PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. S.R.M.*, 2023 NSPC 33

Date: 20230717
Docket: 849834
Registry: Sydney

Between:

His Majesty the King

v.

S.R.M.

Judge:	The Honourable Judge Shane Russell
Heard:	May 11, 2023, and July 17, 2023, in Sydney, Nova Scotia
Decision	July 17, 2023
Charge:	*Criminal Code* ss.271; 266(b); 264.1(1)(a); 267(b); 264.1(1)(a); 264.1(1)(b)
Counsel:	Oge Egereonu, for the Defence Darcy MacPherson, for the Crown

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By the Court:

INTRODUCTION

[1] This is the sentencing of S.R.M. After trial, the accused was found guilty of six counts of intimate partner violence involving his spouse A.B. and her daughter C.D. The following offences occurred between the dates of December 1, 2019, and March 7, 2021:

- Sexual assault on A.B. contrary to section 271 of the *Criminal Code*.
- Assault causing bodily harm to A.B. contrary to section 267(b) of the *Criminal Code*.
- Assault on A.B. contrary to section 266(b) of the *Criminal Code*.
- Uttering threats to cause death or bodily harm to A.B. contrary to section 264.1(1)(a) of the *Criminal Code*.
- Uttering threats to damage property of A.B. contrary to section 264.1(1)(b) of the *Criminal Code*.
- Uttering threats to cause death or bodily harm to C.D. contrary to section 264.1(1)(a) of the *Criminal Code*.

[2] The complexity and sad reality that is Intimate Partner Violence ("IPV") can hardly be captured in words. The injuries, shame, trauma, and oppression, occur in real time far removed from lawyers and judges at sentencing hearings. The deep-rooted impact of this violence can set in and take hold well before and long after a sentencing hearing. Intimate Partner Violence is someone's sister, someone's child, someone's granddaughter, someone's brother. Intimate Partner Violence chills, infects, and decays the mental health and wellness of our communities.

[3] This year the Mass Casualty Commission released a report entitled Turning the Tide Together. The Commission examined what has been referred to as an "Epidemic of gender based, Intimate Partner, and Family violence". The Commission stated:

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

CIRCUMSTANCES OF OFFENCE

[4] The accused and A.B. had been in a 19-month relationship between August 2019 and March 2021. The victim's sons and 13-year-old daughter are from a previous relationship. Over the course of this relationship the accused and victim frequently moved from one location to the next. The victim left the relationship for a brief period in January of 2020. With the support and encouragement of a friend she left for good in March of 2021.

[5] At trial the victim characterized the nature of her relationship with the accused as "hell". Specifically, she stated that the accused subjected her to physical abuse, mental abuse, a sexual assault, numerous physical assaults, and made threats against her daughter. She testified that the accused put in her head that nobody loved her. In her words, "he brainwashed me to the point where I just wanted to die everyday". She testified that she was a strong woman and thought she could walk away but could not.

The Sexual Assault

[6] During the 2019 Christmas holiday a violent sequence of events occurred at the couple's first apartment. The victim and accused were alone in the apartment. At some point an argument ensued.

[7] The victim was seated on the living room sofa. The accused was standing over her. He grabbed her by the back of the hair. He pulled her off the sofa and dragged her to the floor. While she was on her back, he proceeded to drag her approximately ten to twelve feet down the hallway and into the bedroom. She was kicking and screaming. Once in the bedroom he continued to pull her hair. The accused repeatedly punched her in the stomach. She estimated that she was punched 50 to 60 times during the entire incident. She described the blows as "full force" punches. He told her to "Get up". Once she got up, he pushed her on the bed and jumped on top of her. He continued to punch her in the stomach and open handed slapped her in the face. He also "smacked" her in the back of the head.

[8] The accused then pulled off her shirt and pants. Her clothing was ripped. In the victim's words, the accused "ripped" a tampon from her vagina and told her, "You want to know what rape feels like, I will show you". He kept beating on top of her and tried to choke her. He took his pants off and tried to insert his penis into her vagina, however, he was unable to get a complete erection. At trial the Crown had asked her if there was any penetration. She estimated that his penis was inserted an inch. She was crying and screaming. The accused then got up and said, "sorry I'm sorry".

[9] The accused left and went to his mother's place. He was gone for a short time and returned. She laid there crying. When he returned, she referred to him as being like, "Jackal and Hyde". He called her several names such as "fat pig", "fat piece of shit", and "useless". He told her if she tried to leave, he would kill her. He threated to kill her kids.

Assault Causing Bodily Harm

[10] The violence continued when the parties moved into their second apartment. While in the bathroom, the accused got upset with the victim and pushed her. She fell and hit her face on the vanity. As a result, she passed out, began bleeding, and urinated on herself. The incident left her with a scar on the right-hand side of her forehead. She continues to suffer from frequent and lasting headaches.

[11] The victim testified that the injury to her head would have been visible to others. At trial it was described as a "goose egg". As a result, the accused wouldn't allow her to leave the house and she lost her job. She stated the accused also made sure she had the cover story straight. He told her that if anyone asked, she was to tell them she passed out and hit her head.

Common Assaults & Controlling Conduct

[12] The victim was assaulted multiple times during the relationship. She estimated that she was struck “mostly everyday”, “mostly every second day”. She stated he would punch her in locations where others would be unable to see resulting injuries. These areas would include her stomach and leg. He would slap her in the face rather than punch her so as to avoid leaving visible injuries.

[13] There were times during the relationship when the accused would not let her use the bathroom or shower in private. She would either have to seek his permission or he would follow her to the bathroom. While in the bathroom he would watch her. In describing the frequency, she stated it was a very “usual” occurrence.

[14] When she would shower, the accused would sit on a kitchen chair in the threshold of bathroom doorway. He would sit and watch her take off her clothes, shower, and get dressed. At times he would examine her body.

[15] She was asked by Crown if the accused ever told her what he was looking for and she stated “no”. She stated she believed that it was “just control”. She testified that the accused believed she was trying to sneak a phone into the bathroom and contact people. She stated there were occasions where he wouldn’t

allow her to use her phone. Occasionally he would tell her to, “hurry the fuck up”. How much time she could spend in the bathroom was dependant on his mood.

Uttering Threats & Recordings

[16] The accused threated to kill the complainant more than once over the course of the relationship. He stated things such as, “If I can’t have you nobody else will”, and, “I’ll kill you, I’ll find you, you can go as far as you want”.

[17] Entered into evidence were several audio recordings. The recordings are from the following dates: February 26, 2021, March 2, 2021, and March 7, 2021. They were made by the victim on her phone. The recordings were sometimes done without the knowledge of the accused. Both the victim and the accused could be heard arguing with raised voices. Their disagreements were rooted over time and extended to many topics and events well beyond any one specific date. Viewed as a whole the recordings support the reality that this was not a healthy functional relationship.

[18] The recordings captured the accused’s verbal aggression and excessive vulgarity. Extensive demeaning and degrading commentary were directed squarely at the victim, her daughter, and her family. Over a relatively brief period he referred to her as “bitch” on at least 70 separate occasions. Some of the vile

descriptive names the accused uttered at the victim included: “fucking whore”, “dirty whore”, “fat fucking cunt”, “fat fucking whore”, “fat little fuck”, “fat little bitch”, “lying bitch”, “two-dollar slut”, “lying conniving cunt”, “a fucking fag like your father”.

[19] The accused was controlling and suspicious of the victim’s interactions with others. This extended to her phone usage. He suspected she was having an affair with others. I debated whether the recitation of some of the excessive vulgarity was necessary in rendering this decision. However, it does capture the reality of the circumstances under which these offences were committed and the true extent of the oppressive relationship.

- “I have to sit. Am I getting blown while you’re in fuckin’ some faggot in (location vetted), bitch?”
- “Why don’t you get Phil to ride your fat ass some more bitch.”
- “Bitch while you fuckin’ jacked off a limp dick cocaine dealer.”
- “No, I know you’re going to be buried face down in fucking Bill’s cock.”
- “What did you do with Bob when you went back to (location vetted)?”
- “Three men that you had to fuckin’ lay down with wasn’t good

enough."

- "You're a whore that's why."
- "But you had no connection to that brown fucker?"
- "Then guess what, you wanna see your bitch, and his little limp cock where you snort coke come off it."
- "Fuck you show me a fuckin' message bitch. Yeah, cause' you deleted, them all."

[20] The recordings also capture a sample of what the victim stated was otherwise frequent infliction of mental and emotional abuse:

- "You're a fucking whore, bitch."
- "You're a fat fucking cunt is what you are."
- "Don't push me bitch."
- "Trust me bitch."
- "Bitch, so go fuck yourself."
- "You're greedy you fat fucking whore."
- "Your family is trailer trash and you can clearly see that."
- "Your daughter is a fucking cunt."

- "Why don't you go fuck yourself and see your fat, ugly ass across the pavement until you reach your daughter in (location vetted)."
- "My trip is to get my Xbox you fat whore."
- "Not like you; you little two-dollar fuckin' slut. Just like your fuckin' slut bag daughter."
- "You will cause I'm coming for you and your family bitch."
- "I can't wait either cause your sons are going down. Your daughter's goin' down."
- "You're gonna' wish you were dead by the time this is over."
- "Take it up the ass and wearing high-heeled lady (inaudible)."
- "That's why your fat ass is gonna' be alone forever."
- "You're a liar and you've never been nothing else. Same as your fucking trash bag kids, fuck you bitch."

