

SUPREME COURT OF NOVA SCOTIA

Citation: R. v. Beaver, 2014 NSSC 10

Date: 20140109

Docket: CRH 408378

Registry: Halifax

Between:

Her Majesty the Queen

v.

Russell Matthew Beaver

S E N T E N C E D E C I S I O N

Judge: The Honourable Justice Peter Rosinski

Heard: January 9, 2014, Halifax, Nova Scotia

Oral Decision: January 9, 2014

Written Decision: January 15, 2014

Counsel: Darrell Martin, Senior Crown Counsel
Luke Craggs, for the Defence

By the Court:

Introduction

[1] On October 28, 2013 Mr. Beaver pleaded not guilty to first-degree murder as charged, but guilty to the June 5, 2011 second-degree murder of Shawn Mead. That plea was accepted by Justice Robertson and the matter set for sentencing January 9, 2014.

[2] To assist me in the sentencing I have the agreed statement of facts pursuant to section 655 of the **Criminal Code of Canada**, R.S.C., 1985, c. C-46, filed as Exhibit 1 on October 28, 2013. That nine page agreed statement of facts, and appendices, were acknowledged by Mr. Beaver to contain the factual basis upon which he should be sentenced by this court pursuant to section 606 (1.1) **Criminal Code**. I also have the pre-sentence report of Probation Officer Tammy J. Robertson dated December 23, 2013 as well as the December 30 and 31, 2013 letters from Crown counsel and the January 2, 2014 brief of Defence counsel. I have reviewed the written victim impact statements from Donna Brown, Diane LaBonte and Darlene Ann Landry, all sisters of Shawn Andrew Mead, DOB September 24, 1978. I also have had the benefit of the capable submissions of two very experienced counsel.

[3] Having pled guilty to second-degree murder, section 235 (1) of the **Criminal Code** requires that Mr. Beaver "shall be sentenced to imprisonment for life".

[4] Although the sentence is one of life imprisonment, the opportunity to be released from prison on conditions is available to Mr. Beaver, once he completes a period of time in custody during which he is ineligible for such release or parole.

Identification and Interpretation of the Relevant Sections of the Criminal Code

[5] Section 745(c) of the **Criminal Code** provides that:

... In respect of the person who has been convicted of second-degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served at least 10 years of the sentence or such greater number of years, not being more than 25 years, as has been substituted therefor pursuant to section 745.4;...

[6] Section 745.4 sets out how a judge should decide what should be the period of parole ineligibility in cases of second-degree murder. In determining whether parole ineligibility should be 10 years, or some greater amount up to and including 25 years, section 745.4 states:

Subject to section 745.5, at the time of the sentencing under section 745 of an offender who was convicted of second-degree murder, the judge who presided at the trial of the offender or, if that judge is unable to do so, any judge of the same court may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, and to the recommendation, if any, made pursuant to section 745.2, by order substitute for 10 years a number of years of imprisonment (being more than 10 but not more than 25) without eligibility for parole, as the judge deems fit in the circumstances."

[7] In deciding what would a "fit" period of parole ineligibility, judges are guided by what periods of parole ineligibility have been imposed on similar offenders in similar circumstances of second-degree murder convictions. Attempting to provide some consistency between the periods of parole ineligibility for similar offenders in similar circumstances leads judges to review the outcomes in such other similar cases with a view to establishing the "acceptable range" of parole ineligibility.

[8] Thus once the "acceptable range" of parole ineligibility is identified, a "fit" or reasonable period of parole ineligibility can then be selected as the specific period of parole ineligibility for a particular offender - such as Mr. Beaver in this case.

[9] As Justice Bateman pointed out for the court in *R. v. Cromwell*, 2005 NSCA 137 at para. 26, regarding the "fitness" of a sentence and how the "range" of reasonable sentences is determined:

In my opinion the range is not the minimum to maximum possibilities for the offence, but is narrowed by the context of the offence committed and the circumstances of the offender ("... Sentences imposed upon similar offenders for similar offences committed in similar circumstances..." Per MacEachern, C.J.B.C. in *R. v. Mafi*, (2000) 142 CCC (3rd) 449 (CA)). The actual punishment may vary on a continuum taking into account aggravating and mitigating factors, the remedial focus required for the particular offender and the need to protect the public. This variation creates the range .

[10] Deciding upon an appropriate period of parole ineligibility is part of the sentencing function and it is therefore treated like a decision of an appropriate

"sentence" - *R. v. Shropshire*, [1995] 4 SCR 227, at paras. 47 - 50 per Iacobucci, J. Notably that case involved the fitness of the period of parole ineligibility for second-degree murder. At para. 29 Justice Iacobucci commented on why there is a sliding scale of parole ineligibility in section 745 of the **Criminal Code**:

In permitting a sliding scale of parole ineligibility **Parliament intended to recognize that, within the category of second-degree murder, there will be a broad range of seriousness reflecting varying degrees of moral culpability.**

[My Emphasis]

[11] Our Court of Appeal has recently commented in two cases how judges should go about determining the appropriate period of parole ineligibility: *R. v. Ward*, 2011 NSCA 78, per Saunders, J.A.; and, *R. v. Hawkins*, 2011 NSCA 7, per Beveridge, J.A.

[12] In *Hawkins*, the Court stated at para. 16 and 17:

16 Although the criteria specified by s. 745.4 references but three factors (the character of the offender, the nature of the offence, and the circumstances surrounding its commission), it is plain that these factors are not to be narrowly construed. For example, in *R. v. Shropshire*, Iacobucci J., after enumerating the three statutorily prescribed factors, announced that denunciation can be considered under the criterion "nature of the offence" and concerns over the possible future dangerousness of the offender under "character of the offender" (para. 19). Indeed since parole ineligibility is part of the "punishment" and thereby an element of sentencing policy, deterrence is also relevant in justifying an order under s. 745.4 (paras. 21-23).

17 Following the release of the Supreme Court's decision in *R. v. Shropshire*, Parliament amended the Code by introducing ss. 718-718.2 "Purpose and Principles of Sentencing". These sections, in effect, codified many of the principles established by decades of case law, but also clarified the approach to be taken by the courts in exercising their discretion in imposing sentence. It is useful to set them out. They are:

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

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide 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 and to the community.

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

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

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

(iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization, or

(v) evidence that the offence was a terrorism offence

shall be deemed to be aggravating circumstances;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;

(d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and

(e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

[13] In summary therefore, the starting point is a 10 year period of parole ineligibility. After considering: the factors in section 745.4 (character of the offender; nature of the offence; circumstances surrounding the commission of the offence; and any jury recommendation made pursuant to section 745.2, if there has been a trial); and sections 718 - 718.2 of the **Criminal Code**, a judge will be in a position to assess where along the range of acceptable periods of parole ineligibility, the specific offender being sentenced should be placed, that is: in the 10 - 15 year range; the 15 - 20 year range; or, the 20 - 25 year range.

