe. This occurred in front of her children. She was told that she was going to die and that she would never see her children again. The offender suffered from PTSD. He expressed remorse and had no prior criminal record.

[86] The offence had a significant impact on the victim and her children. The assault was described as prolonged and violent. The court emphasized the need to balance denunciation, deterrence, the protection of the public, and the offender's rehabilitation. It found that a proportional sentence for the assault causing bodily harm was two years less one day, plus three years' probation.

[87] In *R. v. Russell*, 2014 NSPC 8, the first-time offender was convicted of two counts of assault causing bodily harm and one count of uttering a death threat. The circumstances included the offender grabbing the victim by her throat, throwing her to the ground, and punching and kicking her in the head, while threatening to kill her. The offender also pulled the victim's hair and kicked her in the head with his work boots, breaking her glasses. In an earlier assault, he pushed her to the ground and dislocated her shoulder.

[88] With respect to mitigating factors, the offender pled guilty, felt remorse, was steadily employed, and had no prior criminal record. He was intoxicated at the time

of the offences. Aggravating factors included the high level of violence involved in the assaults, the unprovoked nature of the assaults, the domestic context of the assaults, and the impact of the assaults on the victim. The offender was sentenced to 12 months for each assault charge, to be served consecutively, and three months for uttering a death threat.

[89] A similar length of incarceration was imposed in *R. v. Jardine*, 2014 NSPC 59. This case involved a charge of assault causing bodily harm which included the offender biting his intimate partner's face and foot; slamming her head on a toilet, tub, and ceramic tile; and threatening to slit her throat with a butcher knife. Clumps of her hair were pulled from her head and she suffered from numerous contusions and abrasions. The offender pled guilty to assault causing bodily harm.

[90] The offender had previously assaulted his partner and received a conditional sentence order, which he breached twice. He was sentenced to two years' imprisonment and three months consecutive for the breach of probation. The court indicated that it would have imposed a six-month sentence for the breach of probation, but gave the offender 90-days' credit for his period of remand time.

[91] In *R. v. Knockwood*, 2009 NSCA 98, the court considered whether the trial judge erred in failing to order a conditional sentence order in a case involving intimate partner violence. The indigenous offender was found guilty of breach of recognizance, and assault causing bodily harm against his spouse.

[92] The offender was angry at his spouse after finding images of other men on her cell phone. They were driving on a highway when the victim shut off and exited the car, running away. The offender ran after her, pulled the back of her hair, and yanked her down to the ground. They both fell down a hill, while the offender held onto the victim's throat, making it difficult for her to breath. She eventually got free, when the offender grabbed her by the hair again and yanked her to the ground, causing them to tumble down into a field. The offender bit her finger, punched her in the eyes, and ripped her shirt off. The victim suffered from extensive bruising to her leg, chest, arms, and shoulders.

[93] At the time of the offence, the offender was bound by a recognizance requiring him not to have any contact with the victim. This was the offender's second conviction for assault on an intimate partner. The sentencing judge assessed the *Gladue* principles and determined that they had no application to the offender. He was sentenced to 12 months' incarceration and two years' probation.

[94] On appeal, the offender argued that the judge had failed to give sufficient weight to the joint recommendation of counsel, failed to address his Aboriginal status, failed to consider the harsh conditions of his pre-trial release, and failed to consider a conditional sentence order. The court denied the appeal and affirmed the carceral sentence:

> [39] A review of Judge MacDonald's reasons makes it apparent that she was well aware of the factors enumerated in *R. v. Proulx*, 2000 SCC 5, when considering s. 742.1 of the Code. She provided cogent reasons for finding that a conditional sentence order was not appropriate in the circumstances: she was not satisfied service of the sentence in the community would not endanger the safety of the community and, furthermore, she was not satisfied a conditional sentence was consistent with the fundamental purpose and principles of sentencing as set in the Code. Judge MacDonald said:
>
> > ... So, in other words, I would have to be satisfied that a conditional sentence order would be consistent with the purpose and principles of sentencing. I referred to those earlier. And it is clear, cases involving spousal violence, the objectives that are to be emphasized by the Court in the sentencing process are denunciation and deterrence and that is clear.
>
> [40] This was a vicious assault in which Mrs. Knockwood was choked, beaten, bruised and bitten. The "blight" of spousal assault was described very well by Justice Bateman in *R. v. MacDonald*, 2003 NSCA 36. Justice Bateman's observations at para. 52 are especially apt here:
>
> > [52] That this is a second spousal assault upon the same victim is a significant aggravating factor. As has already been mentioned, the nature of this crime calls out for denunciation and general deterrence. Specific deterrence is required, here, as well.