[21] Following one of their arguments the accused contacted the victim and threatened to burn their rented house with her in it. The recordings captured the accused threatening the complainant several times in several ways. He can be heard repeating, "you're dead". He also threatens to break her legs and stab her.

[22] The accused also specifically threatened the victim's 13-year-old daughter. During one of the recorded arguments, he and the victim are arguing about his car. At one point he informs the victim; "but your fucking daughter is going to be underneath it". The accused can also be heard telling the victim, "You will. You're fuckin' daughter will bitch. She'll be bouncing on my fucking cock." and "Wait til' I get a hold of your kids".

CIRCUMSTANCES OF THE OFFENDER

[23] The Court must always look at the unique qualities and circumstances of the particular offender. This is a key variable in the sentencing equation. Sentencing must be an individualized process. Individualization acts as a safeguard. It keeps a balance. It is a perspective check point. It serves to remind sentencing judges not to travel down a path which could result in a disproportionate sentence.

[24] S.R.M. is 43 years of age. He has several prior convictions for IPV. He was sentenced on two prior occasions for 4 offences committed against 2 prior intimate partners. In 2010 he received a conditional discharged for an assault (s.266(b)) on spouse #1. Later, in 2016 he was sentenced to a thirty-day conditional sentence and one year probation for two counts of assault (s.266(b)) and uttering threats

(s.264.1(1)(a)) against spouse #2. It is notable that all three offences against spouse #2 occurred on three separate dates.

[25] He currently resides with his mother and has no siblings. In exchange for room and board the accused currently acts as her primary caregiver. His mother remains very supportive and describes him as “kind-hearted and honest”. To her knowledge he has never had any issues with drugs, alcohol, violence, or mental health. He had an uneventful childhood growing up in a “happy stable home” free of IPV and substance abuse.

[26] The accused attended university but never completed his degree. He is currently unemployed and has no plans to further his education. He was last employed in in May of 2022. His employment ended due to gallbladder surgery. Prior to his six-month employment with a forestry company, he was employed for 15 years at a call center. He last did volunteer work twelve years ago. He currently spends most of his time alone or with his mother. He doesn’t have much if any social network and spends his time watching television, going for walks, and taking photos.

[27] In terms of his health, his gallbladder was removed in May of 2022. He is currently prescribed medication for stomach related ailments including colitis. He

reports his mental health as “pretty good” and feels he does not require any assistance in that area.

[28] He has a 13-year-old son from a prior relationship. His former spouse, for whom he was sentenced for assaulting, has full custody of the child. The accused has not seen his son in ten years.

[29] During the presentence interview the accused described himself as “kind, considerate, and respectful of other people”. He maintained his innocence with respect to all of the offences except for the threats, which is his right.

[30] In reflecting on change he expressed that he may benefit from working on his anger management skills. As part of his previous involvement with the Court he completed the Respectful Relationships Program.

IMPACT ON THE VICTIM

[31] A.B. submitted a victim impact statement. The abuse has had a significant lasting impact on her physical, emotional, and psychological well being. The impact is ongoing and has changed her as person.

[32] She stated that she was left feeling “worthless” and suffers from a loss of dignity. She referenced the various forms of intrusive abuse and how this has sadly

changed the way she sees herself and others. She speaks of how she was once a "happy, strong mom" who "had a good job". This was taken from her. She continues to struggle daily. She struggles to understand how she could go from feeling so strong to so weak.

[33] She continues to have issues with trust and feeling "distant". She is reminded of the "control" he had over her and continues to fear him. Given what he has done to her she now fears for anyone else who may develop an intimate partner relationship with him. She states his control had impacted her relationships with her sons and daughter. His threats of sexual violence towards her daughter have impacted her deeply. She stated she will never be the same as she was before he came into her life.

POSITION OF THE PARTIES

[34] The Crown and defence presented what they referred to as a joint recommendation of three and a half (3.5) years in custody "accounting for totality". Three and a half (3.5) years would be apportioned to the sexual assault (s.271) and all other offences would be served concurrently.

[35] Once submissions were completed, I outlined the court's concerns with respect to the recommendation. Counsel were asked to highlight several things

which went into the fusion of this “joint recommendation”. As well, consistent with the court’s obligations under *R. v. Nahanee*, 2022 SCC 37, counsel were advised that the court was considering the imposition of a significantly higher sentence than the one proposed. Counsel were then provided a full opportunity to make additional submissions.

[36] After taking some time, counsel returned with a revised recommendation. The final recommendation was one of four and a half (4.5) years in custody. Four (4) years would be apportioned to the sexual assault (s.271) and all other offences would be six (6) months concurrent to each other but consecutive to the sexual assault (s.271).

JOINT RECOMMENDATIONS

[37] I am aware of the Supreme Court of Canada’s directions in *R. v. Anthony-Cook*, 2016 SCC 43. The Court mandated a “public interest” test for joint submissions and specifically rejected a "fitness test".

[38] The phrase “joint recommendation” is not a magic incantation. Sentencing judges do not vanish once such a phase is uttered. They continue to play an integral role in the sentencing process.

[39] Despite counsel's declarations that this was a "joint recommendation" it was not. In *R. v. Anthony-Cook, supra,* the court defined what is a true joint recommendation. It is a submission where the Crown and defence counsel agree to recommend a particular sentence in exchange for the accused entering a guilty plea. This was addressed recently by the Alberta Court of Appeal in *R. v. Sidhu,* 2022 ABCA 66:

> [30] In order to assess the merits of this argument, we must identify the essential features of a joint submission. This is a term of art in sentencing law.
>
> [31] There are four essential components of an *Anthony-Cook* joint submission.
>
> [32] First, there must be a guilty plea. An *Anthony-Cook* joint submission cannot describe the sentencing process that follows a conviction entered at trial even if both the offender and the Crown agree to recommend the identical sentence.
>
> [33] Second, the guilty plea must be the product of a bargain between the Crown and the accused. If the accused enters a guilty plea without any commitment from the Crown to do something in return for a guilty plea, there is no *Anthony-Cook* joint submission.
>
> [34] Third, the bargain of which a guilty plea is a component consists of another fundamental feature. The Crown must promise to recommend to the sentencer a specific sentence that is acceptable to the offender in return for the offender's promise to plead guilty to a designated offence and relieve the Crown of the burden of calling evidence to prove its case.
>
> [35] Fourth, the Crown and the offender must agree on an identical sentence, or at the very least, one that differs only with respect to ancillary matters.
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> ……
>
> [41] What we have is nothing more than sentencing submissions that suggest a similar sentence, whether as a result of discussion or by coincidence, following a conviction entered at trial.

[40] In short, the accused has not entered a guilty plea in this case. On the most basic of levels, *R. v. Anthony-Cook, supra,* simply does not apply. Nevertheless,

counsel were given a full opportunity to address the court's concerns with respect to not only the fitness of the recommendation but also what underpinned their common position.

[41] Despite being provided with ample opportunity counsel failed to provide the court with a single example of quid pro quo, compromise, commitment, or concession, which served to fuse the shared position. Counsel were specifically asked if there was any quid pro quo. The Crown responded, "only the fact that we could negotiate a joint recommendation. It is always my preference to put a joint recommendation before the court, that was my primary goal in our discussions today". Defence counsel had nothing to add. This shared sentencing position developed on the morning of submissions and post conviction.

PRINCIPLES OF SENTENCING & DETERMINATION OF A FIT SENTENCE:

[42] Very recently Buckle J. in *R. v. C.B*, 2023 NSPC 33 at paras. 37 to 39 stated the following with respect to the purpose and principles of sentencing:

> [37] The general purpose, objectives and principles of sentencing are set out in ss. 718 to 718.2 of the *Criminal Code*.
>
> [38] The goal, "in every case is a fair, fit and principled sanction" (*R. v. Parranto*, 2021 SCC 46, para. 10). However, the best means of addressing the principles and attaining the ultimate objective of sentencing will always depend on the unique circumstances of the case. Because of that, it has been consistently

> recognized that sentencing is "one of the most delicate stages of the criminal justice process in Canada" and is an inherently individualized process (*R. v. LaCasse*, 2015 SCC 64, para. 1; *Parranto*, para. 9; and, *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, paras. 91-92).
>
> [39] The fundamental purpose of sentencing is to protect the public and contribute to respect for the law and the maintenance of a safe society. This purpose is to be accomplished by imposing just sanctions that target one or more of the statutory objectives (s. 718).

[43] I would simply add that sentencing is a "profoundly subjective process." (*R.v. Shropshire*, [1995] 4 S.C.R. 227 at para. 46). It also requires a 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] 1 S.C.R. 500 at para. 91). Sentencing is "profoundly contextual", and regard must be had to all the circumstances of the offence and the offender. (*R. v. L.M.*, 2008 SCC 31 at para. 15 and *R. v. Nasogaluak*, 2010 SCC 6 at para. 44).

Legislation: The *Criminal Code*

[44] Section 718 of the *Criminal Code* provides:

> **718.** The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
>
> (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
>
> (b) to deter the offender and other persons from committing offences;
>
> (c) to separate offenders from society, where necessary;
>
> (d) to assist in rehabilitating offenders;

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

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

[45] Section 718.2 of the *Criminal Code* provides:

Other sentencing principles

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

(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,

(ii) evidence that the offender, in committing the offence, abused the offender's intimate partner or a member of the victim or the offender's family,

(iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,

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

Denunciation, Deterrence & Rehabilitation

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

1. The principle of denunciation "must be weighed carefully, as it could, on its own, be used to justify sentences of unlimited severity": para. 46.

