PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Pardy*, 2023 NSPC 39

Date: 20230706
Docket: 8573709, 8573710, 8573712
Registry: Sydney

Between:

His Majesty the King

v.

Marshall Gordon Pardy

Judge	The Honourable Judge Shane Russell
Heard	May 11, 2023, June 5, 2023, July 5,2023 in Sydney, Nova Scotia
Decision	July 5, 2023
Counsel	Darcy MacPherson, for the Crown James Snow, for the Defence

By the Court:

Introduction

[1] The accused, Marshall Gordon Pardy is being sentenced for the abuse of his spouse and infant child.

[2] The Crown proceeded by way of summary conviction and the accused pleaded guilty to the following three offences:

> On or about February 9, 2022, did in committing an assault on C.D., cause bodily harm to him, contrary to Section 267(b) of the Criminal Code of Canada.
>
> Between September 17, 2021, and September 21, 2021, did in committing an assault on A.B., did choke A.B., contrary to Section 267(c) of the Criminal Code of Canada.
>
> Between September 17, 2021, and September 21, 2021, did by verbal utterance knowingly utter a threat to A.B. to cause death or serious bodily harm to A.B., contrary to Section 264.1(1)(a) of the Criminal Code of Canada.

Circumstances of the Offence

[3] A.B. is the former intimate partner of the accused. The relationship lasted for a period of 18 months. The couple had a little boy C.D. who was born 4 months premature. He is now 18 months old and in permanent foster care.

[4] At the time of the offences the accused, A.B., and the infant resided in a basement apartment. On February 18, 2022, police and community services attended the residence. Upon arrival the accused became angry and started to scream. He declared that he had just finished dealing with community services and couldn't believe they were back. Given his level of anger he was directed to leave the room and calm down. Community services spoke with A.B. and examined the 7-month-old baby.

[5] The accused's sister was present. She asked to speak privately with community services. She expressed concern about her brother's anger and feared what might happen if the baby was left alone with him. Days prior she overheard A.B. state to the accused, "if you spit on me, I will tell police what you did to C.D.". She further advised that A.B. had been planning to leave the accused. The accused has "severe anger issues" and is not "mentally stable enough" to deal with a 7-month-old baby.

[6] A.B. began to cry and agreed to speak with police. Last week while she was in shower the accused went to the store. When the accused returned, he confronted her asking how long the baby had been crying. The accused then went to another room. From the bathroom A.B. heard several loud slapping sounds. She asked what was happening to which the accused responded he was “burping the baby”.

[7] When she came out, the accused slapped the 7-month-old infant on the left side of his head/face. She could immediately see marks on the baby’s face. The accused stated he can’t stand the crying, he never wanted a baby, he gets angry, and does not know why he does it. She stated she didn’t understand this last comment as she had only seen the accused strike the baby this one time.

[8] A.B. showed police a video she had taken on the date of the abuse. The video shows injuries to the baby’s face and head. There was notable bruising around his eyes, nose, mouth, cheek, forehead, and neck. Fortunately for this little boy the injuries have since healed and have had no long-term impact on his physical well being.

[9] A.B. advised that she did not contact police, nor did she seek immediate medical attention. She feared the accused. She was scared and did not know what

to do or who to tell. She didn't know how to leave the relationship but began to make plans with a friend to move to Alberta where she and the child could be safe.

[10] While speaking with police, she disclosed further abuse. She advised she was also assaulted five months prior. This assault occurred a week before the baby had been discharged from the hospital. The accused was upset with her, pushed her to the floor, put his hand around her throat and began to choke her. During the choking the accused stated, "I could kill you right now". She did not lose consciousness; however, her throat was sore. Again, due to fear she did not contact police.

Circumstances of the Offender

[11] The accused is 33 years old and currently single. He has no prior record and was raised in a hard-working prosocial family. The family home was free of all forms of violence, abuse, neglect, and substance abuse. He lived in the family home until he was 30.

[12] He is currently employed as a store clerk at a local grocery store. His past employment includes working at a call center, fish plant, and construction. He is not involved in any community agencies, organizations, or volunteer groups.

[13] He describes his health as “not bad”. He is currently prescribed anti anxiety medication and has been involved in a suboxone treatment program for many years. He notes anger as a weakness, and that it has often “landed him in trouble”. As it relates to his temper and ability to cope with stressors he states, “I bottle everything up. When I explode, it’s because I blackout when I am unable to cope.”. It is notable that the accused has never sought nor participated in any form of mental health or anger management counselling.

[14] In terms of substance abuse the accused states that drugs have been an issue since he was 19 years old. He states that within a year of being introduced to drugs he quickly progressed to abusing Dilantin, Hydromorphone, and OxyContin. The accused states he has been clean for approximately 12 years.

[15] The accused’s mother described him as a good person who is kind, caring, helpful, and friendly. She confirms that the accused has been free of drugs for many years. She submitted a letter of support which was marked as exhibit 1B.

[16] The accused’s sister states that by the age of 19 he began associating with the “wrong crowd”. There had been a period of lost communication between them. She stated his personality and behaviour changes when he is using drugs and alcohol. However, she now sees a difference in the accused. Over the past year he

conducts himself in what she referred to as “a polite, respectable manner”. She submitted a letter of support which was marked as exhibit 1A.

[17] The accused described his relationship with A.B. as starting out positive but deteriorating over time. In speaking of his short relationship with A.B. the accused deflected things. The presentence report states, “He acknowledges their situation had issues because of A.B.’s mental health deficits.”. As it relates to the offences before the court, he reports being accused of adultery and “being provoked” by the victim as contributing to the offences. He does however state that he accepts responsibility and expresses remorse for his actions.

Impact on the Victim

[18] There were no victim impact statements filed. The Crown noted that the child is now in permanent care. At some point this child will grow up. Someday he may learn that he was assaulted by his father and placed in permanent care. It is impossible to know what if any psychological, emotional, or social developmental impact this may have. A.B. has declined to file a victim impact statement. As a result, it is unclear exactly what impact these events may have had on her.

Position of the Parties

[19] The Crown and Defence originally proposed a global joint recommendation of 12 months custody to be served in the community by way of a conditional sentence order. For the first 6 months the accused would be subjected to a 24/7 curfew. For the second 6 months he would be subjected to a daily curfew of 4 pm to 12 pm the following day. For the entire 12 months there would be an exception for paid employment. This is to be followed by a 2-year period of probation combined with two ancillary orders, DNA and a 10-year firearms prohibition.

