

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. Johnson*, 2016 NSSC 297

**Date:** 20161027

**Docket:** CRH 444757

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Jason James Johnson and Kelly Amanda MacDonald

**Judge:** The Honourable Justice Patrick Duncan

**Heard:** October 27, 2016, in Halifax, Nova Scotia

**Written Decision:** November 9, 2016

**Counsel:** Glen Scheuer and Robert J. T. Kennedy, for the Crown  
Ray Kuszelewski (Laura McCarthy) for Defence, Jason Johnson  
Pavel Boubnov for Defence, Kelly MacDonald

**By the Court:**

**Background**

[1] Catherine “Catie” Miller was murdered on July 15, 2014. Kelly MacDonald and Jason Johnson were charged with the first degree murder, and with interfering with the remains, of Ms. Miller.

[2] Today they have entered pleas of guilty to the included offence of second degree murder contrary to section 235 of the **Criminal Code** and also to the offence of interference with human remains contrary to section 182(b) of the **Criminal Code**.

[3] Section 745(c) of the **Criminal Code** stipulates that:

745 Subject to section 745.1, the sentence to be pronounced against a person who is to be sentenced to imprisonment for life shall be...

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

[4] Therefore it is mandatory that Jason James Johnson and Kelly Amanda MacDonald be sentenced to life imprisonment in relation to the offence of second degree murder.

[5] There are three other matters which I must resolve.

[6] First, in relation to the offence of second degree murder I must decide when each of these offenders will be eligible to apply for parole.

[7] Second, I must determine the sentence to impose for the offence committed contrary to section 182(b) of the **Code**.

[8] And finally I must impose the terms of the so-called ancillary orders.

[9] I have both read and heard read the Agreed Statement of Facts.

[10] I have also read and heard read the Victim Impact Statements presented by Catie Miller's parents, John and Terry Miller; by her brother Christopher Miller, and by his wife Katie Loveland, all of whom are present today. Where the filed written statements and the in court statements differ I have relied upon the statements we heard this morning and which counsel agree will form the official record of the Victim Impact Statements.

[11] In addition I have considered the oral submissions of counsel, the legal precedents filed in support of their joint recommendation, and the in court statements of the offender, Kelly MacDonald.

### **Position of the Crown**

[12] Crown counsel submits that Jason Johnson should not be eligible for parole for a period of 20 years. The Crown acknowledges that Mr. Johnson has been in pretrial custody since November 22, 2014 and so that period of time will form part of his sentence.

[13] Crown counsel submits that Kelly MacDonald should not be eligible for parole for a period of 16 years. The Crown acknowledges that Ms. MacDonald has been in pretrial custody since November 26, 2014, and so that period of time will form part of her sentence.

[14] The Crown has provided six cases that set out the applicable legal principles, and establish the general range of parole eligibility dispositions in similar cases.

[15] In addition the Crown seeks a period of 5 years imprisonment, for each offender, to be served concurrently, for the offence of interference to human remains contrary to s. 182(b) of the **Criminal Code**.

[16] Crown Counsel has referred me to a series of aggravating circumstances in the commission of these offences which are offered in support of the increased period of parole ineligibility and the imposition of the maximum sentence available for the offence under section 182. I will speak to those in my discussion of the appropriate disposition in these cases.

[17] The Crown also seeks ancillary orders:

1. A Firearms Prohibition Orders pursuant to s.109 (1)(a) of the **Criminal Code**;
2. The Crown also seeks a DNA Order pursuant to s. 487.051 of the **Criminal Code**. In this case that order is mandatory; and
3. A Victim Fine Surcharge in an amount and on terms to be in the discretion of the Court.

### **Position of the Offenders**

[18] Counsel on behalf of the two offenders join in the sentence recommendations of the Crown.

[19] Both counsel have noted the mitigating effect of a guilty plea. This matter was scheduled for 2 weeks of pretrial motions and a further 1 month of trial time. As heart wrenching and disturbing as this morning's proceedings have been, the guilty pleas do permit, as was said earlier this morning, the judicial process to come to an end in a speedier and more certain manner for all parties. The Courts have always recognized that there is value in that to victims, witnesses and to the public at large, and so I accept this fact as mitigation in this way.