2. 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.

3. 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

[47] 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

[48] 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.

Intimate Partner Violence (IPV)

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

> Additional consideration — increased vulnerability

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

[50] Sections 718.2 (a)(ii) and 718.201 require this court to consider that S.R.M.'s crimes involved the abuse of an intimate partner and a member of the victim's family (her daughter).

[51] The Nova Scotia Court of Appeal in *R. v. Butcher*, 2020 NSCA 50 succinctly stated at para. 136:

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

[52] The British Columbia Court of Appeal recently echoed a similar position in *R. v. Somers,* 2021 BCCA 205 at paras. 67 and 69:

> [67] As noted by Professor Isabel Grant, the case authorities are replete with offenders who committed repeat acts of violence against their intimate partners, even while under court-imposed orders seeking to prevent such conduct: *Sentencing for Intimate Partner Violence in Canada: Has s. 718.2(a)(ii) made a difference?* (Ottawa: Department of Justice Canada, 2017). Typically, these are crimes committed by men against women. Despite the enactment of s. 718.2(a)(ii) in 1996, these crimes are still occurring and there remains a strong need to publicly denounce and deter intimate partner abuse in the sentencing of these types of offenders.
>
> ……
>
> [69] When abuse occurs in the complainant's own home and family environment, the complainant's sense of personal security can be totally destroyed. The loss of a

> sense of security is usually not limited just to the occasions of abuse but continues on an ongoing basis, as the intimate partner does not know whom to trust, where to stay safe, and when the next act of violence is going to occur….

[53] In addition, trial judges are entitled to take note of the continued prevalence and persistence of IPV. The British Columbia Court of Appeal stated in *R. v. Begley*, 2019 BCCA 331 at para. 10:

> [10] In my view, the Crown's submission that the judge's comments should be interpreted as reference to the frequency of domestic violence cases in our justice system is sound. It was not necessary for the judge to have evidence before her in order to recognize that the continuing emphasis on denunciation and deterrence in domestic abuse cases arises from the recurring nature of the problem. In *R. v. Lacasse*, 2015 SCC 64, Justice Wagner (as he then was) observed that "it is well established in our law that judges can take judicial notice of the contexts in which they perform the duties of their offices" (para. 95).

[54] Furthermore, in approaching this sentence, I have found the following cases helpful in that they highlight what other trial courts across this country are currently stating about IPV. The recency of these decisions should be noted.

- *R. v. Trecartin*, 2017 NBQB 71:

> [34] In this case, I focus on denunciation and deterrence. Domestic violence/intimate partner violence remains a significant social issue. It is a crime of forced control, it is a crime causing deep psychological hurt that often lasts much longer than any physical harm does.

- *R. v. Hercules*, 2022 ONCJ 547:

> [17] Section 718.2(a)(ii) of the *Criminal Code* directs a sentencing court to treat as an aggravating factor "evidence that the offender, in committing the offence, abused the offender's intimate partner or a member of the victim or the offender's family". The Ontario Court of Appeal has stressed that the principles of deterrence and denunciation take priority for sentencing offenders convicted of

domestic violence: see *R. v. Inwood*, 1989 CanLII 263 (ON CA) at p. 181; *R. v. Bates*, 2000 CanLII 5759 (ON CA) at para. 30.

[18] In *Bates*, *supra*, Moldaver J.A. (as he then was) held at para. 30:

> The courts have been made increasingly aware of the escalation of domestic violence and predatory criminal harassment in our society. Crimes involving abuse in domestic relationships are particularly heinous because they are not isolated events in the life of the victim. Rather, the victim is often subjected not only to continuing abuse, both physical and emotional, but also experiences perpetual fear of the offender.

- *R. v. Lewis*, 2021 ONCJ 39:

[74] Sentences for violence against an intimate partner must address not only the physical injuries but the emotional, psychological, and spiritual trauma that are often unseen, but which last indefinitely.

[75] Intimate partner violence is a scourge on our communities and our country. The harm done reaches well beyond the walls of a home, beyond the moment of the action, beyond the visible.

- *R. v. C.T.H.*, 2022 BCPC 90:

[44] For similar reasons, intimate partner violence also calls for a sentence the objective of which is to deter the offender and other like-minded offenders. Obviously, rehabilitation, including appropriate on-message counselling, can help with deterrence in that it can provide the offender with the necessary tools to forestall violence, but deterrence also includes a sentence that lets the offender know in no uncertain terms that intimate partner violence is considered a serious criminal offence. In cases where there is a history or pattern of violence, this is all the more compelling.

[45] Moreover, intimate partner violence remains sadly common. That is not to say that courts should give up on sentences that send a message of deterrence. Quite the opposite. Each new generation must be left with no illusion that this kind of conduct will not be met with significant consequences. Intimate partner violence commands a sentence which has as its primary objectives general deterrence as well as denunciation.

- *R. v. Armstrong*, 2021 BCSC 2377:

> [46] The latter factor, their relationship, is a mandatory aggravating factor under s. 718.2(a)(ii) of the *Criminal Code*. That subsection, first enacted in 1996, originally was limited to situations involving abuse of a spouse, common law partner, or child. As explained by Professor Isabel Grant, it was enacted "in response to a growing recognition that violence within intimate relationships was historically trivialized by the courts" (*The Role of Section 718.2(a)(ii) in Sentencing for Male Intimate Partner Violence against Women*, (2018), *Canadian Bar Review*, Volume 96, p. 158-159). Courts responded to this legislation, including by recognizing that violence against a former spouse is equally worthy of attention given that the risk of violence increases when an intimate partner tries to leave the relationship: see for example, *R. v. Cuthbert*, 2007 BCCA 585 at para. 57, and *R. v. Evans*, 1997 ABCA 165 at para. 12. In 2019, the *Criminal Code* was amended to include abuse of intimate partners and family members. At the same time, the *Code*'s definition of intimate partner was amended to include both current and former spouses, common law partners, and dating partners.
>
> [47] Sadly, 25 years after this section was enacted, IPV perpetrated by men against women remains a profound social problem. As recently stated by Madam Justice Griffin in *R. v. Somers*, 2021 BCCA 205 at para. 67:
>
> > Despite the enactment of s. 718.2(a)(ii) in 1996, these crimes are still occurring and there remains a strong need to publicly denounce and deter intimate partner abuse in the sentencing of these types of offenders.

- *R. v. M.S.G.*, 2021 BCPC 157:

> [109] A sentence for a serious spousal assault must impress upon the offender and others the abhorrence with which society ought to view violence committed in a person's home. All persons have the right to feel safe within their home, from their spouses as well as from strangers. If it is to act as a deterrent to others, the sentence for a serious spousal assault must impress upon others who might be inclined to engage in similar conduct that, if they are convicted, they will receive a punishment that is more than simply a partial denial of one's liberty. (See *R. v. Donnelly*, at para. 28.)

Sexual Violence

[55] Recently Justice Brothers in *R. v. Percy*, 2021 NSSC 353, spoke to the inherent violence of sexual assaults. She stated the following at paras. 23 -26 :

> [23] While all sexual assaults are inherently violent and serious, it is well established in law that forced vaginal intercourse constitutes a "major" sexual assault.
>
> 1 *R v Percy*, 2019 NSPC 12, para 32;
> 2 *R v. J.J.W.*, 2012 NSCA 96, para 32;
> 3 *R v Arcand*, 2010 ABCA 363, para 171;
> 4 *R v T.J.S.*, 2021 NSSC 328, para 12.
>
> ……
>
> [25] Sexual assaults are inherently violent:
>
> 1. *R v Goldfinch*, 2019 SCC 38, para 37;
> 2. *R v McCraw*, [1991] 3 S.C.R. 72, at para 83;
> 3. *R v Simpson*, 2017 NSPC 25, at para 46; and,
> 4. *R v G.(T.V.)*, (1994) 133 N.S.R. (2d) 299 (S.C.).
>
> [26] The presence of other physical violence beyond the assault itself is aggravating:
>
> *R v C. (S.C.)* 2004 NSPC 41, paras 30-33 (while factually this case relates to a child, the legal principles are applicable):
>
> *R v Arcand*, *supra*, paras 270-272; and,
>
> *R v T.J.S. supra*, para 17.

Range of Sentence for a Major Sexual Assault

[56] As pointed out by Justice Chipman in *R. v. M (CJP)*, 2022 NSSC 315, Nova Scotia, unlike other jurisdictions, has declined to adopt a “starting point” approach to the sentencing of sexual assault. In *R. v. J.J.W.*, 2012 NSCA 96, a case involving a major sexual assault in the context of intimate Partner violence, the Nova Scotia Court of Appeal stated at paras. 21 and 22:

> [21] Nova Scotia has not adopted a starting point approach. Rather, this Court has chosen to remain focussed on the principles of sentencing as set out in the *Criminal Code* and the Supreme Court of Canada's affirmations that the approach on review on sentencing appeals is one of deference to the decisions of the sentencing judge.
>
> [22] Since sentencing is such an individualized process and done in the context of the particular circumstances of each case, it is notoriously difficult to find cases that are factually similar….