[20] Counsel later revised their joint recommendation. The new recommendation is identical to the first expect for its overall length. The conditional sentence now being proposed is for 16 months. For the first 8 months the accused would be subjected to a 24/7 curfew and for the last 8 months he would be subjected to the daily curfew. Again, the entire 16 months would have an exception for paid employment.

Conditional Sentence

[21] A conditional sentence is a custodial sentence served in the community. It can only be imposed if certain prerequisites are met. First, the sentence must be less than two years. Second, a court must be satisfied that serving the sentence in

the community would not endanger the safety of the community. Third, such a sentence must be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2 of the *Criminal Code*.

[22] The first two perquisites are not in issue. However, the court does have concerns with respect to whether a conditional sentence in this case is consistent with the purpose and principles of sentencing. In accordance with the Supreme Court of Canada's direction in *R v. Anthony-Cook*, [2016] S.C.J. No.43 counsel were given a full opportunity to provide further submissions and supporting case law.

[23] Before I go further, I wish to make a few things clear. Conditional sentences are routinely imposed. There is nothing unusual or shocking about the imposition of a conditional sentence. Conditional sentences are not a free pass on punishment. These sentences have heavy deterrent and denunciatory elements, see *R. v. Proulx*, 1 S.C.R.61 at para 127:

> [127]…. 8. A conditional sentence can provide significant denunciation and deterrence. As a general matter, the more serious the offence, the longer and more onerous the conditional sentence should be. There may be some circumstances, however, where the need for denunciation or deterrence is so pressing that

> incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct or to deter similar conduct in the future.

[24] In addition, sections 718.2(d) and 718.2(e) remind sentencing judges of the principles of restraint when considering incarceration as sentence.

[25] There is no legislative or general prohibition against the imposition of a conditional sentence for crimes of child abuse and/or intimate partner violence. However, sentencing is and must remain an individualized process.

Joint Recommendations

[26] This court is well aware of the Supreme Court of Canada's directions in *R v. Anthony-Cook, supra*. These directions have been at the forefront of my mind as I've considered the submissions of experienced counsel.

[27] Specifically, in *R. v. Anthony-Cook, supra* The Supreme Court of Canada stated:

1. Agreements of this nature are commonplace and vitally important to the well-being of our criminal justice system, as well as our justice system at large. Generally, such agreements are unexceptional and they are readily approved by trial judges without any difficulty. Occasionally,

however, a joint submission may appear to be unduly lenient, or perhaps unduly harsh, and trial judges are not obliged to go along with them (*Criminal Code*, R.S.C. 1985, c. C-46, s. 606(1.1)(b)(iii)): para 25.

2. As a rule, counsel will be highly knowledgeable about the circumstances of the offender and the offence and the strengths and weaknesses of their respective positions: para 44.

3. Trial judges should approach the joint submission on an "as-is" basis: para 51.

4. The greater the benefits obtained by the Crown, and the more concessions made by the accused, the more likely it is that the trial judge should accept the joint submission, even though it may appear to be unduly lenient: para 53.

5. The public interest test is the proper test. Trial judges should apply the public interest test when they are considering "jumping" or "undercutting" a joint submission. Under the public interest test, a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest: paras 32 and 52.

6. Finally, trial judges who remain unsatisfied by counsel's submissions should provide clear and cogent reasons for departing from the joint submission: para 60.

[28] After having reviewed the directions and rational underpinning *R. v. Anthony-Cook, supra* this court must exercise great care in going against this joint recommendation. However, that is not to say that the Supreme Court of Canada intended *R. v. Anthony-Cook, supra* to be an absolute straitjacket removing the proper judicial discretion of trial judges. Even where joint recommendations are presented the court still plays an active role in the sentencing process. Sentencing judges are vested with the responsibility of ensuring that such recommendations meet the proper threshold. If this were not the case, a sentencing judge would amount to nothing more than a drive by ATM. In such a reality counsel would simply convey the "joint recommendation" passcode and passively be presented with a judicial ticket validating sentence.

[29] Later I will return to the application of the public interest test in the context of this sentence.

Principles of Sentencing & Determination of a Fit and Proper Sentence

The Purpose and Principles of Sentencing

[30] In *R. v. Field*, [2013] N.S.J. No. 330 , Derrick J. (as she then was) provided a concise and helpful overview of the purpose and principles of sentencing:

> [2]….Sentencing is a "profoundly subjective process." (*R. v. Shropshire, [1995] S.C.J. No. 52, paragraph 46*) Determining "a just and appropriate sentence is a delicate art" which requires the careful balancing of "the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence ..." (*R. v. M. (C.A.), [1996] S.C.J. No. 28, paragraph 91*) An appropriate sentence cannot be determined in isolation. Regard must be had to all the circumstances of the offence and the offender. (*R. v. Nasogaluak, [2010] S.C.J. No. 6, paragraph 44*) It is a "profoundly contextual" process in which the sentencing judge has broad discretion. *(R. v. L.M., [2008] S.C.J. No. 31, paragraph 15*) That discretion is structured of course, by how the various sentencing objectives are to be weighted for certain offences.

Denunciation, Deterrence & Rehabilitation

[31] The Supreme Court of Canada in *R. v. Bissonnette*, 2022 SCC 23 reflected on the principles of denunciation, deterrence, and rehabilitation:

1. Denunciation "requires that a sentence express society's condemnation of the offence that was committed. The sentence is the means by which society communicates its moral values": para. 46.

2. The principle of denunciation "must be weighed carefully, as it could, on its own, be used to justify sentences of unlimited severity": para. 46.
3. Deterrence comes in two forms, general and specific. Certainty of punishment and criminal sanction "does produce a certain deterrent effect, albeit one that is difficult to evaluate, on possible offenders.": para. 47.
4. The objective of rehabilitation "presupposes that offenders are capable of gaining control over their lives and improving themselves, which ultimately leads to a better protection of society". Rehabilitation "is one of the fundamental moral values that distinguish Canadian society from the societies of many other nations in the world.": para. 48

Proportionality

[32] The paramount principle of sentencing is proportionality. The following can be abstracted from *R. v. Bissonnette, supra*:

1. Proportionality is essential to maintaining public confidence in the sentencing process: para. 50.

2. "The sentence must be severe enough to denounce the offence but must not exceed "what is just and appropriate, given the moral

blameworthiness of the offender and the gravity of the offence."": para. 50.

