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IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

Between:

HER MAJESTY THE QUEEN

-and-

PATRICK JOHN LAVIOLETTE

And Between:

HER MAJESTY THE QUEEN

-and-

ISADORE LEO LaHACHE

And Between:

HER MAJESTY THE QUEEN

-and-

NEIL WALLEY HERON

TRANSCRIPT OF PROCEEDINGS HELD IN FORT SMITH, N.W.T.
on May 4, A.D. 1977, being Submissions on Sentencing
and Sentences of Mr. Justice C. F. Tallis.

Appearances:

E. J. BROGDEN, Esq.	for the Crown
D. H. SEARLE, Esq., Q.C.	Counsel for Patrick John Laviolette
J. U. BAYLY, Esq.	Counsel for Isadore Leo LaHache
D. GELDREICH, Esq.	Counsel for Neil Walley Heron



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RE: PATRICK JOHN LAVIOLETTE

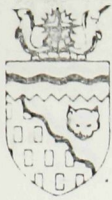
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1 THE COURT: Now, Gentlemen, this is the time for sub-
2 missions on sentence and I am in your hands as far as
3 the procedure. If it would suit the convenience of
4 Defence Counsel, I can direct Mr. Brogden to proceed
5 with his submission as being a joint submission. On the
6 other hand, if each one of you would prefer to have the
7 issue of sentence dealt with separately, I will be quite
8 prepared to have it handled that way. Do you have any
9 preference?

10 MR. SEARLE: My preference, my Lord, would be that it
11 be dealt with jointly.

12 MR. GELDREICH: My Lord, in view of the different offences
13 that these individuals have either pleaded guilty to
14 or have been found guilty of, I would prefer that Mr.
15 Brogden address his remarks to sentencing separately.

16 THE COURT: But there would be nothing wrong with my
17 dealing with the facts jointly, is there?

18 MR. TELDREICH: No, Sir.

19 THE COURT: Would it, Mr. Bayly --?

20 MR. BAYLY: Provided we also address you separately
21 as to the facts.

22 THE COURT: Of course. That goes without saying.
23 Well, Mr. Brogden, how would it be as far as the factual
24 basis of your submission - if you want to refer to the
25 facts you have I direct you do it jointly, and then we
26 will have a submission by you on the first accused,
27



1 and then we will hear from Mr. Searle; then we will
2 have you deal with the second accused, and will hear
3 from Mr. Bayly; and the third accused, we will hear
4 from you and then Mr. Geldreich.

5 MR. BROGDEN: Yes, my Lord. I can simplify that process
6 considerably because it's not my practice or intent
7 at this time to go back through the facts. Your Lord-
8 ship heard the trial last week, and I am sure it's
9 as fresh in your mind as in mine - probably better,
10 in case I inadvertently put in facts from my files
11 that did not go in in the actual trial. So I will
12 be quite content to let the facts of the incident stand
13 for all three as in the trial of Mr. Laviolette -
14 find those facts as they were heard in regard to the
15 guilty pleas of Mr. LaHache and Mr. Heron.

16 I have prepared general remarks, not only
17 remarks in each case, and I will therefore proceed with
18 Mr. Laviolette first. There will be no problem dealing
19 with that one - if my friends have no objection.

20 THE COURT: All right. We will hear from you on the
21 Laviolette.

22 MR. BROGDEN: The first one, in regards to Mr. Laviolette,
23 is to read to the Court the criminal record.

24 THE COURT: And has Mr. Searle had a chance to see this?

25 MR. BROGDEN: He has indicated to me he has seen it.

26 If there is any difference he can certainly point it out.
27



1 Commencing in 1973, the 13th January, 1973,
2 Section 171 (a) (i) of the Criminal Code; causing a
3 disturbance, an \$11.50 fine.

4 There's a Vehicles Ordinance charge in
5 that year which I don't think is relevant.

6 1974, Section 61 of the Liquor Ordinance.
7 That's on the 9th January, 1974 - a \$27.00 fine.

8 On the 13th February, 1974, Section 71
9 of the Liquor Ordinance - a \$34.00 fine.

10 On the 1st of May, 1974, Section 60 of the
11 Liquor Ordinance, a \$27.00 fine.

12 On the 22nd of May, 1974, Section 245 (1);
13 common assault - a \$257.00 fine.

14 22nd June, 1974, Section 65 (1) of the
15 Liquor Ordinance; four days in gaol.