[14] Notably, as the court pointed out in *Hawkins*, although section 718 - 718.2 are applicable (para. 47 *Hawkins*; para. 107 *Ward*) to decisions regarding parole ineligibility, "specific deterrence" has no place in this decision (paras. 39 - 41 *Hawkins*); and, that "denunciation and deterrence" are not of "paramount significance" in cases of second-degree murder because the sentence provides for a minimum period of parole ineligibility (para. 42 *Hawkins*).

[15] To be clear, however, our Court of Appeal accepted that trial judges may increase parole ineligibility to express society's denunciation of, and to promote general deterrence to prevent, such offences

[16] The court noted specifically that: "denunciation can be considered under the criterion of "nature of the offence" and concerns over possible future dangerousness of the offender under the criterion of "character of the offender" per those section 745.4 factors ; and, that since parole ineligibility is part of the "punishment" it is thereby also an element of sentencing policy, and as such deterrence is also relevant in justifying an order under section 745.4 [para. 16 *Hawkins*).

[17] I endorse the approach taken by LeBlanc, J. in *R. v. Hartling*, 2011 NSSC 506 (affirmed 2013 NSCA 51) when he stated at para. 6:

6 I refer to a decision of the Newfoundland Supreme Court, of *R. v. Doyle*, 2003 NLSCTD 20, affirmed at 2004 NLCA 64, where Chief Justice Green outlined a number of relevant considerations in applying the factors under s. 745.4. Along with the principles of sentencing which I have just outlined, he said at paragraph 31:

[31] These considerations can be restated for present purposes as follows:

- (a) Character of the Offender:
 - (i) general background;
 - (ii) previous criminal record and lifestyle;
 - (iii) medical and psychiatric history;
 - (iv) capacity for future dangerousness;
 - (v) attitude, including remorse and victim empathy;
 - (vi) motivation;
 - (vii) mitigating circumstances, such as the entry of a guilty plea, and cooperation with the investigation,

- (b) Nature of the Offence
 - (i) nature of the crime,
 - (ii) victim impact,
- (c) Circumstances surrounding the commission of the offence
 - (i) the manner in which the death was caused, including the infliction of any gratuitous, excessive or sadistic violence,
 - (ii) explanation by the offender, or any lack of explanation,
 - (iii) planning and deliberation,
 - (iv) influence, if any, of alcohol or drugs.

[18] Before turning to the analysis of what is an appropriate period of parole ineligibility here, I should set out the respective positions of the Crown and Defence regarding that issue.

The Crown's Position is that the Court Should Impose Between 12 - 15 Years of Parole Ineligibility

[19] The Crown's position is well captured by its written argument found in the December 30 letter:

Despite what appears to be mitigating circumstances, in this case the Crown's central argument on parole ineligibility is that society cannot countenance vigilante justice on the part of an accused. The accused had numerous legal avenues by which he could have dealt with the deceased in this matter. He however chose to arm himself and seek out the deceased which ended in his death... Parole ineligibility for the accused in this matter should be in the 12 to 15 year range.

The Defence Position is that the Court Should Impose the Minimum 10 years of Parole Ineligibility

[20] The Defence position is also captured well in its written argument found in the January 2, 2014 brief:

... Neither the circumstances of this offence nor this offender are as serious as in *Hawkins* or *Ward* [where the range of parole ineligibility was determined to be 12 to 15 years]. As a result, Mr. Beaver's parole eligibility will fall below the 12 - 15 year range. Even if the court were to disagree with this proposition, the exceptional and unusual facts dictate that it is appropriate to impose the minimum 10-year parole eligibility.

The brief goes on at various points to say:

"The murder of Mr. Mead was the final act in a dysfunctional and tragic friendship between the two men. Shawn Mead probably had some type of mental illness... The content of these text messages demonstrate Mr. Mead attempting to preserve a friendship with Mr. Beaver using guilt, blackmail, threats of violence, pretenses of friendship, promises things will be better, etc. Matthew Beaver's distrust of the police and his refusal to seek the help of the authorities is hardly surprising given his incorrect belief that Mr. Mead could influence the police and court proceedings... The tragic circumstances that culminated in the murder of Shawn Mead are extremely unusual. While Mr. Beaver must be punished for his crime, the circumstances are exceptional. Mr. Beaver's level of culpability is not as high as the offenders in *Hawkins*, *Ward* or any of the Nova Scotia cases since. He confessed his crime to the police and has pled guilty. He is youthful and has demonstrated an ability to be gainfully employed and support his two children... There is no need for this court to impose any sanction greater than the minimum ten-year parole eligibility required by law."

Analysis of the Facts and Factors Affecting the Period of Parole Ineligibility in this Case

[21] The determination of the circumstances of the offender and circumstances of the offence, underlie the acceptable range for the period of parole ineligibility in this case.

The Circumstances of Mr. Beaver

[22] Mr. Beaver was born September 1, 1988 and was almost exactly 10 years younger than Mr. Mead. The two met because they only lived about five minutes apart and when Mr. Beaver was repeating grade seven and presumably would have been approximately 13 years old. Mr. Beaver's mother, Cheryl Beaver noticed

problems developed about three months into Mr. Beavers second-grade seven-year period in junior high school; I estimate that this would have been in September - December 2001.

[23] Mrs. Beaver noted that between 2001 and 2004 Mr. Beaver would hang around with another friend, Corey, who also had been befriended by Mr. Mead. She recalls Mr. Beaver coming home with bruises on his face when he was 14 or 15 years old. Jodi Wade, Mr. Beaver's sister and older by about 11 years, also noted that Mr. Beaver started smoking marijuana when he started junior high and this was in the company of Mr. Mead. His mother also noted she would find tobacco and marijuana on Mr. Beaver. Mr. Beaver dropped out of school in grade nine. His sister, Jodi, noted that around the year 2005 weeks would pass without seeing her brother and when she saw him he looked thin, sickly and stressed-out and had black eyes and bruising on his face. She did move back into the family home with her mother in 2010 - 2011. She noted that Mr. Beaver was very paranoid around that time, and concerned if the door was left unlocked. He carried pepper spray in his car and kept a baseball bat beside his bed.

[24] Sometime in 2006 Mr. Beaver's friend, Corey, left Nova Scotia and thereafter Mr. Mead, according to Cheryl Beaver, became "obsessed" with Mr. Beaver being his friend.

[25] In the Spring of 2008, Mr. Beaver attempted to leave Shawn Mead by staying with his maternal grandparents in Fall River. At some point Mr. Mead discovered his address and shortly thereafter Mr. Beaver was back with Shawn Mead.

[26] Cheryl Beaver did not see much of her son Mr. Beaver in 2007 -2008 although she did receive some phone calls from him. He often sought money from her and would call her crying saying he would "get beat up" if he didn't get the money.