3. "There is no mathematical formula for determining what constitutes a just and appropriate sentence": para. 49.

4. The goal of sentencing is to carefully balance "the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community." The assessment of moral blameworthiness must be done through the perspective of the offender's life experiences and personal characteristics: para. 49.

5. "The relative importance of each of the sentencing objectives varies with the nature of the crime and the characteristics of the offender.": para. 49.

Proportionality Parity & Individualization

[33] Proportionality interacts with the principles of parity and individualization. The Supreme Court of Canada in *R. v. Parranto*, *supra* spoke to how these principles work in tandem:

1. "Individualization is central to the proportionality assessment. Whereas the gravity of a particular offence may be relatively constant, each offence is "committed in unique circumstances by an offender with a unique profile" (para. 58). This is why proportionality sometimes demands a sentence that has never been imposed in the past for a similar offence: para 12.

2. "The question is always whether the sentence reflects the gravity of the offence, the offender's degree of responsibility and the unique circumstances of each case": para. 12.

3. The mitigating and aggravating factors of each case must be considered: paras. 17 and 18.

4. "Parity and proportionality are not at odds with each other." "Consistent application of proportionality will result in parity": para. 11.

5. Courts cannot arrive at a proportionate sentence based solely on first principles, but rather must "calibrate the demands of proportionality by reference to the sentences imposed in other cases": para. 11.

6. Proportionality is determined on "both an individual basis" and by comparison with sentences imposed for similar offences committed in similar circumstances: para. 12.

7. A trial judge "must calibrate a sentence that is proportionate for *this* offence by *this* offender, while also being consistent with sentences for similar offences in similar circumstances": para. 234.

8. Parity "is a secondary sentencing principle, subordinate to proportionality (*Lacasse*, at para. 54) and cannot "be given priority over the principle of deference to the trial judge's exercise of discretion"": para. 234.

Mitigating and Aggravating Factors

Mitigating Factors

[34] There are several mitigating factors in this case:

1. The accused is a youthful first-time offender with no prior record.

2. The accused has entered a guilty plea.

3. The accused has expressed remorse for his actions.

4. The accused cooperated with the police investigation. He gave a chartered and cautioned statement whereby he admitted his guilt.

5. The accused has the family support of his mother and sister. This will likely assist his rehabilitation.

6. The accused's comments within the presentence report suggest he has gained some degree of insight into his anger issues.

Aggravating Factors

[35] The aggravating factors in this case include:

1. The assault on A.B. was one of Intimate Partner Violence. This is specifically listed as an aggravating factor in section 718.2(a)(ii) of the *Criminal Code.*

2. The accused was in a position of trust and C.D. was a child. These are also specifically listed as aggravating factors in sections 718.2(a)(ii.1) and 718.2 (1)(iii) of the *Criminal Code*.

3. There were multiple acts of violence in the home. There was more than one victim from the same family unit.

4. This was a case of child abuse. The injuries to the child were more than trifling. They amounted to bodily harm. The injuries were specifically inflicted to the 7-month-old's head, face, and neck area. The accused was

well aware that this infant was born 4 months premature when through rage he delivered targeted violence to the baby's head, face, and neck area.

5. The accused has demonstrated a susceptibility to quick escalating violence with little to no restraint.

6. The accused made no effort to seek medical assistance for this helpless infant.

7. Although no victim impact statement was filed, based on the facts, the court does find that A.B. was very afraid of living with the accused. She wanted out of the relationship and did not know what to do or who to tell. This struggle was directly linked to her fear of the accused. At a minimum I am able to conclude that the abuse impacted A.B. emotionally and psychologically when it was occurring.

Other Factors

[36] I have considered other relevant factors which do not neatly fit into the categories of aggravating or mitigating:

1. Collateral consequences to the accused. As a result of being charged with these offences his name became public. He was shunned in the community and was forced to go off work for a short period of time. There has been some measure of collateral specific deterrence.

2. Compliance with release conditions. The accused has not contacted either victim since being charged with these offences 17 months ago. To some degree this supports a willingness on the accused's part to move forward and is suggestive of a diminished risk to re-offend (at least as it relates to these two victims).

Range of Sentence: Parity and Cases Involving Similar Circumstances

[37] I keep in mind that parity is secondary to proportionality. A sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. However, the reality is that no two cases are ever exactly the same.

[38] The Supreme Court of Canada in *R. v. Parranto*, *supra* stated, "parity and proportionality are not at odds with each other" "and "consistent application of proportionality will result in parity": para. 11. This is ideal in theory. However, sentencing ranges for child abuse have traditionally been "all over the place". This

is something counsel acknowledged during their submissions. In fact, this reality was also raised in the first case which I will reference momentarily. To some degree this may reflect what the Supreme Court of Canada means when it states that the sentencing process is "profoundly contextual" and a "profoundly subjective process". It is in that context they state that appeal courts owe a great deal of deference to the sentencing judge. I will now turn to a review of several cases.

- *R. v. Bowden*, [2015] N.S.J. No. 113 (NSPC)

  Sentence: 8 months' imprisonment and 2 years probation.

[39] The 40-year-old accused had a dated and unrelated prior record. He entered a guilty plea to a single count of assault causing bodily harm (s.267(b)). In frustration, he slapped his six-week-old son across both sides of his face. This resulted in serious injuries which included permanent brain damage and visual impairment. The Crown sought an 18-month jail sentence. The defence sought a conditional sentence or in the alternative a jail sentence between 3 to 6 months.

[40] Similar to Mr. Pardy, the accused in *Bowden* entered a guilty plea, expressed remorse, and cooperated with the investigation by giving a confession. Mr. Bowden was of African-Nova Scotian heritage and experienced racism. He was

described as a “good worker” and “gentle person who has never been violent”. Sources were “shocked” to hear of his actions. He, like Mr. Pardy, had been fully compliant with release conditions pending sentence.

[41] Specifically, Derrick J. (as she then was) considered whether a conditional sentence for that accused was consistent with the purpose and principles of sentencing. The Court rejected a conditional sentence. The court placed heavy emphasis on the fact that imposing a conditional sentence in that case would not be consistent with the principles of denunciation and deterrence. The Court stated:

> [6] I have concluded that a conditional sentence in this case is not consistent with the purpose and principles of sentencing, specifically the principles to be foregrounded, which are denunciation and deterrence.