[95] The defence cited the following cases which they say demonstrate that a conditional sentence order is both available and appropriate.

[96] In *R. v. Menendez*, [2020] N.W.T.J. No. 17, the court sentenced the 37-year-old first-time offender for two assaults committed on an intimate partner. The first offence was a common assault, while the second was an assault causing bodily harm. The common assault involved the offender forcefully taking the victim down to the hardwood floor where he climbed on top of her while she was face-down. He used one knee to hold down one of her elbows and put his other knee on her back. He used his right elbow to apply pressure to her jaw, and screamed in her ear. The victim already suffered from TMJ disorder. The offender eventually stopped after she began yelling loudly.

[97] The second offence involved the offender holding the victim's arms behind her back and taking her to the ground. He kept her head down with his forearm. She attempted to lift her head and he pushed it back into the ground, causing her head to impact forcefully with the ground.

[98] The court imposed a three-month conditional sentence order for common assault and a consecutive nine-month conditional sentence order for assault causing bodily harm.

[99] In *R. v. Agang*, 2020 ABPC 54, the court considered a conditional sentence order for the offences of assault with a weapon, assault causing bodily harm, and breaches of a recognizance. The assault was upon the offender's partner. He assaulted her on the head and mouth with a hammer. When she fell down, he punched and kicked her. She had trauma to her head and broken teeth. The offender had a prior record and the assault occurred despite an no-contact order. The offender was sentenced to six months' incarceration and one year of probation for the assaults.

[100] The defence argues that the assaults in *R. v. Agang*, *supra*, were far more significant than those committed by Mr. Norton, who has shown the ability to abide by court orders for the last three years.

[101] In *R. v. MacDonell*, 2018 NSPC 21, the offender and his partner were out driving on an ATV when the vehicle broke down and the offender became enraged. He assaulted his partner by shaking and choking her, picking her up by her helmet and pushing her to the ground. She suffered bruising, a black eye, and a cut on her leg. A nine-month conditional sentence order was imposed. This was a single offence and the offender had sought out counselling treatment for anger management.

[102] The defence also cited *R. v. W.E.S.*, 2018 BCPC 23, and *R. v. J.A.*, 2024 NSPC 5. I find that these cases are too dissimilar to assist me in determining a range of sentence.

[103] None of the cases cited by the parties is a perfect comparator. Some offenders have previous convictions for offences involving domestic violence, while Mr. Norton does not. Some offenders committed a single assault, while Mr. Norton committed several. Some offenders breached court orders, which Mr. Norton has not. Like Mr. Norton, some offenders used weapons in the commission of offences. Unlike Mr. Norton, some offenders were intoxicated or suffering from serious

mental illness at the time of the offences. Like Mr. Norton, some offenders committed offences in front of children.

[104] Of the authorities before the court, I find that the closest comparators to Mr. Norton's case are *R. v. Herritt*, *supra* (two years less one day); *R. v. Russell*, *supra* (two years); *R. v. Jardine*, *supra* (two years); *R. v. L.K.M.*, *supra* (two years); and *R. v. Knockwood*, *supra* (12 months).

[105] In setting a range, I must also consider the IRCA. Neither party's pre-trial brief grappled with the role of Mr. Norton's IRCA in determining whether a conditional sentence order is available. In *R. v. Anderson*, *supra*, the court addressed the role of IRCAs at the first stage of the *Proulx* analysis:

