IN THE YOUTH JUSTICE COURT OF NOVA SCOTIA

Cite as: R. v. "X", 2014 NSPC 95

Date: November 21, 2014

Docket: 2588522,
2588523, 2588527,
2588528

Registry: Halifax

BETWEEN:

Her Majesty the Queen

v.

"X"

SENTENCING DECISION

JUDGE: The Honourable Anne S. Derrick

HEARD: September 30, October 1, 2, 3, 14, and 31, 2014

DECISION: November 21, 2014

CHARGES: sections 239, 85(1)(a), 91(1), and 92(1) of the *Criminal Code*

COUNSEL: Terry Nickerson, for the Crown

Christa Thompson, for "X"

Introduction

[1] On April 15, 2013 "X" shot "Y" in an attempt to kill him. "Y" was fifteen years old. "X" was four months past his sixteenth birthday. The teens were cousins although there had been bad blood between them for some time. They are both African Nova Scotian and grew up in the same close-knit African Nova Scotian community of "…".

[2] In convicting "X" of attempted murder, I found that he had deliberately pointed a hunting rifle at "Y" and fired into his abdomen, actions that permitted only one rational inference to be drawn, that "X" was trying to kill "Y".[1] In addition to attempted murder (Count 1), I also convicted "X" of: using a firearm, a rifle, while committing the indictable offence of attempted murder (Count 2); possessing a rifle for which he did not have a registration certificate issued to him (Count 6); and possessing a rifle, knowing he was not a holder of a license or a registration certificate for the firearm under which he may possess it (Count 7).[2]

[3] Although "X"'s sentencing was originally scheduled for March 2014, it had to be adjourned.[3] When it proceeded a number of reports were filed and ten witnesses testified. The fundamental issue to be determined is what sentence will hold "X" accountable for attempting to kill "Y".

Crown Application for an Adult Sentence

[4] The Crown has applied under sections 71 and 72 of the *YCJA* for an adult sentence for "X". Mr. Nickerson is seeking a sentence of life imprisonment. Section 120(2) of the *Corrections and Conditional Release Act* sets full parole eligibility for life sentences imposed otherwise than as a minimum punishment at seven years less any time spent in custody between the day on which the offender was arrested and taken into custody. The Crown is therefore asking for "X" to be given a life sentence with parole eligibility set at seven years from his arrest on April 24, 2013.

[5] Section 76(1)(c) of the *YCJA* requires that a young person sentenced to an adult sentence of two years or more serve his/her sentence in a penitentiary.

The Defence Position on Sentence

[6] Ms. Thompson argues that "X" should be sentenced as a young person. Section 42(2)(o) of the *Youth Criminal Justice Act* provides that the youth sentence for attempted murder is a custody and supervision order (CSO) not exceeding three years. Two-thirds of such a sentence would be served in custody at the Nova Scotia Youth Facility at Waterville and one-third would be served in the community.

Application for an Adult Sentence - The Youth Criminal Justice Act

[7] The earlier incarnation of section 72(1) of the YCJA, before amendments introduced by Bill C-10 on October 23, 2012, required judges to evaluate and weigh the following factors in considering whether an adult sentence should be imposed: the seriousness and circumstances of the offence, the young person's age, maturity, character, background and previous record, and any other factors deemed to be relevant. These factors are no longer mentioned in the YCJA although the Crown concedes they are still relevant in the determination of whether an adult sentence should be imposed.[4]

[8] Section 72(1) now provides that an adult sentence shall be imposed if the Youth Justice Court is satisfied that:

> (a) the presumption of diminished moral blameworthiness or culpability of the young person is rebutted; and
>
> (b) a youth sentence imposed in accordance with the purpose and principles set out in subparagraph 3(1)(b)(ii) and section 38 [of the *YCJA*] would not be of sufficient length to hold the young person accountable for his offending behaviour.

[9] The Declaration of Principle under the *YCJA* is where subparagraph 3(1)(b)(ii) is found. It requires the emphasis of "fair and proportionate accountability that is consistent with the greater dependency of young persons and their reduced level of maturity." Section 38 contains the purpose and sentencing principles of the *YCJA*, and indicates that:

> The purpose of sentencing ... is to hold a young person accountable for an offence through the imposition of just sanctions that have meaningful consequences for the young person and that promote his or her rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

[10] The relevant sentencing principles referenced in section 38 of the *YCJA* include: parity -- that a young person's sentence must be similar to the sentences imposed in the region on similar young persons found guilty of the same offence committed in similar circumstances; proportionality -- that the sentence must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for that offence; and, subject to the proportionality principle, that the sentence be the least restrictive sentence that is capable of achieving the overall purpose of sentencing; that it be the one most likely to rehabilitate the young person and reintegrate him or her into society; and that it promote a sense of responsibility in the young person, and an acknowledgement of the harm done to victims and the community.[5] Introduced by Bill C-10, a youth sentence now may also advert to the objectives traditionally associated with adult sentencing – denunciation and deterrence.

[11] The references to sections 3(1)(b)(ii) and 38 of the *YCJA* in section 72(1)(b) do not require any special consideration in "X"'s case: "X" is not making an argument that the maximum youth sentence allowable for attempted murder – a three year Custody and Supervision Order - is inconsistent with the purpose and principles of these sections. He is not suggesting that an application of the relevant *YCJA* principles should result in him receiving a youth sentence of less than three years. "X"'s fundamental argument is that the presumption of his diminished moral blameworthiness has not been rebutted and a three year Custody and Supervision Order sentence under the *YCJA* satisfies the accountability requirement.

[12] The critical factor in sentencing a young person is accountability. A little later in these reasons I will be discussing what that means.

Documentary and Witness Evidence at Sentencing

[13] In the course of the sentencing hearing, 10 witnesses testified and a number of reports were filed as exhibits. Two of the witnesses – Sarah Rafuse, a clinical social worker at the Nova Scotia Youth Facility ("Waterville") and Stephen Gouthro, a psychologist with the IWK, authored the section 34 psychological assessment dated March 28, 2014.[6] Peyton Harris, a school psychologist, prepared a psycho-educational report on "X" dated March 28, 2014.[7] Dr. Chris Murphy, a psychiatrist, wrote the psychiatric report dated June 4, 2014.[8]

[14] Other witnesses called by the Crown were: Stephen Hepburn, unit supervisor for the cottage where "X" resides at Waterville; Larry Priestnall, program worker for that cottage; and Sarah Nagy, a probation officer who supervised "X" on probation from April 2012 to April 2013.

[15] Ms. Thompson called three witnesses: Susan Dunne, the Manager of Assessment and Intervention at Springhill Penitentiary, and previously Program Manager for 5 years; Robert Wright, who was qualified to give opinion evidence on issues of race and culture; and "XX", "X"'s father.

[16] Also filed as exhibits were the following reports: a report from the Nova Scotia Youth Facility at Waterville dated September 4, 2014[9]; pre-sentence reports from sentencings that occurred on November 23, 2011 and June 28, 2012[10]; a letter from the Waterville chaplain dated September 22, 2014[11]; an update on the Rites of Passage Program, dated September 17, 2014[12]; an update on "X"'s participation in the Music Therapy Program, dated September 11, 2014[13]; an update on "X"'s academic performance, dated September 16, 2014[14]; and an overview of the Youth Advocate Worker's involvement with "X"., dated October 2, 2014.[15]

[17] No fresh pre-sentence report was prepared as counsel agreed that the section 34 psychological assessment was the best option for providing the information needed for this sentencing.

The Victim Impact Statement

[18] "Y" did not file a Victim Impact Statement. His mother did, and came to court to read it. She said that her son's shooting not only changed his life, it changed the life of their immediate family. It also appears to have disrupted her family's

relationship with their community: “YY” said that she and “Y”’s father fear the worst for “Y” and their other children and have been keeping them away from the community since the shooting.

[19] “YY”’s initial thought upon hearing that “Y” had been shot was that it had to be a mistake. “It couldn’t have been my 15 year old son, he’s just a child.” She had to suffer through the anxiety of not knowing if “Y” would survive and then, when he was in recovery, the anguish of trying to manage his pain and anguish. She described how her son is still dealing with the trauma of the shooting because now he has been stigmatized as a “snitch.” Also lost are the simple joys of a close-knit extended family: “Y”’s mother regarded “X” as a nephew. She never imagined that he would shoot her son.

[20] “YY”’s comments about the harm done by “X” to their shared extended family brought to mind Nordheimer. J.’s observations in *R. v. Bagshaw*:

> … People generally feel a greater degree of injury when harm is occasioned to them by someone they know as opposed to being the result of the acts of a stranger. This greater sense of injury undoubtedly arises because the wrongful acts of someone who is known to us constitute a fundamental breach of that element of trust that we naturally develop with persons who we know…[16]

[21] The damage down by “X” to the members of his extended family and the burden of pain being borne by “Y” and his parents is a terrible consequence of his actions that no sentence can alleviate.

Onus

[22] The onus of satisfying me that an adult sentence should be imposed on “X” lies with the Crown. Despite "a broad consensus reflecting society's values and interests" the presumption of diminished moral culpability in young persons can be rebutted if "the seriousness of the offence and the circumstances of the offender justify it notwithstanding his or her age."[17] The Supreme Court of Canada in *D.B.*

explained how placing the onus on the Crown does not make a young person less accountable for serious offences:

> ... it makes them *differently* accountable. Nor does it mean that a court cannot impose an adult sentence on a young person. It means that before a court can do so, the Crown, not the young person, should have the burden of showing that the presumption of diminished moral culpability has been rebutted and that the young person is no longer entitled to its protection.[18]

[23] *D.B.* found young persons to be entitled to a presumption of diminished moral blameworthiness that reflects, as a consequence of their age, their heightened vulnerability, immaturity, and reduced capacity for moral judgment.[19]

[24] Displacing the presumption of diminished responsibility does not involve the conventional standards of balance of probabilities or proof beyond a reasonable doubt. It is not "a very heavy onus." It is an onus that is requires the judge to engage in "evaluative" decision-making. The relevant factors must be weighed and balanced to determine whether a youth sentence is "sufficiently long" to hold “X” accountable for the attempted murder of “Y” I must be mindful of "the very serious consequences of an adult sentence" for “X” so that I only order an adult sentence "when necessary to fulfill the objectives of the YCJA."[20]

[25] The Ontario Superior Court of Justice, in a decision referenced with approval by our Court of Appeal[21], has described the two objectives to be achieved if a sentence is to hold a young person accountable:

> It must be long enough to reflect the seriousness of the offence and the offender's role in it, and it must also be long enough to provide reasonable assurance of the offender's rehabilitation to the point where he can be safely reintegrated into society ...[22]

[26] Where the Crown establishes to the sentencing judge's satisfaction that a youth sentence will not be long enough to achieve these goals, then an adult sentence must be imposed.[23]

Accountability

[27] Accountability is the fundamental principle embedded in sections 72, 3 and 38 of the *YCJA*. In the words of the Ontario Court of Appeal in *A.O.*, accountability "drives the entire YCJA sentencing regime."[24] It is the objective that must be foregrounded in determining whether to impose an adult sentence on a young person. The principle of accountability has been extensively considered in *A.O.*, a decision relied on by the Nova Scotia Court of Appeal in *R. v. Smith*.[25]

[28] The *YCJA* brought a shift in emphasis in the sentencing of young persons. Rehabilitation, the core sentencing principle under the predecessor legislation, the *Young Offenders Act, R.S.C. 1985, c. Y-1* (*YOA*), has been replaced by accountability. A "significantly different approach" in sentencing of young persons has been mandated by the *YCJA*.[26] It is a sentencing regime designed by Parliament to

> ... promote the long-term protection of the public by addressing the circumstances underlying the offending behaviour, by rehabilitating and reintegrating young persons into society and by holding young persons accountable through the imposition of meaningful sanctions related to the harm done.[27]

[29] The consensus is that accountability is to be regarded as having equivalency to "the adult sentencing principle of retribution" discussed by the Supreme Court of Canada:

> Retribution in a criminal context ... represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender, having regard to the intentional risk-taking of the offender, the consequential harm caused by the

> offender, and the normative character of the offender's conduct. Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more.[28]

[30] Proportionality is a central feature of a retributive sentence: the sentence must "properly reflect the moral blameworthiness of that particular offender." This harkens back to the individualized nature of sentencing.

[31] Rehabilitation, although regarded as significant, is now recognized as only one of the "important factors that are integral to the accountability inquiry mandated by ss. 72(1)(b) and 38(1) of the YCJA."[29]

[32] As Judge Campbell stated in the sentencing of a young person for attempted murder:

> **110** The *YCJA* is not a licence for violent crime. It is not a shield for young people who commit serious acts of violence. It provides a set of sentencing options that are intended to provide a nuanced response to the crimes committed by young people. It recognizes that young people do function in a way very different from adults. It encourages an approach that takes into account the reality that public safety is best served by dealing with problems while there is still time and that strict punishment may not be the best answer in the long run.
>
> **111** The *YCJA* also recognizes however that there are times when circumstances demand a response that is out of the ordinary. There are times, when the crime and the young person who commits it are such that accountability in the form of retribution is called for. It is called for in a way and to an extent that would not normally be the case for a young person.[30]

[33] In providing in the *YCJA* for a maximum youth sentence of three years for attempted murder, Parliament plainly contemplated that some youth would not receive adult sentences even where their intent had been to kill their victims. The challenge lies in determining which cases of attempted murder fall under the youth sentencing regime and which require an adult sentence.[31]

[34] The issue I am required to decide is this: whether a youth sentence of three years is a sentence of sufficient length to reflect the seriousness of "X"'s offences and his role in them, and whether it will provide reasonable assurances of "X"'s rehabilitation to the point where he can be safely reintegrated into society. To evaluate this, I must assess: the seriousness and circumstances of the offence, "X"'s age, maturity, character, background and previous record, and any other factors I consider to be relevant, which in this case include evidence about race and culture.

The Seriousness and Circumstances of the Offence

[35] What makes the offence of attempted murder "… in all cases…an inherently serious crime" is "not the *actus reus* of the offence which may vary from modest acts of preparation with no resulting physical injury, to an egregious life-threatening assault where it is simply fortuitous that the victim survived at all." What makes attempted murder inherently serious in all cases is the specific intent to kill.[32] The attempted murderer is "a lucky murderer": the intended killing of his victim thwarted by a "fortuitous circumstance" but he still has "the same killer instinct..."[33] In this case, "Y" didn't die because help was summoned, an ambulance came quickly enough, and medical intervention saved his life.

[36] The basic facts of "Y"'s shooting are recited in my trial decision:

> On April 15, 2013 in broad daylight "Y" was shot in the abdomen by someone using a rifle. Just before the shot was fired, "Y" had been standing talking with his friend, "Z"., inside the "…" community basketball court. Other teenagers and younger children were also on the court, taking advantage of the early spring sunshine. The shooter fled. "Y" was rushed to Emergency and into surgery. He

> had life-threatening internal injuries and spent two weeks in hospital...[34]

[37] A C.T. scan at the hospital, possible because of "Y"'s stable condition, indicated a perforated bowel and the presence of numerous bullet and vertebral fragments along the pathway of the gunshot. The vertebral fractures did not involve "the main body of the bones." Fortuitously, "Y" did not sustain a spinal cord injury.[35]

[38] Approximately an hour after his arrival at the hospital, "Y" was taken into surgery as a level one priority. The extent of the abdominal damage was explored and "Y"'s bowel was repaired. His gunshot wounds were cleaned and dressed. His major organs (such as right kidney, vena cava and pancreas) were spared. "Y" was treated post-operatively with antibiotics and narcotics for pain management. He has made a complete recovery.[36]

[39] Unlike murder itself which is classified under the *Criminal Code* as first or second degree murder, there is no codified classification for attempted murder. Notwithstanding, a sentencing judge is "certainly entitled to take into account the features" of the attempted murder before her.[37] That includes considering whether the attempted murder was "planned and deliberate."[38]

An Impulsive or a Planned and Deliberate Attempted Murder?

[40] The Crown submitted in its written brief that "X"'s actions constituted a planned murder of "Y" and that his planning, including the obscuring of his face to avoid being identified, "helps rebut the presumption" of diminished moral culpability.