[27] On December 28, 2008 Mr. Beaver committed the offence of possession of a prohibited weapon. It appears this may relate to when he and Matthew Duggan were stopped in a car in which he had bear spray and marijuana. At his subsequent court appearance his mother spoke to Shawn Mead who attended the court appearance and asked him to give Mr. Beaver some space. Mr. Mead called her back after that and said that Matthew was his boyfriend and sent her a picture of a person playing with

a man's penis. At some point Mr. Mead told Mrs. Beaver that he and Mr. Beaver were going to get married.

[28] Mr. Beaver has a criminal record as follows:

December 28, 2008 [offence date] - section 91(2) **Criminal Code** possession of a prohibited weapon [pepper spray] - sentenced January 23rd 2009 - 12 months probation

December 29, 2008- Section 91(2) **Criminal Code** - possession of pepper spray - sentenced January 23, 2009 - 12 months probation and a firearms prohibition order for five years - section 110 **Criminal Code**

December 29th 2008 - section 4(1) **CDSA** - possession of marijuana - sentenced February 3, 2009 - \$250 fine

January 9, 2009 - section 92(2) **Criminal Code** possession of pepper spray - sentenced January 23, 2009 - one day jail time served by court appearance

January 9, 2009 - section 145(3) **Criminal Code** - failed to comply with conditions of release - sentenced January 23, 2009 - one day jail time served by court appearance;

March 5, 2009 - section 4(1) **CDSA** - sentenced June 9, 2009 - \$300 fine

March 5, 2009 - section 733.1(1)(a) **Criminal Code** - breach of probation - sentenced June 9, 2009 - \$150 fine

April 20, 2010 - section 335(1) **Criminal Code** - take motor vehicle without consent - sentenced May 3, 2011 - \$1000 fine

August 19, 2010 - section 145(5.1) **Criminal Code** - failed to comply with conditions of release - sentenced September 23, 2010 - \$200 fine

September 19, 2010 - section 145(3) - failure to comply with conditions of release - sentenced September 30, 2011 - 20 days in custody.

[29] Mr. Beaver met his current girlfriend, Angela White, in 2009 and their daughter, Ava, was born in March 2011. Their son was born about ten months ago in 2013.

[30] According to the pre-sentence report, Mrs. Beaver says Mr. Beaver moved out of the family residence when he turned 18 years old - this would be approximately September, 2006. It is likely that he resided with Mr. Mead for a two-year period thereafter.

[31] Mrs. Beaver stated in the PSR "I learned after the incident Mr. Mead had obscene photos of him and Matthew, and he had threatened to expose them".

[32] Mr. Beaver's sister, Ms. Wade, reported that up until five years ago [Fall of 2008], Mr. Beaver was always displaying injuries of physical assault..., blackened eyes..., and he would have a different story every time... His typical story was that he got jumped." She noted that his behaviour improved upon meeting his common-law partner, Angela White, saying "he has been slowly becoming his old personality again. He's been visiting with family and spending time with us again."

[33] Angela White has been in a common-law relationship with Mr. Beaver for over five years. They presently parent two children. She had not noticed Mr. Beaver having any signs of physical abuse during their relationship and considered him not to exhibit any signs of substance abuse throughout their relationship. She makes favourable comments about him as a father and a partner.

[34] The report notes that Mr. Beaver completed grade nine at the age of 16 years and then stopped attending school, after being expelled for possession of marijuana. He was given an opportunity to attend upgrading in Bedford at the age of 18 years; however, he did not complete all of his grade 10 credits. He worked at the age of 16 years at the Superstore as a clerk and remained there for approximately two years. He has worked in other positions and most recently in the subcontracting trade of drywall installation for eight years. His recent employer Mr. Weadle spoke very favourably of him: "pleasurable, mellow, good work ethic, highly skilled, punctual, and responsible parent". He was shocked to learn of the offence and considered it very out of character for Mr. Beaver. He would be happy to rehire Mr. Beaver again.

[35] Mr. Beaver himself disclosed a history of substance abuse commencing at the age of 13 years starting with experimenting with marijuana and by 18 years mixing Valium and alcohol; and at 19 years using cocaine. He states he has been sober for the last three years.

[36] Thus, since at least early 2010 Mr. Beaver has been sober, working regularly, and in a supportive relationship with Angela White. There is no evidence suggesting that Mr. Beaver has ever had assessment, counselling and treatment regarding his substance abuse or mental health issues.

[37] Under assessment of community alternatives Probation Officer Robertson writes:

Matthew Beaver does present core issues of anger management and mental health issues surrounding victimization from alleged abuse. The subject would benefit from a mental health assessment to deal with repressed anger and past abuse trauma... He presented as forthcoming during this process... Would most certainly benefit from ongoing therapy in the areas of anger management, trauma and victimization. As well, educational upgrading would provide more opportunities for the subject in future.

The Circumstances of the Offence

[38] Mr. Beaver stated he had been physically, sexually (at the age of 15 onward) and emotionally abused by Mr. Mead since the age of 14 years onward. The abuse he states occurred on a daily basis and that whenever he left Mr. Mead and attempted to stay away from him, Mr. Mead harassed him. Miss Robertson, the Probation Officer notes: "the subject indicated he did not file a police report regarding this history of abuse, as he was too scared of the victim and the repercussions he would face. He advised he had witnessed how things had worsened for his other friends, who were acquaintances of the victim and were chosen to disassociate. He commented "I did not feel I could tell anyone, so I denied it out of fear of what he would do to me if I told."

[39] Mr. Beaver continued "I didn't fight back after a while; I just gave up out of fear, and I just stopped fighting the sexual assaults after a while and gave up. I had a natural fear of him. He would threaten to come after me and my family, if I did not comply with his demands... The first time I ever spoke about this abuse was at the

interrogation with the police, as they suggested I was in a relationship with him, and I clarified this and told them I'd been raped throughout those years." I will ignore the reference to "my family" as pointed out by the Crown as it is not a fact agreed to nor proved, although I infer that Mr. Beaver believed that Mr. Mead may have interfered with his family if Mr. Beaver tried to resist Mr. Mead's demands.

[40] Under "offender profile" Probation Officer Robertson writes:

He took responsibility for his actions involving the offence before the court. He commented, "I was victimized by him between the ages of 14 - 18 years. I tried to negotiate with him to leave me alone. I tried to reason with him, but it was not working. I would meet with him, and I would get beat up. He kept messaging me, and I asked him to stop, so I decided to show up at his house. I was not afraid of him anymore. I argued with him" ... "I do not feel I could have handled it any differently, especially when he had threatened my family and kids and, knowing what he had done to me, I thought he would follow through with his threats. Even when I went there, I was just going to fight and that was my initial intent. I asked him to leave me alone. I got scared, as he kept coming at me, and I told him if he kept coming at me I would shoot him and myself. I regret I took someone's life, but I felt I did not want to be victimized by him anymore. He could have hurt my children or someone else.

[41] I again accept that Mr. Beaver may have believed Mr. Mead may have interfered with Mr. Beaver's family, but there is no proof that Mr. Mead expressly threatened them.