[20] A guilty plea without the necessity of a trial is also sometimes seen as a reflection of remorse, although in this case it is difficult for me to draw such an inference. It may be, as Christopher Miller suggested, that the pleas are a recognition by the accused that the prosecution case was strong.

[21] No issue has been taken by the offenders with the ancillary orders sought by the Crown.

[22] I do not have the benefit of presentence reports and I do not have a great deal of biographical information about the offenders. To the extent that I have such information I will incorporate it later in this decision.

## Legal Principles

[23] Section 745.4 of the **Code** guides the court as to the factors that must be considered in determining whether to substitute the 10 year minimum parole ineligibility period with a greater period. That section says:

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

[24] In this case there was no jury and so I have no jury recommendation to consider.

[25] A review of the cases provides guidance as to how these factors which I have just read are to be construed.

[26] In *R. v. Shropshire* [1995] 4 S.C.R. 227 (at para. 29) the Court observed that s. 745(c) contemplates a “broad range of seriousness reflecting the varying degrees of moral culpability” that the circumstances of each case presents.

[27] In more recent years the courts have had the benefit of a statutorily defined set of principles of sentencing to guide us. Those are set out in ss. 718 - 718.2 of the **Criminal Code**. The provisions in s. 718 address the fundamental purpose of sentencing which is: “to contribute to respect for the law and the maintenance of a just, peaceful and safe society.” In fulfilling this purpose the court is told to impose sentences that speak to a balancing of the objectives of denunciation, general deterrence, specific deterrence, rehabilitation of the offender, the need for reparations to victims or the community and the role that sentencing plays in promoting a sense of responsibility in offenders and the acknowledgement of the harm caused.

[28] Section 718.1 requires that a sentence be proportionate to the gravity of the offence and the offender’s degree of responsibility. Section 718.2(b) states that sentences “should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.” Section 718.2(d) requires that an

offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances.

[29] Finally, ss. 718.2(a)(ii) makes it a “deemed aggravating circumstance” where there is “evidence that the offender, in committing the offence, abused the offender’s spouse or common law partner”. I am told that Ms. Miller and Mr. Johnson had previously been in a domestic relationship. Whether or not a past relationship falls strictly within the meaning of this section, I am satisfied that in the circumstances of this case that it is an aggravating factor in considering the sentence to impose on Mr. Johnson.

[30] In *Shropshire*, Iacobucci J., after enumerating the three statutorily prescribed factors, held that denunciation can be considered under the criterion "nature of the offence"; and that concerns over the possible future dangerousness of the offender could be considered under the "character of the offender" criterion (para. 19). As parole ineligibility is part of the "punishment", and thereby an element of sentencing policy, deterrence is also relevant in justifying an order under s. 745.4 (paras. 21-23).

[31] Beveridge J.A., writing in *R. v Hawkins* 2011 NSCA 7 addressed the principles of sentencing in a second degree murder case; specifically, at paragraphs 39 and 40 he said:

39 The theory of specific or individual deterrence is that the sentence imposed will be sufficiently punitive that the offender will be convinced it is not worthwhile to commit that or any further offences. Any offender convicted of second degree murder is sentenced to life imprisonment....

40 ...subject to a grant of clemency, the only way an offender will be released into the community is by the National Parole Board. It is wrong to assume that the Board will not fulfill its mandate to ensure that an offender will only be conditionally released when it is safe and appropriate to do so. Hence, the public is still protected (see *R. v. Nash*, supra, at para. 4). I fail to see how concern over individual deterrence would have a role in extending the period of parole ineligibility to segregate this offender from society.

[32] Justice Beveridge accepted that there is a role for setting “an increased period of parole ineligibility to express denunciation and the community's revulsion over the offence” and “some scope for general deterrence” but that deterrence should not be overemphasized as being of paramount significance.

[33] In that case the sentencing judge imposed a sentence of a period of parole ineligibility of 20 years. In considering the fitness of this disposition, Justice Beveridge held: "...Neither was there any indication of any underlying or persistent danger to re-offend to justify extension of the parole ineligibility period to twenty years." I take this comment to mean that if such indications of dangerousness are present then they may impact on the period to be set for parole ineligibility.