[41] Can "X"'s shooting of "Y" be characterized as a shooting that was planned and deliberate? After seeing "Y" on the basketball court, "X" went into the nearby woods, retrieved the rifle, returned to the edge of the court, aimed at "Y", fired, and immediately turned and fled.[39] His explanation has been that he believed "Y" was a threat that had to be eliminated.[40]

[42] First degree murder is an intentional killing that is both planned and deliberate. A plan, for the purposes of first degree murder, is "a calculated scheme

or design that has been carefully thought out and the nature and consequences have been considered and weighed." "Deliberate" includes the concepts of being slow in deciding and cautious, implying that the accused must take time to weigh the advantages and disadvantages of his or her intended action.[41]

[43] A murder committed on a sudden impulse and without prior consideration, even though the intent to kill is clearly proven, would not constitute a planned murder.[42] The Saskatchewan Court of Appeal in *Smith* found the evidence of a "cruel and sadistic" shooting of the victim in cold blood did not show "the implementation of a previously determined design or scheme."[43] The Court went on to say: "It may well be that the killing was deliberate. However, even if it was, there could only be a verdict of first degree murder if the evidence established as well that the murder was planned."[44]

[44] I do not think it can be stated with any confidence that had "Y" died, "X" would have been convicted of first degree murder. There is room on the facts for an argument that, as in *Smith*, the essential element of planning could not be established beyond a reasonable doubt even if the shooting was found to have been deliberate. "X"'s retrieval of the rifle and shooting of "Y", all of which happened very quickly, could be viewed as having been impulsive and without prior consideration.

[45] While, as I have said, the shooting of "Y" might not constitute a planned and deliberate attempt to kill him, the circumstances of the offence are extremely grave and "X"'s moral culpability is high, having regard to his intentional risk taking, the consequential harm caused, and the egregious affront to societal norms represented by his conduct.[45]

Use of a firearm

[46] "X"'s use of a firearm in the attempted murder of "Y" is another serious feature of the crime. "X" used a weapon - a .300 calibre rifle - that is designed for lethality[46] and was able to execute his intention to kill "Y" from a distance, increasing the chances he would not be identified and could escape.

Presence of other children on the basketball court

[47] Also contributing to the seriousness of this offence is the fact that "X" fired at "Y" when other children were playing on the court. A child could have easily moved into the path of the bullet or there could have been a ricochet. "X" shot at "Y" without any regard for the other children and the collateral harm that might be caused.

Motive

[48] Although "X" and "Y" had known each other their entire lives and had grandfathers who are brothers, in elementary school the friendship between them had soured. Arguing evolved into fistfights and as time went on, "X"'s hostility toward "Y" became intractable. "Y" testified that "X" would always want to fight when he saw "Y" In my trial decision I concluded that,

> …"X" had an *animus* toward "Y" and a motive to shoot him. His hostility toward "Y" had not abated and while the shooting was a significant escalation in the aggression "X" had demonstrated previously, it occurred on a continuum where "X" had started to produce weapons and fists had already been supplanted by knives.[47]

[49] The section 34 psychological assessment obtained information from the "X's community" Community Officer for the RCMP. "Cst…" indicated that there had originally been conflict between "Y"'s older brother and an older brother of "X"'s. It appears this played a role in poisoning the relationship between "X" and "Y:.[48]

[50] In his interviews for the section 34 psychological assessment, "X" said he shot "Y" because he thought "Y" might have a gun and decided to get "Y" before "Y" could get him.[49] Whether "X" really thought this at the time I have no way of knowing as I am unable to assess the credibility of this assertion. There was no evidence at trial to suggest "Y" had been arming himself or was a threat to "X" Indeed, he was not even living in the community at the time of the shooting. "X" himself described "Y" to Stephen Gouthro as: "an average community guy."[50] However, "X" personifying himself in "gangster" terms - which I will be discussing

later in these reasons - may have distorted his perception of the situation or amplified his hostility toward "Y" whom he regarded as an enemy.

[51] There is no evidence however that "X" was incubating a scheme to kill "Y" and had a gun hidden in the woods for just the right moment to execute a murderous plan. I regard the presence of the gun, obviously known to "X", as merely fortuitous, a readily available and convenient weapon seized upon in a spur-of-the-moment decision to kill.

[52] What "X" told Stephen Gouthro in the course of what appears to have been a lengthy discussion about the circumstances of the shooting is that he "wasn't thinking. I was too high…"[51]

[53] The circumstances of this serious offence tilt toward the imposition of an adult sentence. However there is much more to consider, including "X"'s age, maturity, and character.

Age, Maturity, and Character

[54] At 16 years and 4 months when he shot "Y", "X" was not on the cusp of becoming an adult in the eyes of the criminal justice system. He told Peyton Harris during the psycho-educational assessment that his close friends in high school ranged in age from 15 to 18 years old.[52] His parents confirmed that his closest friends were similar in age.[53] In other words, he was associating with other young people, and not adults.

[55] It was Mr. Gouthro's opinion that "X" evidenced a strong affiliation to his peer group whose shared interests were music, substance abuse, and criminal activity. "X" did not indicate many pro-social relationships or friends.[54]

[56] It does not appear that "X"'s peer group contributed to him making positive choices. His father indicated in the section 34 psychological assessment that over the previous three years, "X" had often been in trouble with his friends. "XX" did not approve of them and suspected they were involved in criminal activity. He expressed his disapproval to the parents of these friends. "XX" believes that "X"'s group of friends was in conflict with another group of youths in "…".[55] "X"'s

disengagement from supports and services appears to have been directly correlated to deepening ties with his peer group.

[57] "XX" testified about his relationship with and knowledge of his son. He was well aware prior to the shooting that "X" was a management issue. He described enjoying an open relationship with "X"'s mother. "XX" testified that he felt he had a "very good grasp" on what was happening with his son. He and "Y"'s father, his best friend, would talk about their sons and "what they were doing to each other." He viewed each teen's friends as negatively influencing the bad feelings between the boys.

[58] At the time of the shooting, "X" was living at home with his mother and siblings and still enrolled in school. He had not begun to live independently from his family. "X"'s mother interviewed for the section 34 psychological assessment indicated that when "X" became a teenager, "it appeared to her that he felt he was old enough to make his own decisions." He began to spend more time with his friends than at home. Despite being told by his mother that the wrong decisions would led to him having to suffer the consequences, consequences seemed to have little effect on "X" It was his father's impression that "X" did not care about the consequences meted out by his parents and found ways to circumvent them.[56]

[59] Information obtained in the course of the section 34 psychological assessment and the psycho-educational assessment indicate that as a young teen, "X" showed tendencies toward aggression and violence. The principal from the school he attended in Grades 7 and 8, and briefly at the start of Grade 9, described him as manipulative, bullying, defiant, and aggressive.[57] He was suspected of being involved in criminal activities in addition to the drug dealing he has admitted. There are suggestions in the assessments that "X" was involved in luring and pimping teenage girls. A joint Department of Community Services and police investigation was conducted into a complaint made by a 15 year old girl that "X" had set up and then participated in her being forcibly confined and sexually assaulted. The complainant alleged that four other male youths were involved. She did not want charges to proceed and relocated with her family.[58] Asked about this allegation by Stephen Gouthro, "X" flatly denied it.[59]

[60] These allegations of misogynist, criminal behaviour in relation to young women are suggestive of very serious character flaws in a young teen, and negative peer influences, that are deeply troubling. It is difficult to know how to treat the allegations in the context of the Crown's application for an adult sentence. They are not proven. They are not the subject matter of these proceedings and are unrelated to the shooting of "Y" And while Stephen Gouthro noted in the section 34 psychological assessment that "X" "eventually" admitted to him that he had been involved in pimping,[60] in his interview with Dr. Murphy, "X" "denied any history of sexual exploitation or any recollection" of having made such disclosures.[61] This inability to recall does not seem credible. However I do not know whether the sexual assault and luring/pimping allegations are true or not and I have concluded it would be unfair of me to rely on unproven allegations of bad character in my determination of whether "X" should be sentenced as an adult.

[61] "X" does not come before me as a young person of previously good character. In addition to having a prior criminal record, there is a consistent and reliable thread of misconduct that runs through his school records. An incident described by the principal of his junior high school bears some resemblance to the shooting of "Y" The principal recalled a specific instance of "X" leaving the office "mid-discussion to punch another student in the head." This occurred in the presence of another teacher. "X" subsequently sought to justify his actions on the basis that the other student "deserved it." This was described not as an isolated incident but as a pattern of behaviour for "X".[62] "X" was known to have difficulty accepting responsibility for his behaviour: "… He would always have an excuse, even when he was caught red-handed. ["X"] would never own up for anything."[63]

[62] "X"'s behavioral issues continued in high school where he was removed from the Options and Opportunities program (a program to develop both employment and academic skills.) He continued to associate with a group of loyal peers and was seen, as he had been in junior high, as a leader. Nothing suggests that "X"'s peer choices promoted improvements in his behaviour. He continued to be seen as manipulative and disingenuous. He was suspected of drug dealing at the school.[64] His inappropriate, aggressive behaviours resulted in suspensions and continued until just before the shooting.[65]

[63] In October 2012, "X" and his mother met with a clinical social worker, an appointment arranged by "X"'s probation officer, Ms. Nagy, through the IWK Youth Intervention Services. "X"'s mother was keen to have "X" participate in the recommended mental health services however "X" declined the opportunity. The clinical social worker reported that "X" had "limited insight into how he could [manage his risk in the community] and minimized the significance of his anti-social peer group."[66]

[64] Stephen Gouthro viewed "X" as "eager to portray himself as a savvy and streetwise young man who was highly confident."[67] This description indicates that "X" wanted to present himself to Mr. Gouthro as sophisticated and self-possessed but whether that is an accurate representation of "X" is another question. "X" told Mr. Gouthro that after being stabbed in August 2011 he began carrying a handgun and for a time, owned two – a .32 calibre and a 9 mm Beretta. If this is true it indicates that a 14 year old living in "…" was able to acquire two handguns quite readily. That says something about the community where he was growing up.

[65] "X" admitted to Mr. Gouthro that he had been a drug dealer although his claim of "moving" $5000 worth of crack cocaine per week is difficult to believe as is his estimate of having made $20,000 in the year before the shooting and saving $10,000 of it. "X"'s pimping claims have a similarly flamboyant character: he told Mr. Gouthro he became involved in pimping at the age of 15, and on three occasions went to Moncton and Ontario with others to deliver girls for the purposes of prostitution.[68] "X"'s father, asked about these claims found them hard to believe in light of the fact that when "X" didn't come home at night he would get a call from "X"'s mother to go and look for him in the community. "XX" testified: "Nothing goes on in ["X"]'s household that I don't know about from my daughter, son, or ["X"'s mother.]"

[66] "X"'s response to being confronted by Stephen Gouthro about the increasing seriousness of his anti-social and criminal activities, was flippant, dismissive and immature: "More serious? I wouldn't say more serious. It was getting better. I was making money."[69]

[67] In the section 34 psychological assessment Mr. Gouthro commented on "X"'s willingness to boast about and glamorize criminal activities he purported to have engaged in. He described it as "concerning" that "X" was "so willing to portray himself in such a negative light" and viewed it as possibly being accounted for by "immaturity and a degree of impulsivity."[70]

[68] Mr. Gouthro noted in his testimony that at times during the assessment "X" "seemed over the top…He enjoyed being interviewed, talking about his exploits. I had to be careful that I wasn't taking everything at face value. There was probably a degree of embellishment and exaggeration of his pro-criminal activities by him." He testified that "X" engaged in "a bit of grandiosity" in his narratives about his criminal history.

[69] The opinion Mr. Gouthro formed of "X" was very negative. He described his impression of "X" as "a highly anti-social, self-assured young man who is arrogant, has a sense of omnipotence and is typically indifferent to [the] welfare of others."[71]

[70] "X"'s father, "XX", has seen a positive change in "X" since he was remanded into custody. He said: "He's a different kid now than before he went in." He described this in terms of how "X" "conducts himself, how he talks to people." Mr. Nickerson seemed to acknowledge "X"'s relative immaturity at the time of the shooting when, in cross-examining "XX" he pointed out, as an explanation for the changes "XX" has seen in his son, that "X" is 18 months older now.

[71] "X" told Peyton Harris during his interview for the psycho-educational assessment that when he arrived at Waterville he had been "burnt out" from drug use and partying and that it took him "9 months to realize that he gotta do something different."[72] That being said, it is Ms. Harris' opinion that "X" "demonstrated little understanding of how his marijuana use potentially interfered with his ability to learn and perhaps his motivation to succeed at school."[73]

[72] "X"'s failure, prior to the shooting, to take advantage of opportunities and supports, and his disengagement and withdrawal, for example from the Youth Advocacy Program, points strongly to an immaturity in his thinking and choices. This is revealed in the excerpt from a letter written by "X" to the Youth Advocate

Program, an excerpt included in Ms. Thorpe's October 2 report. She noted that in July 2014 "X" had written:

> Tell Helen ["X"'s first Youth Advocate Worker] I know she still cool and the YAP was a great opertunity (sic). At the time I ain't know it, but something always has to happen to make you think. I hope when I get out I can be part of the program. If not, I'm thankful y'all try to help my life… I respect your support.

[73] I note that the goal of the Youth Advocacy Program is to "prevent youth from engaging in gang related activities, antisocial and criminal behavior while enhancing public safety."[74] It is these goals that "X" disassociated himself from when he disengaged from the YAP. Now that a catastrophic event has caused him to think, he may have started to grow up and see the value in the program's pro-social objectives. Ms. Thorpe, interviewed for the section 34 psychological assessment, expressed her opinion that "X" has done "a lot of reflecting and has matured."[75]

[74] It is difficult to know, given "X"'s noted tendency to be manipulative and calculating, whether his professed recognition that he needs to change and avail himself of opportunities, previously spurned, to make better choices, is genuine or part of an ongoing effort at "impression management". Stephen Gouthro sounded a caution with respect to "X"'s personality testing results, noting that his score on Impression Management was in the above average range.

[75] All this evidence indicates to me that in April 2013, "X" was an immature 16 year old who was associating with negative peers and taking advantage of the inability of his parents to more effectively supervise him. But the issue of character in the analysis of the Crown's application is about more than whether a young person has shown evidence of bad character. It is also about the nature of the young person's character. In the case of "X", the profile of his character is more complex than his anti-social behaviours suggest. This was identified by Robert Wright, whose evidence I will be discussing. His youth mentor, Otis Daye, was interviewed for the section 34 psychological assessment and also described a teen who was struggling within himself. The changes he observed around the time "X" started junior high

were not positive: he felt "X" was "giving in to his friends and outside influences." Mr. Daye identified the manipulative side of "X"'s character but also said the "real" "X" is "compassionate, smart and sensitive."[76]

Remorse

[76] The professionals who assessed "X" for the section 34 psychological assessment – Stephen Gouthro and Sarah Rafuse – and Dr. Chris Murphy, who prepared the psychiatric report, view "X" as lacking remorse for shooting "Y" While there is a basis for their opinions, "X"'s statements to others and to the Court at sentencing suggest some deeply conflicted feelings.

[77] Stephen Gouthro described "X" as having quite a hardened view of his attempt to kill "Y" He testified that at one point "X" told him "Y" deserved it. Mr. Gouthro understood that "X" still believed what he had done was necessary and justified. It was Mr. Gouthro's evidence that "X" "… Really didn't think he'd get caught: he didn't think people would talk."

[78] When asked about this, "X"'s father testified that he "… just can't believe ["X"] would say that." However in the section 34 psychological assessment Mr. Gouthro details "X"'s statements to him justifying the shooting very explicitly, including "X" telling him: "The fucker had it coming." He also reported "X" telling him: "They were coming after me. I'm protecting myself."[77] But "X" also told Mr. Gouthro he was happy "Y" hadn't died and that he wished he had not shot him. Discussing the shooting with Mr. Gouthro, he said he had a shower after the shooting because he felt "dirty", not to get rid of evidence. This suggests "X" was experiencing shame over the terrible thing he had just done.

[79] Sarah Rafuse noted that Rev. Mike Veenema, interviewed for the section 34 psychological assessment, said "X" had no remorse and was concerned instead about the consequences the crime had for him. This is not mentioned in Rev. Veenema's letter[78], written 7.5 months after Ms. Rafuse interviewed him.[79]

[80] Dr. Chris Murphy testified that his statement that "X" "has shown a genuine lack of remorse or guilt"[80] was based on his observations of "X" Dr. Murphy testified that "X" justified the shooting to him by saying he had felt his life was in danger.

When Dr. Murphy suggested he could have just left the area, "X" told him that the confrontation with "Y" was something that would have happened "sooner or later."

[81] "X"'s Youth Advocate Worker has had ongoing contact with "X" since he was remanded to Waterville. They have corresponded and had several face-to-face meetings. In her October 2 report[81], Ms. Thorpe has indicated: "During my visit with him in March of this year he admitted that he regretted his actions, a confession that came unbidden and was unprompted. He also told me during a recent visit that he regretted how his actions had affected the children who were in the basketball court at the time of the shooting."