[42] The agreed statement of facts also contains details leading up to the June 5, 2011 murder of Mr. Mead. It was only on June 27, 2011 when Halifax Regional Police were dispatched to the residence of Mr. Mead that they found Mr. Mead approximately three inches from the threshold of the doorway lying on his back in an advanced state of decomposition. They also found his cellular phone a few inches to the left of his head and shoulder and a spent 12-gauge shotgun shell. It appears that a shotgun had been discharged, and some of the buckshot hit the right side of Mr. Mead's head, causing his immediate death. His dog "Lucky" had died of dehydration nearby him by that time.

[43] I bear in mind that Mr. Beaver had ample time since June 5, 2011 to reflect on his explanation why he felt he had to shoot Mr. Mead.

[44] Mr. Beaver was interviewed by police initially on June 28, 2011. He gave an exculpatory statement and denied being responsible for Mr. Mead's death.

[45] By September 8, 2011 police had received Mr. Mead's telephone records from his telephone service provider. They were able to compare those with text messages documented in handwriting in 47 coil ring scribblers found at the scene which relate to the time period June 2009 to June 2011.

[46] The police made copies, Appendix "A" to the agreed statement of facts, of the text messages between Mr. Beaver and Mr. Mead between February 11, 2011 and March 6, 2011.

[47] Further examples of text messages between the two men between June 4 -6, 2011 are contained in Appendix "B" of the agreed statement of facts.

[48] The agreed statement of facts reads:

The text messages documented in the 47 coil ring scribblers and the records from Telus were predominantly outgoing messages from Shawn Mead to Matthew Beaver. The content of the text messages from Mead to Beaver would waiver between apologetic, friendly, pleading, accusatory, and threatening. The common thread between the different approaches is they were inviting or demanding Matthew Beaver reciprocate the contact with Shawn Mead.

[49] Mr. Beaver did confess to the police on September 14, 2011. He also made a belated attempt to retrieve the shotgun he had used, but by that time he had already lost control of it himself, and it was not recovered.

[50] Mr. Beaver was harrassed by Shawn Mead after they stopped living together, being the 2.5 years before the murder on June 5, 2011.

[51] This harassment was almost exclusively by text messages and telephone. Mr. Beaver had a belief that Mr. Mead had contacts in the justice system that would alert Mr. Mead to Mr. Beaver's telephone and residential address changes.

[52] Having thus canvassed portions of the material facts relevant to the character of Mr. Beaver, and the nature of the circumstances of the offence, I will next state my conclusions regarding those matters.

Conclusions Regarding the Character of Mr. Beaver and the Nature/Circumstances of the Offence

[53] Mr. Beaver was a vulnerable 13-year-old youth when he fell under the control of the 10-year-old Mr. Mead. In order to exploit Mr. Beaver's vulnerability for his own sexual gratification, Mr. Mead provided Mr. Beaver with alcohol, cigarettes and marijuana, and the appearance of a sympathetic ear and friend. Mr. Mead effectively disrupted the positive social connections that Mr. Beaver had enjoyed before Mr. Mead's intervention. Mr. Mead's effect on Mr. Beaver's life was more or less continual until June 5, 2011. Mr. Beaver was in the midst of turning his life around to a more positive path, and more likely than ever to break free from Mr. Mead's control in the Spring of 2011. It appears to me that Mr. Beaver viewed Mr. Mead as an obstacle on that path that he could not avoid, and therefore he decided very deliberately to get rid of that obstacle, by going to his house with a loaded shotgun, to intimidate Mr. Mead, yet these actions instead precipitated his murder of Mr. Mead at that time.

[54] The agreed statement of facts reads:

Based on the history of abusive, controlling and threatening behavior by Shawn Mead, has revealed and text messages recorded by Shawn Mead, interviews with Matthew Beaver, his mother and his sister, Matthew Beaver was fearful that Shawn Mead could cause him injury or death unless he took steps to protect himself. This is the reason why Matthew Beaver brought the shotgun to Shawn Mead's house on June 5, 2011 and this is the reason why Matthew Beaver discharged the shotgun at Shawn Mead despite the fact he was unarmed.

[55] To be clear, Mr. Beaver did not have a legal excuse such as "duress," or a legal justification such as "self-defence", to shoot Mr. Mead - see the decision of Justices LeBel and Cromwell for the Majority in *R. v. Ryan*, 2013 SCC 3, regarding the defence of duress and self-defence and their juridical differences - paras. 16 - 30 and paras. 81 - 84.

[56] Paraphrasing their decision in part from paras. 16 - 30, the Court points out that the law "excuses" those who, although morally blameworthy, acted in a morally involuntary manner. The act remains wrong, but the author of the offence will not be punished because it was committed in circumstances in which there was realistically

no choice. The principle of moral involuntariness is a concession to human frailty in the face of agonizing choice. The commission of the crime is remorselessly compelled by normal human instincts and morally involuntarily conduct is not always inherently blameless. Defences built on the principle of moral involuntariness are classified as “excuses.” Duress is a defence built on the principle of moral involuntariness. On the other hand self-defence is a “justification.” Less emphasis is placed on the particular circumstances and concessions to human frailty, and more importance is attached to the action itself and the reason why the accused was justified in meeting force with force. In that respect it has been said that the attacker victim is the author of his or her own misfortune.

[57] It is important to recall that Mr. Beaver has not attempted to excuse or justify his shooting of Mr. Mead by relying upon the defence of duress or self-defence, though his actions would be more akin to “self-defence” than duress if he had done so.

[58] It must be asked: what is the legal status of Mr. Beaver’s apparent motivation to kill Mr. Mead in this case; that is: "that Matthew Beaver was fearful that Shawn Mead would cause him injury or death unless he took steps to protect himself" (page 8 of 9, agreed statement of facts). Similarly, in the pre-sentence report: "I do not feel I could have handled it any differently... knowing what he had done to me, I thought he would follow through with his threats... I regret I took someone's life, but I felt I did not want to be victimized by him anymore. He could have hurt my children or someone else."

[59] Do these statements of Mr. Beaver regarding his motivation for the murder represent a “mitigating” or neutral factor in this sentencing? Mitigating factors are those factual matters that tend to lessen the need for the otherwise appropriate deterrent sentence or punishment absent that/those factors.

[60] There is no persuasive evidence that Mr. Beaver could not have contacted the police in order to disassociate himself from Mr. Mead especially in 2010 - 2011. The only references in this respect are from Mr. Beaver and his mother.

[61] Mr. Beaver, in his police statement summarized in the agreed statement of facts (page 5 of 9), stated that he "believed Shawn Mead knew people 'on the inside', including a court clerk, "crack guards" and a member of the Halifax Regional Police,

and that Shawn Mead had people stalking [Mr. Beaver] and giving Shawn Mead information about his whereabouts, phone numbers and court dates."