[42] Both Crown and defence were very short in their submissions as it relates to the precedential value of this case. Both swiftly argued that it was distinguishable on the basis of severity of resulting injury. Obviously, I agree that this is a material distinction between the cases. However, I wish to pause here and speak to two things.

[43] First, the point is made that one case has the presence of a significant aggravating factor while the other does not. However, the Nova Scotia Court of

Appeal has stated that when comparing cases, the "absence of an aggravating factor does not mitigate the seriousness of an offence", *R. v. Kleykens*, [2020] N.S.J. No. 22. The seriousness of Mr.Pardy's offences already exist, so does his high level of moral blameworthiness. Here there was a pattern of abuse linked to both his spouse and infant child. Neither were minor assaults. One involved choking with threats to kill while the other involved blows to a baby's head. His extremely high level of moral blameworthiness exists independent of the resulting injuries.

[44] Second, sentencing is much more than an exercise of comparing resulting physical injuries. It is also more than categorically pigeonholing specific acts while ignoring the much larger context of the specific circumstances and offending behaviour. The Supreme Court of Canada in *R. v. Friesen*, 2020 SCC 9 has made this profoundly apparent.

[45] While the resulting injuries were obviously more extensive in *Bowden* it would be a gross misapplication of that case to state that Derrick J. (as she then was) rejected the appropriateness of a conditional sentence on that basis alone. To draw such a conclusion would be overly simplistic and out of sync with the entirety of her reasons.

[46] In particular, Derrick J. went to great lengths in exploring what she referred to as a "consistent theme that runs through the cases". This theme is "that the primary sentencing objective is the protection of vulnerable children". As stated by the Crown few are as vulnerable as an infant child. I adopt the following passages from the court in *Bowden*:

> [36] The consistent theme that runs through the cases is that the primary sentencing objective is the protection of vulnerable children. (*R. v. T.J. V., [2000] N.W.T.J. No. 51 (S.C.), paragraph 17*) This has been expressed in plain terms by the Prince Edward Island Appeal Division in *R. v. T.J.S.*, [2006] P.E.I.J. No. 10 at paragraph 27:
>
> > While each sentence must take into consideration the circumstances of each offence and each offender, in all cases where injuries are inflicted intentionally upon innocent and defenceless children, denunciation of the conduct and general deterrence have to be the paramount objectives of the sentence...
>
> [37] Infants are to be cared for and protected by their parents and care-providers. (*R. v. E.M., [2005] O.J. No. 386 (C.J.), paragraph 89*) Infants are especially vulnerable victims, unable to protect themselves and unable to tell anyone when they have been harmed. (*E.M., paragraph 69*)
>
> [38] ….the Crown relied heavily on the Alberta Court of Appeal decision of *R. v. M.J.S.* ([2006] A.J. No. 928) for its position that a conditional sentence is not

appropriate in Mr. Bowden's case. M.J.S. was sentenced for an assault causing bodily harm to his infant son aged one to three months. M.J.S. admitted to having applied force to the baby's ribs and legs on multiple occasions when he was crying, causing fractures. M.J.S. was 32 years old. He was assessed as having severely deficient parenting skills. While M.J.S. provided no real explanation for his actions, he accepted responsibility and was remorseful. The Alberta Court of Appeal upheld the sentencing judge's determination that a conditional sentence was not appropriate, stating:

> However, in our view, a conditional sentence is clearly not warranted in this case. A jail term is necessary to properly address the principles of general deterrence and denunciation, which are the predominant objectives in child abuse cases. (*cite omitted*)

[47] In reinforcing that sentencing is "a very individualize, contextualized process with each case requiring close scrutiny on its merits", the Court in *Bowden* completed an extensive review of cases imposing conditional sentences for child abuse and concluded:

> [48]…. Mr. Bowden assaulted his baby, striking X across the face in a back and forth motion with both hands. While I accept that he did so out of stress and frustration, it was an intentionally violent act against a tiny, helpless baby. Sentencing for such violence must emphasize denunciation and deterrence. I am simply not satisfied that a

> conditional sentence in this case, even with strict punitive conditions, is consistent with these principles. A conditional sentence is not the appropriate sentence in this case.

[48] I will now review several cases submitted by counsel in support of their recommendation for a conditional sentence. While I agree that conditional sentences have been available and imposed for child abuse in both Nova Scotia and throughout Canada this does not by operation automatically dictate the imposition of one here.

- R. v. Sharpe, [2010] A.J. No. 1058

  Sentence: Conditional sentence of 2 years less 1 day.

[49] A 33-year-old accused with no prior record pleaded guilty to aggravated assault of his 7-month-old baby. The infant began to fuss and cry. The accused threw him up in the air four times catching him. The accused's thumb inadvertently stuck the infant's chin. As a result of the sudden motion the child suffered injuries which included subdural hematomas and bilateral retinal hemorrhages. The child made a full recovery. The accused was described by his ex-wife as a "hard worker, good provider, and was good to their children". There was never any violence directed towards her and she described him as "having a good heart". Prior to sentencing the accused was assessed by a psychologist. He

was reported to be of " low average to average intelligence". He was assessed in the "medium range" for further violence.

[50] The court properly held that in cases of child abuse denunciation and deterrence are paramount. However, the court in *R. v. Sharpe, supra* drew a distinction between different trust relationships without supporting authority, see *R. v. Bowden*, *supra*. There is no authority to differentiate between an abuse of trust for personal gain and an abuse of trust by an accused who fails to perform an important function such as being a parent to a child. The Justice in *R. v. Sharpe, supra*, found that it was less of an aggravating feature in the latter situation than in the former. The adoption of such a distinction appears to have materially impacted the ultimate sentence in *R. v. Sharpe*, *supra*. Given this, I have concerns with respect to the precedential weight I can give this case.

- R. v. D.N.K, [2004] B.C.J. No.3066

  Sentence: Conditional sentence of 2 years less 1 day.

[51] A 26-year-old accused with no prior record pleaded guilty to aggravated assault on a three-month-old baby. Despite suffering from a broken femur and two skull fractures the baby made a full recovery.