[82] "X" went further than that when he addressed the Court on October 31 at the end of his sentencing hearing. He admitted that what he did was wrong and apologized "to the people of the community of "…", all the communities that were affected." He said he "truly and honestly" regretted his actions and acknowledged owing "a major apology" to "Y"'s parents, "if it means much." He went on to say the following:

> I made a big mistake, you know, shooting "Y: and it affected not only me, not only him, but our whole family and it is a mistake that l learned from. And I also want to apologize to my parents because I know this disappointed them. They probably didn't expect me to do something like this. I didn't expect me to do something like this and in the end, it happened. And from this point, I feel like the only thing I could do now is to move on from what happened and try to make a positive change for the better of me, for the benefit of "Y"'s grandmother, my father, my mother and my family and to him, if he were here, I would be like, I want to apologize, but somewhere in my mind it says it's too late…I am sorry to him because at the time I don't know where my mind was, it was just like, okay, you're in a situation, let's do something, and now it's like, where do we go from here. I feel like the best thing we could do is help other people so they don't make the same mistakes that we made. I feel like the best

> thing I can do, right now, is help people and help [hope] that they don't make the same mistake that I made. I mean, someone once told me that your future starts with the decisions you make today and no matter what happens I'm going to try my best to make positive choices in my life and hope that everyone who's been affected from my actions can recover and live a happy and successful life.

[83] I was not convinced by "X"'s statement in court that he yet feels true remorse for shooting "Y" It is not "Y" he referenced first: "Y" was down on the list of people "X" spoke about having hurt and disappointed. Robert Wright, asked about his interview with "X", testified that "X" did not reflect on how the shooting will have affected "Y" I suspect "X" continues to harbour a belief that he had some justification for what he did, even if he recognizes now the harm he has caused. But that is what rehabilitation is for: we don't often sentence people who have been fully rehabilitated. What we craft as a sentence is intended to address issues that remain outstanding and contributed to why an offender is before the courts.

Good Intentions or Manipulation?

[84] The more recent reports/updates concerning "X" indicate apparent pro-social and positive impulses and interests. For example, Ms. Thorpe described how "X" "expressed a desire to help his community by doing work similar to" the youth advocacy work she does. In one of his letters he told her: "I don't want to tell you how to do your job, but get these guys in programs; get them active in and out of the community." She said he wanted to "embrace positive change and transform a tragic decision that he made as a young person; an act that he maintains "won't define [him]."

[85] Another positive report comes from Rev. Michael Veenema, the chaplain at Waterville. [82] Rev. Veenema has described "X" as "a strong participant" in the chaplaincy programs offered at Waterville. He has completed programs and continues to attend church very regularly. He consistently meets with Rev. Veenema, often once per week. He appears to take an active interest in church services, suggesting "music/rap videos that are appropriate for raising important topics during

church." Rev. Veenema notes that "X" has displayed dozens of photos, a certificate from the chapel, and prayers or similar Bible passages in his cell, "indicating that family and faith are important to him." Rev. Veenema concludes his observations with the following:

> ["X"] has remained respectful all the time I have known him, about a year and a half. He continues to be articulate and to demonstrate leadership skills. I hope ["X"] will one day become a pastor or chaplain.

[86] "X" has also been a consistently positive participant in music therapy. He self-referred to the music therapy program at Waterville in September 2013. Brenda Johnson's report[83] describes "X" as "an engaged participant of therapy, consistently respectful, cooperative and views music therapy as a safe place to improvise, express and generally explore his experiences." He engages in "reflective and narrative discussion about his material" and its themes of "values, trust, beliefs and evaluating change." Ms. Johnson notes that "X" "can speak about family, struggles for money, mistakes and loyalty. He expresses a desire to "let go of his past." She has observed "a progression of reflection" in "X" since she started working with him. Interviewed for the section 34 psychological assessment, Ms. Johnson advised that she believes "X" "is starting to put serious thought into what he needs to change in his life and appears to be moving in a positive direction."[84]

X's Background and Prior Record

[87] A young person's background and prior record are important factors to be considered in assessing a Crown application for an adult sentence. A significant feature of "X"'s background is the fact that he is an African-Nova Scotian youth. I will be discussing the relevance of his race and culture in a separate, dedicated section of these reasons. What I am going to describe now is the evidence from various sources concerning his upbringing, certain traumatic events, and his prior involvement in the criminal justice system.

[88] "X" has grown up living with his mother and siblings. His father has played a role as a disciplinarian when "X"'s mother was having difficulty getting "X" to

comply with household rules, such as a curfew. While his father has been engaged and seems to have a good understanding of his son's issues and difficulties, he does acknowledge the need to have a greater involvement with his son, given "all that's happened."

[89] One of "X"'s older brothers and his father have served time. "XX" served a jail sentence for domestic assault when "X" was 8 years old. He has had no further problems with the law since then.

[90] Both parents have worked full-time. The section 34 assessment notes that "X"'s mother seemed to have had "little awareness of "X"'s anti-social activities and negative peer influences identified by several other collateral sources." She was very familiar with the difficulties her son experienced at school and the interventions that were employed to address his behavioural issues.[85] The assessment credits "X"'s father with providing a portrayal of "X" that is "a more detailed account of ["X"]'s defiant attitudes and anti-social behaviour."[86] For example, "XX" indicated during his interview for the section 34 psychological assessment that "X" had been drinking and smoking marijuana on a regular basis for several years prior to the shooting.[87] "X" confirmed this when interviewed by Stephen Gouthro.[88]

[91] "X" has experienced some trauma in his young life: when he was a small child his family home was badly damaged by fire; he suffered the death three years ago of his maternal grandfather which his mother says left him "heartbroken"; and two years ago, there were two separate incidents of shots being fired at his home. "X" was at home on both occasions when the shootings occurred. The RCMP conducted an investigation but no one was charged. The incidents led to the decision by "X"'s parents to send his twin sister to live with his father.[89]

[92] On August 12, 2011, "X", then 14, was the victim of a serious stabbing. He underwent emergency surgery for repair to two wounds, one to his hip and one to his lower chest. The discharge summary, referenced in the section 34 psychological assessment[90], indicated the following wounds: right hip laceration, right posterior lateral chest wall injury, pneumothorax, diaphragmatic injury and liver laceration. "X" recovered well and was discharged from hospital on August 17, 2011. He did

not want anyone charged and claimed not to know who had stabbed him. "X"'s mother believes he did know but did not want the person charged.[91]

[93] "X" told Stephen Gouthro that the stabbing strengthened the bonds with his closest friends.[92] In Mr. Gouthro's opinion, "it likely increased ["X"]'s vigilance and readiness to react to a real or perceived threat…That experience has likely helped shape ["X"]'s world view and attitudes toward violence."[93] I find that to be a significant statement that provides important context for better understanding "X" and the shooting.

[94] There is nothing in "X"'s prior record[94] that approximates the violence he perpetrated in attempting to kill "Y"[95] To establish the facts of "X"'s prior convictions, I listened to the record of the proceedings from his sentencings on November 23, 2011, June 28, 2012 and April 25, 2013.

[95] On April 29, 2011, when he was 14, "X" committed an assault causing bodily harm. At his sentencing, "X" admitted to having punched the victim in the face, knocking him to the ground and kicking him once. Other young people then assaulted the victim but "X" denied playing any role in these further assaults. The victim sustained a concussion which led to headaches and limitations on his normal activities and a broken nose which required surgery.

[96] On November 17, 2011, "X" grabbed an iPhone from the victim's hands when she entered a Metro bus terminal. CCTV footage of the incident led to "X"'s identification and arrest. The phone was recovered.

[97] "X" was sentenced on November 23, 2011 to 12 months' probation for the assault causing bodily harm and the theft of the iPhone and 15 hours of community service.

[98] A pre-sentence report was prepared for "X"'s November 23 sentencing on the charges of assault causing bodily harm and theft.[96] In the report, "X" indicated that both his parents were aware of his offences and were very disappointed with him. His mother said he was doing very well at home and had not got into further trouble. He was playing basketball with the "…" Basketball Association and doing well at school. It was his mother's view that "X" should have been permitted to have his

charges dealt with through the Restorative Justice Program although she indicated her understanding that what happened was very serious. It was her opinion that "X" did not need any help and was capable of staying out of trouble. She told the author "he acted out of anger, which he does feel bad about. I don't think he will get into that type of trouble anymore, so I would say he has learned his lesson."

[99] "X" accepted responsibility for what he had done, advising that he felt bad and that "it shouldn't have happened like that." He reported that he put up with school but didn't really like it. He had been suspended for five days in the previous year for fighting but said he had not had any suspensions since that incident. He claimed to get along well at school for the most part.

[100] The information obtained by the author of the pre-sentence report from the principal of "X"'s junior high school was a good deal less positive. "X" had attended school for the first week in the fall of 2011, and engaged in behavior "which ended up being serious matters the school had to deal with." "X" was described as "a leader [who] influenced his peers tremendously in a negative way." "X" was placed on an extended school suspension. When he returned an agreement was reached between the school and "X"'s mother that he should move to a new school. His youth mentor at the time, interviewed for the section 34 psychological assessment, described "a network of trouble" at "X"'s junior high school, identifying "X"'s friends from "…" being a factor in him getting into trouble.[97]

[101] "X"'s second sentencing occurred on June 28, 2012. He was given nine months' probation and ordered to complete 20 community service hours for a theft committed on January 24, 2012. The original charge was robbery: the Crown accepted a guilty plea to the lesser included offence of theft. The theft conviction qualified "X" for a conviction for breaching his November 23, 2011 probation order.

[102] "X" committed the theft with two teenaged accomplices. The boys followed a woman off the bus, pushed her from behind on to the ground, kicked her and stole her bag containing her Blackberry Playbook, her wallet and other personal items. Eventually all the items were recovered including the Playbook although after the theft it had been sold by the boys and the proceeds divided.

[103] A pre-sentence report was also prepared for "X"'s second sentencing, on June 28, 2012 for theft and breach of probation.[98] This report indicated that "X" had completed his 15 hours of community service work on June 4, 2012. His hours included: taking the initiative to be a leader amongst his peers at an art expressions program; performing at the Elimination of Racism event; performing at the Cole Harbour Skateboard Park reopening; and participating as a panelist for the Peer Leader Forum.

[104] "X"'s mother was again interviewed. She indicated that "X" was doing well and said she was proud of him. She expressed the fact that she was not pleased with "X"'s involvement in these latest offences but described him as progressing in a positive manner. She said he was involved in the Youth Advocate Program and community activities and was playing sports. He had just completed his Grade 9 year and had been accepted into high school.

[105] The change of junior high school in the fall of 2011 seems to have been positive for "X" The Acting Vice Principal indicated that "X" had been pretty disciplined since his arrival with only a few minor incidents. "X" was described as "holding it together quite well." Academically he was described as "quite weak." The pre-sentence report details steps that were being taken to assess and respond to "X"'s educational needs. These initiatives were seen by "X" as positive. The author of the pre-sentence report, Sarah Nagy, noted that: "["X"] seems to feel welcome, supported, valued and even connected to his school and school community. Youth reported to YAW [Youth Advocate Worker] in February 2012, that he felt this was the first time his education mattered to anyone other than him."

[106] Ms. Nagy's pre-sentence report also noted that "X" was working with a mentor (Otis Daye) on some musical initiatives and was recording some of his songs. His mentor had facilitated "X"'s participation in a local university radio show which had played some of his music.[99] Music was viewed as a pro-social activity with the potential to provide "X" with financial benefits. Other activities had included attending church with the "…" Community Worker and participating in the RCMP hosted Father and Son Camp earlier in the spring of 2012. The RCMP officer

involved described "X" as a positive, engaged and considerate participant in the weekend event.

[107] In his interview for the pre-sentence report, "X" volunteered that his commitment to his peers was a risk factor. The pre-sentence report states that: ["X"] "has what seems to be an intense commitment to his peers…[Youth Advocate Worker] is looking for additional strategies to support ["X"] and increase positive engagement and prosocial activities." It was noted that "X" was building a support network for himself.

[108] As for his offending behaviour, "X" admitted responsibility but expressed no remorse.

[109] On April 25, 2013, "X" was sentenced to 12 months' probation for assaulting a police officer on January 11, 2013. He also earned a conviction for breaching a probationary condition to keep the peace and be of good behaviour which was a condition of the probation order he had received on June 28, 2012. The breach of probation charge arose out of "X" trying to intervene during the arrest of two robbery suspects. "X" told police he wanted to speak to one of the suspects, whom he said was his brother. He was told he couldn't. When the police were distracted, "X" opened the door of the patrol vehicle where one of the suspects had been placed. A police officer reacted quickly and closed the door. "X" was arrested. During his arrest, "X" pushed the arresting officer in the chest with both hands and was charged with assault.

[110] As indicated in the report of Youth Advocate Worker, Gillian Thorpe, in February 2013, "X" withdrew from the Youth Advocate Program. "X" also discontinued the involvement with his mentor, who was supporting "X"'s musical aspirations. This was another unfortunate decision by "X" who is described by Ms. Thorpe as "a talented rhyme-writer and performer."[100]

[111] Sarah Nagy, the author of "X"'s pre-sentence report for his June 2012 sentencing, testified at this proceeding that she had found him to be really charismatic, charming and pleasant. He was easy to communicate with. When his behavior deteriorated in the latter part of 2012, Ms. Nagy referred him to the IWK

Youth Forensic Services, with the support of his mother. As I noted earlier, "X" was not prepared to attend a meeting.

Other Relevant Factors

The March 28, 2014 section 34 Psychological Assessment

[112] For the section 34 psychological assessment, Stephen Gouthro administered a number of personality tests. These included the Million Adolescent Clinical Inventory (MACI), Resiliency Scales for Adolescents, the Beck Youth Inventories Second Edition (BYI-II), the Behaviour Assessment System for Children, 2nd Edition (BASC-2), questionnaires about drugs and alcohol (HIT-D&A) and self-serving cognitive distortions (HIT), Criminal Sentiment Scale – Modified (CSS), the Pride in Delinquency Scale (PID), and the Hare Psychopathy Checklist:Youth Version (PCL:YV).

[113] Mr. Gouthro interpreted the following from "X"'s testing results:

- "X" is "likely to be exploitative, self-centered, and indifferent to the welfare of others." A lack of empathy may be present. "X"'s profile described "a young man with a sense of omnipotence who may readily exploit and manipulate others to enhance and indulge himself….He desires the attention and approval of others and has become skilled in sensing what will please others…. The profile suggests that ["X"] readily engages in an active fantasy life in which he is able to readily rationalize school and social failures into successes."(MACI)[101]

- The MACI profile is "often associated with pervasive substance abuse issues…as an extension of [a] self-centred and stimulus seeking lifestyle."[102]

- "X"'s Resiliency Scale scores suggest "X" portrays himself as "self-confident, receptive to support and not vulnerable to stress." They also suggest he "sees himself as adaptable or able to learn from his mistakes."[103]

- "X"'s scores on the various Beck Youth Inventory tests suggest he "enjoys healthy self-esteem"; does not perceive himself as frustrated, resentful, or

angry, to any greater extent than other youth his age; and is experiencing some understandable levels of anxiety about his future.[104]

- "X" indicates difficulties establishing and maintaining relationships and produced an "At Risk" score for anxiety suggesting "substantial worrying and an inability to relax."[105]

- "X"'s responses on the HIT-D&A were inconsistent with what he reported during interviews about his drug and alcohol use.[106] "X"'s HIT results were contrary to his behavioural history and what he reported during interviews about engaging in physical aggression (fights).[107] Mr. Gouthro viewed these testing results as a reflection of "X"'s "attempt to manage his image and present an overly positive view of himself." Mr. Gouthro formed the opinion that: "those attempting to work with him should take into account that he will have great difficulty seeing things from others' perspectives and that he is primarily motivated by self-serving interests."[108]

- While "X"'s responses on the Pride in Delinquency Scale (PID) "indicated that "X" would expect to be extremely ashamed of all 10 of the delinquent behaviors identified", Mr. Gouthro rated these responses as inconsistent with "X"'s statements in the interviews about his criminal activities and attitudes. Mr. Gouthro noted that "X"'s responses on the Criminal Sentiment Scale-Modified (CSS) "indicated he was more willing to acknowledge negative attitudes towards the police, rationalization of criminal behaviour and affiliation with the pro-criminal peer group."[109]