[62] Mrs. Beaver, paraphrased in the pre-sentence report, is reported as having effectively said that after the second time Mr. Beaver separated from Mr. Mead in 2008, "their family had spoken with the Crown Attorney in applying for a restraining order section 810 Criminal Code involving Mr. Mead; however, the subject [Mr. Beaver] felt it would not prevent Mr. Mead from trying to make contact with him."

[63] There is also no persuasive evidence that Mr. Mead's control over Mr. Beaver would have been anywhere as significant in 2011, as it was when Mr. Beaver was 13 to 18 years old [2001 - 2006].

[64] Having said that, I accept that Mr. Mead likely had very embarrassing information and photos/video of Mr. Beaver and used these to maintain some measure of control over Mr. Beaver in 2010 - 2011.

[65] At para. 67 In *R. v. Hawkins* our Court of Appeal approvingly refers to a decision from the New Brunswick Court of Appeal, *R. v. Nash*, 2009 NBCA 7. There, Robertson, J.A. found the 20 year period of parole ineligibility in that case to be outside the acceptable range, which he described in para. 54:

Not only are these cases instructive, they provide support for a general thesis: more often than not, trial and sentencing judges work with three time frames when fixing the period of parole ineligibility: 1. 10 to 15 years; 2. 15 to 20 years; and 3. 20 to 25 years. In practice the third time frame is reserved for the "worst of offenders" in the "worst of cases". The first is reserved for those offenders for whom the prospects of rehabilitation appeared good and little would be served by extending the period of parole in eligibility other than to further the sentencing objectives of denunciation and retribution. The second time frame is reserved for those who fall somewhere in between the first and third. Obviously, these time frames are not cast in cement and represented basic starting point for analysis... There is other jurisprudence which adds support to the understanding that, traditionally, the upper range has been reserved for the "worst of offenders for the worst offences". These are the offenders who commit brutal murders and who have a criminal record involving brutal or violent crimes. Typically, cases in which the period of parole in eligibility has been fixed at 20 to 25

years involve offenders with criminal records involving violence and, hence, are considered to be a threat to public safety."

[My Emphasis]

[66] Before specifically addressing the effect of the mitigating and aggravating factors on the period of parole ineligibility in this case, I should therefore determine what is the acceptable range of parole ineligibility for similar offenders for second-degree murder committed in similar circumstances?

[67] I have canvassed all the cases provided to be by counsel, those being: **for the Crown:**

1. *R. v. Hawkins*, 2011 NSCA 7, our Court of Appeal sentenced afresh after finding errors by the trial judge in sentencing. At para. 95:

The facts speak of a brutal and callous murder of a vulnerable victim in his own home by an offender driven by the scourge of addiction to a corrosive drug. Most murders are brutal and callous. As recognized by many cases, the imposition of a sentence of life imprisonment without parole of ineligibility [sic] for at least 10 years already carries with it a significant element of denunciation and general deterrence. However, here the appellant recognized at trial and on appeal that some additional period beyond the automatic minimum 10 years was appropriate and suggested 15 years. In my opinion, the acceptable range of sentence in these circumstances is between 12 and 15 years. I would accept the suggestion of the appellant and set it at 15 years.

2. *R. v. Ward*, 2011 NSCA 78, at para. 113:

There can be no question that Philip love was the victim of a brutal murder. He was virtually beaten to death in his own home. He lingered on in the hospital for several days. However, given the nature of his severe skull and brain injuries, death was inevitable. Undoubtably alcohol was a factor in these tragic circumstances. The trial judge found that the appellant was intoxicated but also appeared to be the least intoxicated of all the persons who were in the residence that evening. After taking into account all the circumstances including the principles and objectives of sentencing; the appellant's culpability in such a senseless and vicious assault; and a recognition that in his case the prospects for parole should not be so distant as to dash all hope for rehabilitation, I would fix the appellant's period of parole ineligibility at 13.5 years.

3. *R. v. Hayden* (2006), 210 OAC 40 - in *Hawkins* our Court of Appeal commented at para. 88:

The offender was found guilty of murder and attempted murder. The trial judge found the offender had killed the deceased to eliminate a witness to the attempted murder allegation. This was viewed as an extremely aggravating feature, as was the fact that the attack was brutal, the offender having broken into the victim's home to commit the murder. In addition there was an obvious element of planning as the offender took steps to locate the victim, and watched that location for at least two days. The court upheld the imposition of a 15 year period of parole in eligibility.

4. *R. v. Paterson*, 2001 BCCA 11 - I note that at para. 80 in *Hawkins* our Court of Appeal concluded that that case "fell closer to first-degree murder than to manslaughter, and the majority of the court upheld the 14 year period of parole in eligibility"

[68] **For the Defence:**

1. *R. v. Bengy*, 2012 ONSC 4463 - 11 year parole ineligibility/jury recommended 10 year period; Crown sought 12 year period; defendant sought 10 years. Defendant was 19 years old with no criminal record; cooperated with police; armed himself with a knife to attend a social event which he took out during a fistfight and stabbed to death an unarmed male.
2. *R. v. Brake*, 2012 NSSC 372 - 14 year parole ineligibility/18-year-old with fetal alcohol affect, had ongoing problems with substance abuse, brutally murdered his mother when he found she had returned to her old substance abuse ways after she had promised to abstain therefrom. Guilty plea; however, lack of remorse likely related to his fetal alcohol effect; and, was not on his prescribed medications. Joint recommendation for 14 years
3. *R. v. Chareka*, 2013 NSSC 320 - 13 years parole ineligibility/joint recommendation after guilty plea. Preliminary inquiry waived. Defendant has no criminal record, and though not NCR, defendant was diagnosed with a delusional mental disorder causing him to attack his wife in her sleep with a hammer killing her

4. *R. v. Feng*, 2012 BCSC 2082 - 10 year parole ineligibility/found guilty at trial - "the offence occurred in circumstances which gave rise to a realistic defence of self-defence or defence of another. The jury by its decision rejected those defences. In doing so, on the evidence before them, the jury must have found in the circumstances that Mr. Feng used more force than was necessary." No parole recommendation by jurors. Immediately remorseful, with no history of violence and crime was out of character for him. "I find that Mr. Feng's circumstances are very unusual and make him a very low risk and I recommend that corrections officials consider placing him in a minimum-security institution."
5. *R. v. Hardy*, 2012 NSSC 209 - 14 years parole ineligible/history of mental illness and behavioral disorders which personality disorders made him vulnerable to inappropriate episodes of anger and aggression. The offender and victim were double bunked in a jail cell for several days before Hardy strangled his cellmate to death using a strip of bedsheet as a ligature without any obvious reason. Aggravating factors were a lengthy criminal record including violence and custodial sentences, and the attack having taken place in a jail. Crown recommended 14 years; Defence recommended 12 years.
6. *R. v. Hartling*, 2011 NSSC 506 - 13 years parole ineligible/37 years of age with stale criminal record. Victim shot in face with a shotgun at close proximity. Heated conversation between the two led to Hartling shooting the victim in what he unreasonably believed was a preemptive strike. [Crown recommended 18 to 20 years; Defence recommended 13 years] Conviction affirmed on appeal 2013 NSCA 51.
7. *R. v. Kringuk*, 2012 NUCJ 20 - 10 year parole ineligibility/joint recommendation and guilty plea - psychiatric history and tragic life circumstances of aboriginal defendant warranted special application of the principle of restraint. Impulsive shooting of a spouse by wife in an intoxicated state
8. *R. v. Laffin*, 2013 NSSC 135 - 13 years parole ineligibility/joint recommendation on guilty plea; highly mitigating factor was the guilty plea and specifically that he disclosed the location of the victim's body to the police.