[34] Imposition of a sentence that is consistent with others that arise from similar circumstances is a sought after result. It is a difficult task as no two cases are identical. In *R. v. Doyle* (1991), 108 N.S.R. (2d) 1 (A.D.) Chipman J.A. stated at paras 42 and 43:

[42] ...I have examined the cases referred to us by both counsel. Comparisons with other cases is a difficult exercise. Attempts to seek similarities with or differences from other murders committed by other people can be very frustrating and counterproductive. We are not dealing with an exercise of reviewing "comparables" such as is done in a property appraisal. In exercising the discretion under s. 744 of the Code, other cases are no more than a rough guide for the sentencing judge in identifying the types of aggravating or mitigating circumstances that other courts have relied on as relevant in applying the guidelines....

[43] While no hard and fast conclusion can or should come from any one of them, a sense of direction definitely emerges from the large number of cases reviewed....

[35] On this question of similarity the Court in *Hawkins* referred to various authorities which I have also reviewed.

## **Analysis**

### *Circumstances of the offences*

[36] There is an Agreed Statement of the Facts entered into the record by the parties pursuant to s. 655 of the **Criminal Code**. Those facts are:

1. On July 21st, 2014, Catherine ("Catie") Miller (DOB: 1985-05-06) was reported missing by her mother, who had last spoken to her daughter on July 15th, 2014;

2. Video surveillance obtained by police showed Ms. Miller getting into a 2000 Pontiac Grand Prix driven by Jason Johnson outside the Superstore located at the Bedford Place Mall, in Bedford, Nova Scotia on July 15th, 2014, shortly after 3:00 pm. Afterwards, Ms. Miller's cell phone, bank accounts and social media accounts were not used again;
3. During the course of the police investigation into Ms. Miller's disappearance, it was learned that she had been in a previous relationship with Mr. Johnson, which ceased near the end of April 2014;
4. On August 29th, 2014, police began to intercept the private communications of Mr. Johnson in relation to what they believed was the murder of Ms. Miller;
5. On September 24th, 2014, Mr. Johnson and Kelly MacDonald, had just returned to their residence at 132 Doherty Drive in Lawrencetown, Nova Scotia from the Walmart and Canadian Tire stores in Cole Harbour, Nova Scotia. Mr. Johnson was observed by police putting on gloves and entering the trunk of the 2000 Pontiac Grand Prix parked in his driveway, removing the spare tire and carpet liner, and spraying the inside of the trunk with a rust sealer. Police attended immediately to seize the vehicle to prevent the destruction of evidence. A forensic search of the seized vehicle yielded a significant amount of blood in the trunk area. DNA located in the trunk matched that of Ms. Miller and Mr. Johnson;
6. Shortly after police left the residence with the seized vehicle, Ms. MacDonald drove Mr. Johnson to an associate's residence in Cole Harbour where she dropped him off with a kit bag. Ms. MacDonald returned home and called a friend, asking him to take a bag of items to hide in his shed in case the police returned with a warrant to search her residence;
7. Police maintained surveillance of Mr. Johnson where he was observed being picked up by another associate and taken back to her apartment in Bedford. Police learned through the ongoing wiretap investigation that Mr. Johnson was going to this residence to hide from police. Mr. Johnson maintained a low profile and continued to hide at that



Bedford residence up until the time of his arrest, a period of nearly two months;

8. Police obtained multiple intercepted communications during this time in which Mr. Johnson talked about his desire to be a notorious killer and attempted to convince his associate to help him plan the kidnapping and murders of multiple females. He stated that he has done it before and that he will not get away with it and would like to kill again before he gets arrested. Mr. Johnson became excited during these intercepted conversations and provided details of the manner in which he would like to commit these further murders. During this time period, Mr. Johnson was a regular consumer of alcohol and cocaine;
9. When speaking of the murder of Ms. Miller during these interceptions, Mr. Johnson stated that he “cut her head off and went back two days later to cut her up”. He further provided various details of the murder and included graphic details that he said made him physically sick;
10. On November 22nd, 2014, out of mounting concerns by police that Mr. Johnson would follow through on his fantasies to kill again, Mr. Johnson was arrested for the murder of Ms. Miller. During an in-custody interview with police, Mr. Johnson confessed to killing Ms. Miller by slitting her throat and subsequently cutting off her head and hands using an axe. He then buried her head and hands and wrapped up the rest of her body in a tarp and hid it below a tree. He informed police that he burned his clothing, his shoes and other evidence in a burn barrel after he murdered Ms. Miller. He further stated that he went back approximately one month later and moved the remains further into the woods to better conceal them;
11. Police investigation into this matter continued and on November 24th and 25th, 2014, Ms. MacDonald spoke with undercover officers about the death of Catherine Miller. Officers learned the following about the events surrounding Ms. Miller’s death:
  - a.) Mr. Johnson called her in a panicked state on July 15th, 2014. She met him at the Big Stop Restaurant in Enfield, Nova Scotia

at approximately 9:15 pm with their infant child. She and their child got into Mr. Johnson's 2000 Pontiac Grand Prix vehicle;