[57] The following was also eloquently stated by Justice Brothers in *R. v. Percy*, *supra*, at paras. 55 and 56:

> [55] Sexual assaults, at any end of the spectrum, are a serious social problem that the courts of Nova Scotia, and all other provinces, are grappling with regularly. Canadians have the expectation that they will be protected from sexual assaults as they go about their daily lives. They should know that actions like those of Mr. Percy will not be tolerated and will result in incarceration. No one is ever simply entitled to any sexual act they desire from any individual they choose.
>
> [56] The range of sentences for sexual assault offences varies widely in Nova Scotia and throughout the country. Each case is fact-specific and person-specific. What acts constitute a sexual assault vary widely, along with the circumstances and ages of the parties involved. Our courts specifically state we do not have a 'starting point' for sexual assaults, though, we still rely on the approximate 'ranges' as set in previous cases….

Parity: Cases Involving Similar Circumstances

[58] The principle of parity requires that I look at cases involving similar offenders in similar circumstances. With that said, there are limitations. No two cases are ever exactly the same. While these cases are helpful in providing guidance, alone they are not determinative. Proportionality remains the cardinal

principal of sentencing. As well, individualization remains paramount. These go hand in hand.

[59] In Nova Scotia and to some degree in other jurisdictions, the range of sentences for a major sexual assault in the context of an intimate partner relationship appears to be four to seven years. Obviously, this is just a range. It is a "navigational buoy", or a quantitative sentencing tool designed to assist trial Judges (*Parranto, supra*, at paras. 15-17). It is not surprising that there may be circumstances were a departure from the range, either above or below, will be appropriate.

[60] I will now outline several cases which I found to be of relevance in crafting a fit and proper sentence in this case.

A Decade Later: Revisiting The Court of Appeal Decision R. v. J.J.W.

[61] While *R v. J.J.W., supra,* is certainly binding authority it is now over a decade old. A decade ago, the Nova Scotia Court of Appeal did not have the benefit, guidance, wisdom, and direction of the Supreme Court of Canada's landmark decisions of *R. v. Friesen*, 2020 SCC 9 and *R. v. Goldfinch,* 2019 SCC 38 . In both cases the Supreme Court of Canada spoke to the evolution of the law in this area. They also spoke to our evolving knowledge and awareness of the

impacts of sexually based crimes in the decade since *R. v. J.J.W.*, *supra*. Any sexual assault sentencing must now be viewed through the lens which is *R. v. Friesen*, *supra* and *R. v. Goldfinch*, *supra*. The Supreme Court of Canada in *R. v. Goldfinch*, *supra* stated at para. 37:

> [37] ... As time passes, our understanding of the profound impact sexual violence can have on a victim's physical and mental health only deepens. ... Throughout their lives, survivors may experience a constellation of physical and psychological symptoms including: high rates of depression; anxiety, sleep, panic and eating disorders; substance dependence; self-harm and suicidal behaviour. A recent Department of Justice study estimated the costs of sexual assault at approximately $4.8 billion in 2009, an astonishing $4.6 billion of which related to survivors' medical costs, lost productivity (due in large part to mental health disability), and costs from pain and suffering. The harm caused by sexual assault, and society's biased reactions to that harm, are not relics of a bygone Victorian era.

[62] I would also refer to para. 89 in *R. v. Friesen*, *supra*:

> [[89] All forms of sexual violence, including sexual violence against adults, are morally blameworthy precisely because they involve the wrongful exploitation of the victim by the offender -- the offender is treating the victim as an object and disregarding the victim's human dignity (see *R. v. Mabior*, 2012 SCC 47, [2012] 2 S.C.R. 584, at paras. 45 and 48). As L'Heureux-Dubé J. reasoned in *L. (D.O.)*, "the occurrence of child sexual abuse is one intertwined with the sexual abuse of all women" precisely because both forms of sexual offences involve the sexual objectification of the victim (p. 441). Courts must give proper weight in sentencing to the offender's underlying attitudes because they are highly relevant to assessing the offender's moral blameworthiness and to the sentencing objective of denunciation (*Benedet*, at p. 310; *Hajar*, at para. 67).

[63] Returning to *R v. J.J.W.*, *supra*; after trial the accused was found guilty of sexually and physically assaulting his wife. The sexual assault involved forced anal and oral intercourse. The accused was gainfully employed, supported his children,

and had no prior record. The trial Judge sentenced the accused to a five-month custodial sentence for the sexual assault and two consecutive conditional sentences for the common assaults. In finding the sentence demonstrably unfit the Court of Appeal noted they would have imposed a sentence of two and one-half years. Justice Oland for the Nova Scotia Court of Appeal stated at para. 32:

> [32] ….Persons convicted of serious sexual assaults must appreciate that the principles of sentencing include specific and general deterrence and denunciation, and such offences will attract serious consequences….

[64] The year is now 2023. “Sentencing ranges are not "straitjackets" but are instead "historical portraits"” (*Friesen, supra*, at para. 108). Later I will reference in further detail the very recent Ontario Court of Appeal decision of *R. v. A.J.K*, 2022 ONCA 487. However, at this point, what the Court stated at para. 71 is very relevant*:*

> [71] The Supreme Court recently reiterated that ranges and starting points are malleable products of their time. They are "historical portraits" that provide insight into the operative precedents of the day, but they are not "straitjackets" and can be departed from as societal understanding of offences and the severity of harm arising from those offences deepens: see *R. v. Lacasse*, 2015 SCC 64, [2015] 3 S.C.R. 1089, at paras. 57; *R. v. Friesen*, 2020 SCC 9, 444 D.L.R. (4th) 1, at para. 108. To that end, it is not unusual "for sentences to increase and decrease as societal and judicial knowledge and attitudes about certain offences change": *R. v. Parranto*, 2021 SCC 46, 436 D.L.R. (4th) 389, at para. 22, citing *R. v. Smith*, 2017 BCCA 112, at para. 36, citing *R. v. Nur*, 2011 ONSC 4874, 275 C.C.C. (3d) 330, at para. 49; *Friesen*, at para. 108.

[65] The time has come to set *R. v. J.J.W.*, *supra* aside in the sense that it may have come to be interpreted by counsel and trial courts as standing for a hard and

fast rule that forced intercourse on an intimate partner in this province yields a sentence in the range of 2 years imprisonment.

[66] To some degree in the decade since *R. v. J.J.W.*, *supra*, courts have been “called upon to chart a new course” and bring sentencing ranges into "harmony with a new societal understanding of the gravity of certain offences or the degree of responsibility of certain offenders" (*A.J.K, supra*, at para.72). The Supreme Court of Canada has clearly spoken to this in *R. v. Friesen*, *supra*.

[67] In reviewing the case authorities available at the time, the Court of Appeal noted that the lowest comparable sentence to be found for the sexual assault in those circumstances was two years less a day. The key words here being, “at the time”.

Parity: Cases

[68] *R. v. A.J.K*, 2022 ONCA 487

- Global Sentence: Five (5) Years incarceration.

- After trial the accused was found guilty of assault, sexual assault, and breach of probation. The accused and victim had been dating. The accused demanded to know if she had been sexually active since the last time, he had

seen her. He drove to a parking lot and then forced non-consensual intercourse on the victim. During the incident he choked her. When she attempted to retrieve her belongings and leave, he started punching her. The accused had a prior record which included communicating with an underage person for the purpose of prostitution.

[69] In upholding the sentence and affirming the sentencing range of between 4 and 7 years, the Ontario Court of Appeal stated at paras. 74-76:

> [74] All sexual assaults are serious acts of violence. They reflect the wrongful exploitation of the victim whose personal autonomy, sexual integrity, and dignity is harmfully impacted while being treated as nothing more than an object. Whether intimate partners or strangers, victims of sexual violence suffer profound emotional and physical harm and their lives can be forever altered. So too can the lives of their loved ones.
>
> [75] As the years pass, enlightenment on the implications of sexual violence continues to permeate our conscious minds. In *Friesen*, the court noted, at para. 118, that "our understanding of the profound physical and psychological harm that all victims of sexual assault experience has deepened" and, I would add, is continuing to deepen: see also *R. v. Goldfinch*, 2019 SCC 38, [2019] 3 S.C.R. 3, at para. 37. As Moldaver J. stated in *R. v. Barton*, 2019 SCC 33, [2019] 2 S.C.R. 579, at para. 1:
>
> > "Without a doubt, eliminating ... sexual violence against women is one of the more pressing challenges we face as a society" and "we can - and *must*- do better" (emphasis in original). This comment encapsulates why these sentencing ranges as they have come to be understood must be reconciled.
>
> [76] There is no justifiable reason for why sexually assaulting an intimate or former intimate partner is any less serious than sexually assaulting a stranger. The fact is that a pre-existing relationship between the accused and complainant places them in a position of trust that can only be seen as an aggravating factor on sentencing: *Criminal Code*, R.S.C., 1985, c. C-46, s. 718.2(a)(ii). Therefore, contrary to the impression that may be left when contrasting the *Smith* range with

the non-*Smith* range, the sexual assault of an intimate or former intimate partner can actually attract a greater sentence.

[70] *R v T.J.S.*, 2021 NSSC 328

- Global Sentence: Four (4) Years incarceration.