Previous criminal record and professed remorse was not genuine. Callous killing of sex trade worker.

9. *R. v. LaLonde*, 2013 BCSC 1349 - 10 years parole ineligibility/joint recommendation on guilty plea - aboriginal offender; significant criminal record and serious mental health history; guilty plea and significant cooperation with the police; expression of remorse as well as mental health issues are mitigating factors.
10. *R. v. Laxon*, 2012 BCSC 1664 - 10 years parole ineligibility/guilty plea; 19-year-old offender motivated by affection for his girlfriend and the consequent belief that he had to stand up to her father who had a history of violence and sexual abuse towards her. Offender confronted the father and became enraged at what the father had to say, hitting him repeatedly with a wine bottle and stabbing him. Minor record. Crown recommended 12 to 15 years; Defence recommended 10 years.
11. *R. v. MacLeod*, 2013 NSSC 137 - 12 years parole ineligibility/elderly spousal partners had an altercation as a result of wife seeking drugs that evening - husband professed no memory of the evening and claimed to left the apartment to return and find the victim dead on the floor he believed of a heart attack. Found guilty after trial. Some prior domestic abuse. No reference to a prior criminal record.
12. *R. v. Pandurevic*, 2013 ONSC 3323 - 10 year parole ineligibility/ 22-year-old unexpectedly ran into deceased, and after the deceased called him a "goof", altercation ensued during which offender attacked and stabbed victim . Found guilty after trial - eight jurors recommended 10 years; one juror recommended 12 years; the others making no recommendation.. "For the reasons I've stated I am satisfied... [the offender's] involvement in this grave crime was out of character.... the only factor, therefore, that might justify an increase is the nature of the offence and circumstances surrounding its commission."
13. *R. v. Pattison*, 2011 BCSC 1603 - 10 year parole ineligibility/58-year-old killed 27-year-old who he felt had insulted him, thus he fetched a high velocity hunting rifle with ammunition and when he saw the 27-year-old he fired two shots one of which was fatal. Offender almost immediately telephoned 911 and

reported the shooting and death - "he was clearly distraught" - "on the evidence it is unclear from the jury's verdict whether the jury rejected Mr. Pattison's account of events, including that he fired a warning shot, or rather found that in firing the fatal shot, Mr. Pattison did not reasonably believe that he could not otherwise preserve himself from death or grievous bodily harm." - Minor record. Crown recommended 12 years; Defence 10 years.

14. *R. v. Reeves*, 2011 BCSC 821 - 10 years parole ineligibility/offender with minor record, no previous history of violence, who was abused as a child and diagnosed as a schizophrenic stabbed his stepfather to death. Offender claimed it's possible that his mother, who was present and is also schizophrenic, may have stabbed the victim because he had no memory of it. "He suffered serious physical and psychological abuse from his mother and his childhood. He was apprehended as a late adolescent which given his intellect and likely personality disorder, he experienced this part of his life as a horror... Mr. Reeves, by his refusal to be previously properly assessed and his expressed refusal of treatment for any psychiatric disorder, has rendered this horrific and brutal crime without motive or explanation." Eight jurors recommended 10 years while three recommended 20 to 25 years.
15. *R. v. Robinson*, 2013 BCSC 772 - 10 year parole ineligibility/22-year-old aboriginal pled guilty to murder of drug dealer during a drug transaction. Significant criminal record; expressed remorse; joint recommendation of 10 year parole ineligibility
16. *R. v. Shields*, 2013 BCSC 1485 - 10 year parole ineligibility/51-year-old with minor criminal record (without violence) entered guilty plea and expressed remorse - contacted police and reported what happened. He lived in a dysfunctional relationship with his mother. Offender impulsively killed his mother by a physical attack upon her. Significant record for drugs and alcohol which were implicated in the murder. Joint recommendation for 10 years parole ineligibility
17. *R. v. Tan*, 2011 BCSC 595 - 10 years parole ineligibility/impulsive strangling and stabbing of defenceless young woman who tried to extract herself from the offender's criminal enterprise. Offender took drugs and partied after the offence and boasted about the murder to others. The offence was unprovoked

and the offender fled the country after the murder. 22-year-old with no prior record confessed to the crime and ultimately expressed remorse. Crown suggested 15 years parole ineligibility. Defence suggested 10 years. Characterized by the sentencing judge as "an intentional but isolated impulsive and senseless act on a defenceless person by a young man who eventually confessed and expressed remorse" - paragraph 67

18. *R. v. Wilmot*, unreported Kennedy, CJSC Chronicle Herald newspaper report of Oct 3, 2011 - joint recommendation 10 years parole ineligibility.
19. *R. v. Yliruusi*, 2011 BCSC 268 - 10 years parole ineligibility/32-year-old convicted in 2009 stabbing death of drug trafficker who supplied drugs to the Defendant in exchange for sexual favors. Defendant formed intention to rob the trafficker of drugs and money, and when a scuffle ensued he attacked the victim with a stick and then stabbed him. Drug addict with an extensive criminal record. Crown recommends 12 years; Defence recommends 10 years. Judge found criminal record significant, but it and the offence fuelled by drug addiction. Jury made no recommendation; has family support and had abstained from drugs for two years.

[69] The Defence argues that all the Nova Scotia cases since *Ward* [2011] have facts that are more serious than in the case at bar and therefore their parole ineligibility periods of 12 to 15 years (excepting *Wilmot* which was a joint recommendation of 10 years) are higher than appropriate in this case.

[70] The Defence also listed only cases from other jurisdictions which have ordered parole eligibility be set at less than 12 years as I recounted. Counsel notes that many have facts which are more serious than the case at bar, but that the Defence would highlight the *Feng* and *Laxon* cases as those courts examined circumstances in which and how an unsympathetic victim may affect parole ineligibility.

[71] Defence therefore argues that its suggested 10 year parole ineligibility period is appropriate.

[72] The Crown, as I have noted, argues that the proper range of parole ineligibility here is 12 to 15 years.

[73] Although in *Hawkins* (para. 95) and *Ward* (para.105) our Court of Appeal referred to a 12 to 15 year period of parole ineligibility as "the acceptable range...for the offence of second-degree murder in similar circumstances," I believe it important to recall that the Court also endorsed Justice Robertson's general thesis in *R. v. Nash* (*Hawkins*, para. 67) wherein he stated that there are essentially three time frames when fixing the period of parole ineligibility for second-degree murder.