> [131] In assessing the probation/penitentiary issue and determining the range, systemic and background factors that could reasonably and justifiably impact the sentence imposed must be considered. IRCAs are a vital source of evidence for resolving these issues. The judge sentencing Mr. Anderson did not have the benefit of sentences for s. 95(1) offences that had been crafted with IRCA evidence taken into account. Cases such as *Nur* were decided without such evidence.
>
> [132] The question of whether the range can include a sentence of two years less a day should be refracted through the prism of the factors addressed by the IRCA. It is not a matter of determining if deviating from the range for the offence is warranted. Determining the range itself must be informed by the factors addressed in the IRCA and the statutory prerequisites for a conditional sentence. As the ANSDPAD Coalition submitted, IRCAs should be employed to individualize sentences, taking account of factors that have previously been absent from the analysis. Sentence ranges will have to be re-evaluated as they have been developed without the benefit of a fully contextualized analysis. As noted, a judge's determination of the applicable sentencing range needs to be accorded a high degree of deference.
>
> [133] The need to re-assess sentence ranges has been acknowledged by the Crown in post-hearing submissions:
>
> > …the historical portrait of sentences that may comprise a range are currently without the benefit of IRCAs to inform those results. Therefore, to individualize the range, even for the preliminary step of excluding probation and federal custody, any consideration of this range must be cognizant of the more fulsome context by which a court with the benefit of an IRCA can arrive at a just and appropriate sentence.
>
> [134] This, the Crown says, will lead to a body of jurisprudence that has incorporated the factors addressed by IRCAs. In the meantime, "departure from

> a traditional range that is not itself informed by systemic and background factors will not necessarily constitute an error in principle or result in an unfit sentence".
>
> [135] Once a judge has determined that the appropriate range of sentence for the offender includes a term of imprisonment of two years less a day, they then must address whether the offender should be permitted to serve their sentence in the community. As I noted earlier, a conditional sentence can only be ordered if the judge:
>
> > …is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2.
>
> [136] The "endangerment of the community" factor consists of two components: (1) the risk of re-offence; and (2) the gravity of the damage should re-offending occur. These elements were extensively reviewed in *Proulx* which held that incarceration would be warranted where there is a "real risk" of re-offending and, particularly in the case of violent offenders, where there is even a minimal risk of "very harmful future crime".
>
> [Emphasis added]

[106] In reviewing the IRCA, I must consider the moral culpability of Mr. Norton in the context of the historic factors and systemic racism discussed in the IRCA. As noted in *R. v. Anderson*, *supra*:

> [146] The moral culpability of an African Nova Scotian offender has to be assessed in the context of historic factors and systemic racism, as was done in this case. The African Nova Scotian offender's background and social context may have a mitigating effect on moral blameworthiness. In *Ipeelee*, the Supreme Court of Canada recognized this principle in relation to Indigenous offenders. It should be applied in sentencing African Nova Scotians. Sentencing judges should take into account the impact that social and economic deprivation, historical disadvantage, diminished and non-existent opportunities, and restricted options may have had on the offender's moral responsibility. The judge here mined the rich vein of the IRCA evidence and closely and comprehensively examined it to better understand how to view Mr. Anderson's possession of the gun.
>
> …
>
> [153] While scepticism is justified, judges are nonetheless required to factor denunciation and deterrence into their sentencing calculus. Where the appropriateness of a conditional sentence is being considered, it will be necessary for the judge to determine if denunciation and deterrence can be served by punitive conditions that restrict the offender's liberty. And general deterrence as a sentencing principle must be applied with caution so that it does not obstruct the fashioning of a proportionate sentence. A grossly disproportionate sentence crafted

> to send a deterrent message to would-be offenders will attract appellate intervention.
>
> [154] Judges are accorded significant, although not unfettered, discretion in weighing the principles of sentencing in determining a fit sentence that accords with the overarching principle of proportionality. In this calculus, a properly crafted conditional sentence with appropriate conditions can achieve the objectives of denunciation and deterrence. A conditional sentence may even be:
>
> > … as onerous as, or perhaps even more onerous than, a jail term, particularly in circumstances where the offender is forced to take responsibility for his or her actions and make reparations to both the victim and the community, all the while living in the community under tight controls.
>
> …
>
> [156] Societal values must not be lost in the analysis. Denunciation may need to be emphasized to such an extent that "incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct". There are also statutory provisions that require judges to prioritize denunciation and deterrence. The Crown's roadmap references *Proulx* which held:
>
> > [114] Where punitive objectives such as denunciation and deterrence are particularly pressing, such as cases in which there are aggravating circumstances, incarceration will generally be the preferable sanction. This may be so notwithstanding the fact that restorative goals might be achieved by a conditional sentence. Conversely, a conditional sentence may provide sufficient denunciation and deterrence, even in cases in which restorative objectives are of diminished importance, depending on the nature of the conditions imposed, the duration of the conditional sentence, and the circumstances of the offender and the community in which the conditional sentence is to be served.