- A 35-year-old accused was convicted of four offences: sexual assault, assault, uttering a threat, and intent to choke. The accused and victim developed a very close friendship. While seated on the sofa the accused became angry when the victim got up to leave. He walked toward her, grabbed her arm, and slapped her in the face. He covered her nose and mouth with one hand while putting the other around her throat. He pushed her down on the sofa, pulled her pants down, and forced vaginal intercourse. At sentencing the accused accepted responsibility and expressed remorse. He had no prior record and in advance of sentencing had completed an anger management course.

[71] *R. v. Percy*, 2021 NSSC 353

- Global Sentence: Five (5) Years incarceration. Joint recommendation.

- The accused pleaded guilty to three offences; sexual assault causing bodily harm, intent to choke, and assault. The accused and victim were long time

friends. They socialized and shared drinks. While watching a movie and seated on the couch the accused got on top of her, pushed her down and forced intercourse. She suffered bruising and a bite mark on her arm. After the assault the accused was described as being smug and asked to her, "Don't I get a hug goodbye?". The accused had no prior record and after assessment was deemed to be a moderate to high risk to reoffend. He accepted responsibility and was remorseful during the sentencing hearing. He had continued family supports which spoke to his prospects for rehabilitation.

[72] Justice Brothers stated at para. 72:

> [72] In *R. v. Ewanchuk*, [1999] 1 S.C.R. 330, Major J. explained how a sexual assault harms the very core of human dignity, autonomy, and physical integrity:
>
> > [28] The rationale underlying the criminalization of assault explains this. Society is committed to protecting the personal integrity, both physical and psychological, of every individual. Having control over who touches one's body, and how, lies at the core of human dignity and autonomy. The inclusion of assault and sexual assault in the Code expresses society's determination to protect the security of the person from any non-consensual contact or threats of force….

[73] *R. v. C.B.K*, 2015 NSSC 62

- Global Sentence: Four and one half (4.5) Years incarceration.

- After trial the accused was found guilty of six offences: sexual assault, unlawful confinement, assault causing bodily harm, two counts of uttering threats, and theft. The accused and victim were in a common law relationship. Prior to the events before the court there had been no history of violence within the relationship. The offender suspected the victim had been unfaithful with a former boyfriend. Upon seeing pictures of the victim with her former boyfriend on the victim's phone he lost control. Throughout the night the accused hit the victim many times causing physical injury. He threatened her, took her money, and ultimately forced intercourse without her consent. The accused was 26 years of age and had a significant prior record.

[74] It is notable that this decision was decided prior to *Frisen*. Justice Gogan in reviewing the jurisprudence from that time and referencing *R. v. W. (J.J), supra* stated at paras. 28 and 35:

> [28] In that case, the jurisprudence indicated that a major sexual assault involving intercourse, particularly in the spousal context, mandated a term of imprisonment of at least two years less a day, and frequently a term of between 3 and 5 years. The starting point approach to sentencing was rejected.

…….

[34] Having reviewed the authorities submitted by the parties, I conclude that the appropriate sentencing range for sexual assault is anywhere from 2 to 5 years but typically 3 to 5 years depending upon the relevant circumstances, and the weight to be given to the sentencing objectives and principles.

[75] *R. v. C.G.*, 2022 ABKB 696

- Global Sentence: Seven (7) Years incarceration.

- After trial the accused was found guilty of three offences: sexual assault with a weapon, sexual assault, and assault. All offences were against his then common law wife. All charges arose from a single date. The accused became upset with his partner because she refused to engage in sex. While at home with the young children the accused grabbed the victim pulled her into the bedroom and verbally berated her. He forced her to perform oral sex on him and attempted vaginal intercourse before being interrupted at the door by their three-year-old child. Later in the afternoon he forced the victim to again perform oral sex on him while holding a small dresser over her head.

- The accused was 30 years old and had no prior record. He had various mental health diagnoses. As a child he experienced poverty and had suffered emotional and physical abuse. Prior to sentencing the accused had voluntarily engaged in and made significant progress in various forms of mental health treatment. Sentencing references described his actions as being out of character. At sentencing the accused expressed remorse, regret, and shame for his actions.

[76] Although the Alberta Court made reference to “starting points” which are not used in Nova Scotia , the following comments at paras. 18, 19, and 30 are somewhat helpful:

> [18] I recognize that a starting point sentence is to serve as a guideline, not a hard and fast rule or binding precedent, and that the sentence imposed still needs to be arrived at based on the sentencing principles set out in the *Criminal Code: R v Friesen*, 2020 SCC 9 at para 37, 114. Increases may be supported by statutory aggravating factors or statutory provisions that require specific considerations by the sentencing justice: *Friesen*, para 116.
>
> [19] The latter encompasses two relatively recent amendments to the *Code*, sections 718.04 and 718.201. Combined, these sections provide that, of all the sentencing objectives set out in s 718, the primary objectives are denunciation and deterrence where it is abuse of an intimate female partner and the increased vulnerability of females is a factor in determining sentencing. This is in addition to, not redundant of, the statutory aggravating factors of 718.2(a)(ii), abuse of an intimate partner, and 718.2(a)(iii), abuse of a position of trust and authority. Although this victim is not Aboriginal, this situation involved abuse of the accused's common law wife. Thus, the primary consideration here is to impose a sentence that denounces domestic violence in clear terms and deters both CG and other spouses from engaging in such violence in the future.
>
> ……

> [30] Mirroring the language in *Friesen, supra* at para 5, sexual offences against intimate partners are violent crimes that wrongfully exploit the intimate female partner's vulnerability and cause profound harm to children, women, families, and communities. For this reason, the Supreme Court of Canada determined that crimes for sexual offences against children must increase, when considering the fundamental principle of proportionality, to accurately reflect the wrongfulness of sexual violence and its far-reaching impacts both within families and society at large.

[77] *R. v. Clase*, 2017 ONSC 45

- Global Sentence: Five (5) Years incarceration.

- After trial the accused was found guilty of sexual assault and attempt to choke. The accused and victim met at a bar and afterward the victim and the accused's friend attended his residence. At some point during the evening the accused pushed her on the bed and forced vaginal intercourse. She was choked during the events. The 36-year-old accused had no prior record, was gainfully employed, and described by others as a "good person" and "reliable worker".

[78] *R. v. Simpson*, 2017 NSPC 25

- Global Sentence: Three (3) Years incarceration.

- The accused and victim went on a date and had consensual oral sex. The victim was clear that she did not want to have vaginal sex. Despite her

> expressed objection, the accused had unprotected vaginal intercourse with her. There were no other allegations of violence or abuse. The Court held that the range for this type of offence was two-to-three years. The accused had no prior record, lived a prosocial life and had a career in the navy. He was described by others as a "dedicated family man" , and "very reliable" navy seaman. I note that this case was decided pre-*Friesen*. While I have considered I attach less weight to its precedential value.

Parity: Crown Cases

[79] As part of their submission the Crown tendered seven cases. Five out of the seven are from outside Nova Scotia. All but two were decided prior to the landmark decision of *R. v. Friesen*, *supra*. I have reviewed and considered these cases. However, it is worth noting what Justice Gogan recently stated in *R. v. Murray*, 2023 NSSC 62 at para. 50:

> [50] The consideration of cases decided before *Friesen* for parity purposes must be done with care. (*R. v. Sinclair*, 2022 MBCA 101, at para. 61; *R. v. RGH*, 2021 BCCA 54, at para. 20).

[80] Specifically, the Manitoba Court of Appeal in *R. v. Sinclair*, *supra* stated at para. 61:

> [61] Cases that pre-date *Friesen* should be approached with caution since they may not reflect the change in jurisprudence (see, for example, *R v Lemay*, 2020 ABCA 365; and *R v RJH*, 2021 BCCA 54 at para 20).

[81] I will now turn to the cases tendered by the Crown.

[82] *R. v. G.W.P*, 2006 NLTD 136

- Global Sentence: Two (2) Years and Four (4) Months.

- This case pre-dates *R. v. Friesen*, *supra*. After trial the accused was found guilty of five counts of assault, one count of assault with a weapon, one count of assault causing bodily harm, one count of sexual assault, and one count of uttering a threat. All offences occurred over a 10-year period and were against the accused's wife. There was no penetration during the sexual assault.

- The Court noted the accused had one dated unrelated criminal conviction and considered him to be "effectively, a first-time offender." The accused was employed and stated he was "sorry" at the sentencing hearing.

[83] I will note that the facts of the sexual assault in that case were not nearly as egregious as they are here. Unlike the case tendered, the sexual assault committed by S.R.M. was coupled with a high degree of simultaneous physical violence. As

Justice Brothers stated in *R. v. Percy*, *supra* at para. 26: "The presence of other physical violence beyond the assault itself is aggravating."

[84] *R. v. V.J.*, [2016] O.J. No. 5023

- Global Sentence: Thirty-Five (35) months imprisonment. Two (2) years was apportioned to the sexual assault.

- This case pre-dates *R. v. Friesen, supra*. After trial the 44-year-old accused with no prior record was found guilty of two assaults, two assaults with a weapon, two counts of uttering threats, sexual assault, and unlawful confinement. All offences were against his former wife and occurred over a two-year period. On different occasions the accused threaten to kill her, grabbed her by the hair, twisted her arm, threw her to the ground, stuck her with a rolling pin and slipper. On another occasion he locked the bedroom door and forced her to have sex.

- The accused was described as a hard-working contributing member of society. He had the support of his family and was the primary caregiver for his elderly parents. The victim suffered physical and emotional harm. The Crown sought a global sentence of three (3) years incarceration.