[114] Mr. Gouthro used the PCL:YV to consider personality characteristics to be taken into account by treatment providers developing and orchestrating strategies for intervention. He testified that the test has "very little long-term predictive ability." He confirmed that it is not appropriate to use the test to draw conclusions of psychopathology in a teenager nor can the test be used to assess long-term treatment amenability. In the section 34 psychological assessment he referred to "X"'s PCL:YV scores as portraying ["X"] having the following personality characteristics: "a highly manipulative young man whose initial presentation should not be taken at face value…Such youth…tend to respond better to approaches emphasizing building

behavioral controls and coping strategies rather than insight. Youth with similar scores are often hedonistic and highly self-centered. They are most strongly motivated by what serves their needs and typically show little regard or concern for others."[110]

[115] Mr. Gouthro found that "X" meets the criteria for Conduct Disorder, Adolescent Onset type (Severe). In Mr. Gouthro's opinion, "X"'s apparent lack of remorse and empathy appears to also qualify him for the specifier of Conduct Disorder with limited pro-social emotions.[111] Mr. Gouthro noted that "X" "accepts little responsibility for his own actions." When discussing his previous convictions, ["X"] consistently dismissed, distorted or rationalized his involvement. When confronted with contradictions between his version of events and the evidence that resulted in convictions, he presented as indifferent, showing no embarrassment."[112]

[116] Mr. Gouthro acknowledged in his testimony that long-term risk is difficult to predict. Furthermore, the section 34 assessment states explicitly that: "The following assessment of risk should only be considered valid for **one year** after the date of this report. If there is a significant change to this young person's clinical presentation, or family and educational/vocational characteristics within a year of this report, then this assessment of risk should be considered invalid."[113]

[117] Using the Structured Assessment of Violence Risk in Youth (SAVRY), Mr. Gouthro assessed "X"'s overall risk for violence as falling within the high range. It was Mr. Gouthro's opinion that most of "X"'s violence has tended to be "instrumental and goal directed" rather than as a result of emotional dysregulation.[114] Mr. Gouthro testified that "X" is "not ruled by emotion." Using the Youth Level of Service/Case Management Inventory, 2.0 (YLS/CMI 2.0), Mr. Gouthro assessed "X"'s risk for general criminal recidivism as falling within the moderate range in comparison with youth in custody and in the high range compared to youth in the community. Both the violence risk and general criminal recidivism risk assessments are based on no meaningful interventions being undertaken to manage "X"'s risk.[115]

[118] Mr. Gouthro identified a number of dynamic factors in "X"'s case that "are contextual, situation dependent and can be amenable to change over time if addressed through treatment or by altering the environment." These factors are in

the social/contextual category - peer delinquency; poor parental management; and community disorganization. In the individual/clinical category, they are - antisocial attitudes that condone crime and violence; risk-taking and impulsivity; substance use difficulties; low empathy/remorse; poor compliance with intervention/supervision; low interest/commitment to school.[116] "X"'s intelligence and self-confidence and his strong social skills are strengths that can mitigate the effect of his risk factors although, Mr. Gouthro viewed "X" as having "frequently applied those strengths toward a criminal purpose."[117]

[119] In Mr. Gouthro's opinion, a risk management plan for "X" should include: "exploring and challenging his anti-social attitudes and values, and discouraging his affiliation and socialization with anti-social peers."[118] Other issues to be targeted are: substance abuse, callousness and lack of empathy. Rehabilitation will require "sustained effort and the likely collaboration of family and other system participants" involved with supervision, education, therapy, and mentoring.[119]

[120] Mr. Gouthro is of the opinion, as expressed in the section 34 psychological assessment, that "X" will "likely…require years of intervention to significantly reduce his risk for re-offending." He testified that it was his impression that "X" will be "extremely difficult" to engage because he is comfortable with who he is and what he's done, has questionable motivations and firmly entrenched attitudes and values. Mr. Gouthro views a maximum youth sentence of three years as of insufficient length to effectively reduce or manage "X"'s risk "in a meaningful way."[120] It was his evidence that "X" will have to be subject to a lengthy enough sentence that he is inconvenienced into thinking "there has to be another way…Given his personality, it has to be about him coming to the view that things are not working for him."

[121] The section 34 psychological assessment concludes with a number of recommendations[121], formulated by Mr. Gouthro, Sarah Rafuse, and Peyton Harris:

- That "X"'s sentence afford a consequence that is meaningful enough to encourage him to reconsider his commitment to a pro-criminal lifestyle and its associated values;

- That "X" be "strongly encouraged to participate in therapy directed at exploring, challenging and restructuring his pro-criminal, pro-violence and misogynistic attitudes and values."
- Family members or those responsible for his supervision should be involved in "X"'s rehabilitation to provide a reality-check against "X"'s tendencies to minimize and distort.
- A case manager should be assigned to oversee "X"'s rehabilitation and risk management planning. "Such a role may provide a degree of objectivity to maintain expectations, coordinate services and support service providers in their efforts."
- Academic and/or vocational training should be encouraged and supported.
- Pro-social recreational and leisure opportunities should be explored and encouraged.
- "X"'s placement at Waterville should be contingent on his ability to benefit from the programming and services available there, as well as the nature of his influence on other youth.
- Substance abuse counselling.
- Community re-integration should provide structure and clear accountability. "The development of a pro-social support network should be given high priority" as "X" must distance himself from pro-criminal influences.
- Enhancement of "X"'s independent living skills, e.g. budgeting, securing and maintaining employment, and life skills, e.g. pro-social activities, adaptive problem-solving skills.

[122] Mr. Gouthro agreed that programming available at Waterville could positively motivate "X" and help address issues such as low empathy and remorse and assist his rehabilitation and reintegration. He emphasized that pro-criminal attitudes and values are difficult to address and the process of change requires the youth being prepared to do the heavy lifting.

The March 28, 2014 Psycho-Educational Assessment Report

[123] The psycho-educational assessment was prepared by Peyton Harris, a school psychologist. She spent a couple of days with "X" in February 2014 – February 10 and 18. She interviewed eight school collateral sources, looked at "X"'s school history and behaviour, and conducted testing.

[124] "X"'s school history shows evidence of lack of focus, behavioural issues, and academic difficulties associated with both. A "very hyper" student, "X" was part of a group of boys in Grade 6 who were all "extremely physically active, loud, and vocal", at times "argumentative" and apt to engage in "fights." The overall impression of the Educational Program Assistant (EPA) assigned to the group was that they were "real busy boys, not hostile or horrible." Their "bickering" at times led to physical aggressive rather than "talking it out."[122]

[125] "X"'s behaviour – aggression and physical violence – began to earn him suspensions in Grades 5 and 6. In Grade 7 it was noted that his difficulties "working within classroom routines and meeting academic expectations… lead to frustration and anger."[123] He was suspended for physical violence on four occasions, involving assaults on other students. Suspensions continued through Grade 8 and at the beginning of Grade 9.[124]

[126] A youth mentor who started working with "X" in Grade 5 noted that "X" was a charismatic presence in the classroom and had the ability to "diffuse situations with other students or add fuel to the fire." He tried to draw on "X"'s strengths and engage him to focus them in a positive way.[125]

[127] School attendance had become a problem for "X" at the start of junior high and continued through Grade 9. He attended Grade 10 until he was taken into custody in April 2013. He acknowledged to Ms. Peyton that he had not taken school seriously. "I understood school was important but didn't give the push I needed… I was okay with half-assed." He admitted to selling drugs at his high school ("marijuana, ecstasy, MDMA") and to having sold marijuana during Grades 8 and 9.[126]

[128] Ms. Harris noted that "X"'s involvement in using and selling drugs, including at school, interfered with his ability to concentrate on his academic responsibilities. He told Ms. Harris he was focused on "drugs, girls and money." He admitted to smoking marijuana at high school: "in the morning and lunch I was smoking weed. I was just chilling out. I was high all day." He partied and socialized a lot and would sometimes "sleep in class."[127]

[129] According to Ms. Harris, many collateral sources saw "X" as a very bright, capable young man (when he applied himself) whose behaviour had a direct impact on his academic performance. In Ms. Harris's opinion, "X" could be successful at university with some accommodation, for example, more time to complete examinations.

[130] Ms. Harris herself found "X" to be "pleasant, polite, and animated…" She noted that he is articulate and presents "well orally." He can be dramatic but showed "no overt signs of restlessness" during the assessment.[128] Ms. Harris reported that the results of "X"'s cognitive assessment suggest "he has the underlying potential to succeed academically." She described "X"'s test results as indicating that he "is a fluent reader who generally understands what he reads."[129] His areas of weakness are "processing speed and visual-motor integration" and mathematics and Ms. Harris concluded that "X" has "a Mild Learning Disability in the areas of processing speed and visual-motor integration."[130]

[131] It was Ms. Harris's opinion based on the results of "X"'s psycho-educational testing that he would be a good candidate for insight-based therapy. (I note that Stephen Gouthro assessed "X" as "likely to be a difficult candidate for talk-based therapy"[131] which he testified is insight therapy.) Ms. Harris also noted that "certain aspects of ["X"]'s personality and belief system will make him challenging to engage in therapy in a meaningful way."[132] She testified that "X" has the cognitive ability to learn and a good potential to succeed if his risk factors are addressed.

[132] Ms. Harris concluded her report with the following comments: "It is this writer's hope that ["X"] will make the choice to actively pursue treatment for his criminogenic needs while he is in custody, so he will be in the best position to benefit from the support of school personnel and other service providers upon his eventual

release. He is a bright young man with much potential should he choose to channel it in a pro-social direction."[133] She recommended: individual therapy; individual addictions counseling; consultation by Ms. Harris with teachers at Waterville; and addressing "X"'s processing speed difficulties, visual motor integration problems, and mathematic difficulties. Ms. Harris also recommended that "X" be encouraged to become involved in pro-social activities such as music, dramatic arts, and athletics, given "X"'s abilities in these areas.[134]

The June 4, 2014 Psychiatric Assessment

[133] The psychiatric report prepared by Dr. Chris Murphy of the IWK assessed "X" to have a Severe Conduct Disorder – Adolescent Onset.[135] Dr. Murphy described this diagnosis as "a disruptive behaviour disorder characterized by *"... a repetitive and persistent pattern of behaviour in which the basic rights of others or major age-appropriate societal norms or rules are violated."* Dr. Murphy went on to note:

> These behaviors are grouped into the domains of aggression, destruction of property, deceitfulness or theft, and serious violations of rules and must cause clinically significant impairment in social, academic, or occupational functioning. While there is some suggestion of disruptive behavior in ["X"'s] early childhood, behaviors consistent with conduct disorder only emerged in adolescence.[136]

[134] It was Dr. Murphy's assessment that at the time of his remand, "X" met criteria in the domains of aggression, deceitfulness and theft. It is Dr. Murphy's opinion that "X" "continues to demonstrate some features of conduct disorder despite being in a highly controlled environment" and therefore "a current, active diagnosis of conduct disorder continues to be warranted."[137]

[135] Dr. Murphy viewed "X" as also meeting criteria "for the specifier of conduct disorder with limited pro-social emotions", basing this opinion on "X" having "minimized or denied his involvement in past offences" and his "lack of remorse or

guilt…a history of manipulative and exploitative behaviors towards others and the majority of his peer relationships [tending] to be fairly superficial or centered around antisocial or criminal behaviors."[138]

[136] Given that "X" pleaded guilty when previously in Youth Court, prior to the shooting of "Y", I find it is not entirely accurate to say that he has "minimized or denied" his involvement in past offences. "X"'s denial to Dr. Murphy of involvement in crimes – pimping – that he made claims to Stephen Gouthro about raises more questions than it reveals. "X"'s claims are unsubstantiated; his father testified that the family had seen no evidence of "X" being engaged in extra-provincial pimping and the transport of young women for prostitution, activities that would have required him to be away from home. It is distinctly possible that "X" may have been exaggerating his lawlessness, seeking to embellish a "gangster" profile and being too immature to recognize the harmfulness of portraying himself in this light.

[137] Dr. Murphy also diagnosed "X" with Cannabis Use Disorder, noting that "X" described an entrenched pattern of daily cannabis use "which may have perpetuated and further contributed to his long-standing academic difficulties." It was noted by Dr. Murphy that "X"'s drug-dealing in the community and at school had helped to support his habit.

[138] It was Dr. Murphy's conclusion that there was no evidence to support a diagnosis, past or present, of a major mood, anxiety, or psychotic disorder.[139]

[139] Dr. Murphy made recommendations[140] for:

- Individual or group counselling "to address "X"'s substance use and associated lifestyle choices", stating that such counseling "should be considered as part of the rehabilitative process and may contribute to a reduction of the risk of reoffending once in the community."

- "X"'s participation "in interventions targeting his antisocial attitudes, encouraging the avoidance of antisocial peers, and development of pro-social living skills." Dr. Murphy cautioned that treating clinicians should be aware

of "X"'s "limited empathy, and tendency to engage in manipulative behavior and impression management."

- "Active follow-up and gradual reintegration into the community" to "increase the chances that any observed improvements in behavior will translate into lasting, meaningful change." Dr. Murphy noted that although "X" "has multiple potentially redeeming factors, including interpersonal skills, charisma and intelligence, interventions to date have been unsuccessful in altering his life trajectory."

[140] According to Dr. Murphy, "X"'s age makes it difficult to "prognosticate his trajectory going forward" without knowing how genuine or sustained "X"'s efforts will be to engage in programming. He noted that this is the first opportunity "X" has had to access in-custody programs. He testified: "There's an age [before mid-20's] where the personality structure isn't fully formed yet and there is the chance for intervention or…improvement of the symptoms." It was Dr. Murphy's evidence that "X"'s personality will be revealed over time by "his pattern of behaviours going forward and his level of engagement with treatment…" He agreed with Ms. Thompson that "X" should be encouraged to avoid anti-social peers and that pro-social skills can be developed through programming.

[141] Dr. Murphy acknowledged that his assessment of "X" did not address his race and culture.

"X"'s Behaviour and Progress in the Nova Scotia Youth Facility in Waterville

[142] As noted at paragraphs 84 to 86, "X" has done well in programming at Waterville. In addition to positive participation with the chaplain and in various programs (substance abuse, reasoning and rehabilitation, and music therapy), "X" has been successful in gym programs and in the pool, attaining his Level 10 badge in swimming.[141] "X" has also completed courses on electrical safety, safety orientation, WHIMS, and career development.[142] The career development course is a credited program.

[143] Academically, "X" is described as a contentious student, receiving high marks and working well both independently, and in the classroom, "when not involved in

a power struggle with the teachers…"[143] "X" is now only 2.5 credits short of obtaining his Grade 12. His teacher at Waterville indicates that his marks have been good: he is currently enrolled in English 12 and Human Biology 11 and needs one more Grade 12 credit. He is described as "able to work independently and is typically not a behaviour problem."[144]

[144] "X"'s academic performance has materially improved: the most recent report[145] dated September 4, 2014, is positive. When Peyton Harris interviewed teachers at Waterville in March 2014, they viewed "X" as under-performing in relation to his capabilities. The dynamic of engaging in a "power struggle" with teachers is reflected by "X" having difficulty "taking no for an answer" and being "manipulative."[146] These are long-standing negative characteristics that "X" has yet to overcome.

[145] Stephen Hepburn described "X" as a "very articulate" participant in programming and noted that he showed initiative after being locked down for behavioural infractions by taking it upon himself to catch up with work he had missed. Larry Priestnall testified that "X" is not having any problems in his programming right now: in Mr. Priestnall's words, "things are going well for ["X"] right now".

[146] "X" made a good initial adjustment to Waterville on being remanded there and attempted "to conform to the facility expectations."[147] He was described as generally making an effort to get along with all youth and "very sociable with staff." Stephen Hepburn, the unit supervisor for "X"'s unit who continues to have a high degree of involvement with "X", described him as "very personable, polite, and articulate" in the beginning. He was not a behaviour concern although he could be "loud on the unit." It was noted that he identified himself as a gang member and voiced a pro-criminal attitude.[148]

[147] Between May 10, 2013 when "X" was transferred to the Orientation and Assessment Unit to September 16, 2013, he received no disciplinary sanctions for the most serious breaches (Level III's) of facility rules and regulations. His institutional behaviour on the Orientation and Assessment Unit and in Unit 3, where he was transferred on June 26, 2013 was reasonably good. He was mostly disciplined

for only minor, nuisance-type breaches (Level I's) in both units with a couple of Level II's for intermediate breaches ("detrimental behaviour" and "harassment") while in Orientation and Assessment.

[148] In the fall of 2013, "X"'s behaviour began to deteriorate. He would refuse to follow staff direction and begin posturing, raising concerns that force would have to be used to secure his compliance. He received two Level II's for abusive language to staff and for disobeying a direct order. He did not always follow staff direction and was argumentative and upset about receiving sanctions. He was setting a bad example for the younger residents.