- b.) Ms. Miller was in the trunk still alive and believed to be unconscious at this time. Mr. Johnson told her that he had beaten Ms. Miller with a tire iron;
- c.) Ms. MacDonald started driving the vehicle and they travelled to Lawrencetown so they could drop off their child with Ms. MacDonald's mother. While driving to Lawrencetown, Ms. Miller became conscious and started screaming and kicking in the trunk and yelling "Jason" and "you don't have to do this". Ms. MacDonald feared that Ms. Miller would kick out a tail light and she told Mr. Johnson that they had to "finish her off";
- d.) Mr. Johnson sat in the back seat, next to the infant child, to prevent Ms. Miller from kicking the back seat down. They then stopped at their residence at 132 Doherty Drive, where they dropped off their child and she obtained a "hooked knife". They then continued to Sheet Harbour where she had been in contact with an associate who lived there and made arrangements to attend at his residence. Ms. MacDonald said to the associate that he shouldn't ask any questions, and that he was to have tarps, garbage bags, a shovel and an axe ready for when they arrived;
- e.) On the way to Sheet Harbour, Ms. MacDonald pulled over at an unknown location and told Mr. Johnson he had to kill Ms. Miller. Mr. Johnson got out of the vehicle, opened the trunk and cut Ms. Miller's throat with the hooked knife and they started to drive again. As they started to drive again, Ms. Miller continued to kick and make noise in the trunk of the vehicle. Ms. MacDonald stopped the vehicle again and told Mr. Johnson that he had to "finish it". Mr. Johnson went back to the trunk and slit Ms. Miller's throat, which was fatal;
- f.) At approximately 11:30 pm Ms. MacDonald and Mr. Johnson arrived at the associate's residence in Sheet Harbour. The associate had tarps and tools laid out on his lawn. Ms. Miller's face was swollen and "smashed up";
- g.) Mr. Johnson proceeded to dismember the remains of Ms. Miller using an axe and hand saw provided by the associate. Mr.

Johnson removed Ms. Miller's head and hands from her body, which was done to prevent her identification through dental and fingerprint records. After wrapping the torso in a tarp, and putting the head and hands in a garbage bag, the group placed Ms. Miller's remains back in the trunk. Mr. Johnson and Ms. MacDonald left and instructed the associate to burn any remaining evidence and throw the metal items in the adjacent ocean, including the hooked knife used to murder Ms. Miller, her keys and an axe head.

12. Ms. MacDonald took undercover officers to the location where Ms. Miller's torso was hidden off of Horseshoe Turn Road in Lawrencetown. Her remains were wrapped in a tarp and tied to a tree in a wooded area on the property. Ms. MacDonald explained that she and Mr. Johnson had tied the remains to the tree so that animals did not drag them away. Ms. MacDonald stated that Ms. Miller's head was buried in a sink hole on the same property, but a distance away from her body and showed the officers the general area where it was located, however Ms. Miller's head was not located. The couple also burned their clothing and other evidence in a burn barrel located on the property. Ms. MacDonald further stated that Ms. Miller's hands were thrown in the woods in an area behind the airport, where she took undercover officers to show the exact location. Ms. Miller's hands were not located;
13. An autopsy of Ms. Miller's remains showed that her head and hands had been removed using blunt force. During a search of the associate's property in Sheet Harbour, a small bone fragment was located in the sod next to the residence which matched the right ulna bone of the remains recovered in Lawrencetown. An axe head used to dismember Ms. Miller was also located in the search of the associate's property;
14. On November 26th, 2014, Ms. MacDonald was arrested for her involvement in the homicide of Ms. Miller;
15. On September 20th, 2016, Mr. Johnson was taken by police to the Lawrencetown area in order to locate further remains of Catherine Miller. Mr. Johnson led police to a general area off of Horseshoe Turn

Road where a search was conducted. Ms. Miller's head was recovered.