[74] The first period between 10 to 15 years parole ineligibility, he characterized as, in practice, being "reserved for those offenders for whom the prospects of rehabilitation appeared good and little would be served by extending the period of parole ineligibility other than to further the sentencing objectives of denunciation and retribution. The second time frame is reserved for those who fall somewhere in between the first and third. The third time frame is reserved for the "worst of offenders" in the "worst of cases."

[75] I would certainly characterize and agree with counsel that the level of Mr. Beaver's moral culpability on June 5, 2011 puts him in the first, that is the namely 10 to 15 year period of parole ineligibility, group of offenders.

[76] Mr. Beaver is an offender for whom the prospects of rehabilitation appear to be good. If one looks to periods of parole ineligibility imposed upon similar offenders for similar offences committed in similar circumstances, one is therefore left to look for cases of second-degree murder involving "similar offenders" who have committed second-degree murder "in similar circumstances."

[77] Mr. Beaver was almost 23 years old at the time of the offence. He had 10 adult convictions and sentencings for minor to moderately serious offences between the offence dates of December 29, 2008 and September 19, 2010. None of these were for violence. He turned 18 years old on September 1, 2006. In 2011 he was sober, gainfully employed, in a stable relationship, and getting reconnected with his family. In the preceding 2.5 years his contact with Mr. Mead was almost exclusively by telephone/texts. There is no evidence of any physical violence or expressed threats by Mr. Mead to physically harm Mr. Beaver during that time period.

[78] The years he had spent in closer contact with Shawn Mead (approximately sometime in 2001 - 2009, being between the ages of 13 and 21 years old) created significant anxiety and ambivalence in Mr. Beaver's mind about the ends to which

Mr. Mead would go in order to maintain his contact or relationship with Mr. Beaver. There is evidence that Mr. Mead had a history of abusive controlling and threatening behavior towards Mr. Beaver and that this caused Mr. Beaver to fear that Mr. Mead would cause him injury or death unless he took steps to protect himself.

[79] On June 5, 2011 Mr. Beaver went to Mr. Mead's residence carrying a loaded long barrel 12-gauge shotgun in a duffel bag. Mr. Beaver intended to intimidate Mr. Mead to leave him alone, and also had the shotgun for the sake of his own self-defence in the event that Mr. Mead were to produce a weapon, including a firearm, which Mr. Beaver believed he may have had. There is no apparent reason why Mr. Beaver felt an urgency at this time to confront Mr. Mead with a loaded shotgun.

[80] Mr. Beaver went to the back door to confront Mr. Mead. Mr. Mead approached Mr. Beaver with a facial expression that Mr. Beaver recognized and feared. In response Mr. Beaver removed the shotgun.

[81] In his police statement Mr. Beaver stated "he started walking toward me. I said 'are you going to leave me the fuck alone? I ain't playing none of your shit. I fucking helped you through thick and thin and I am fucking sick of it' and he started coming towards me with his little evil fucking look. And I said, 'you get any fucking closer, I'll kill us both'. I shot him. I fucking pumped it again and I put it to my face and I could not do it, so I just ran." Mr. Beaver also commented in that statement that he had decided to confront Mr. Mead the week before "just to prove that I wasn't scared of him, because he was trying to fucking ruin my life, fuck with my kid."

[82] The last June 5, 2011 text messages between Mr. Beaver and Shawn Mead read as follows (Exhibit "B", agreed statement of facts):

2:31 PM - Beaver - you makes up the weirdest shit your fucked in the head.

Mead - wel you're on video talking bout a 3 some and i askd who ud like to fuck if ya could an ya said Scottie Phelem or Corey. Wtf (what the fuck) bud on video man.

Beaver - your so full of shit.

Mead - Then why is it on video; your fucking me and were talkin bout a 3 some. Ya man its there. Fuck bud we did talk alot while haven sex .

Beaver - Keep tellin ppl your bull shit it aint on video i never said it.

Mead- Like fuck bud. Man when ppl see the whole dick with you and me and whats done and said they will make there own conclusion.

Beaver - Words never came out of my mouth lier you do everything to me an cry when I say words back W.e

Mead - Beav you fuckin did al kinds of talking. And you say alot over the diff times. And Beav ya fucking know what we did an talkd about w.e.

2:58 PM - Beaver - Listen all you do is start shit an act like I say all this shit about you i never gave your address up an if ya want shoot me here reason.

Mead - Ya bud ya aint settin me up bud.

Beaver - Told ya bymyself fool.

Mead - Then where you at.

Beaver - Your not pullin that one again i walked from back front back left

Mead - Well fuckin come back or meet me. And dont fucking scream

Beaver - Who screamed i aint wastin no more time on you

Mead - Fuckin come back or meet me man if Not it al gos up an u go to jail

Mead - COME BACK MAN I JUST WASNT GOIN OUT SIDE TO A GROUP OF PPL.

Beaver - Told you aint on [sic] group ppl id bring

Mead - Come on beaver doors open.

Mead - Then come back cus i thot you had ppl with ya

3:26 PM - Beaver - Door aint open did i ever bring ppl

Mead - Door is open bud

3:28 PM - Beaver - Well then shoot me

Mead - Man where you at

3:30 PM - Beaver - Ill be by

3:38 PM - Mead - Ya doors open man

3:53PM - Mead -?

[83] That is the last text message ever from Mr. Mead to Mr. Beaver.

[84] Among the cases cited by counsel, and my own investigation I was unable to find a case of a similar offender and similar circumstances. While there are similarities with some cases, I find that I can do no better than conclude that cases like that of Mr. Beaver's parole ineligibility fit within the first group cited by Justice Robertson in *R. v. Nash*, that being between 10 and 15 years parole ineligibility.

[85] Next I will turn to the aggravating and mitigating factors to place Mr. Beaver somewhere on that continuum of 10 to 15 years parole ineligibility.

Mitigating Factors

[86] While Mr. Beaver's motivation for shooting Mr. Mead, insofar as it is based upon the years of exploitation and abuse by Mr. Mead of the vulnerable and underaged Mr. Beaver, in this exceptional case has mitigating value on the length of a proper period of parole ineligibility; however, I cannot overlook that on June 5, 2011 Mr. Beaver was not as vulnerable as he had been when he was younger, since he was then 23 years old, had a supportive common-law partner since 2009, the continuous support of his mother and sister, stable employment, and had almost exclusively only phone contact from Mr. Mead in the previous 2.5 years and was thus much less susceptible to Mr. Mead's demands and threats. As he got further away from the period of more intense exploitation, manipulation and abuse by Mr. Mead, the less likely the dominance of Mr. Mead, including the interference by him in Mr. Beaver's life, would have prevailed. Therefore, the mitigation value otherwise

associated with Mr. Beaver's motivation for shooting Mr. Mead, diminished over time.