[149] On December 17, 2013 "X" received his first Level III for fighting. He was transferred to segregation for ten days. When he returned to Unit 3, he was sanctioned for not following staff direction and program non-participation, both Level I's. On January 18, 2014 he assaulted the youth he had fought in December. Staff had to resort to Use of Force when "X" ignored their direction to stop. He was given a Level III and sent back to segregation, this time for 15 days.[149]

[150] From the time of his return to Unit 3 until July 13, 2014, "X" was sanctioned on 17 occasions for detrimental behaviour and abusive language to staff (10 Level I's), detrimental behaviour, disobeying direct orders, threatening to punch another youth, and possession of contraband. (5 Level II's)[150] One of his Level II sanctions was for being in a physical altercation with another youth where "X" was not the aggressor and "did not throw any punches."[151]

[151] "X" received two Level III's in the summer of 2014: on July 14 for fighting in the gym, an offence that earned him 10 days in segregation and on August 16 for discussing setting up a fight between two other residents. He was sent to segregation for 6 days. Other rule infractions in the summer of 2014 included: detrimental behaviour, name-calling of staff, being disrespectful, and slamming his door in anger.[152]

[152] Waterville reported that in the period of April 25, 2013 to September 4, 2014, "X" was disciplined for a total of 42 incidents.[153] Of these, 38 were Levels I and II – 26 Level I's and 12 Level II's.[154]

[153] A theme emerged at Waterville that had been identified as a problem by his mother: "X" does not like to be given direction. Stephen Hepburn testified that "X" is "not very receptive" to being told to follow the rules. In his interview for the section 34 psychological assessment, Mr. Hepburn said that "X" did not respond well to the word "no" and "often gets defiant or had an attitude when denied a request."[155]

[154] In January 2014, "X" re-engaged with Dr. Naomi Doucette, a psychologist with Mental Health Services. She reported that he now appeared willing to address issues related to his offence and "target…problem areas" that include anger.[156] Dr. Doucette has noted that a trigger for "X" is the "perception that others are not respecting him." (This was confirmed by "X" in his interviews with Stephen Gouthro.[157]) According to Dr. Doucette, "X" was consistently attending his appointments with her and "appears open to participating in their sessions."[158]

[155] Sarah Rafuse testified that since the section 34 psychological assessment was completed, "X" has declined further mental health services. He participated with Dr. Doucette for several months but not since March 2014. I do not know why "X" stopped seeing Dr. Doucette.

[156] Since "X" has been in custody, he and his father have been in contact weekly. Every couple of weeks, "XX" goes to visit him at Waterville. "XX" testified that they have more time to talk now. They discuss "X"'s conduct in the facility, his family, and his behavior both before and since the shooting. "XX" uses these opportunities to mentor his son, advising him on how he can improve his experience in custody and what he could have done differently in certain situations.

[157] "XX" noted that "X" has been talking to him about his interest in getting a university education and having a career. "XX" testified that he would be able to help "X" out financially if he pursued post-secondary education.

Racial and Cultural Factors

[158] "X" submits that his race and culture are relevant considerations for me in determining the Crown's application for an adult sentence. He asks me to consider the evidence of his involvement in the Rites of Passage Program at Waterville and

the testimony of Robert Wright, a registered social worker who was called as a Defence witness. I will deal with Mr. Wright's evidence in some detail shortly. Before discussing it, I will describe Waterville's Rites of Passage program.

The Rites of Passage Program at the Nova Scotia Youth Facility

[159] The Rites of Passage program is an Afrocentric program "…designed to empower youth of African descent to reaffirm their cultural values and struggles through self-awareness, self-esteem, community building and enriching black consciousness and leadership."[159] It was most recently facilitated by Robert Smith through weekly meetings and group activities with the participant youth at Waterville.

[160] The program primarily consisted of weekly 20 to 30 minute individual sessions and group sessions. Mr. Smith, interviewed for the section 34 psychological assessment, indicated that he provided mentorship and opportunities for the participants to learn about the history of African-Canadians in North America. In group sessions, Mr. Smith addressed topics related to self-respect, self-image, financial issues, and violence.[160]

[161] "X" was an engaged participant in the program. Mr. Smith reported having "good or great" chats with "X".[161]

[162] Presently Waterville is looking for a new program facilitator as Mr. Smith has left. As Stephen Hepburn testified it is considered "an important core program" I assume finding Mr. Smith's replacement will be a matter of some priority.

Qualifying the Defence Expert, Robert Wright

[163] Robert Wright, MSW, RSW, was called by the Defence to testify about race and cultural factors relating to "X" The Crown opposed Mr. Wright being qualified as an expert and a voir dire was conducted into his qualifications. I qualified him to give opinion evidence on social factors relating to "…", the effect of those factors on "X", and rehabilitative recommendations for "X" Mr. Wright was also permitted to express his opinion about the absence in the psychological and psychiatric assessments of any reference to race and culture.

[164] Mr. Wright is a Registered Social Worker and presently a PhD candidate in Social Work, the recipient of the James Robinson Johnston Scholarship.[162] His career focus has been three-fold: clinical, administrative, and academic. He has a small private practice doing counselling work with individuals, including youth, groups, and families. He has done many parental capacity and custody access assessments in family and child welfare cases and has testified in court in relation to these assessments at least a dozen times. Mr. Wright is very familiar with reviewing file material, clinical interviews, psychological reports, educational records, and relevant literature, when preparing assessments. Since 2008 he has taught as a sessional and term instructor in the Departments of Education and Child and Youth Study at Mount Saint Vincent University.

[165] From May 2007 to July 2010, Mr. Wright worked at the Nova Scotia Department of Community Services as the Executive Director of the Child and Youth Strategy, a position established in response to the Nunn Inquiry. In this role Mr. Wright was responsible for the coordination of efforts involving five key government departments – Health, Education, Community Services, Justice and Health Promotion - working together to improve services to, and outcomes for, children and youth in Nova Scotia.

[166] Mr. Wright testified that his mandate as Executive Director of the Child and Youth Strategy included coordinating and managing the services needed for high-risk youth in the Province. He is familiar with the creation of IRCS sentencing as a vehicle for meeting the needs of high-risk youth.

[167] Mr. Wright also worked from July 2005 to June 2006 as a Social Worker/Principal Investigator with the Central Region Child and Youth Action Committee (CYAC) to develop a profile of students described as “youth-not-in-school” and an inter-agency method of practice to better serve them.

[168] Since the early 1990’s Mr. Wright has done clinical and consulting work around race and cultural issues. Over many years he has conducted cultural competence training for groups that have included lawyers and doctors. He has been on the Nova Scotia Barristers’ Society Race Relations Committee since the fall of 2009. From March 1994 to May 1996, Mr. Wright was the Race-Relations

Coordinator for the Dartmouth District School Board. The mandate of the position was to develop cultural competence with a view to improving the School Board's capacity to meet the needs of a diverse student body. Mr. Wright provided in-service training, supervision and consultation to all levels of administration and staff regarding issues of cultural competence and race relations. He also contributed to provincial educational initiatives, including curriculum and policy development.

[169] Mr. Wright has also been involved in numerous volunteer and civic endeavours. From 1992 to 1994, Mr. Wright was a member of the Mayor's Task Force on Drug Awareness, and from 1992 to 1997 served on the Uptown Community Futures organizing committee which co-authored an Afrocentric substance abuse program.

[170] From December 2011 to the present, Mr. Wright has been a member of the Afrikan Canadian Prisoner Advocacy Coalition (ACPAC), a national coalition that focuses on the intersection of race and culture with the criminal justice system. ACPAC contributed to the 2012 – 2013 Correctional Investigator's special report on Federally-sentenced African-Canadian offenders.[163] In his Report, the Correctional Investigator described ACPAC:

> ACPAC is a research coalition whose members bring a unique and distinctive mix of knowledge, practical skills, expertise and experience related to issues of the over-representation of African Canadians in Federal penitentiaries, mental health and marginalized groups, racial discrimination and cultural competence.[164]

[171] Mr. Wright has worked extensively on race-related issues in communities across Nova Scotia, including ["X's community"] . He was closely involved with the implementation of the Black Educators' Report on African-Nova Scotian learners in the Nova Scotia school system. He indicated that his work with the training of health providers and child welfare workers on delivery of service issues has contributed to his understanding of young people in ANS communities such as ["X's community"]. Asked about his qualifications for making recommendations

about rehabilitation, Mr. Wright noted his broad range of education and experience enables him to speak to this issue.

[172] Mr. Wright acknowledged that while he has never prepared a section 34 psychological assessment, he has administered actuarial and psychometric tests. As part of his Master's degree, Mr. Wright took a graduate course in the principles and skills of psychological assessment using tests and other procedures. He is fully qualified to administer all the psychometric tests that were used in the section 34 psychological assessment of "X"

[173] Two of Mr. Wright's scholarly works were introduced as evidence on the qualifications voir dire. In May 2012, he produced a paper for the Province entitled "Toward the Development and Implementation of a Violence Interruption Program in the Halifax Regional Municipality (HRM)."[165] The paper locates Mr. Wright as an African-Nova Scotian (ANS) and discusses such issues as: community displacement, economic collapse in ANS communities in HRM, increased demand for education in the province, and strategic recruitment of ANS into the criminal subculture, particular patterns of ANS violence, and looks toward a violence interruption program such as the Ceasefire model[166] developed in Chicago.

[174] In his Violence Interruption paper, Mr. Wright makes a couple of points I will mention here: he notes that "When violence is "Black on Black" it inevitably involves overlapping social and/or family ties between victim and perpetrator." He also observes that criminally identified African-Nova Scotians may be apt to have a violent response to "being "disrespected."[167]

[175] In January 2003, Mr. Wright authored a paper entitled: "Reflections of African Canadian/American Identity Development from Birth to Later Adolescence: Towards a Framework for Guiding Interventions."[168] Mr. Wright described this paper as conceptualizing race and culture and "how we develop a positive racial identity for African-Canadians."

[176] There was a thorough examination and cross-examination of Mr. Wright in relation to his CV and his experience, his employment, consultancy work, and his scholarly pursuits. Following the qualifications voir dire, I found that Mr. Wright

was shown to have acquired special or peculiar knowledge through both study and practical training and experience.[169] I determined he possessed "special knowledge and experience" that went beyond my own.[170] I noted that although Mr. Wright had never been previously qualified in the context of a sentencing where issues of race and culture were being raised, he has been qualified as an expert where race and culture were relevant in a family law setting.[171]

Robert Wright's Evidence

[177] Mr. Wright testified that what he attempted to do in his report[172] was,

> …take a look at the kind of broad historical context of race and crime and then talk about a community that is under pressure and is experiencing unique patterns of crime and violence and then look more specifically at ["X"] as a young person … from a criminally impacted African-Nova Scotian community…

[178] In preparation for his report and testimony, Mr. Wright reviewed the section 34 psychological assessment, the psycho-educational assessment, the psychiatric assessment, and the trial decision. Before reading the reports, he met with "X" and three members of "X"'s immediate family - his mother, his father, and his paternal grandmother.

[179] What Mr. Wright learned from his interviews was that "X" had grown up in a large, close, and extended family. "X"'s immediate family, other than his older brother, has had no significant, ongoing criminal engagement. His community was continuing to experience gun violence during the time when "X"'s behaviours were becoming more difficult. Mr. Wright understood "X"'s mother and father felt unable to control his behaviour outside the home. Nothing suggested that "X" was a significant problem within the home. Indeed, "X" enjoyed a special relationship with his paternal grandmother who is legally blind. She described to Mr. Wright the many ways that "X" was a help to her. "X" was always "extremely respectful of her and never brought trouble around her door."

[180] It was Mr. Wright's evidence that he talked with "X"'s mother about

> …the unfortunate reality that there are very few families in the community of "..." who have not been visited with this kind of tragedy. Almost everyone has a son, a nephew, a cousin who has either been shot or has shot someone, and so we talked about ["X"]'s offence in the context of those difficulties.

[181] According to "X"'s mother, the shooting has had a "devastating and difficult" effect on the entire, extended family. "X"'s paternal grandmother also spoke of this to Mr. Wright, indicating the "bitterness" that exists in the extended family as a result of "X"'s offence. In his interview with Mr. Wright, "X" described feeling "extremely upset and remorseful about the harm he had done to his family", that being his immediate family and "Y"'s family, acknowledging that he is the source of the tensions and heartache that his extended family is experiencing.

[182] Consistent with the section 34 psychological assessment, "X"'s father indicated to Mr. Wright that he has had grave concerns about "X" and his peer relationships for the three years prior to the shooting. "X"'s paternal grandmother spoke of her perception that if "X" and "Y" "were together in the same room or with family", they would be "fine", but that if "they were together in the presence of their separate friends there was bound to be conflict."

[183] Mr. Wright testified that "X"'s father located "X"'s offence in the context of very troubling patterns of criminal activity that, Mr. Wright indicates, have been "fairly well-established in ["X's community"]." It is Mr. Wright's opinion that "X"'s "early introduction to criminal behaviour, though it may include some influences from his brothers, was largely due to peer and other community influences."

[184] In his report, and elaborated upon in his testimony, Mr. Wright explained the social phenomenon that is occurring in communities "whose very fibers are affected by criminal activity." He described "X"'s community of "..." as "the flagship Black community in Nova Scotia" that has transitioned from a long history of being an intact, self-sufficient, if subsistence community to a present-day community experiencing intense social and economic pressures. ["X's community"] and African-Nova Scotian communities like it have undergone displacement of its

population base, economic collapse, lack of education or employment opportunities, and the challenges presented by external economic changes. Mr. Wright testified to the changes that ["X's community"] has experienced, as witnessed by elders such as "X"'s grandmother:

> ... a proud, relatively isolated, racially uniform community… and in the space of a generation and a half, the sons of deacons are going to jail in large numbers for pimping and for drug and violent offenses… to understand that phenomenon, one needs to understand it as a socio-cultural phenomenon that is like a future shock phenomenon, that is related to the dramatic shifts and changes in demographics and the like.

[185] Mr. Wright observed that this socio-cultural upheaval has led to an increase in criminal activity in the community and access to guns. He testified that:

> … These guns are being used in the context of personal conflict, not in terms of guns being used to enforce some kind of criminal enterprise but rather criminally engaged individuals who have guns using their guns to deal with personal matters…So we are talking about individuals who have access to guns because of their criminal activity, but to discharge their guns because someone has "dissed" them – disrespected them – or, hung with their girl or disrespected a member of their family or beat up their cousin or some other kind of personal kind of conflict. And that kind of pattern of violence is understandably particularly troubling and disruptive to the fabric of the community because it results in the violence being directed between people who are known to each other and are part of an intricately connected network of family and friends.

[186] Mr. Wright also raised the issue of "chronic racial trauma", and noted that there is "a growing literature that talks about the psychological effect of being raised as a racialized individual in a racially intolerant society." In his opinion, the assessment of an African-Nova Scotian needs to be "open to the…phenomenon of racial trauma and its effects." He referred to "micro-assaults" occurring when racialized children "leave the nurturing and racially informed cocoon of their family home" and encounter the public school system. Mr. Wright testified that the impact on their developing racial identity can be manifested in behavioural problems. He felt it was "highly likely" that "X" had experienced these racial traumas.

[187] In Mr. Wright's opinion, "X" is

> … A very conflicted young man. On the one hand, trying to hold on to this bravado of African-Nova Scotian male, criminalized tough guy; on the other hand experiencing shame, guilt, distress at what he's done to his family. He talked about the high degree of emotional distress that he experienced immediately following the shooting. He talked about recurrent thoughts about how his actions have affected his family. A kind of post-traumatic kind of revisiting. A desire to contact the family of his victim to apologize and as he described, "bleed my heart out to them"…

[188] Mr. Wright testified that "X" appreciates that he "is now a perpetrator of the same violence that he suffered and that…violence that has been disrupting his community and his family…" Mr. Wright testified that "X" grasps the significance of what he has done not only at a cognitive level but comprehends it at an emotional level as well.

[189] Mr. Wright does not see "X" as remorseless, cold and sophisticated. In his report he indicated that "X"'s "presentation and attitude, read as lack of remorse and anti-social, are also likely influenced by race and racial models for coping in the criminally affected community…" In Mr. Wright's opinion, the assessor needs to understand that "X" may be modeling a particular racial presentation and "get behind

that presentation to better understand the young person." And while Mr. Wright acknowledged on cross-examination that it was possible he was manipulated by "X", he testified that he did not believe that had happened. It is reasonable to think that as an African-Nova Scotian, Mr. Wright may have been able to connect with "X" through their shared racial and cultural heritage.

[190] Mr. Wright viewed the absence of any examination or analysis of race and culture in the assessments as preventing these issues from being addressed and understood in the context of "X"'s sentencing. He testified that assessments need to consider race and culture in order to "differentiate between what might be *bona fide* psychopathology and community socialization." Mr. Wright's view of the risk assessments for "X" was that they lacked any consideration of racial and cultural factors so he could not comfortably say "yes, those reports got it right."