[37] This murder was carried out with extreme callousness – with a total disregard for the inviolability of human life; without regard to the suffering that was inflicted on Catie Miller and on those who loved her and on society at large.

[38] The brutality of the murder is stark. There were many opportunities to let Catie Miller live. She pleaded for her life but the accused ignored those pleas. Their sole focus was on silencing her forever and then taking extreme steps in trying to hide their crime and their responsibility for the crime.

[39] The ultimate act of killing was not a spontaneous one. Catie Miller was assaulted viciously before she was killed. She was confined in the trunk of a car for hours, conscious for at least parts of that time, kicking and trying to escape. That some of this was happening while there was an infant in the car speaks to the complete lack insight to the viciousness and single-mindedness of the offenders' conduct that day.

[40] The indignities committed upon Ms. Miller's body speak for themselves. These offenders showed that they lacked the most basic humanity.

#### *Victim Impact Statements*

[41] The Millers and Ms. Loveland have individually and collectively stated more clearly than I or anyone who has not suffered from a similar experience, the sense of hurt that accompanies such a senseless, horrific, sudden and painful loss. They have poignantly described the impact on Catie Miller's young son, whose opportunity to know his mother was taken away from him, and they have also described the damage done to every facet of their lives: interpersonal relationships, personal emotional turmoil, and to social interactions.

[42] I would add this: what these offenders did also impacts the community's general sense of security. It is a strike at our shared hopes for peaceful, secure and happy lives for ourselves, our families and our neighbours. The damage this murder caused did not stop with the family and friends of Catie Miller. Everyone with knowledge of this case is affected in some way.

*Circumstances of the offenders*

[43] Ms. MacDonald has expressed remorse today. I am in no position to assess whether it is true remorse. I note that she is a first offender, relatively young and had, until 2 years ago apparently led a productive life, going to school, working and raising a child. I am told that she, and Mr. Johnson as well, became heavily involved in drug use, and in particular cocaine.

[44] There is no question that cocaine has been regularly observed by the courts and society in general to be a dangerous drug that is the source of much pain and misery for its users, those who are close to them and those in society that they harm by their antisocial conduct. The fact of cocaine use by these offenders is something that Corrections Canada can address with them in the years of their incarceration. It is no excuse and there is nothing in this sentencing which can address it, other than to acknowledge a possible role in the commission of the offence.

*Range of Sentence*

[45] In *R v. Nash* 2009 NBCA 7, , Robertson J.A. in discussing the ranges of sentencing imposed in second degree murder cases observes that (para. 54):

...Not only are these cases instructive, they provide support for a general thesis: more often than not, trial and sentencing judges work with three time frames when fixing the period of parole ineligibility: (1) 10 to 15 years; (2) 15 to 20 years; and (3) 20 to 25 years. In practice, the third time frame is reserved for the "worst of offenders" in the "worst of cases". The first is reserved for those offenders for whom the prospects of rehabilitation appear good and little would be served by extending the period of parole ineligibility other than to further the sentencing objectives of denunciation and retribution. The second time frame is reserved for those who fall somewhere in between the first and third. Obviously, these time frames are not cast in cement and represent a basic starting point for analysis.

[46] The submissions of the Crown and of the defence are consistent with my view of the circumstances of this offence and place Ms. MacDonald's period of parole ineligibility period within the range in the second of these time frames - that is 15-20 years. Mr. Johnson's parole ineligibility period falls within the third time frame. The question is: where, within those ranges, should the parole eligibility date be for these two offenders?

[47] I have reviewed the decisions in *R. v. Boudreau* 2009 NSSC 30, *R. v. Surette* 2015 NSSC 141, *R. v. Johnson* 2001 NSSC 119; (aff'd 2004 NSCA 91), and *R. v. Hutchison* 2014 NSSC 155. These cases clearly establish that the joint recommendations are supportable in so far as the circumstances of the offence are concerned, and the circumstances of the offenders.

[48] There are certain factors though which do distinguish these two offenders: Mr. Johnson initiated the confinement, and the assaults of the victim. He committed the ultimate act of killing Ms. Miller. He has a criminal record that includes related offences, and during the investigation was heard to say that he intended to commit more murders. There is an inherent dangerousness in Mr. Johnson that has been exhibited by his actions and language and that is greater than that shown by Ms. MacDonald, who had no record and no history of violence before, or indicated about her future conduct.