[87] Mr. Beaver's prospects for rehabilitation are good. He is a relatively young man, who has been gainfully employed for eight years at least, and has been sober for three years; his criminal record does not show him to be entrenched in a criminal lifestyle. He has never had the benefit of assessment treatment and counselling for substance abuse or sexual/physical abuse, which suggests his rehabilitation potential is significant, if he is willing to fully engage such processes.

[88] He has pled guilty to second-degree murder. However, he has not shown the kind of fulsome, genuine remorse that would normally entitle him to the same level of mitigation that fulsome, genuine remorse would generate in a sentencing. His counsel suggested in oral argument that the absence of more fulsome remorse by Mr. Beaver is "the product of feeling the ordeal with Mr. Mead is over, and he will have to heal himself first."

[89] Mr. Beaver was in custody from September 14 to October 13, 2011 on this charge. Thereafter he was released on a recognizance with his parents as sureties having placed at risk property in the value of \$100,000. He has been on a curfew from 7 p.m. until 7 a.m. seven days a week with some strict exceptions. He has complied with these strict bail conditions for over two years without incident it would appear. This reinforces what I have said earlier about his rehabilitative potential.

[90] Mr. Beaver did provide inculpatory details on September 14, 2011 during his second police interview which is a mitigating factor.

Aggravating Factors

[91] Given Mr. Beaver's belief that Mr. Mead would likely react violently if he confronted him and insisted that Mr. Mead not contact him anymore, Mr. Beaver clearly understood the risks that serious violence could erupt if he went to Mr. Mead's home with a loaded shotgun. Yet, rather than find alternate means of making his point Mr. Beaver created a situation of preventable danger - this was not an impulsive spur of the moment act - it require deliberation and in my view that is an aggravating factor in this case.

[92] Mr. Beaver was in violation of the firearms prohibition order imposed January 23, 2009 for a period of five years for an offence under section 91(2) **Criminal Code**, when he on June 5, 2011 possessed and used a 12-gauge shotgun to kill Mr. Mead. This, in combination with his record for breaches of court-ordered release conditions in probation suggest Mr. Beaver attached little significance to Court orders.

[93] Mr. Beaver having shot Mr. Mead at point-blank range, must have been aware immediately or very shortly thereafter that Mr. Mead was dead or grievously injured, yet he did not call 9-1-1 to get assistance for Mr. Mead, nor did he advise anyone, even anonymously, that Mr. Mead was injured or dead. The result is that Mr. Mead's dead body, and I gather his dog "Lucky" who died as a result of dehydration, were left in the house where Mr. Mead had been shot untouched until June 27, 2011. Leaving Mr. Mead in this state is an aggravating factor in my view. It may even be an offence under section 182 of the **Criminal Code**, that being offences in relation to the failure to perform a duty in relation to a dead body or to interfere with or offer an indignity to a dead human body.

[94] The fact that Mr. Beaver has a criminal record is an aggravating factor, but given the nature of the offences in the record and the offence dates, by itself is not a significant aggravating factor.

[95] The fact that Mr. Beaver shot Mr. Mead in his own home is an aggravating factor.

[96] Mr. Beaver's lack of more fulsome, genuine remorse is not an aggravating factor.

The Victim Impact Statements Herein

[97] I am in the possession of and have heard by the reading into the record by either from the sisters or from Mr. Martin, the victim impact statements of the three sisters of Mr. Mead who provided victim impact statements: Darlene Ann Landry; Donna Brown; and Diane LaBonte.

[98] I read and heard those statements, and the heartfelt pain of their loss was profound. There were two common elements to those victim impact statements that I could see: all of his sisters commented that they recognized Shawn Mead had his

troubles but: 1. they were especially aggrieved by the fact that he was shot and left to die just inside his house, and his body was not attended to until it was discovered three weeks later; and 2. in their last contacts with him he seemed to be making a good attempt at turning his life around, but he never had a chance to try to complete that turnaround, and they never had a chance to help him with that turnaround.

Conclusion as to the Period of Parole Ineligibility

[99] It is at this stage that the purpose and principles of sentencing as contained in sections 718 - 718.2 come into play. Especially relevant are all subsections of section 718 (excluding specific deterrence); 718.1 (a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender); and, 718.2 (aggravating and mitigating factors, similar sentences for similar offenders committing the offence in similar circumstances; and the principle of restraint in the exercise of punishment).

[100] I do not lose sight of the reality that the sentence imposed upon Mr. Beaver is life imprisonment. The period of parole ineligibility precludes him from having the opportunity to apply for parole at any time before the period of parole ineligibility that I set, no matter how much rehabilitative progress he will have made by that time. Therefore, I must impose a period of parole ineligibility with a conscientious measure of restraint.

[101] In my opinion, given the circumstances of Mr. Beaver and the offence herein, including the aggravating and mitigating factors; and, specifically the deliberation required by Mr. Beaver to acquire, load and take the shotgun with him to the home of Mr. Mead on June 5, 2011 without any apparent evidence of impending urgency to do so, and in specific violation of his firearms prohibition order, and the fact that Mr. Beaver did so without any real attempt over an extended period of time to involve the police or other authorities in order to protect himself, or any other persons for which he had a concern, from Mr. Mead, at a time when his life seemed to be stable and on a positive path, in spite of the significant exploitation and manipulation of Mr. Beaver by Mr. Mead that had taken place in the past, a period of parole ineligibility greater than the minimum of 10 years is required here.

[102] While I have found that the acceptable range of parole ineligibility period is between 10 and 15 years, and without the guidance of more specific precedent cases,

I am inclined to order a period of parole ineligibility of 12 years as a proper reflection of all those considerations that I should properly consider.

[103] For the parole authorities I should note that Mr. Beaver did remain in custody on this charge from September 14 through to and including October 13, 2011.

[104] I will also order under section 109(1)(d) and (3) of the **Criminal Code** that Mr. Beaver be prohibited from possessing any firearm, crossbow, restricted weapon, ammunition and explosive substances for life.

[105] Pursuant to section 487.051 of the **Criminal Code** I also authorize the taking of a number of samples of bodily substances as is reasonably required for the purpose of forensic DNA analysis from Mr. Beaver.

[106] In relation to the warrant of committal I will, as noted in the pre-sentence report, strongly recommend that Mr. Beaver should be entitled to participate in the following as he would benefit therefrom: 1. a mental health assessment, and ongoing therapy (individual and/or group whichever is most to his benefit) in the areas of anger management, trauma and victimization; 2. educational upgrading; and, 3. any such other programming which would be beneficial to this young man, **who I would say may be fairly regarded as especially vulnerable in a prison population. I hope that the handling of his case while incarcerated reflects this reality.**

[107] Lastly, I recommend that correctional services take all reasonable steps to ensure that Mr. Beaver has appropriate ongoing access to his two young children and family.

Rosinski, J.