[191] When asked on cross-examination whether "X", "a criminalized individual from criminalized community" will be harder to rehabilitate, Mr. Wright responded by saying it made "X" harder to assess, and raised the issue of whether the assessments done of "X" are wholly reliable.

[192] The recommendations for rehabilitation identified in the section 34 psychological assessment were endorsed by Mr. Wright -"individual therapy, individual addictions therapy, educational, vocational, prosocial leisure activities, pro-social support network development, training to promote independence…" with these measures informed by and specifically addressing "X"'s status as an African-Nova Scotian youth "who has been significantly impacted by this phenomenon of being raised in a criminally impacted racialized community." Mr. Wright also observed that "breaking the connection" between "X" and his peers is important for his rehabilitation.

[193] At the conclusion of his direct testimony, Mr. Wright observed there are "clear and systemic problems" with how the needs of African-Canadians are addressed in the criminal justice system. Although Mr. Gouthro testified that race and culture are more relevant to treatment than assessment, in Mr. Wright's opinion, understanding and addressing the unique racial and cultural factors of African-Canadians in the criminal justice system is "critical" at both the assessment and rehabilitative stages.

He testified that the assessments done of "X" reflected no awareness of the potential that the absence of any consideration by the assessors of race and culture could be a significant omission.

The Relevance of Evidence about Race and Culture in This Case

[194] I am not aware of a case dealing with the relevance of race and culture in the context of an African-Canadian youth who is the subject of an application for an adult sentence. In the context of sentencing adults, "systemic racism and background factors faced by black youths…" have been acknowledged as important and possibly influential in sentencing.[173] And although, in the context of an African-Canadian offender, the seriousness of the offence has been identified as so determinative a factor in sentencing that "systemic and background factors could not affect the length of the sentence"[174], this was said in the context of sentencing an adult where consideration of denunciation and deterrence is mandated. By contrast, as I noted earlier in these reasons, in determining an application for an adult sentence under the *YCJA*, the factors to be taken into account expressly include the young person's background. And furthermore, although denunciation and deterrence are now available considerations for judges imposing a youth sentence under the *YCJA*, the application of these factors is discretionary.

[195] The Ontario Court of Appeal has recognized, in the context of sentencing an adult offender, that the sentencing principles,

> … generally applicable to all offenders, including African Canadians, are sufficiently broad and flexible to enable a sentencing court in appropriate cases to consider both the systemic and background factors that may have played a role in the commission of the offense and the values of the community from which the offender comes.[175]

[196] It cannot be that systemic and background factors will have currency only in the case of an appropriate adult African-Canadian offender[176] and not in the determination of whether an African-Canadian youth should be sentenced as an adult. It is relevant to note that section 3(1)(c)(iv) the *YCJA* provides that "within

the limits of fair and proportionate accountability, the measures taken against young persons who commit offences should…respect gender, ethnic, cultural and linguistic differences…"

[197] Like Aboriginal Canadians, persons of African descent are over-represented in prisons and jails in this country. The Office of the Correctional Investigator has determined that Black offenders now account for 9.5% of the total Federal prison population while representing just 2.9% of the Canadian population.[177] The Ontario Court of Appeal has observed that the underlying reasons for the over-representation of Aboriginal offenders in Canada's prisons – poverty, substance abuse, lack of education, lack of employment opportunities, and dysfunctional communities - could also be factors in the over-representation of African-Canadians. The Court viewed the consideration of such factors as a legitimate undertaking for a sentencing judge, saying however, "…this is a matter that should be addressed at trial where the evidence can be tested and its relevance to the particular offender explored."[178]

[198] "X" has put this evidence forward to be considered in the evaluative process I must undertake with respect to the Crown's application. I have asked myself what the evidence of Robert Wright contributes to the process of determining whether the presumption of "X"'s diminished responsibility has been rebutted such that he is no longer entitled to its protection? I find it raises significant questions about the assessment of "X" as a criminally-entrenched, sophisticated youth. It provides a more textured, multi-dimensional framework for understanding "X", his background and his behaviours. "X" has been both a perpetrator and a victim of violence in the context of his criminally-impacted community. Mr. Wright's evidence gives me a lens through which to view "X" in determining this application. And it suggests that "X"'s character and maturity are still in a formative stage. Mr. Wright encountered a significantly conflicted young person, still located in his loving, pro-social family, who is struggling with his identity in the context of a criminally-impacted community that has incubated mistrust, rivalries, and violence.

Accountability in Context

[199] To determine what constitutes accountability for "X", I must consider, in addition to the factors I have been discussing, what a youth sentence for "X" would look like and what an adult sentence would look like.

Accountability in the Context of a Youth Sentence

[200] Ms. Thompson has submitted that I should be satisfied that the maximum allowable youth sentence for attempted murder - three years - on top of the time "X" has spent on remand constitutes a sufficiently lengthy sentence for the purposes of accountability.

Remand Credit

[201] "X" is not seeking any remand credit for the time he has already spent in custody since his arrest on April 24, 2013. In Ms. Thompson's submission, "X"'s remand time should be factored into the accountability assessment. A three year youth sentence going forward after almost 19 months in custody – which Ms. Thompson says is the equivalent of 28.5 months at a 1.5 to 1 calculation – is a lengthy period of custodial accountability.

[202] Although in *R. v. Skeete*[179] I was confronted by the Crown's position that the *YCJA* does not provide for a young person waiving his or her remand credit and that therefore, time on remand has to be treated as part of the young person's custodial sentence, that submission was not made by the Crown in "X"'s case. In *Skeete*, I found that actual credit for remand time does not have to be given, resting my determination of this issue on what our Court of Appeal has said in *R. v. J.R.L.*[180] and what appears to me to have been the approach taken by the Supreme Court of Canada in *R. v. D.B.*[181] where the Court upheld a maximum sentence that had been imposed on top of a significant amount of remand time.

[203] I am satisfied that there are other ways to take remand time "into account" as required by section 38(3)(d) of the *YCJA* besides awarding actual credit for it.

The Unavailability of an IRCS Sentence

[204] An IRCS sentence is comprised of two parts: (1) a committal to intensive rehabilitative custody, to be served continuously, and (2) a placement under

conditional supervision to be served in the community. An IRCS sentence can only be ordered if certain prerequisites are met. In “X”’s case, his offence and psychological profile qualify him: he has been convicted of attempted murder and he has been assessed as having a Severe Conduct Disorder, which qualifies as "a mental or psychological disorder".[182] However there is no recommendation before me for an IRCS sentence for “X”

[205] Usually such a recommendation would appear in the Recommendations section of the section 34 psychological assessment. Examples of this are found in *R. v. T.P.D., [2009] N.S.J. No. 556 (S.C.)* and *R. v. A.J.D., [2009] N.S.J. No. 78 (S.C.), paragraphs 15-22*. Although the section 34 psychological assessment recommends various therapies and counseling for “X”, as well as other programs and activities, there is no description of "a plan of treatment and intensive supervision" which is the language used in section 42(7)(c) of the *YCJA* that governs IRCS' sentences. And crucially, no express reference to an IRCS sentence is made anywhere in the March 28 section 34 psychological assessment.

[206] At the end of Stephen Gouthro’s testimony, I put questions to him about whether an IRCS sentence had been considered by him in preparing his opinion and recommendations in the March 28 section 34 psychological assessment. He responded by indicating that in his opinion, a three year IRCS sentence would still be inadequate to manage “X”’s risk. I will note that Mr. Gouthro offered this opinion without the benefit of the details of an IRCS treatment plan which means there could be no exploration of what might be made available in this case through IRCS funding to address “X”‘s issues.

[207] Not only does Mr. Gouthro not support an IRCS sentence for “X”, there has been no "buy-in" for an IRCS sentence by the Provincial Director. The *YCJA* requires that the Provincial Director determine that an IRCS program is available and “that the young person's participation in the program is appropriate."[183]

[208] It is difficult to see how the Provincial Director would ever get behind an IRCS sentence where the section 34 psychological assessment does not recommend one. This has the effect of taking the ability to even order an IRCS assessment out of the hands of the sentencing judge. If the psychological assessment does not

recommend a youth sentence then an IRCS sentence does not get on the radar. I am left to wonder whether in some cases this will mean that while a "conventional" youth sentence might fail to satisfy the requirement of accountability, an IRCS sentence could. The inability to consider an IRCS option could mean a young person who should get a youth sentence ends up sentenced to the penitentiary. If this is a resource issue, then a grave disservice is being done to youth who commit very serious crimes and to the communities where these crimes have been committed and where the youth will, in most cases, eventually return.

[209] These musings aside, as I do not have in "X"'s section 34 psychological assessment a recommendation for a youth sentence, my determination of an appropriate sentence for "X" does not include considering an IRCS sentence. The legislated prerequisites have not been satisfied.

Programming at the Nova Scotia Youth Facility

[210] Stephen Hepburn testified that the programming at Waterville consists of: music therapy, chapel, the academic program, a cognitive based, education-based substance abuse program, and a Reasoning and Rehabilitation program. The Reasoning and Rehabilitation program is a life style, anger management-type program that runs twice a week for 22 sessions. Larry Priestnall testified that the 22 weeks can take 3 – 4 months to complete.

[211] Waterville has no specialized program for youths convicted of serious violent offences such as murder or attempted murder. None of the programming is offered in higher levels for youths who had completed the basic components. Once a youth has completed a program, such as the substance abuse or Reasoning and Rehabilitation programs, he is eligible to take the same program again. Upon completion of these programs, a youth can take a leadership role when undertaking the program again. Waterville tries to make all its programming available to all of the youth in custody: Mr. Hepburn testified that lengthy youth sentences are not commonplace.

[212] "X" has already completed the Reasoning and Rehabilitation program once, receiving a certificate. He has done the Substance Abuse program twice and is starting it for a third time.

[213] A new program would be available to "X" if he receives a youth sentence. The new program is Waterville's "24/7" program, offered by the youth facility in its building off campus. Larry Priestnall testified that the 24/7 program is a "learning by doing program" involving such activities as hiking, camping, rock climbing, and utilizes community reintegration strategies. A youth has to qualify for Reintegration Leave (RL) in order to be accepted into the 24/7 program.

[214] Larry Priestnall described the approach taken by the program: within one month of acceptance into the program, Waterville does a case conference. In the meantime an RL package is prepared. This can include structured, supervised activities in the local community and the possibility of parents taking the youth out of the institution with a youth worker. Eventually there may be a chance to go home for a couple of days, if appropriate, or spend a weekend in the local community with family. This usually happens just before the youth is released. All of these activities are privileges that have to be earned. The goal is to foster and support reintegration.

[215] Waterville also offers work opportunities, in the kitchen working with the cooks, preparing meals and cleaning up; maintenance work in the institution – cleaning, taking out garbage; and grounds work such as grass cutting and gardening. Youth learn basic job skills as well as managing responsibilities and expectations.

[216] "X" told Stephen Gouthro that he viewed Waterville as a "good place to rehabilitate" by which he said he meant that there were "more opportunities for youth to experience things" than in prison.[184]

Reintegration into the Community – The Community Supervision Portion of a Custody and Supervision (Youth) Sentence

[217] The community supervision portion of a Custody and Supervision Order (CSO) imposed under the *YCJA* pursuant to section 42(2)(n) is required to contain mandatory conditions set out in section 97(1) and may contain other conditions set by the Provincial Director under section 97(2). What follows is a plan proposed by

"X" for the community supervision portion of his sentence, should he receive a youth sentence.

[218] "X"'s father, "XX", has discussed with "X" the outlines of a plan for the community supervision portion of a youth sentence. "XX" has an uncle, "AA", who lives in southwest Nova Scotia, a considerable distance away from ["X's community"] . "AA" spent six years in prison for attempted murder in the early 1970s. He has been in no trouble with the law since then. "XX" described his uncle as putting him on "the straight and narrow" and always trying to show him "right from wrong." In "XX."s words, his uncle: "… laid it on the line, that where he came from is not a place I'd want to be."

[219] "AA" is 77 years old. He lives on a fixed income in a three-bedroom bungalow on 4 acres approximately 10 to 15 minutes by car from "…". The closest neighbours are a 10 minute walk. When one of "XX"'s other sons got into trouble, the family sent him to live with "AA". That son was able to get his life back on track. "XX" testified that locating "X" with "AA" would keep him away from his current friends who are still residing in ["X's community"]. "XX" testified that the family's "biggest thing is to get "X" away from the community until he matures." It was "XX"'s evidence that "X" has respect for "AA" and would not run off.

[220] "XX" indicated his willingness to provide, with "X"'s mother, financial support while "X" lived with his uncle. "XX" testified that it would be possible for his son to get work with the construction company where "XX" is employed. He plans to be more involved in "X"'s life.

[221] "XX" believes that "X" "needs help to deal with what he's done." He sees "X"'s family "pulling together more strongly to get him the professional help he needs." He did acknowledge that despite the previous efforts made to deal with "X"'s issues and de-escalate the tensions between "X" and "Y", "X" still went ahead and shot "Y"

Accountability in the Context of an Adult Sentence

[222] I will repeat here what I said in *Skeete*[185]:

200 Although section 72 of the *YCJA* does not explicitly indicate that it is relevant to consider what an adult sentence would involve, there is clear precedent for not merely focusing on what constitutes a youth sentence. For example, the Nova Scotia Court of Appeal in the 2009 *Smith* decision (*Garmen Davison Smith*), noted on a number of occasions, either without adverse comment or with express approval, that the sentencing judge had considered the programs offered at the youth and adult institutions. (*Smith, paragraphs 10, 51, and 66*) In upholding the judge's decision to impose an adult sentence on Smith, Hamilton, J.A. held that no error had been committed by the judge failing to specifically address certain differences between youth and adult correctional settings. These differences were not treated as irrelevant however. Hamilton, J.A. had this to say: "The fact that the judge did not expressly advert to the differing conditions between adult and youth facilities does not persuade me that he was not alive to these issues." (*Smith, paragraph 51*) This statement places a positive onus on sentencing judges "being alive" to conditions in both the youth and adult correctional institutions.

201 I believe it is difficult to consider the pivotal issue of accountability without an appreciation for what an adult sentence involves. In *T.P.D.* Hood, J. viewed the issue this way: "Which sentence ... best balances the two-fold objectives of accountability, meaningful consequences for the offence and the promotion of rehabilitation and reintegration?" (*T.P.D., paragraph 150*)

Programming in the Federal Correctional System

[223] Susan Dunne, now the manager of Assessment and Intervention at Springhill Penitentiary, was the program manager for the last five years. She described programming in the context of an adult sentence.

[224] Springhill Penitentiary is the regional Reception center. Newly sentenced offenders from the Atlantic region are sent there for a 90 day period before being "pen placed." Offenders in reception at Springhill are double-bunked. Ms. Dunne testified this means offenders are locked up together for as long as 12 – 14 hours per day.

[225] During the time in Reception testing is undertaken using actuarial tools and a correctional plan is developed. A program officer meets with the offender to assess programming needs.

[226] Penitentiary placement – "pen placement" - is determined by actuarial tools with the Springhill Warden making the final decision. Springhill houses offenders classified as Medium Security: in the Atlantic Region, offenders receiving a Maximum Security classification are sent to Atlantic Institution in Renous, New Brunswick. The actuarial tools drive the security classification unless there is a rare CSC classification override.

[227] Ms. Dunne testified that an offender sentenced for attempted murder is very unlikely to start out at a Medium Security institution. However CSC would probably try to keep a young person with his first Federal sentence in a Medium Security institution if his behavior in reception had been acceptable.

[228] An offender who is following his correctional plan and the objectives set out for him by his Case Management Team may be successful in having his classification lowered. Correctional plans are reviewed every two years.

[229] In the Atlantic region, programming is delivered through the Integrated Correctional Program Model (ICPM). The ICPM has been piloted as the model for the rehabilitation of federally-sentenced offenders in the Atlantic and Pacific regions. It is a cognitive/behavioural, group-based model. Offenders are assigned to either the moderate intensity or high intensity program depending on the assessment of their risk. The high-intensity program consists of 100 sessions over 5 to 6 months: the moderate intensity program is 50 sessions taking approximately 4 months. Participation in programming is voluntary. Ms. Dunne testified that whether the ICPM is the best program delivery model has not yet been determined.