[85] It should be noted that the Crown's reliance on this case specifically reinforces the danger when considering pre- *Friesen* cases. The Court in *R. v. V.J.*, *supra* placed a great deal of emphasis on *R. v. Smith,* [2011] O.J. No.3832 when determining the appropriate sentencing range. Since both *R. v. V.J.*, *supra* and *R. v. Smith*, *supra*, the Ontario Court of Appeal has adjusted their sentencing perspective when it comes to sexual violence in an IPV setting. I've cited para. 71 of *R. v. A.J.K*, *supra* previously. However, what the Ontario Court of Appeal added at paras. 64 to 67, 70, 72 reinforces this very point:

> [64] The respondent maintains that the time has come to abandon what has come to be known as the "*Smith* range". It is not clear to me that *Smith* was ever intended to set a clear sentencing range for a particular type of sexual assault. Even so, to the extent that it has come to be understood in this way, I agree that the time has come to set it aside.
>
> [65] To begin, it is important to understand the context for the *Smith* decision. …….In a single-sentence paragraph, this court commented that the sentence for a sexual assault involving the forced penetration of a spouse or former spouse "generally range[d]" from 21 months to four years. That short sentence was followed by five citations to decisions said to support that observation: *Smith*, at para. 87. That was the extent of it.
>
> [66] Over time, this single sentence from *Smith* gained traction and was repeatedly referred to as if it were a fixed sentencing range in the context of penetrative sexual assaults of intimate and former intimate partners. It is difficult to know whether the single sentence from *Smith* was intended to be treated as such, but with or without that intention, the fact is that courts have done so.
>
> [67] Treating *Smith* as a sentencing range for the sexual assault of an intimate partner is disquieting because what has come to be known as the *Smith* range is out of sync with the sentencing range for those sexual assaults where the victim is a stranger or simply an acquaintance of the accused, but not an intimate partner or former intimate partner.
>
> [70] However we arrived at this place, it is time to leave this sentencing artefact behind.

……

> [72] In some cases, appellate courts are called upon to chart a new course and bring sentencing ranges into "harmony with a new societal understanding of the gravity of certain offences or the degree of responsibility of certain offenders": *Friesen,* at para. 35. See also: *R. v. Wright* (2006), 83 O.R. (3d) 427 (C.A.), at para. 22. That is what we are being asked to do here. It is right to do so.

[86] *R. v. House*, [2012] N.J. No. 69

- Global Sentence: Four (4) Years imprisonment for sexual assault and concurrent sentences for the threat, assaults, assault with a weapon, unlawful confinement, and breach of recognizance.

- This case pre-dates *R. v. Friesen*, *supra*. The accused was 22 years old with no prior convictions. While awaiting sentence he completed counselling and upgraded his education. He accepted responsibility and expressed remorse. The victim was his former girlfriend. The offences had a profound impact on her physically, mentally, and emotionally. He plead guilty to four counts of assault, assault with a weapon, unlawful confinement, uttering threats, sexual assault, and breach of recognizance.

- Over a period of four months the accused threatened her, hit her, pushed her, and struck her with a belt. He also forced non-consensual sexual intercourse. There was extensive violence over the course of the relationship. As well,

the accused breached his release conditions by repeatedly texting her. The Court found that the total sentence should be a term of imprisonment of approximately six years considering totality and proportionality principles. However, in light of the Crown's submissions, the Court reluctantly reduced the sentence.

[87] *R. v. L.I.*, [2014] B.C.J. No.3315

- Global Sentence: Four (4) and a half years' imprisonment. Three (3) and half years were apportioned for the sexual assault.

- This case pre-dates *R. v. Friesen*, *supra*. A 42-year-old former pastor with no previous record was convicted of four counts of assault, two counts of assault with a weapon, uttering threats, and sexual assault. The offences occurred over a two-year period. He hit his three children with a wooden comb, hit and pushed his wife, and forced her to engage in sexual intercourse on multiple occasions. The offences had a lasting impact on her. She had been left to battle several things such as severe anxiety, low self-esteem, post-traumatic stress, and nightmares. The court place emphasis on the principles of denunciation a deterrence.

[88] *R. W.H.A.*, [2011] N.S.J. No. 460

- Global Sentence: Five (5) years imprisonment.

- This case pre-dates *R. v. Friesen, supra*. It is somewhat distinguishable in that it did not involve IPV. The victim of the sexual assault was not the accused's spouse but rather her 17-year-old cousin. The 36-year-old accused had a significant record for violence which included convictions for robbery and invitation to sexual touching. Although he had part time seasonable employment he was described as having been involved in a life of alcohol, drugs, and gang related activity. There were no significant mitigating factors, and the accused expressed no remorse. His prospects for rehabilitation were "not promising".

- While staying at her cousin's residence the victim was sexually assaulted by the accused on two occasions. During one incident the accused began hugging her and thrusting his pelvis against her body. He masturbated in front of her. On a second occasion he forced vaginal intercourse while the victim repeatedly told him to stop.

[89] Justice Rosinski attempted to determine an appropriate "range of sentence" in that case. After a thorough review of the caselaw as it existed over a decade ago concluded that "in the absence of exceptional circumstance, an offender with no

significant criminal record, who has committed a non premeditated rape, will receive a sentence around three years in jail".

[90] Justice Rosinski's detailed analysis came 8 years prior to *R. v. Friesen*, *supra*. He engaged in a very thorough and effective analysis. In particular, the following comment was very astute, "determining a fit sentence is a "complicated calculus" and should not be seen as a simple numbers game". This Court is left to wonder just how different Justice Rosinski's detailed and eloquent "complicated calculus" might have been had he had the benefit of the vast number of cases and evolving perspective in the post-*Friesen* landscape.

[91] *R. v. Kotio*, [2020] N.S.J. No.69

- Global Sentence: Three (3) years imprisonment.

- The 24-year-old accused had gotten to know the complainant over snap chat. They only met twice in person. During one of the two in person encounters the parties had initially engaged in consensual sex. However, the accused without the victim's consent tried to insert his penis into her anus. She told him to stop and that it hurt. The accused ignored her clear demands and continued before eventually moving back to vaginal intercourse and masturbation.

- The youthful accused had no prior record, was advancing his university education, and expressed remorse for his actions. This case was a joint recommendation.

[92] *R. v. Palacios-Morales*, [2020] A.J. No.820

- Global Sentence: Ten (10) years imprisonment.

- The 25-year-old accused was sentenced for nine offences which included sexual assault causing bodily harm, sexual assault, choking, assault causing bodily harm, unlawful confinement, uttering threats, and breach of recognizance, and simple possession. The accused had a long criminal record with convictions for violence, sexual violence, weapons, and drug trafficking.

- All offences with the exception of simple possession were committed against his former aboriginal partner over a two-year period. There were two separate sexual assaults. Both were particularly violent and committed while the accused had been ben under the influence of drugs and alcohol. During the first incident the accused grabbed the victim by her throat and struck her against the wall. The accused then threw her onto the bed, forcibly removed

her clothes, and forced vaginal penetration. She suffered physical injuries which included a sore neck, collarbone, legs, hips, and vaginal area.

- The second sexual assault was equally violent. The accused began grabbing the complainant's breasts and vaginal area. Later the same evening he then pushed her onto the sofa and began choking her. He spat on her and forced sexual intercourse.

- In addition to the sexual violence the relationship had several incidents of physical violence and threats of violence. During one assault, the pregnant victim had to be treated for injuries to her forehead, ear, shoulder, back, and ribs. The abuse had a lasting impact on the victim physically, emotionally, and psychologically.

Parity: Defence Cases

[93] The defence has submitted three cases.

[94] *R. v. Simkins*, [2023] A.J. No. 126

- Global Sentence: Conditional Sentence Order of two (2) years less one day.

- The accused and victim were friends. While attending the accused's residence the victim consented to a back rub. This progressed to consensual

kissing. However, during the sequence of events the accused removed the victim's underwear and began to perform oral sex. This "startled" the victim who did not consent to this act.

- The accused was 42 years of age and had no criminal record. He was employed and suffered from a number of medical ailments. In advance of sentencing, he completed a number of programs aimed at rehabilitation. He had spent 54 days in pre-trial custody. After a forensic assessment he was found to be a low risk to reoffend.

[95] There are many obvious differences between this case and the matter before the court. Here, S.R.M. is being sentenced for multiple incidents of IPV involving two victims over an extended period of time. The accused in *R. v. Simkins*, *supra* was being sentenced for a single incident. As well, the circumstances of that sexual assault are very different than the one committed by S.R.M.

[96] The actions of S.R.M. during the sexual assault were significantly more aggravating, protracted, and had the hallmarks of dominance and oppression. Although the victims in both cases have suffered a great deal of harm, it is near impossible to reconcile the facts and circumstances of S.R.M. with the case tendered by defence counsel.

[97] *R. v. G.T*, [2022] O.J. No.2473

- Global Sentence: Conditional Sentence Order of one (1) year.
- The 23-year-old accused, and victim were student co-workers. They began to engage in consensual sex. However, the accused placed his penis and his finger in contact with the victim's anus multiple times despite her express lack of consent.
- The accused was described as a youthful offender with no prior record. While awaiting sentence he continued to advance his education and training.