[52] There are several distinguishing features in this case compared to the one before this court. After a forensic psychiatric assessment, the accused in *R. v. D.N.K, supra* was found to be "a low risk for both general and violent reoffending". This court does not have the benefit of a forensic risk assessment and can not make such a definitive finding. D.N.K, unlike Mr. Pardy, had "no pattern of violence or aggression". Finally, D.N.K's "substance abuse was a primary factor in his behaviour". D.N.K prior to sentencing took exceptional and extensive efforts to fully rehabilitated himself with respect to the primary contributing factor to his criminal conduct. Mr. Pardy has not come to court having addressed his underlying issues. This is not aggravating but at the same time Mr. Pardy does not get the benefit of such mitigation which was reflected in D.N.K's ultimate sentence.

[53] In imposing a conditional sentence, the court stated, "the court should impose a conditional sentence in cases involving violence to children only in exceptional cases". They found that D.N.K was an "exceptional case". I am unable to find that Mr. Pardy's circumstances are such that he is an 'exceptional case". Nor am I able to find that Mr. Pardy had "no pattern of violence or aggression". The high degree of violence involving multiple victims on separate dates suggests otherwise.

- *R. v. Berg*, [2017] S.J. No. 170

Sentence: Conditional sentence of 3 months.

[54] The youthful accused was found guilty of assault causing bodily harm to his infant daughter. He had no prior record. The infant was crying, he attempted to comfort her, but she continued to cry. While holding a video game controller by the cord he hit her. The assault resulted in severe bruising.

[55] The accused had been diagnosed with Asperger's Syndrome. This played a prominent role in the imposition of a conditional sentence. Specifically, the court stated:

> [4]…. As a result, I conclude that Mr. Berg had some poor parenting skills and a poor ability to cope with the stressful situation brought about by his daughter crying. This was directly connected to his suffering from Asperger's Syndrome and ADHD.

[56] The court in *R. v. Berg*, *supra* place heavy emphasis on two material mitigating factors which are not present in this case. The accused's criminal conduct was linked directly to his diagnosis of Asperger's Syndrome. As well, Mr. Berg was being sentenced for a single isolated incident "occurring out of frustration". Mr. Pardy's violence was not isolated to a single event or a single victim. As a result, this court is unable to accept that his violence was simply "occurring out of frustration". Nor was Mr. Pardy's conduct linked to a

diagnosable disorder such as Asperger's Syndrome. Mr. Pardy's situation is not one where his moral blameworthiness is diminished by mental disorder.

- *R. v. Marks*, [1994] N.J. No. 241.

[57] In *R. v. Marks*, *supra* The Newfoundland Court of Appeal specified two categories of physical child abuse:

> [27] Physical child abuse frequently falls into two distinct types:
>
> > (i)The application of force with, if not the intention, the expectation of causing injury or, an indifference as to whether injuries will result and,
> >
> > (ii) the application of force where a parent or other custodian of a child is immature and is unskilled in matters of child care, and, acting out of emotional upset, frustration or impatience, does not fully appreciate the serious injuries which might result.
>
> [28] In the first situation, there is a high degree of culpability and the Court will in most cases impose a severe sentence. In the second situation, while punishment is warranted, a sentence, where such is warranted, will not ordinarily be a severe one and will usually be followed by a period of probation, a condition of which would be that the abuser receive training and counselling to the end that further acts of abuse will be avoided.

[58] A key feature underpinning this joint recommendation is counsel's reliance and emphasis that Mr. Pardy falls into the second category. Counsel have maintained that the circumstances of this particular accused are such that he falls into a category of offenders which is an immature and unskilled parent acting out of frustration or impatience not fully appreciating that serious injuries might result.

[59] There is a danger in trying to box a particular offender or type of conduct into a narrow set of predefined categories. The Alberta Court of Appeal in *R. v. Nickle*, 2012 ABCA 158, expressed a similar concern and rejected the adoption of the ridged categorical approach outlined in *R. v. Marks*, *supra*. Offending conduct occurs on a spectrum and so do the particular circumstances and level of moral blameworthiness. By putting the accused in one of the two *Marks* boxes counsel have bootstrapped their recommendation. To some degree what has been ignored is the context which was the whole of the family violence. Any fit and appropriate sentence must take this into consideration.

[60] Even if this court were to adopt the categorial approach in *R. v. Marks*, *supra*, which I do not, these facts do not support the convenient placing of Mr. Pardy into the second category. After being confronted by A.B. about what was happening the accused proceeded to slap the infant in the head/face. The violence occurred directly in front of the child's mother. This is remarkably concerning.

Upon being confronted his reaction was not to back away from the situation. He chose to inflict violence on this child coupled with telling her he never wanted a baby.

[61] It is extremely difficult to accept that striking a seven-month-old premature infant directly in the head/face, falls into a situation where one "does not fully appreciate the serious injuries which might result". I am satisfied that there was a degree of indifference to the potential harm when he directed targeted violence to the infant's head/face in front of the child's mother. As well, he inflicted abuse to both members of the same family unit. To chalk this second event up to being "unskilled", "immature", and "frustrated", is to ignore the first abusive event. I specifically reject counsel's categorization of Mr. Pardy's criminal conduct. Mr. Pardy's anger and propensity for violence were on full display prior to assaulting his infant son. He choked and threated to kill A.B. only to later transfer his violent ways towards a second member of the same family unit. His culpability and moral blameworthiness are very high.

- *R. v. M.J.A*, [2000] N.B.J. No. 116

  Sentence: 2 months imprisonment.

[62] The 22-year-old accused with no prior record pleaded guilty to assault causing bodily harm (s.267(b)). The accused had been living with the child's

mother. While baby-sitting he excessively spanked a 16-month-old infant on the buttocks. This resulted in extensive bruising. The infant made a full recovery and the accused cooperated with the police investigation.

[63] This case was tendered by defence counsel; however, the decision does not speak to the availability or appropriateness of a conditional sentence. Despite the availability of a conditional sentence a straight 2-month jail sentence was imposed. Here, both the Crown and defence have put forward a custodial sentence of 16 months. This court does not take issue with the proposed length of the sentence. That is not an issue. As stated, the issue is whether imposing the 16-month custodial sentence as conditional sentence would be consistent with the principles and objectives of sentencing. In that regard, this case is of little assistance.

[64] I accept that there have been custodial sentences imposed which are less than 16 months imposed depending on the unique circumstances of the individual case. However, this certainly isn't one of those cases. Counsel have maintained that this case warrants a 16-month custodial period.