[230] The ICPM is focused on helping offenders examine their risk factors that led to their criminal behaviour, and developing skills – interpersonal and communication skills – and arousal reduction techniques. The program emphasizes problem-solving and goal-setting. It relies heavily on relapse prevention. The program is full-time, about 3 to 4 hours per day in a classroom setting. Offenders will also be given worksheets and required to prepare journals and relapse prevention plans. Offenders have individual sessions with program facilitators as well. A report is completed at the end of the ICPM identifying what outstanding issues remain to be addressed.

[231] Once an offender has completed the ICPM he can participate in the maintenance program at the institution to help build and solidify skills. Offenders are also accountable to their Case Management Team with whom they will discuss their progress. Regular meetings with their institutional parole officer are required where offenders are challenged on their attitudes and thinking.

[232] Access to programming is based on the length of an offender's sentence. Offenders serving a longer sentence can face a delay getting into programming as priority is given to offenders serving shorter sentences. Other programs offered in the federal correctional system are delivered through chaplaincy and recreation. Recreation programs include gym, woodworking, ceramics, and music.

[233] Although there are psychologists employed by CSC under mental-health initiatives, with Springhill currently having a full complement, access is still limited. Segregation placements and suicidal offenders are given priority on psychologists' caseloads. An offender can self-refer to see a psychologist or be referred by his Case Management Team.

[234] The Federal Correctional Service has no specific anger management programming, does not offer music therapy, or any specific institutional programming for offenders with African heritage.[186] The academic program is a GED program and some vocational testing if an offender does not have Grade 12. There are a couple of free programs, mechanical programs and drywall. The Correctional Service of Canada does not pay for any postsecondary education so an offender has to bear the cost himself for any university correspondence courses.

[235] In addition to programming, Federally-sentenced offenders are also expected to work to develop and strengthen skills in attendance, punctuality and performance.

[236] No special accommodations are made for youth and no special programs or integration has been developed by CSC.

[237] Ms. Dunne acknowledged that violence, muscling, weapons, and assaults are part of the Federal Correctional environment. Drugs and contraband, such as tobacco, create significant difficulties for prisoners and the institution – inflated prices for prohibited commodities, a lot of intimidation and debt collection. A thriving underground economy exists despite institutional security and intelligence gathering, searches of prisoners, drug dogs, counts and movement control, and cell searches.

[238] "X"'s father expressed grave concerns about "X" receiving an adult sentence. He said: "I know the adult system…I've lived it." In his view it just teaches an offender how to be a better criminal. He is fearful of what an adult sentence will mean for "X"'s rehabilitation: "He'll be put away for too long…and not get the help he needs."

Placement

[239] Pursuant to section 92 of the *YCJA*, it is a decision of the Youth Justice Court whether "X", if sentenced as a youth, would remain at Waterville after his 18th birthday until he is 20 years old. A transfer to an adult institution of a 20 year old sentenced as a youth is mandated unless the Provincial Director orders otherwise. "X" will not turn 20 before the end of the custodial portion of a youth sentence of three years. If sentenced as a youth, there is a real possibility "X" could serve the entire custodial portion of a CSO at Waterville.

The Evaluative Process – Determining the Sentence that will hold "X" Accountable

[240] I previously noted the factors I must consider in the evaluative process to determine if "X" has lost the protection afforded by the *YCJA* on the basis of diminished responsibility: the seriousness and circumstances of the offence; "X"'s age, maturity and character; his background and prior record; and other relevant

factors, including his race and culture. These factors all inform the analysis of whether the Crown has met its onus on this application.

[241] The determination of whether "X" should be sentenced as an adult would be less complicated if the only factor to be considered was the seriousness of the offence. But Parliament has contemplated that youths convicted of attempted murder may be sentenced to a maximum youth sentence of three years. Attempted murder with its essential element of the intent to kill is always going to be a very serious offence although obviously the circumstances in which it is committed will vary.

[242] This was an attempted murder at the higher end of the spectrum: although impulsive and motivated by a distorted sense of threat, "X" engaged in a brief deliberation before shooting "Y" and inflicted injuries that nearly killed him. But that is not all I have to evaluate. I have to consider all the evidence I have heard and, taking all the factors into account, determine whether "X" should receive an adult sentence.

The Criminally Sophisticated Teenager – Does This Describe "X"?

[243] Mykel Smith, sentenced in the Nova Scotia Youth Justice Court as an adult to 14 years for attempted murder met the description of "an arrogant, cold and criminally sophisticated teenager."[187] Does this describe "X"? And how do their offences compare – the attempted murder committed by Smith and the attempted murder committed by "X"? The Crown submits that there are strong parallels between these young men and their offences although it is the Crown's view that "X"'s offence was of an even more egregious character, justifying not only the application to have "X" sentenced as an adult but the imposition of a sentence of life imprisonment.

[244] As the Mykel Smith facts have been given some attention in this case, I have compared them to the facts of the attempted murder by "X" of "Y" In *Smith*, Judge Campbell found that the shooting of the victim, Michael Patriquen, was a "hit." He made the following factual findings: very late one night, Sergio Bowers and his friend, Michael Patriquen, got into a dispute. In the course of the dispute, after trying to threaten and intimidate Patriquen, Bowers called Smith, a friend of his who did

not know Patriquen. He told Smith to bring a gun and "fuck [Patriquen] up." Smith stole his grandfather's truck and, with Bowers' help on directions, drove to Patriquen's house and shot him at point-blank range. Judge Campbell described the circumstances of the shooting this way:

> Sergio Bowers called in a hit on Michael Patriquen in the early morning hours of November 11th…M.C.S. went to the home of Michael Patriquen and shot him in the chest…M.C.S. came to the house on the instructions of Sergio Bowers. He did not know Michael Patriquen. He had no quarrel with him. Michael Patriquen was a stranger to M.C.S. It was purely a "hit." It was a cold-blooded act, carried out in a coldly calculated fashion…M.C.S. came to the door. Their eyes met for a few moments. No words were exchanged...[188]

[245] In sentencing Mykel Smith, Judge Campbell observed that there were features of this attempted murder that made it "especially disturbing." Mykel Smith and Michael Patriquen were strangers. There was nothing personal between them, "… No grudge. There was no argument…This was not a case where young person was caught up in a moment, or driven by rage, anger, jealousy or revenge."[189] Judge Campbell noted that: "This was not something that got out of control. This was something that was, on the contrary, very controlled."[190]

[246] Mykel Smith was 17.5 years old when he very nearly killed Michael Patriquen, who survived as a paraplegic. He had a record of 14 prior offences, one of which involved the stabbing of a taxi driver.[191] In the psychiatric assessment prepared for Smith's sentencing his personality was said to be the kind that "makes for good mercenaries."[192]

[247] In considering the *Smith* case I have also asked myself whether "X" should be understood to resemble the teenager that Mykel Smith was said to be. Mr. Gouthro testified that "X" "portrayed himself as a fighter, as a sophisticated criminal involved in diverse criminal endeavours." As I noted when discussing "X"'s character, Mr. Gouthro also recognized "X"'s tendencies to exaggerate and embellish and

commented on how his boasts might be accounted for by "immaturity and a degree of impulsivity."[193]

[248] All of the evidence about "X", taken together, supports a more complicated, nuanced personality than the one that "X" seems to have put on display to the section 34 assessors. Robert Wright's description of "X" has to be factored into my understanding of who "X" was and is: in Mr. Wright's assessment, "X", a "deeply connected and well-loved grandson, son, brother, cousin and uncle" is "at war with the gun-toting hardened gangsta image that he has been cultivating in recent years." Mr. Wright described how "X"'s "presentation and attitude" which suggests a lack of remorse and anti-social attitudes, are likely to have been "influenced by race and race models for coping in a criminally-affected community." The criminally-affected character of "X"'s community has been revealed through "X"'s own evidence, the evidence of Mr. Wright, and the very fact of "X"'s own victimhood – the shots fired at his home and the serious stabbing he experienced at 14, perpetrated in all likelihood by someone he knew. Taking all the evidence into account, I am not satisfied that when "X" shot "Y" he had become the image he claims to have been cultivating. Still at home with his mother, he was a teenager getting caught up in dysfunctional community dynamics.

[249] Although there was calculation in "X"'s decision to fetch the rifle and shoot "Y" in an attempt to kill him, a chillingly violent act, this was an attempted murder fueled by emotion - anger, rivalry and an irrationally perceived threat. This was the dreadful climax to a relationship that had unraveled. There was a grudge, a very deep abiding grudge. Mykel Smith and "X" each acted with a heinous lack of regard for their victims' lives but I find the facts of these two cases and the character of the perpetrators to be readily distinguishable. Mykel Smith and the facts of his case do not provide me with a reference point for determining the Crown's application to have "X" sentenced as an adult.

[250] I find that when "X" shot "Y" he was not a hardened, criminally sophisticated teenager who had the makings of an effective mercenary. "X", at 16, was an immature, conflicted teenager who committed a shocking crime off the chart in

terms of his previous criminal offences and activities. He was a vulnerable young person with a reduced capacity for moral judgment.[194]

Other Cases

[251] Both Crown and Defence provided, and I reviewed, a significant number of cases where young people have been sentenced for violent offences, including murder, attempted murder, and aggravated assault. As the facts of the offences and the circumstances of the young persons are unique to each case, I did not find they assisted me although I appreciate the effort made by counsel. Reading the cases did serve to remind me once again how profoundly contextualized and nuanced sentencing is. I also saw that even in cases where the attempted murder was plainly a failed attempt at a first degree murder with catastrophic injuries to the victim, the young person receiving an adult sentence was not give a sentence of life imprisonment.[195] What the Crown is seeking here is unprecedented.

Has the Crown Rebutted the Presumption of Diminished Responsibility and is a Three-Year Youth Sentence Long Enough to Hold "X" Accountable?

[252] Despite the very serious offence committed by "X", its grave violation of societal norms, and the harm caused to "Y" and their respective families, I am not satisfied that the Crown has rebutted the presumption of diminished responsibility in this case. I find that when "X" shot "Y" he was an immature, dependent 16 year old caught up in the dysfunctional dynamics of his community, dynamics that are relevant to my understanding of his context, background, and choices. He acted impulsively. His thinking was distorted and profoundly anti-social. He has made some tentative progress toward appreciating the magnitude of the harm he has caused. The evidence satisfies me that an adult sentence will likely derail "X"'s chances to be rehabilitated, undermining the protection of the public objectives of the *YCJA.*

Programming and Rehabilitation

[253] A youth sentence must be sufficiently long to hold a young person accountable for his offence. A sufficiently lengthy sentence cannot simply be a calculation of time: it must be informed by the programming and treatment that will be available

and be long enough to promote the young person's rehabilitation. But a youth sentence does not have to ensure that the young person will be rehabilitated. Successful rehabilitation is impossible to predict with certainty.[196] In the words of the Ontario Court of Appeal:

> …There is no guarantee that any sentence, however skilfully fashioned, will ensure the rehabilitation of an offender. What is required under the YCJA is that the sentence imposed has meaningful consequences for the affected young person and that it promotes his or her rehabilitation and reintegration into society…

[254] An underlying premise of the *YCJA* is that "… with some exceptions, young persons who commit crimes can be rehabilitated and successfully reintegrated into society so they commit no further crimes…"[197] The legislation's objective of protecting the public is to be achieved by holding young persons who have committed offenses accountable through proportionate measures and promoting their rehabilitation and reintegration[198]. It is obvious that the sentence that best promotes rehabilitation and reintegration is the one that best protects the public.

[255] In the section 34 psychological assessment Mr. Gouthro observed that the issues needing to be confronted for "X"'s rehabilitation "can be effectively targeted and addressed in either an adult or a youth correctional facility."[199] He acknowledged in his testimony that he was not aware of the programming available to offenders in Springhill Penitentiary. I have just described the evidence I received concerning that programming.

[256] I note that programming in the Federal penitentiary system is voluntary although participation is taken into account in assessing privileges and parole. Programming at Waterville is mandatory. I will also note that the penitentiary system programming is a one-size-fits-all model with no special features, accommodations or adaptations to meet the needs of youthful offenders. In my sentencing decision in *Skeete*[200], I observed that this issue has been commented on by the Correctional Investigator whose reports are publicly available on the Office of the Correctional Investigator's website. The Correctional Investigator has said:

> This Office has often pointed out that the Correctional Service does not meet the special service and program needs of inmates aged 20 and younger. These younger offenders ... very often find themselves in disadvantaged situations - segregation, abuse by other inmates, limited access to and success in programming, gang affiliations and delayed conditional release ... The Correctional Service does not provide special housing, programming or other services for younger offenders. While the Correctional Services' position is that programs available to all inmates can be adapted to meet the needs of younger offenders, the reality is that these young men and women continue to find themselves in the disadvantaged situations described above.[201]

[257] The Correctional Investigator has also identified concerns about the relevance of the Correctional Service's programming to racialized offenders. His 2012-2013 Annual Report observed:

> While Black offenders felt that CSC programs provided them with important tools and strategies, they did not feel that they adequately reflected their cultural reality. Black inmates reported that they could not see themselves reflected in program materials and activities and they felt these were not rooted in their cultural or historical experiences…[202]

[258] The OCI's full Case Study of Diversity in Corrections contains a more expansive description of the importance to Black offenders of culturally relevant programming. Offenders,

> …felt that their life experiences were very much shaped by the culture they grew up in and thus what led them to committing a crime may be very different than that of

> other inmates. Black inmates reported that they believe programs would be more effective and they would get more from the programs if they were to more closely reflect their experiences…[203]

[259] Also identified by the Correctional Investigator as disadvantaging to Black offenders was the lack of community support, with many Black inmates never having "seen, spoken with or met anyone from a Black community group while incarcerated, though most expressed a strong desire to develop and maintain these community linkages."[204]

[260] As noted by the recommendations in the section 34 psychological assessment[205], an important component of "X"'s rehabilitation will be the active role of his family and, I would add, members of the African-Nova Scotian community who can mentor him. "X" is acutely aware now of how deeply he has hurt and disappointed his family: his immediate family will want to see him commit to making significant changes and it will be necessary for him to work very hard to regain their trust and confidence. Much has now been revealed about the extent of his anti-social activities and alliances. "X" is no longer flying under his family's radar and will have to make fundamental changes to satisfy their expectations of him.

[261] Mr. Gouthro testified that a major factor in "X"'s rehabilitation will be his motivation. In his opinion, it will be necessary for "X" to be affected "in such a negative way that he wants to change." Mr. Gouthro went on to say that he would be hoping that sentenced to a federal penitentiary "X" would "attach himself to people actively interested in rehabilitation." I have very profound reservations about the likelihood of that happening. How likely is it that an immature teenager who is already struggling with his identity and affiliations will be successful in finding pro-social mentors in a Federal prison population? I believe that prison will affect "X" in a negative way that will undermine the potential for him to change.

[262] While recognizing that the risk of "further pro-criminal socialization" is present in both youth and adult correctional institutions, Mr. Gouthro noted that "The research literature has indicated that youth who are transferred to adult institutions

do not tend to meet favourable outcomes in terms of recidivism."[206] Mr. Gouthro acknowledged that there are more serious offenders in the Federal penitentiaries than in youth facilities. On cross-examination he agreed it is a concern that in the adult system "X" will be exposed to more negative, sophisticated influences and said he "could see things go worse for ["X"] in the adult system." I think that "things going worse" for "X" in the Federal prison system is highly probable.

[263] In assessing "X" as an inappropriate candidate for a youth sentence, Mr. Gouthro viewed him as having "demonstrated himself to be treatment resistant."[207] I do not find that to be a wholly reliable conclusion at this time. It is certainly true that previous interventions, all undertaken at home, at school, or in the community, were unsuccessful. "X" either declined services or became disengaged. His anti-social behaviour continued, culminating in the nearly fatal shooting of "Y" However there is clear evidence of "X" responding well to interventions at Waterville that have included educational and therapeutic programming. It is very disappointing that he appears to have discontinued sessions with Dr. Doucette but a further lengthy period of youth custody would permit that relationship to be re-established.

[264] A three year youth sentence is not a short or lenient sentence, especially taking into account in this case "X"'s time spent on remand. Three years following a lengthy period in custody already is a long time in the life of a teenager. It is a sentence that can permit the implementation of the recommendations made in the section 34 psychological assessment and in the psychiatric report, which I reviewed in paragraphs 121 and 139 of these reasons. Unlike the Federal penitentiary system, the Youth Facility at Waterville provides specialized programming for young persons - young persons are its sole focus - and recognizes programming relating to race and culture as central to its programming mandate.