[107] In this case I need to closely "interrogate" the use of denunciation and deterrence as an underpinning for any decision to incarcerate Mr. Norton (*R. v. Anderson*, *supra*, para. 159). In fashioning an appropriate sentence, I do not want Mr. Norton's prospects of being a pro-social, law abiding citizen, to be sacrificed at the altar of denunciation and deterrence.

[108] The IRCA in *R. v. Wournell*, 2023 NSCA 53, provided a detailed background of the offender which the court summarized as follows:

> [90] The three reports--the PSR, the original IRCA and the updated IRCA--all reflect the deprivations experienced by the appellant, a racialized young man. His family was fractured, he grew up in poverty, struggled in school, ultimately acquiring only a limited education, was subject to sexual and physical abuse, lacked a positive Black male role model, endured housing instability and

> inadequate housing in socio-economically marginalized neighbourhoods, and struggled with his racial identity.

[109] This is not the same experience as Mr. Norton. However, there is no question that Mr. Norton experienced systemic factors that impacted his education. His experiences of anti-Black racism and a lack of Black teachers within the education system likely influenced his decision not to pursue post-secondary education, thereby limiting his future options for employment.

[110] In *R. v. Wournell*, *supra*, the court stated:

> [98] The appellant's impoverished coping mechanisms and impacted global functioning deficits manifested themselves in his offending. A proportionate sentence, one that reflects the gravity of the appellant's offences and his moral culpability, must take into account the systemic and background factors that have contributed to him coming into conflict with the law.

[111] However, how have Mr. Norton's experiences manifested themselves in domestic violence? What about the systemic and background factors contributed to him coming into conflict with the law? There is no suggestion in any of the materials that the offender has had an unstable childhood. In fact, he appears to have experienced a happy and stable home without any exposure to intimate partner violence.

[112] The gravity of the offences and Mr. Norton's moral culpability must be assessed in the context of historical factors and systemic racism. In sentencing Mr. Norton, the court is to "take into account the impact that social and economic deprivation, historical disadvantage, diminished and non-existent opportunities, and restricted options may have had on the offender's moral responsibility" (*Anderson*, *supra*, para. 146). However, some of these aspects are not in play with regards to Mr. Norton's background, nor are they addressed in his IRCA.

[113] The defence also relies on a one-page letter from Shauna Oliver, the chair and president of Wallace Lucas Community Centre. She did not testify. In her letter, she asked the court to consider alternatives to incarceration. She referred to the fact that Mr. Norton has custody of his daughter, and stated:

> It is essential to recognize that Kenneth Norton did not simply decide to commit this act without a complex background of struggles. He is dealing with significant mental traumas and personal demons from his past that have contributed to his actions.

[114] While the IRCA certainly describes mental traumas caused due to anti-Black racism experienced throughout his education, there has been no effort to connect those experiences to his moral culpability or blameworthiness for the multiple assaults and threats made in the context of Mr. Norton's intimate partner relationship, some occurring in front of his children. I am not satisfied that Mr. Norton's moral blameworthiness – which is high – is significantly reduced, or that the aggravating factors can be more deeply explained, as a result of the information in the IRCA.

[115] I find that the range for a fit and proportionate sentence for Mr. Norton's offences is 12 to 24 months of incarceration. Having determined that the range can include a sentence of two years less a day, I must move on to consider whether a conditional sentence order would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2.

Second Stage

[116] In considering whether a conditional sentence order is a fit and proper sentence, I refer to *R. v. Wournell*, supra, where the court noted:

> [57] In the context of re-visiting the appellant's sentence I will discuss the analysis required where a conditional sentence is within the sentencing range, as it was here. The constituent elements are found in s. 742.1 of the *Criminal Code*. Relevant to the appellant's sentencing on April 25, 2022, the judge was required to consider whether:
>
> > * The appropriate sentence is one of imprisonment of no more than two years' less a day.
> >
> > * Service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2.
> >
> > * There is no minimum term of imprisonment.
>
> [58] The provisions of the conditional sentencing regime required the sentencing judge to assess whether the appellant serving his sentence under a CSO would pose an unacceptable risk to the community. The "endangerment of the community" factor consists of two components: (1) the risk of re-offence; and (2) the gravity of the damage should re-offending occur. The judge's failure to address this fundamental question was an error in principle.
>
> [59] The sentencing judge should have addressed the provisions of s. 742.1 and the focus in *Proulx* on:

> • Parliament's objective in instituting conditional sentencing as a means for reducing "the problem of overincarceration in Canada". (As the Supreme Court of Canada and Parliament have recognized since *Proulx,* overincarceration, particularly of Indigenous and Black offenders, has become an even more pressing societal issue.)
>
> • The doubt that has been cast on the effectiveness of incarceration in achieving the goals intended by traditional sentencing principles, including the goals of denunciation and deterrence.
>
> • Parliament's intention, by way of the 1996 amendments to the *Criminal Code* that included conditional sentencing, "to give increased prominence to the principle of restraint in the use of prison as a sanction through the enactment of s. 718.2(d) and (e) which provide, respectively, that "an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances" and "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders…"
>
> • The ability of a conditional sentence to provide "a significant amount of denunciation" and "…significant deterrence if sufficiently punitive conditions are imposed and the public is made aware of the severity of these sentences".

[117] While I acknowledge that a conditional sentence order, when properly crafted, can provide a significant amount of denunciation and deterrence, I am not satisfied that it would adequately express society's condemnation of the offender's conduct in the circumstances of this case.

[118] In *R. v. S.R.M.*, *supra*, the court considered a fit sentence in relation to six counts of intimate partner violence involving the offender's spouse and her daughter. The offences took place over the course two years and included a sexual assault, assault causing bodily harm, threats to cause death or bodily harm, and threats to damage property. Although the specific offences differ, the court's comments on intimate partner violence apply equally to the present case:

> [2] The complexity and sad reality that is Intimate Partner Violence ("IPV") can hardly be captured in words. The injuries, shame, trauma, and oppression, occur in real time far removed from lawyers and judges at sentencing hearings. The deep-rooted impact of this violence can set in and take hold well before and long after a sentencing hearing. Intimate Partner Violence is someone's sister, someone's child, someone's granddaughter, someone's brother. Intimate Partner Violence chills, infects, and decays the mental health and wellness of our communities.
>
> [3] This year the Mass Casualty Commission released a report entitled Turning the Tide Together. The Commission examined what has been referred to as an

"Epidemic of gender based, Intimate Partner, and Family violence". The Commission stated:

> In 2023, we use "epidemic" to underscore the fact that gender-based, intimate partner, and family violence continue to be excessively prevalent in Nova Scotia and throughout Canada. Although being experienced by all genders, these forms of violence affect a disproportionately large number of women and girls (page 274).
>
> ...
>
> Focusing on Statistics Canada data on intimate partner violence, we point out that more than 11 million people, the overwhelming majority of whom were women, have experienced intimate partner violence at least once in their life from the age of 15 on. It is important to pause and pay attention. About one out of three adults has experienced this form of violence. These statistics are not just numbers. They represent the lived experiences of real people - of everyday life for far too many women and girls (page 275).

[119] In *R. v. Chirimar*, *supra*, the court contended with whether or not to impose a conditional sentence with regard to domestic violence offences:

> 37 During his submissions, Mr. Pain strongly urged me to order that Mr. Chirimar be permitted to serve his sentence in the community. He suggested a conditional sentence in the range of nine to 12 months might even be appropriate.
>
> 38 As the law presently stands, unless Parliament has prescribed a minimum sentence, as long as the criteria in s. 742.1 of the *Criminal Code* are met, all offences are eligible to be punished by a conditional sentence of imprisonment: see *Regina v. Proulx* (2000), 140 C.C.C. (3d) 449 (S.C.C.). The Court held that a sentence served in the community may achieve the goals of general deterrence and denunciation. As Chief Justice Lamer explained in *Regina v. Proulx, supra*, at para. 22:
>
> > The conditional sentence incorporates some elements of non-custodial measures and some others of incarceration. Because it is served in the community, it will generally be more effective than incarceration at achieving the restorative objectives of rehabilitation, reparations to the victim and community, and the promotion of a sense of responsibility in the offender. However, it is also a punitive sanction ***capable*** of achieving the objectives of denunciation and deterrence. It is this punitive aspect that distinguishes the conditional sentence from probation, and it is to this issue that I now turn. [Emphasis added.]
>
> 39 It is also important to observe that, merely because conditional sentences are *capable*, at a general level, of satisfying the principles of denunciation and general deterrence, this does not mean that they are appropriate in every case in