[98] Again, the facts and circumstances of the offence are materially different than the repeated ongoing IPV inflicted by S.R.M. As well, the facts of the sexual assault here are grossly out of synch with the conduct of S.R.M. The sexual assault committed by S.R.M. was coupled with horrific acts of physical violence, dominance, and aggression. I point this out not to diminish the significance of *R. v. G.T.*, *supra*, or it's principles. However, it is to demonstrate that defence counsel is seemingly trying to draw parity parallels between cases where none exist.

[99] *R. v. Holland*, [2022] O.J. No.1611

- Global Sentence: Conditional Sentence Order of eight (8) months.

- The then 31-year-old accused was a nightclub promoter with no prior record. Under the guise of taking the young, intoxicated victim on a VIP tour of the club he took her to a secluded area. Without her consent he began to kiss her neck, pulled down her pants and inserted his finger into her vagina. She immediately told him to stop, and he did so. The accused's actions had a significant impact on the victim. She became constantly fearful, suffered panic attacks and night terrors. She was diagnosed with post-traumatic stress disorder. This was a historical offence and at the time of sentence the accused was 45 years of age.

[100] The most obvious distinguishing feature between S.R.M.'s case and *R. v. Holland, supra* is that one is IPV while the other is not. Counsel appears to be drawing a parity parallel based on the fact that both cases involved a relatively brief period of vaginal penetration. I'm mindful that comparing cases is a difficult task as no two are every perfectly alike, however, I can not ignore the obvious distinction.

[101] S.R.M.'s sexual abuse was committed in the context of a larger and protracted context of IPV. His act was not isolated. His actions on that night were just one of many demonstrations of his forced control and dominance over his

intimate partner. His circumstances and the circumstances of the offence and victim are very different than in *R. v. Holland*, *supra*.

MITIGATING FACTORS

1. At 43 years old the accused still has a life ahead of him. It is much too soon to abandon prospects of rehabilitation. He has demonstrated to be someone capable of holding down steady employment. Outside of intimate partner relationships he has lived a straightforward pro-social lifestyle free of drugs, alcohol, and crime.

2. The accused has complied with his release conditions without incident. I take into account that he has been subject to a very restrictive 7:00pm to 7:00am curfew with exceptions for employment. This has been in place for the past two years.

3. Although limited, the accused does have a supportive family. He tends to live a simple existence free of negative influences. Naturally this is a solid foundation upon which rehabilitation can be based.

4. Although not accepting responsibility for much of his actions (which is his right and not an aggravating factor), the accused has shown some insight into his anger. He states in the presentence report that he feels he could

improve on his anger management skills. In the past he has shown initiative in attending counseling and commitment to rehabilitation.

AGGRAVATING FACTORS

1. This was a major sexual assault.

[102] One of the acts of violence was a "major" sexual assault. The accused violently pulled the victim's clothes off, "ripped" a tampon from her vagina, and began forcing vaginal intercourse.

2. There was extreme dominance and control exercised over the victim during the sexual assault and the relationship.

[103] There was a high degree of sustained violence during the sexual assault. The victim was pulled by the back of the hair, dragged down a hallway, and repeatedly punched in her stomach. She was also slapped in the face and struck in the back of the head. At one point he attempted to choke her. All of this occurred despite the victim's kicks, and screams.

[104] The dominance and control extended beyond the physical. It was also verbal and emotional. During the vicious sexual attack, he instructed her to "get up". Prior to pulling off her clothing he callously declared "you want to know what rape feels

like, I will show you". After the assault he referred to her as a "fat pig", "fat piece of shit", and "useless".

[105] On other occasions he would frequently accompany her to the bathroom where he would sit in the threshold of the doorway. He would watch her take off her clothing and tell her to hurry up. At times she had to ask permission to use the bathroom. This cycle of terror naturally striped her of her dignity and right to autonomy.

3. The sexual assault and other assaults including the assault causing bodily harm occurred in the victim's home.

[106] Just prior to the infliction of violence the victim was seated on her sofa in the privacy of her own living room. On another occasion she was in the bathroom. These were places where was entitled to feel safe and secure. There was nobody home and no place to turn to for assistance. The fact that the violence occurred in her place of comfort and security only deepens the degree of violation.

4. The nature of the relationship.

[107] The accused was her boyfriend. This was IPV. He was her spouse. They had a share bonded relationship which ought to have been built on security and trust.

The victim naturally had every expectation that she would be safe in the company of the very person who viciously attacked her, threatened her, threatened her daughter, and frequently abused her.

5. The level of harm.

[108] The events resulted in significant harm to the victim physically, emotionally, psychologically, and financially. As a result of striking her head on the bathroom vanity the victim passed out and urinated on herself. She was left with a lasting visible scare on her head. She was forced to miss work, lost her job, and encouraged to maintain a cover story for her injuries. A.B. suffered frequent bruising as a result of the common assaults. Collectively as a result of the various forms of violence she suffered enduring psychological and emotional trauma. It was also noted by the Supreme Court of Canada in *R. v. Goldfinch*, *supra*, at para. 37:

> [37] …..Throughout their lives, survivors may experience a constellation of physical and psychological symptoms including: high rates of depression; anxiety, sleep, panic and eating disorders; substance dependence; self-harm and suicidal behaviour.

6. The abuse was frequent and gratuitous.

Frequent physical assaults were the sad common reality for the victim during their 19-month relationship. This was not a “one off” event nor was the violence

sporadic. The victim was a primary target for the accused both physically and verbally. She was frequently punched in the stomach and in the leg. Furthermore, it was a frequent occurrence where the victim was subjected to degrading and demeaning conduct. The victim had frequently been subjected to the accused's constant vial verbal abuse. She was frequently reminded and reduced to nothing more than vile descriptive names.

7. One of the victims was a child.

[109] The accused's threats didn't stop with his spouse. He extended threats of violence to her 13-year-old daughter. He threatened this child more than once. Children are vulnerable victims. Section 718.2(a)(ii.1) expressly outlines this as an aggravating factor.

8. The accused has a prior related record.

[110] As outlined previously this is the third intimate partner the accused has victimized. This is a concerning and troubling pattern. Despite prior sentencings the accused has demonstrated a clear pattern and escalation of IPV.

Other Factors

[111] I have considered several other factors which do not naturally fit into the traditional categories of aggravating or mitigating.

[112] The accused has never been sentenced to a period of custody outside of a short conditional sentence order. Presumably, the uncertainty of what prison will be like must weigh heavily on him. It will no doubt have a heavy impact on him. This reflects specific deterrence. To some degree it also reminds the court of the principal that the final sentence should be the least necessary in the circumstances to accomplish proportionality.

[113] The accused has complied with his release conditions and has had no contact with A.B. or C.D since his arrest. This is a factor when considering the long-term protection of society which includes these specific victims. His ability to comply with release conditions for over two years speaks to his ability to comply with community-based restrictions on his liberty. It also speaks to his potential for rehabilitation.

The Current Health of the Accused

[114] It is argued that the accused's current physical health is a mitigating factor. The New Brunswick Court of Appeal in *R. v. Pond*, [2020] N.B.J. No. 181

provides guidance with respect to the relationship between mitigation and the personal circumstances of an accused. The Court stated at para. 43:

> [43] The onus is on the offender to disclose all relevant facts, the circumstances of the case and his or her personal situation. The burden of proving the existence of a mitigating circumstance generally rests on the offender, who has the burden of establishing that fact on a balance of probabilities.

[115] Except for specific circumstances, health issues do not diminish an accused's level of moral blameworthiness, *R. v. Pond, supra*. In that sense health issues are not a classic mitigating factor *per se*. However, they are something I can consider. In *R. v. Al-Awaid,* [2015] N.S.J. No. 369. Judge A.S. Derrick, (as she then was) properly stated at para. 125, "It is apparent however that examining the role of ill health as a mitigating factor in sentencing engages a very case-specific inquiry."

[116] Counsel has outlined the accused's current health status. It is argued that as a result of S.R.M.'s current health his time in custody will be more difficult than a healthy prisoner. Last year S.R.M. had issues with his gallbladder, necessitating removal through surgery. He is currently on medications for stomach ailments such as colitis. Finally, he is undergoing tests for what has been described by counsel as a possible diagnosis "which causes stomach cancer". There is no evidence before this court that the accused has stomach cancer.

[117] The extent of S.R.M.'s health circumstances at this point is colitis and other undiagnosed issues related to his stomach. This case is very different than those cited in *R. v. Al-Awaid*, *supra*. Here, defence counsel has not related any firm diagnoses, ongoing treatment other than medication, or supporting expert evidence. They have not drilled down with specificity what impact, if any, S.R.M.'s reported health issues may have upon him while in custody.

[118] While I do take his current health situation into account, based on the evidence before me I am unable to find that a sentence of imprisonment would result in any serious, unusual, or notable ramifications to the accused.

CONCLUDING ANALYSIS :

[119] The actions of S.R.M. were excessively cruel. He has beaten A.B., sexually abused her, verbally abused her, and exercised control over her in various ways. His actions on the date of the sexual assault would easily shock the public conscience. He beat on her relentlessly and senselessly. It was about forced control in the most severe and cruelest of ways. Not only did he declare that he was going to show her what rape feels like, he acted on those horrid, declared intensions without hesitation.

[120] The accused violated A.B.'s bodily and sexual integrity in the very worst of ways. He stripped her of all sense of safety and security both inside the relationship and inside her home. There is no way around it, this was an ongoing abusive relationship. It had the hallmarks of jealousy, control, entitlement, and oppression.