[265] A three year youth sentence in this case recognizes "X"'s "heightened vulnerability, immaturity, and reduced capacity for moral judgment"[208], and is long enough to satisfy the requirements of accountability. It is an "objective, reasoned and measured determination" of "a just and appropriate punishment, and nothing more."[209]

[266] I am imposing a three year Custody and Supervision Order on "X" for Count 1, attempted murder, a concurrent three year Custody and Supervision Order for Count 2, use of a firearm while committing the indictable offence of attempted murder, and concurrent to the three year CSO, CSO's of 90 days each, concurrent to each other, for Counts 6 and 7 – possessing a rifle for which he did not have a registration certificate and possessing a rifle knowing he did not have a license or a registration certificate. The CSO's shall contain the mandatory conditions found in section 97(1) of the *YCJA* for the community supervision portion of the sentence.

Ancillary Orders

[266] I am imposing a mandatory DNA order and a weapons prohibition order under sections 109 of the *Criminal Code* and section 51(1) of the YCJA, for life.

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[1] *R. v. "X" , [2013] N.S.J. No. 713, paragraph 125*

[2] *R. v. "X" , [2013] N.S.J. No. 713, paragraph 127*

[3] "X" was convicted on December 20, 2013. Although setting "X"'s sentencing for March 2014 was thought to provide enough time for the completion of section 34 psychological, psycho-educational and psychiatric reports, it became apparent that the clinicians preparing the reports required additional time. Consequently "X"'s sentencing was adjourned to dates at the end of May. However a further adjournment was required when Ms. Thompson advised that she was exploring the possibility of retaining an expert. This was confirmed on April 17 and "X"'s sentencing was re-scheduled to, and proceeded on, September 30 – October 3 as well as October 14 and 31.

[4] *R. v. C.M., [2013] A.J. No. 172, paragraph 38 (P.C.)*

[5] *Youth Criminal Justice Act, sections 38(2)(b); (c); (e)(i)(ii)(iii)*

[6] Exhibit 2

[7] Exhibit 3

[8] Exhibit 4

[9] Exhibit 1

[10] Exhibit 7

[11] Exhibit 14

[12] Exhibit 15

[13] Exhibit 16

[14] Exhibit 17

[15] Exhibit 18

[16] *[2009] O.J. No. 4123, paragraph 15 (S.C.J.)*

[17] *R. v. D.B., [2008] S.C.J. No. 25, paragraphs 68* and 77

[18] *R. v. D.B., [2008] S.C.J. No. 25, paragraph 93 (emphasis in the original)*

[19] *R. v. D.B., [2008] S.C.J. No. 25, paragraph 41*

[20] *R. v. A.O., [2007] O.J. No. 800 (C.A.), paragraphs 38 and 34*

[21] *R. v. Garmen Smith, [2009] N.S.J. No. 30, paragraph 39*

[22] *R. v. Ferriman, [2006] O.J. No. 3950, paragraph 38*

[23] *R. v. Ferriman, [2006] O.J. No. 3950, paragraph 38*

[24] *R. v. A.O., [2007] O.J. No. 800 (C.A.), paragraph 59*

[25] *R. v. Smith, [2009] N.S.J. No. 30, paragraph 28*

[26] *R. v. Lights, [2007] O.J. No. 1516, paragraph 42(O.C.J.)*

[27] *R. v. B.W.P.; R. v. B.V.N., [2006] S.C.J. No. 27, paragraph 4*

[28] *R. v. M.(C.A.), [1996] S.C.J. No. 28, paragraph 80; emphasis in the original*

[29] *R. v. A.O., [2007] O.J. No. 800 (C.A.), paragraph 57*

[30] *R. v. Mykel Smith, [2010] N.S.J. No. 461, paragraph 110 (Y.J.C.)*

[31] *R. v. J.S.R., [2009] O.J. No. 1662, paragraph 41 (S.C.J.) (Nordheimer, J., making these comments in the context of a murder sentencing.)*

[32] *R. v. Bryan, [2008] N.S.J. No. 569 (C.A.), paragraphs 39 and 40*

[33] *R. v. Logan. [1990] S.C.J. No. 89, paragraphs 19 and 20*

[34] *R. v. "X" , [2013] N.S.J. No. 713, paragraph 1*

[35] Trial Exhibit 2, Agreed Statement of Facts

[36] Trial Exhibit 2, Agreed Statement of Facts

[37] *R. v. Bryan, [2008] N.S.J. No. 569 (C.A.), paragraph 52*

[38] *R. v. Bryan, [2008] N.S.J. No. 569 (C.A.), paragraph 53*

[39] *R. v. "X" , [2013] N.S.J. No. 713, paragraphs 29 – 32; 53 – 54;*

[40] "X"'s explanation, in his interviews for the section 34 psychological assessment and the psychiatric assessment, for the shooting.

[41] *R. v. Nygaard, [1989] S.C.J. No. 110, paragraph 18*

[42] *R. v. Smith, [1979] S.J. No. 476 (C.A.), paragraph 28*

[43] *R. v. Smith, [1979] S.J. No. 476 (C.A.), paragraph 31*

[44] *R. v. Smith, [1979] S.J. No. 476 (C.A.), paragraph 32*

[45] *R. v. A.S., [2013] O.J. No. 5580, paragraphs 81 and 84 (O.C.J.)*

[46] *R. v. "X" , [2013] N.S.J. No. 713, paragraph 20*

[47] *R. v. "X" , [2013] N.S.J. No. 713, paragraphs 50, 106 - 110*

[48] Section 34 Psychological Assessment, page 24

[49] Section 34 Psychological Assessment, page 42

[50] Section 34 Psychological Assessment, page 41

[51] Section 34 Psychological Assessment, page 43

[52] Psycho-educational Assessment, page 8

[53] Section 34 Psychological Assessment, page 12

[54] Section 34 Psychological Assessment, page 31

[55] Section 34 Psychological Assessment, page 12

[56] Section 34 Psychological Assessment, page 8

[57] Psycho-educational Assessment, page 10

[58] Section 34 Psychological Assessment, page 7

[59] Section 34 Psychological Assessment, page 29

[60] Section 34 Psychological Assessment, page 28; also, page 29

[61] Psychiatric Report, page 6

[62] Psycho-educational Assessment, page 11

[63] Psycho-educational Assessment, page 11

[64] Psycho-educational Assessment, page 13

[65] Psycho-educational Assessment, page 14

[66] Section 34 Psychological Assessment, page 14

[67] Section 34 Psychological Assessment, page 26

[68] Section 34 Psychological Assessment, page 29

[69] Section 34 Psychological Assessment, page 30

[70] Section 34 Psychological Assessment, page 50

[71] Section 34 Psychological Assessment, page 50

[72] Psycho-educational Assessment, page 8

[73] Psycho-educational Assessment, page 8

[74] Exhibit 18, Letter from Gillian Thorpe, Youth Advocate Worker

[75] Section 34 Psychological Assessment, page 18

[76] Section 34 Psychological Assessment, page 17

[77] Section 34 Psychological Assessment, page 43

[78] Exhibit 14, Letter from Reverend Veenema

[79] Rev. Veenema was interviewed by Sarah Rafuse on February 10, 2014. His letter is dated September 22, 2014.

[80] Exhibit 4, page 10

[81] Exhibit 18

[82] Exhibit 14

[83] Exhibit 16

[84] Section 34 Psychological Assessment, page 22

[85] Section 34 Psychological Assessment, page 11

[86] Section 34 Psychological Assessment, page 9

[87] Section 34 Psychological Assessment, page 18

[88] Section 34 Psychological Assessment, page 27

[89] Section 34 Psychological Assessment, page 8

[90] Section 34 Psychological Assessment, page 9

[91] Section 34 Psychological Assessment, page 10

[92] Section 34 Psychological Assessment, page 30

[93] Section 34 Psychological Assessment, page 50

[94] Exhibit 9

[95] Stephen Gouthro notes this in the section 34 psychological assessment at page 51: "The index offence would be considered a significant escalation in terms of the severity and level of violence."

[96] Exhibit 7

[97] Section 34 Psychological Assessment, page 16

[98] Exhibit 7

[99] "X" has had a longstanding interest in writing and performing his own music. His youth mentor first started working with him as a behavioural consultant teacher in Grade 5, using music to engage "X" in his education. (Section 34 Psychological Assessment, page 12)

[100] Exhibit 18. Peyton Harris notes in the psycho-educational assessment that two collateral school sources indicated that "X" was musically talented. (Psycho-educational Assessment, page 9)

[101] Section 34 Psychological Assessment, page 34

[102] Section 34 Psychological Assessment, page 34

[103] Section 34 Psychological Assessment, page 35

[104] Section 34 Psychological Assessment, page 36

[105] Section 34 Psychological Assessment, page 36

[106] Section 34 Psychological Assessment, page 37

[107] Section 34 Psychological Assessment, page 38

[108] Section 34 Psychological Assessment, page 39

[109] Section 34 Psychological Assessment, page 39

[110] Section 34 Psychological Assessment, page 40

[111] Section 34 Psychological Assessment, page 40

[112] Section 34 Psychological Assessment, page 41

[113] Section 34 Psychological Assessment, page 41 (*emphasis in original*)

[114] Section 34 Psychological Assessment, page 44

[115] Section 34 Psychological Assessment, page 44

[116] Section 34 Psychological Assessment, page 45

[117] Section 34 Psychological Assessment, page 45

[118] Section 34 Psychological Assessment, page 49

[119] Section 34 Psychological Assessment, page 49

[120] Section 34 Psychological Assessment, page 55

[121] Section 34 Psychological Assessment, pages 56 - 57

[122] Psycho-educational Assessment, page 5

[123] Psycho-educational Assessment, page 5

[124] Psycho-educational Assessment, page 6

[125] Section 34 Psychological Assessment, page 16

[126] Psycho-educational Assessment, page 7

[127] Psycho-educational Assessment, page 8

[128] Psycho-educational Assessment, page 18

[129] Psycho-educational Assessment, page 22

[130] Psycho-educational Assessment, page 25

[131] Section 34 Psychological Assessment, page 56

[132] Psycho-educational Assessment, page 26

[133] Psycho-educational Assessment, page 26

[134] Psycho-educational Assessment, pages 26 - 29

[135] Exhibit 4, page 10

[136] Exhibit 4, page 10

[137] Exhibit 4, page 10

[138] Exhibit 4, page 10

[139] Exhibit 4, page 11

[140] Exhibit 4, page 11

[141] Exhibit 1, page 2, Program Progress

[142] Exhibit 1, page 3, Program Progress

[143] Exhibit 1, page 3, Program Progress

[144] Exhibit 17, Letter from Debora Schofield, NSYF Teacher

[145] Exhibit 1

[146] Psycho-educational Assessment, page 16

[147] Exhibit 1, Report from the Nova Scotia Youth Facility at Waterville ("Waterville"), September 4, 2014, page 1

[148] Exhibit 1, page 1

[149] Exhibit 1, page 2

[150] Exhibit 1, page 2

[151] Section 34 Psychological Assessment, page 21

[152] Exhibit 1, page 2

[153] Exhibit 1, page 2

[154] Exhibit 1, Offender Incidents Report, pages 1 - 5

[155] Section 34 Psychological Assessment, page 21

[156] Section 34 Psychological Assessment, pages 15 and 16

[157] Section 34 Psychological Assessment, page 32

[158] Section 34 Psychological Assessment, page 16

[159] Exhibit 15, Rites of Passage Program Update, dated September 17, 2014 from Ralph Hayden, Deputy Superintendent, Programs at the Nova Scotia Youth Facility, Waterville

[160] Section 34 Psychological Assessment, page 23

[161] Exhibit 15

[162] Mr. Wright's *curriculum vitae* was entered into evidence as Exhibit 10. I have culled from it and Mr. Wright's testimony the most relevant aspects of his professional and volunteer experiences.

[163] The Annual Report of the Office of the Correctional Investigator 2012 – 2013 containing *A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries* was submitted by Ms. Thompson with her case authorities.

[164] The Annual Report of the Office of the Correctional Investigator 2012 – 2013, page 8

[165] Exhibit 11

[166] Material submitted by Ms. Thompson indicates that Ceasefire–Halifax Communities is based on "Cure Violence", formerly known as Ceasefire in Chicago. Ceasefire "is based on a healthcare model which views violence as an epidemic and therefore it should be treated as such – find the source-stop the transmission-change the behaviour." (From "General Information About Ceasefire-Halifax Communities)

[167] Exhibit 11, pages 7 and 8

[168] Exhibit 12

[169] *R. v. Mohan, [1994] S.C.J. No. 36*

[170] *R. v. Marquard, [1993] S.C.J. No. 119, paragraph 35*

[171] Mr. Wright has been qualified as an expert witness in the Family Court and Supreme Court Family Division in Nova Scotia and in New Brunswick in areas that include mental health, child protection, and parenting capacity.

[172] Exhibit 13

[173] *R. v. Q.B., [2003] O.J. No. 354, paragraphs 2 and 27 (C.A.)*

[174] *R. v. Q.B., [2003] O.J. No. 354, paragraph 2 (C.A.)*

[175] *R. v. Q.B., [2003] O.J. No. 354, paragraph 32 (C.A.)*

[176] In an article provided with materials submitted by the Crown, Professor H. Archibald Kaiser notes that, "Wherever there is a nexus between the commission of an offence and social deprivation and marginality, *for whatever reason*, [*Q.B.* and *Hamilton*] herald the permissibility of taking such factors into account in mitigation of sentence. (emphasis in the original) *Borde* and *Hamilton*: Facing the Uncomfortable Truth About Inequality, Discrimination and General Deterrence, (2003) 8 C.R. (6th) 289 at 296

[177] The Annual Report of the Office of the Correctional Investigator 2012 – 2013, page 9

[178] *R. v. Q.B., [2003] O.J. No. 354, paragraph 30*

[179] *[2013] N.S.J. No. 22, paragraphs 169 - 179*

[180] *[2007] N.S.J. No. 214, paragraph 47*

[181] *[2008] S.C.J. No. 25*

[182] *section 42(7)(a)(i) and (b) of the YCJA*

[183] section 42(7)(d) of the *YCJA*

[184] Section 34 Psychological Assessment, page 32

[185] *[2013] N.S.J. No. 22, paragraphs 200 and 201*

[186] There are social/cultural groups in prison such as the Black Inmate Friend Association (BIFA) which are allowed to meet once a month and can hold "socials" with approved speakers, and a meal.

[187] *R. v Smith, [2010] N.S.J. No. 461, paragraph 113 (Y.J.C.)*

[188] *R. v. M.C.S., [2010] N.S.J. No. 151, paragraphs 84, 102, 103 and 104 (Y.J.C.)*

[189] *R. v. Mykel Smith, [2010] N.S.J. No. 461, paragraphs 85 and 86*

[190] *R. v. Mykel Smith, [2010] N.S.J. No. 461, paragraph 6 (Y.C.J.)*

[191] *R. v. Mykel Smith, [2010] N.S.J. No. 461, paragraphs 55 and 57 (Y.J.C.)*

[192] *R. v. Mykel Smith, [2010] N.S.J. No. 461, paragraph 53 (Y.J.C.)*

[193] Section 34 Psychological Assessment, page 50

[194] *R. v. D.B., [2008] S.C.J. No. 25, paragraph 41*

[195] *R. v. B.C.F., [2008] S.J. No. 510 (P.C.) (upheld R. v. Flaten, [2009] S.J. No. 709 (C.A.)); R. v. Ferriman and Madden, [2006] O.J. No. 3950 (S.C.J.); R. v. Knelsen, [2013] O.J. No. 1402 (C.J.) and R. v. Quintana, [2008] B.C.J. No. 212 (P.C.), upheld [2009] B.C.J. No. 513 (C.A.)* – aggravated assault.

[196] *R. v. A.O., [2007] O.J. No. 800, paragraph 58 (C.A.); R. v. N.H., [2009] N.S.J. No. 361, paragraph 128 (Y.J.C.)*

[197] *R. v. T.P.D., [2009] N.S.J. No. 556, paragraph 128 (S.C.)*

[198] Section 3(1)(a)(i) and (ii), of the *YCJA*

[199] Section 34 Psychological Assessment, page 53

[200] *R. v. Skeete, [2013] N.S.J. No. 22, paragraph 217*

[201] The Annual Report of the Office of the Correctional Investigator 2005-2006, page 13

[202] The Annual Report of the Office of the Correctional Investigator 2012 – 2013, page 12

[203] A Case Study of Diversity in Corrections: The Black Inmate Experience in Federal Penitentiaries, page 12

[204] The Annual Report of the Office of the Correctional Investigator 2012 – 2013, page 12

[205] Section 34 Psychological Assessment, pages 56 - 57

[206] Section 34 Psychological Assessment, page 54

[207] Section 34 Psychological Assessment, page 53

[208] *R. v. D.B., [2008] S.C.J. No. 25, paragraph 41*

[209] *R. v. M.(C.A.), [1996] S.C.J. No. 28, paragraph 80; emphasis in the original*