> which they might be available. Much depends upon the circumstances of the case. As the Chief Justice further explained in *Regina v. Proulx, supra,* at para. 106:
>
> > The amount of denunciation provided by a conditional sentence will be heavily dependent on the circumstances of the offender, the nature of the conditions imposed, and the community in which the sentence is to be served. As a general matter, the more serious the offence and the greater the need for denunciation, the longer and more onerous the conditional sentence should be. ***However, there may be certain circumstances in which the need for denunciation is so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct***. [emphasis added]
>
> 40 There are features of domestic violence that distinguish it from other types of violence. When the level of violence is serious, these features militate against a community-based sanction. Most profoundly, it is the experience of the courts that domestic violence almost always occurs in the home, beyond the vigilance of the public. In a public place, there is the possibility of assistance being rendered to a victim, or the police being called. These opportunities are diminished in the family home. The family home can be a place where bullying and aggression may occur, uninterrupted, and in isolation. While a conditional sentence is capable of sending a denunciatory message when punitive conditions, such as house arrest, are imposed (see *Regina v. Proulx, supra*), the denunciatory message associated with a house arrest condition may be distorted when an offender sentenced for serious domestic violence is allowed to serve his sentence at home. Of course, this is not to say that cases of domestic violence can never be met with non-custodial dispositions, including conditional sentences. The authorities, starting with *Proulx*, suggest otherwise. **However, the case law is rife with examples of courts concluding that conditional sentences could not adequately express the principles of denunciation and deterrence. In my view, the serious features of this case bring it into this category of cases.**
>
> [Emphasis added]

[120] These comments resonate with me and I find that they apply to the circumstances and the offender in this case.

[121] In *R. v. S.(S), supra*, the court also considered and rejected a conditional sentence:

> [119] In determining if a conditional period of imprisonment is appropriate, two primary questions must be answered: (1) would the imposition of a conditional period of imprisonment endanger the safety of the community or (2) be inconsistent with the fundamental principles of sentencing set out in the *Criminal Code*? Danger to the public is evaluated by reference to (1) the risk of re-offence,

> and (2) the gravity of the danger in the event of a re-offence (see *R. v. Knoblauch*, 2000 SCC 58 (CanLII), [2000] 2 S.C.R. 780).
>
> …
>
> [121] In this case, as noted earlier, Mr. S committed a serious assault against an intimate partner in her own home, causing her significant injuries.
>
> Danger to the Public:
>
> [122] Mr. S has no prior convictions, but he committed a violent and prolonged assault in the context of an intimate relationship. The imposition of certain conditions can provide Ms. S with some protection, but Mr. S has demonstrated a willingness to resort to extreme violence against a female he was involved in an intimate relationship with. **I conclude that Mr. S constitutes a danger to the public.**
>
> The Fundamental Principles of Sentencing:
>
> [123] In *R. v. Macintyre-Syrette*, 2018 ONCA 706, the Ontario Court of Appeal indicated that "there are circumstances in which the need for denunciation and deterrence is such that incarceration is the only suitable way to express society's condemnation of the offender's conduct...'a conditional sentence...does not, generally speaking, have the same denunciatory effect as a period of imprisonment. Incarceration remains the most formidable denunciatory weapon in the sentencing arsenal'" (at paragraph 19). Similarly, in *R. v. McNish*, 2021 ABCA 28, it was noted that there "may be cases where all the circumstances mandate significant denunciation and general deterrence. In such cases, CSOs may be inappropriate" (at paragraph 22).
>
> …
>
> [126] I have also concluded that a period of probation should be imposed. I have concluded that a period of two years of probation is appropriate so as to provide Ms. S with a lengthy period in which Mr. S will be prohibited from having contact with her. I have considered imposing a weapon prohibition pursuant to section 732.1(d), but as will be seen, I have done so pursuant to section 110 of the *Criminal Code*.

[122] In *R. v. Agang*, *supra,* relied on by the defence, the offender's violation of prior court orders factored into the court's conclusion that serving the sentence in the community could not ensure the safety of the victim or the community. Although this factor is not present in Mr. Norton's case, I find the court's comments at para. 30 apropos:

> I also cannot find a Conditional Sentence Order would be consistent with the principles of sentencing. It would not protect society. It would not deter this Offender anymore than two court orders did that he breached. It would not denounce domestic violence or the harm down to Ms. Bilwan. **There are too**

> **many aggravating factors particularly the high degree of moral blameworthiness. In considering denunciation, I must take into account the increased vulnerability of female intimate partners. The principles of sentencing militate against a Conditional Sentence Order in this case. There must be actual incarceration.**
>
> [Emphasis added]