[121] S.R.M.'s distorted and abhorrent threats of violence and sexual violence towards A.B.'s 13-year-old daughter are also deeply troubling and disturbing. His words and actions demonstrated a complete disregard for the respect and dignity of woman, children, and young girls. His repeated resort to threats and violence ought to raise red flags. They ought to give the court some pause and heavily consider the risk he poses to the public; particularly when it comes to future relationships with woman and their children.

[122] S.R.M. must be specifically deterred from committing future violence towards woman. His actions have consequences, and they must be met with "emphatic denunciation". Like-minded individuals of all generations must get the message loud and clear that this type of abhorrent conduct especially in the context of an intimate partner relationship will be met with significant consequences.

[123] It is difficult to reach a hard definitive conclusion on S.R.M.'s likelihood to reoffend. However, what the court does know is that he is a repeat offender when it

comes to IPV. It is the expectation that he will receive the type of assessments, treatments and programming as outlined in the presentence report. His full cooperation with such programming will no doubt play and integral role in his rehabilitation prospects.

[124] In the end, the accused's actions run deeply against the core values of society. His actions are as troubling as they are disturbing. His actions indicate that he has issues with anger and distorted deplorable views towards women. For the sake of public protection, the Court is hopeful that these undercurrents will someday resolve.

Sentence on Each Count

[125] The Nova Scotia Court of Appeal in *R. v . Campbell*, [2022] N.S.J. No. 128 and *R. v. Laing*, [2022] N.S.J. No. 106 reaffirmed the three-phase sentencing methodology for multiple offences. First, I must determine the sentence for each offence apart from concurrency and totality. Second, I must then determine whether the sentences should be concurrent or consecutive. Third, I must only then look to see whether the cumulative sentence should be reduced having regard to the principles of totality. During the third phase the Court must give a "last look". This ensures that the overall length of sentence is not "crushing".

[126] Prior to determining which offences will be consecutive or concurrent I conclude that the sentence for each count will be:

- For the offence of sexual assault on A.B. contrary to section 271 the sentence will be 5 years.
- For the offence of assault causing bodily harm on A.B. contrary to section 267(b) the sentence will be 1 year.
- For the offence of assault on A.B. contrary to section 266(B) the sentence will be 8 months.
- For the offence of uttering threats to cause death or bodily harm to A.B. contrary to section 264.1(1)(a) the sentence will be 6 months.
- For the offence of uttering threats to damage property of A.B. contrary to section 264.1(1)(b) the sentence will 4 be months.
- For the offence of uttering threats to cause bodily harm to C.D contrary to section 264.1(1)(a) the sentence will be 6 months.

Consecutive & Concurrent Sentences

[127] Consecutive sentences hold offenders accountable for separate harms. It is well established that sentences should be consecutive unless there is a valid reason for making them concurrent. Consecutive offences should be imposed for offences

that "do not arise out of the same event or series of events." (s.718.3(4)(b)(i)). However, offences that are so closely linked together so as to constitute a single criminal venture may (not must) receive concurrent sentences, while all other offences are to receive consecutive sentences (*R. v. Friesen*, *supra*, at para. 155). If there is a “reasonably close” nexus between offences sentences can be concurrent even when the offences arise out of separate transactions (for example, a series of "spree" offences, *R. v. Bratzer* (2002), 198 N.S.R. (2d) 303 (C.A.)).

[128] A number of things should be considered when determining whether to impose concurrent or consecutive sentences. Such factors include the similarity of offences, the time frame within which the offences occurred, and whether a new intent or impulse initiated each separate offence (*R. v. T.E.H.*, [2011] N.S.J. No. 677 (C.A.); *R. v. G.A.W.* (1993), 125 N.S.R. (2d) 312 (N.S.C.A.); and, *R. v. Naugle*, 2011 NSCA 33).

[129] S.R.M. is to be sentenced for six separate offences. While on occasion some of his offences occurred simultaneously, this was not always the case. For example, in the same night he physically and sexually assaulted A.B. during one continuous sequence. However, there were other stand-alone assaults separated in time and context. The single count of common assault and the single count of uttering threats to cause death or bodily harm to A.B. were listed on the

Information as between dates. The between dates nature of the Information for these two charges capture multiple incidents, on separate occasions, and at different residences.

[130] The accused threated to burn A.B.'s apartment. This also occurred on an entirely separate occasion from other offences. The incidents of sexual assault and assault causing bodily harm were also separate and distinct events of abuse occurring at different points in time and at different locations. Finally, there were the threats against A.B.'s daughter C.D., C.D. is an entirely separate victim.

[131] All of these separate and distinct acts of IPV were serious and impacted both victims A.B. and C.D. in several ways and on separate occasions. For example, on one day the accused violated A.B's sexual integrity, on another he left her with a bleeding head injury, on another he told her he was going to stab her.

[132] To some degree these many acts of abuse were one continuous infliction of suffering and torment over the course of the relationship. Many of the acts were similar in that he physically assaulted and threatened A.B. with his hands and words. However, for the most part his criminal offences were not always paired together. Sometimes he would just threaten her, sometimes he would just assault her.

[133] This was not a single criminal venture in the classic sense. Most often each event arose during a separate interaction with A.B. These events arose out of various contextual interactions within their relationship on any given day. The offences were not part of a continuous transaction over a short period. The accused had plenty of time to step away. He had days, weeks, and months between some offences. He had time to not only reflect on his previous actions but also on the earlier harm he had caused. He had plenty of time to recalibrate and navigate a different path forward between each incident. This was not a "spree" as contemplated in the caselaw.

[134] Therefore, subject to the consideration of totality under s.718.2(c) I find that each of the six counts ought to be consecutive to one another with the most serious being the sexual assault. Subject to totality, the cumulative sentence for all 6 offences is 8 years.

Restraint & Totality

[135] Despite the cumulative sentence amounting to 8 years, 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". The aggregate sentence must be "just and appropriate". The punishment must be the least that would be appropriate in the circumstances. The sentence must adequately reflect the accused's level of moral blameworthiness but yet not be so crushing that it undermines rehabilitation. As stated, there is a prospect of rehabilitation with S.R.M.

[136] The Nova Scotia Court of Appeal in *R. v. Campbell*, *supra* and *R. v. Laing*, *supra* reviewed the totality principle. The Court in *R. v. Laing*, *supra* at para. 38 clearly stated that "the other sentencing principles to be considered do not displace the mandatory fundamental principle. The outcome of a totality reduction under s.718.2(c) must be proportionate to overall culpability under s.718.1.".

[137] It is not always easy to strike that perfect balance which is "a sentence that both speaks out against the offence and punishes the offender no more than is necessary" *R. v. Nasogaluak*, [2010] 1 S.C.R. 206 at para. 42. That is the ultimate challenge for any trial judge and for which there is no magic potion. However, I should note that here the offence of sexual assault, being the most serious, should meaningfully affect and be reflected in this global sentence.

[138] After taking a “final look” I do find that the aggregate cumulative sentence of eight (8) years would be unduly harsh in the circumstances. It would be disproportionate to S.R.M.’s overall culpability as it relates to proportionality, the gravity of the offence, and his moral blameworthiness. That is not to say that S.R.M.’s crimes collectively are worthy of a wholesale discount or that his level of moral blameworthiness is diminished by volume. That is not the test. Rather, I am satisfied that the cumulative sentence could have the unintended result of unduly restricting his rehabilitation and reintegration back into society. It need not be and will not be more than what is necessary.

[139] As a result, I find that a total sentence of 7 years would appropriately reflect all principles of sentencing including proportionality. Accordingly, I will adjust the sentence as follows:

- For the offence of sexual assault on A.B. contrary to section 271 the sentence will be 5 years.
- For the offence of assault causing bodily harm on A.B. contrary to section 267(b) the sentence will be 6 months.
- For the offence of assault on A.B. contrary to section 266(B) the sentence will be 6 months.

- For the offence of uttering threats to cause death or bodily harm to A.B. contrary to section 264.1(1)(a) the sentence will be 4 months.

- For the offence of uttering threats to damage property of A.B. contrary to section 264.1(1)(b) the sentence will be 2 months.

- For the offence of uttering threats to cause bodily harm to C.D contrary to section 264.1(1)(a) the sentence will be 6 months.

CONCLUSION

[140] The accused perpetuated a repeated cycle of IPV on his vulnerable spouse. This extended to her daughter by way of his vial threats to rape her. The victim was essentially terrorized in her own home. The abuse was persistent and multifaceted. A prominent example of the abuse was the grave sexual assault he committed for the sole purpose of domination and control. The accused's level of moral blameworthiness is undeniable and remarkably high. He breached her trust, violated her personal integrity and security, and extended his conduct to cause her to fear for the safety of her young daughter. The ultimate custodial sentence of the Court reflects the not so easy task of balancing all of the principles of sentencing.

[141] In addition, to the 7-year period of incarceration the following ancillary orders are granted:

- An order pursuant to s.743.21(1) prohibiting the accused from communicating, directly or indirectly, with the victim during the custodial period of the sentence.
- DNA Order (Primary Designated Offence Section 487.051)
- SOIRA Order for Twenty Years pursuant to section 490.013(2)(b)
- Firearms Prohibition for 10 years pursuant to s.109(1)(a)

S. Russell J.