- *R. J.F.C*, [2006] N.S.J. No. 37

  Sentence: Conditional Discharge.

[65] The court is well familiar with this case. After trial the accused was found guilty of assault with a weapon (s.267(a)) and uttering threats (s. 264.1(1)). The accused lacked a prior record and had struck his 8-year-old son with a broom handle 10 to 12 times. The child suffered a series of longitudinal bruises to various parts of his body including his upper right shoulder, ribs, and waist area. The resulting injuries were described as “a bit tender” upon examination but did not require medical treatment. The trial judge described them as “ really not far off a simple assault under s.266”.

[66] There are material differences between *R. v. J.F.C, supra* and the matter before this court. The court in *R. v. J.F.C, supra* specifically held that the incident was isolated and was “not part of a pattern of behaviour”. As stated, Mr. Pardy is being sentence for multiple acts of violence on different dates involving both his spouse and infant son. As well, J.F.C was described by the child’s mother as being a “good provider and good father”. All sources stated that the offence was out of character for the accused who had never shown a propensity for anger or violence. The circumstances were unique in that the accused had been the sole source of financial support for his children. He was a tuck driver by trade and made frequent boarder crossings. It was established that a criminal record would essentially

terminate his employment and result in immediate and considerable financial hardship on his family and children.

[67] It is argued that *R. v. J.F.C, supra* demonstrates that offences against children do not automatically result in a jail sentence. The principles and objectives of sentencing, including deterrence and denunciation, can be met without the imposition of a jail sentence. That is a fair point. However, I will comment that this case is now close to 20 years old.

[68] While most of the sentencing principles have remained relatively constant during the past 20 years, I am comfortable in stating that there has been an evolution with respect to how courts examine intimate partner violence, family violence, and the abuse of children. First, there have been parliamentary increases to sentencing maximums for certain violent crimes which are often committed against intimate partners and children. Second, since the trial court's decision in *R. v. J.F.C, supra* parliament has enacted sections 718.01 and 718.04 of the *Criminal Code*. Both of these sections have full application today:

> **Objectives -- offences against children**

> 718.01 When a court imposes a sentence for an offence that involved the abuse of a person under the age of eighteen years, it shall give primary consideration to the objectives of denunciation and deterrence of such conduct. [Emphasis added.]
>
> **Objectives -- offence against vulnerable person**
>
> 718.04 When a court imposes a sentence for an offence that involved the abuse of a person who is vulnerable because of personal circumstances -- including because the person is Aboriginal and female -- the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence. [Emphasis added]

[69] Third, the Supreme Court of Canada has provided guidance with respect to child abuse sentencing albeit in the context of sexual violence. It was emphasized that priority shall be given to the principles of deterrence and denunciation. Although *R. v. Friesen, supra* delt with sexual violence I find certain pronouncements are equally applicable in cases involving the physical abuse of infant children. Adopting the direct language of the Supreme Court of Canada in *R. v. Friesen, supra* the principles naturally transition to the physical abuse of infant children. They could read as follows:

1. The overarching objective is the protection of children. This can be gleaned from a historical review of the caselaw and current legislation.

To achieve this objective heavy emphasis is often placed on the sentencing principles on deterrence and denunciation. However, a court must never lose site of rehabilitation. At the end of the day the sentence must be “just and appropriate and nothing more”.

2. Infants are highly vulnerable and as such violence against them is especially wrongful.

3. Courts must recognize the wrongfulness of infant child abuse and the profound harm that it causes.

4. Given the vulnerability of infants, violence against them ought to normally warrant a stronger sanction that those against adults.

5. The wrongfulness and harmfulness of abusing infant children must form part of the proportionality analysis and be accounted for when determining the gravity of the offence.

6. An assessment of the gravity of infant child abuse requires a court to consider: (1)the inherent wrongfulness of the offence; (2)the potential harm to the infant which flows from the offence and (3)the actual harm that an infant has suffered as a result of the offence.

7. The reasonable foreseeability of potential harm when inflicting violence against an infant ought to be considered when determining the gravity of the offence.

8. The intentional infliction of violence on an infant is highly morally blameworthy. Because infants are so helpless, vulnerable, and defenceless, offenders ought to be aware that their actions can profoundly cause them. Absent unique circumstances, offenders ought to have some degree of awareness of the potential harm.

9. A trust relationship between an infant and the accused will be an aggravating factor.

[70] As a result of the outlined analysis, I find that a conditional sentence in this case would not be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2 of the *Code*. Specifically, I conclude that a conditional sentence would not properly reflect deterrence and denunciation given the accused's high level of moral blameworthiness, degree of violence, and position of trust in relation to both victims.

[71] In reaching this conclusion I am mindful of the punitive aspects of a conditional sentence. However, the accused committed both intimate partner

violence and child abuse. One resulted in bodily harm and the other involved choking with threats to kill. The acts themselves were particularly egregious and were hardly on the low end of the scale. Further, both victims had a high degree of vulnerability. His actions were intentional, senseless, and callous. Mr. Pardy's conduct was textbook gender-based violence.

[72] Despite the court's position with respect to the fitness of sentence, I am reminded that this is a joint recommendation. Fitness of sentence is not a basis upon which I can reject the joint recommendation. I am not rejecting this joint recommendation on the basis of fitness of sentence. However, I am rejecting it on the basis of the public interest test.

The Joint Recommendation

[73] The public interest threshold has been defined in *R. v. Anthony-Cook, supra* at paras 32 to 34:

> [32] …. But, what does this threshold mean? Two decisions from the Newfoundland and Labrador Court of Appeal are helpful in this regard.
>
> [33] In *Druken*, at para. 29, the court held that a joint submission will bring the administration of justice into disrepute or be contrary to the public interest if, despite the public interest considerations that support imposing it, it is so "markedly out of line

> with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system". And, as stated by the same court in *R. v. B.O.2*, 2010 NLCA 19 (CanLII), at para. 56, when assessing a joint submission, trial judges should "avoid rendering a decision that causes an informed and reasonable public to lose confidence in the institution of the courts".
>
> [34] In my view, these powerful statements capture the essence of the public interest test developed by the Martin Committee. They emphasize that a joint submission should not be rejected lightly, a conclusion with which I agree. Rejection denotes a submission so unhinged from the circumstances of the offence and the offender that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the justice system had broken down. This is an undeniably high threshold -- and for good reason, as I shall explain.