[123] As the Nova Scotia Court of Appeal noted in *R. v. Bryan*, 2008 NSCA 119:

> [59] Finally, and as recognized by Judge Murphy, this crime was committed against a spouse. The appellant's actions violated the element of trust that is implicit in such a relationship. Persons who live together in a domestic context deserve the community's protection from violence and abuse in their homes. Similarly, individuals who leave such romantic relationships should be free to get on with their lives without fear of violence, abuse or subjections at the hands of jealous ex-lovers. The law must to its best to provide such protection. **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 will provide a specific deterrent to the offender and a general deterrent to other persons who may be similarly disposed.**
>
> [Emphasis added]

[124] Since I have concluded that a conditional sentence order would be inconsistent with the fundamental purpose and principles of sentencing, I do not need to consider whether the risk of re-offence and the gravity of the danger if there is a re-offence. I note, however, that as in *R. v. S.(S.)*, *supra*, Mr. Norton committed serious assaults on his intimate partner, in their home. This occurred away from the public eye, causing harm. As such, I find that Mr. Norton is a danger to the public.

Restraint

[125] I have considered the fact that this offender has never been previously sentenced to a period of custody. Incarceration would have a heavy impact on him, taking him away from his children, work, home, and sister. Consequently, this puts the principle of restraint front and center. However, the comments in *R. v. S.R.M.*, *supra*, at para. 122, apply equally to Mr. Norton:

> S.R.M. must be specifically deterred from committing future violence towards woman. His actions have consequences, and they must be met with "emphatic denunciation". Like-minded individuals of all generations must get the message

> loud and clear that this type of abhorrent conduct especially in the context of an intimate partner relationship will be met with significant consequences.

[126] The events that occurred over the two-year indictment period were troubling, disturbing, shocking, and, quite frankly, I struggle to understand how some of these thoughts even came into the offender's mind. There is no question that he struggles with anger and had no respect for his intimate partner. She should have felt safe, secure, and protected in her own home. Instead, it was a place where she was degraded, dehumanized, and attacked physically, emotionally, and verbally.

Probation

[127] This question in the IRCA, "What supports and resources should be provided to Mr. Norton to aid in his rehabilitation and re-integration considering his personal history and social status?", leads me to the inescapable conclusion that probation is necessary for the successful rehabilitation of Mr. Norton. This probation should be carefully crafted to be of support and benefit to the offender.

[128] When considering terms of probation, and not constraining the probation officer from finding appropriate programming, it is imperative that an afro-centric counselling program be provided to Mr. Norton. Several such programs were referred to in *R. v. Anderson*, *supra*, including 902 ManUp and IMOVE, an organization run by Sobaz Benjamin. While I am not ordering that either of these specific programs be provided to Mr. Norton, I am ordering that an afro-centric program be provided and that Mr. Norton participate in that program.

Conclusion

[129] The defence took the position that such egregious conduct as requiring the victim to remove her tampon and put it in her mouth was not criminal (that is, it did not form the essential elements of the offence) and should not factor into this sentencing. I disagree. Mr. Norton's actions on the whole were certainly controlling, degrading, and dehumanizing conduct in the circumstances of a domestic assault. This is all part of the assault and coercive control the victim was made to endure. This is a graphic, reprehensible example of the nature of the relationship where Mr. Norton assaulted and threatened his victim who is supposed to feel protected and secure in her home and in her intimate partner relationship. Instead she was victimized, violated, dehumanized, and degraded. As the court stated in *R. v. Lewis*, 2021 ONCJ 39:

> [74] Sentences for violence against an intimate partner must address not only the physical injuries but the emotional, psychological and spiritual trauma that are often unseen, but which last indefinitely.
>
> [75] Intimate partner violence is a scourge on our communities and our country. The harm done reaches well beyond the walls of a home, beyond the moment of the action, beyond the visible.

[130] The offences before the court are significant and serious in nature. That alone does not foreclose the imposition of a conditional sentence order, however, given the nature, extent, and number of offences, the primary objectives of denunciation and deterrence cannot be appropriately achieved through a conditional sentence order. Mr. Norton needs to be removed from society. However, I am not satisfied that the term of imprisonment sought by the Crown is suitable. To properly reflect the seriousness of the offence and to better serve the purpose of rehabilitation, a sentence of 20 months in custody with 24 months probation is a fit and proper sentence.