[49] However, Ms. MacDonald's conduct was extremely serious and while she may not have committed the acts of violence on Ms. Miller while she was alive, she is very much as guilty of these offences as Mr. Johnson is. She encouraged the commission of these offences and contributed to the efforts to cover up the crime.

## **Conclusion**

[50] The Nova Scotia Court of Appeal in *R. v. MacIvor* (2003), 215 N.S.R. (2d) 344 (C.A.) provides the following direction with regard to joint recommendations at p. 351:

... It is not doubted that the joint submission resulting from a plea bargain, while not binding on the court, should be given very serious consideration. This requires the sentencing judge to do more than assess whether it is a sentence he or she would have imposed absent the joint submission: see, e.g., *R. v. Thomas* (O.) (2000), 153 Man. R. (2d) 98; 238 W.A.C. 98 C.A. at para. 6. It requires the sentencing judge to assess whether the jointly submitted sentence is within the acceptable range - in other words, whether it is a fit sentence. If it is, there must sound reasons from departing from it ...

[51] I conclude that the recommended sentences are fit as being within an acceptable range having regard to the totality of the circumstances and the treatment of other offenders in similar circumstances. There is no sound reason to depart from the recommendations.

[52] Jason Johnson and Kelly MacDonald have entered pleas of guilty to second degree murder. In compliance with the requirements of s. 745(c) of the **Criminal Code** I sentence Jason James Johnson and Kelly Amanda MacDonald to life imprisonment in relation to the offence of second degree murder. That is the maximum sentence allowed in our law.

[53] I have concluded that Mr. Johnson will not be eligible for parole for a period of 20 years. I conclude that Ms. MacDonald will not be eligible for parole for a period of 16 years.

[54] The offenders were in pretrial custody as set out previously. They are entitled to have that time treated as part of their sentence. Section 746(a) of the **Code** governs the calculation of the time in this case. It states:

746. In calculating the period of imprisonment served for the purposes of section 745, 745.1, 745.4, 745.5 or 745.6, there shall be included any time spent in custody between

(a) in the case of a sentence of imprisonment for life after July 25, 1976, the day on which the person was arrested and taken into custody in respect of the offence for which that person was sentenced to imprisonment for life and the day the sentence was imposed;

[55] Section 182(b) of the **Criminal Code** states:

182 Every one who...

(b) improperly or indecently interferes with or offers any indignity to a dead human body or human remains, whether buried or not,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

[56] The significance of this charge is not the ultimate penalty – that is overshadowed by the sentence of life imprisonment. It is significant however in ensuring that forever more these two offenders will be remembered not only for the murder of Catherine Miller but also their cold and calculated attempt to hide their heinous crime by a further heinous act – one that demonstrated an attitude totally opposite to the sensibilities of civilized people.

[57] I sentence each of the offenders to a period of 5 years imprisonment to be served concurrently to any other sentence imposed.

*Ancillary Orders*

[58] I order that the offenders be subject to Firearms Prohibition Order made pursuant to s.109(1)(a) of the **Criminal Code**. The period will be for life. I have the draft order. I will execute it after Court is closed.

[59] Pursuant to s. 487.051 of the **Criminal Code** the offenders will comply with the terms of a DNA Order. Again, I have the draft order. I will execute it following Court.

[60] Section 737(2)(b)(ii) mandates that the court impose a “Victim Surcharge” of \$200 per indictable offence. In this case that amounts to \$400 for each offender.

[61] Section 737(4) of the Code states:

(4) The victim surcharge imposed in respect of an offence is payable within the time established by the Lieutenant Governor in Council of the province in which the surcharge is imposed. If no time has been so established, the surcharge is payable within a reasonable time after its imposition.

[62] The surcharge is to be paid “within a reasonable time” after imposition. In this case both offenders have been sentenced to life imprisonment. I am told that they have no income and no ability to pay a surcharge. I have no means of assessing whether they are able to earn an income while incarcerated and I cannot anticipate whether or when they will be released from prison. I have no evidence upon which I can determine what constitutes a “reasonable” time within which to pay the surcharge and therefore I decline to order a time for payment.

Duncan, J.