[74] The threshold for rejecting a joint recommendation is high, *R. v. Lucas*, [2021] N.J. No. 63 (NLCA). I am also mindful of why the Supreme Court of Canada has insisted on the stringent public interest test. I will summarize by referring to specific paragraphs in *R. v. Anthony-Cook, supra*. Not every word is verbatim, however the principles remain unaltered:

1. Guilty pleas in exchange for joint submissions on sentence are a "proper and necessary part of the administration of criminal justice". When plea resolutions are "properly conducted [they] benefit not only the accused, but also victims, witnesses, counsel, and the administration of justice generally": para 35.

2. Accused persons benefit by pleading guilty in exchange for a joint submission on sentence. The most obvious benefit is that the Crown agrees to recommend a sentence that the accused is prepared to accept. This recommendation is likely to be more lenient than the accused might expect after a trial and/or contested sentencing hearing. Accused persons who plead guilty promptly are able to minimize the stress and legal costs associated with trials. Moreover, for those who are truly remorseful, a guilty plea offers an opportunity to begin making amends. For many accused, maximizing certainty as to the outcome is crucial -- and a joint submission, though not inviolable, offers considerable comfort in this regard: para 36.

3. The most important factor in the "ability to conclude resolution agreements, thereby deriving the benefits that such agreements bring, is that of certainty". Generally speaking, accused persons will not give up

their right to a trial on the merits, and all the procedural safeguards it entails, unless they have "some assurance that [trial judges] will in most instances honour agreements entered into by the Crown": para 37.

4. From the Crown's perspective, the certain or near certain acceptance of joint submissions on sentence offers several potential benefits. First, the guarantee of a conviction that comes with a guilty plea makes resolution desirable. The Crown's case may suffer from flaws, such as an unwilling witness, a witness of dubious worth, or evidence that is potentially inadmissible -- problems that can lead to an acquittal. By agreeing to a joint submission in exchange for a guilty plea, the Crown avoids this risk. The Crown may consider it best to resolve a particular case for the benefit of victims or witnesses. When an accused pleads guilty in exchange for a joint submission on sentence, victims and witnesses are spared the "the emotional cost of a trial". Moreover, victims may obtain some comfort from a guilty plea, given that it "indicates an accused's acknowledgement of responsibility and may amount to an expression of remorse": para 39.

5. Guilty pleas save the justice system precious time, resources, and expenses, which can be channeled into other matters. This is no small

benefit. To the extent that they avoid trials, joint submissions on sentence permit our justice system to function more efficiently: para 40.

6. It is important that trial judges exhibit restraint, rejecting joint submissions only where the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. A lower threshold than this would cast the efficacy of resolution agreements into too great a degree of uncertainty. The public interest test ensures that these resolution agreements are afforded a high degree of certainty: para 42.

[75] I have considered the "critical systemic benefits" which have flowed from this joint recommendation. I have also considered the circumstances and rationale underpinning the joint recommendation. This includes whether there were any benefits to the Crown or concessions made by the accused. I have considered whether there was *quid pro quo* and provided counsel an opportunity to outline the same. Counsel were given a full opportunity to outline the considerations and concessions which went into fusing the joint recommendation.

[76] According to the Crown there were no concerns with respect to the cooperation of the victim, A.B. As outlined, she cooperated with the police and

witnessed the accused strike the infant. The victim has been spared the “emotional cost” of participating in a trial. However, there was no indication that she was reluctant to testify or that her circumstances were such that it would have been detrimental to her well being.

[77] Furthermore, there were no noted concerns with respect to the admissibility of the accused’s confession or other evidentiary issues which frequently form part of the underlying rational for joint recommendations. Aside from identifying one evidentiary issue, which I will speak to momentarily, Crown counsel did not specify a single concern with respect to the evidentiary strength of their case.

[78] Here, the singular evidentiary concern appears to have been whether at trial the Crown could prove that C.D.’s injuries amounted to bodily harm. However, there were photos and a video documenting the extensive bruising to the infant. The was no concern expressed with respect to the admissibility of this supporting evidence. The Crown’s concern appears to be more rooted in how the court might weigh the sufficiency of this evidence at the end of the day. Nevertheless, I do accept that the Crown had limited concern with respect to how the court might have interpreted the evidence as it relates to bodily harm. The Crown stated that this is an aggravating factor and the accused’s guilty plea relieved them of this burden.

[79] I have also taken into account that the Crown received the benefit of certainty of conviction, the victim received finality, and the court saved time and resources. These are valid considerations. I do note, however, that the last three will be present in every case where a guilty plea is entered regardless of whether it is attached to a joint recommendation. As well, Moldaver J. qualified the weight to be attributed to the certainty consideration in *R. v. Anthony-Cook, supra* at para 43:

> [43] At the same time, this test also recognizes that certainty of outcome is not "the ultimate goal of the sentencing process. Certainty must yield where the harm caused by accepting the joint submission is beyond the value gained by promoting certainty of result" (*R. v. DeSousa*, 2012 ONCA 254, 109 O.R. (3d) 792, per Doherty J.A., at para. 22).

[80] Defence submits that the accused expressed interest in entering a guilty plea very early on. As stated, I have already taken this into consideration as a mitigating factor. I also accept that by pleading guilty the accused would have had some anticipation that the recommendation would be honoured. However, this concern was tempered to some degree. At the time of plea, the court completed a full inquiry under section 606(1.1) of the *Criminal Code*. This included a clear reminder to the accused, before he entered his plea, that the court is not bound by any agreement made between counsel and can impose a different sentence.

[81] The weighing of "public interest" considerations is not an exercise in mathematics. There are no derivatives, no fixed equations, no specific target values. Each separate consideration does not have a preassigned value. Depending on the case certain public interest considerations can weigh more heavily than others. Finally, there is no set quantum of factors which must be present or absent before a judge accepts or rejects a joint recommendation. Just like the sentencing process it is delicate, individualized, and case specific process.

[82] A properly conducted joint submission is based upon rigorous consideration of all the circumstances. I am convinced that given the totality of the circumstances here that if the court were to impose the recommended sentence, it would cause an informed and reasonable public to lose confidence in the institution of the courts and the administration of justice. I do not "lightly" reject this joint recommendation nevertheless I do reject it.