[131] For count 3 - s. 264.1(1)(a), uttering threats to cause death or bodily harm, I order three months custody.

[132] For count 4 - s. 266 assault of J.M., I order 8 months custody.

[133] For count 5 - s. 267(a), assault with a weapon, I order 12 months custody.

[134] The sentence of three months for count 3 – 264.1(1)(a) is to be served concurrent to count 4 as it arises out of the same incident. Count 5 is to be served consecutively to count 4.

[135] I am including in this decision that Mr. Norton should be provided anger-management counselling and counselling in relation to intimate partner violence. I understand that there may not be any afro-centric programming in this regard. If there is, it should be provided to Mr. Norton while he is in custody.

[136] The following ancillary orders are ordered:

1. DNA Order (mandatory pursuant to 487.051 CC, as section 267(a) is a primary designated offence);
2. Firearms prohibition for 10 years (mandatory pursuant to section 109(a) CC in relation section 267(a)); and

3. An order pursuant to section 743.21 CC prohibiting Mr. Norton's communication with J.M. during his custodial sentence (discretionary).

[137] I will be attaching the IRCA to the Warrant of Committal as required by s. 743.2 of the *Criminal Code*.

[138] The parties are not seeking imposition of the Victim Surcharge and given the disposition and circumstances of Mr. Norton, I will not be imposing this.

[139] The the terms of the Probation Order are attached as Appendix "A".

[140] I refer to CC s. 732.2(3) which indicates an offender can make application to effect changes to or be relieved from optional conditions of probation. Counsel is to ensure that Mr. Norton is aware of those provisions.

[141] Mr. Norton the term of imprisonment will undoubtedly be difficult for you. It will also take a toll on your children and in particular your young daughter who has been in your custody. My hope is that with engagement in culturally competent counselling you understand and are able to address any triggers you have and find a way to manage your emotions. For any future partners you have and for your sake and your children's sake, you must recalibrate how you treat your intimate partners and move forward forging positive, healthy, supportive and loving relationships. Your daughter and your young son were spectators to this abusive behavior. I suspect, as a loving father, you do not want your daughter to ever find herself being treated this way, by anyone, let alone a partner. You need to show her and your sons how intimate partners are to be treated, with dignity, kindness and caring and ensure that they have a healthy role model in you and that you do not subject any other partners to this violence.

Brothers, J.

Appendix "A"

THE COURT ORDERS THAT:

(A)

AND THAT YOU COMPLY WITH THE FOLLOWING TERMS AND CONDITIONS:

upon the expiration of the sentence of imprisonment imposed on you pursuant to paragraph (A) above for the period of 24 months:

1. keep the peace and be of good behaviour;
2. appear before the Court when required to do so by the Court; and
3. notify the Court or the Probation Officer in advance of any changes of name or address, and promptly notify the Court or the Probation Officer of any changes of employment or occupation.

AND IN ADDITION, YOU SHALL:

(a) report to a probation officer at 1256 Barrington Street, Suite 200, Halifax, Nova Scotia within 2 days from the date of release from custody and thereafter as directed by your probation officer.

(b) remain within the province of Nova Scotia unless you receive written permission from your probation officer.

(c) reside at 124 Anderson Road, Hammonds Plains, Nova Scotia, unless permission to reside elsewhere is obtained from the court.

(d) have no direct contact or communication with J.M except through a lawyer or in accordance with a court order for access to a child.

(e) do not possess any firearm as defined by section 2 of the *Criminal Code*.

(f) do not possess any firearm or ammunition.

(g) do not possess, use or consume a controlled substance as defined in the *Controlled Drugs and Substances Act* except in accordance with a physician's prescription for you or a legal authorization.

(h) make reasonable efforts to locate and maintain employment or an education program as directed by your probation officer;

(i) attend for mental health assessment and counselling as directed by your probation officer;

(j) attend for substance abuse assessment and counselling as directed by your probation officer;

(k) Attend for and participate in afro-centric counselling as directed by your probation officer;

(l) Attend for and participate in the assessment and counselling in anger-management counselling if this is not contained within the afro-centric counselling, as directed by your probation officer;

(m) Attend for and participate in assessment and counselling in a violence intervention and prevention program as directed by your probation officer in relation to spouse/partner) and if possible this be delivered by way of culturally competent programming; and

(n) Attend for assessment, counselling or a program directed by your probation officer.