Joint Recommendations: The intersecting of Public Interest with Fitness of Sentence

[83] As stated recently by the Newfoundland Court of Appeal in *R. v. Lucas*, *supra* at para 19:

> [19] While the public interest test engages elements that are not undertaken for purposes of a conventional sentencing, it does not follow that considerations relevant in a conventional sentencing have no place in assessing a joint submission. In particular, depending on the circumstances, a frame of reference from which to conduct the assessment may be necessary in order to determine whether a joint submission is so "markedly out of line with the expectations of reasonable persons aware of the circumstances of the case that they would view it as a break down in the proper functioning of the criminal justice system", or the joint submission would cause "an informed and reasonable public to lose confidence in the institution of the courts" (paragraph 11, above). For example, in this case, the trial judge reviewed case law to ascertain the sentences that the offences may have attracted in a conventional setting. That said, care must be taken with the manner in which such information is used when assessing a joint submission because the focus must remain on the public interest criteria.

[84] Similarly, both the Alberta Court of Appeal in *R. v. Naslund*, [2022] A.J. No.32 and the British Columbia Court of Appeal in *R. v. CRH*, 2021 BCCA 183, have taken a similar position. The following was stated by the Alberta Court of Appeal in *R. v. Naslund*, *supra* at paras 72 & 73:

> [72] The British Columbia Court of Appeal said much the same recently in ***R v CRH***, 2021 BCCA 183 [***CRH***]. It was acknowledged that "one cannot simply compare" the joint submission with "what a fit sentence in the circumstances might

> be", noting that the sentencing judge must also "consider the benefits and advantages of the joint submission process to that justice system": para 54. Yet the Court nevertheless accepted that the "public interest" test cannot be applied "without some consideration of an otherwise fit sentence": para 58. That is, while fitness "cannot be determinative", it "*must be a consideration* in determining whether the administration of justice will be brought into disrepute notwithstanding the many advantages to the joint submission process that stand in counter-weight": *ibid*, emphasis added. In short, a sentencing judge must consider both the benefits of the joint submission process as well as the fitness of the proposed sentence: para 84.
>
> [73] This makes eminent sense. Indeed, were the reasonableness of the sentence not part of the equation, it would be impossible to determine whether the sentence was "unhinged from the *circumstances of the offence and the offender*": ***Anthony-Cook***, para 34, emphasis added. After all, a sentence cannot be "unhinged" in the abstract; it is unhinged *from something*, namely the gravity of the offence and the degree of responsibility of the offender. Proportionality is thus a necessary (though not sufficient) consideration when determining whether a joint submission meets the "public interest" test.

[85] An informed member of the public, being aware of all the circumstances and issues in this case, would have serious concerns with the proposed sentence. So much so that I am satisfied that it is unhinged from the gravity of the offence and degree of responsibility of the accused. An informed member of the public would,

if such a sentence were imposed, lose confidence in the institution of the courts. This case is not about bad parenting, provocation, or an inexperienced parent. It is about an abusive spouse and responsible adult who was in a position of trust abused a child. This accused on two separate and distinct occasions with two separate and distinct vulnerable victims demonstrated an inability or unwillingness to control his anger and aggression. His violence was senseless and gratuitous. This is the key feature which makes *this* offender in *this* case very different from the cases provided by counsel.

[86] It is impossible to ignore that Mr. Pardy is being sentenced for a broader collective which is family violence. His conduct involves both child violence and intimate partner violence. The violence he inflicted occurred within the home and within the same family unit. This offender wasn't simply an immature frustrated parent briefly losing his cool on one occasion. When he gratuitously inflicted bodily harm to the head, face, and neck of his 7-month-old son he had only been a few short months removed from choking this baby's mother and threatening to kill her.

[87] Mr. Pardy's conduct is shocking and calls for emphatic emphasis on denunciation and deterrence. He choked his spouse and delivered violence to the head of a helpless defenceless baby. Proper emphasis on the principles of

denunciation and deterrence can not be met in this case by allowing Mr. Pardy to serve his jail sentence at home for the first 8 months then by being home before curfew for the remaining 8.

[88] Judges are ultimately responsible for the sentences they impose. Parliament and the public have entrusted them with this grave responsibility. This Court has a duty to protect vulnerable members of our society. This duty encompasses helpless infant children who can not protect themselves and their mothers who are all too frequently abused by their intimate partners. Ultimately, I am not satisfied that the limited public interest considerations present in this case warrant the acceptance of this joint recommendation in circumstances.

Conclusion

[89] I am aware that sentences should be consecutive unless there is a valid reason for making them concurrent. Consecutive sentences should be imposed for offences that "do not arise out of the same event or series of events." (s. 718.3(4)(b)(i)). There were two distinct victims from separate dates. As a result, the sentence for the section 267(b) and Section 264.1(1)(a) offences involving A.B. ought to be concurrent to one another but consecutive to the section 267(c) offence

involving C.D. Before going on to consider totality and restraint the sentence will be as follows:

- Section 267(c) relating to C.D. : 12 months custody at a correctional institution.

- Section 267(b) relating to A.B. : 4 months custody at a correctional institution, consecutive to the offence under 267(c).

- Section 264.1(1)(a) relating to A.B. : 1 month custody at a correctional institution concurrent to both offences under 267(b) and 267(c).

Restraint & Totality

[90] I must ensure that the total sentence remains proportionate. A sentence must never exceed the culpability of the accused. Specifically, section 718.2(c) of the Criminal Code states, “where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;”. Furthermore, section 718.1 states, “a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender”. As stated, Mr. Pardy is a young man and there are real prospects for his rehabilitation. I accept that a total 12-month custodial

sentence would be proportionate, and anything longer would be unnecessary. Therefore, the sentence will be adjusted as follows:

- Section 267(c) relating to C.D. : 12 months custody at a correctional institution.

- Section 267(b) relating to A.B. : 4 months custody at a correctional institution, concurrent to the offence under 267(c).

- Section 264.1(1)(a) relating to A.B. : 1 month custody at a correctional institution concurrent to both the 267(b) and 267(c) offences.

[91] The total custodial sentence will be 12 months to be severed at a correctional institution followed by two years probation on the terms and conditions as recommended by the Crown.

ANCILLARY ORDERS

[92] The following ancillary orders are granted:

- DNA order in accordance with section 487.051. Assault causing bodily harm is a primary designated offence under the *Criminal Code*.

- A 10-year Firearms Prohibition pursuant to section 109 (a.1) of the *Criminal Code*.

Russell J.