16 18th of September, 1974, Section 245 (1)
17 Criminal Code - a \$102.00 fine; common assault.

18 18th September, 1974, section 71, Liquor
19 Ordinance - a \$27.00 fine.

20 18th September, 1974, Section 70 (6) (a)
21 of the Liquor Ordinance - a \$52.00 fine.

22 THE COURT: Is that arising all out of one incident?

23 MR. BROGDEN: I don't know, my Lord, but they're all
24 on the same day.

25 On the 2nd October, 1974, Section 65 (1)
26 of the Liquor Ordinance - a six month suspended sentence.
27



1 On the 30th of April, 1974, Section 65 (1)
2 of the Liquor Ordinance - a \$27.00 fine.

3 On the 12th of November, 1975, Section 234
4 of the Criminal Code, impaired driving - \$250.00 fine.

5 18th October, 1975, Section 64, Liquor
6 Ordinance - a \$50.00 fine.

7 On the 17th March, 1976, Section 133 (3)
8 (b) of the Criminal Code; Breach of Undertaking - ten
9 days in gaol.

10 Now, that's as far as my written record
11 goes, my Lord. There's a further conviction under
12 Section 236. I can't recall the date, but I did that
13 myself.

14 THE COURT: That's a liquor offence while driving.

15 MR. BROGDEN: A driving offence - breathalyzer. There
16 have been breaches of Section 133, but they relate
17 directly to the offence before the Court with regard
18 to drinking while on an undertaking before the Court.
19 I don't have the specifics. They relate to this. They
20 were on an undertaking and there was drinking related.

21 I mention this because there's some mention
22 in the pre-sentence as to time in custody.

23 THE COURT: I haven't seen that report officially.

24 I take it it can be officially filed with the Court?

25 MR. SEARLE: Yes, Sir.

26 THE COURT: That will be marked as "S" - 1 on this.
27



1 I like to keep a copy on my file, but if you don't have
2 an extra one, it can be filed as "S"-1.

3 MR. BROGDEN: I have only the one, Mr. Searle has one -
4 and the one we had for your Lordship earlier today.

5 THE COURT: That's fine.

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7
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9

EXHIBIT NO. "S"-1 Pre-sentence report on
Patrick Laviolette.

10 MR. BROGDEN: My Lord, unless Mr. Searle has some comment
11 for the record, my remarks as to sentence:

12 I may indicate that some of the first
13 remarks are remarks dealing with all three cases, however,
14 we are dealing with Mr. Laviolette only, and I would like
15 to draw the Court's attention to the case of the Queen vs
16 Morrissette, of which I am sure your Lordship is very
17 much aware, and I don't think I need to go into much
18 detail, except that the case of the Queen vs Morrissette
19 strikes me and I present it to the Court as being almost
20 on all four's with the case before the Bar now.

21 In that case, the Morrissette case, there
22 were three offenders, ages twenty-three, eighteen and
23 seventeen - James, Kenneth and Vincent Morrissette. James
24 Morrissette, as you see in the Morrissette case, was
25 considered the leader of that operation, of that incident -
26 the instigator, and the Crown takes the position and
27 represents to the Court that on the facts as shown in



1 the trial Pat Laviolette stands in the same stature
2 in relation to the other two. He is the leader, the
3 instigator in this case.

4 There are some other similarities in ages.
5 They're not that dissimilar.

6 THE COURT: As I read that particular case there was
7 more, shall we say, physical force used than on the
8 evidence in this case.

9 MR. BROGDEN: Well, I was about to come to that, but
10 I would suggest that from what we see in the report --
11 Your Lordship may have had the advantage of reading
12 the material behind the report - I have not, but from
13 what we see in the report the woman, who was a married
14 woman, separated, twenty-one years of age, was not
15 hurt. There's no indication she was injured, much
16 like Marjorie Nukik, who was not injured. The woman
17 in the Morriset case got away as soon as she could and
18 ran away as soon as she was able when the men were fin-
19 ished with her, as Marjorie Nukik did when they were
20 finished with her and she was able to run away.

21 THE COURT: I must tell you, Mr. Brogden, my understand-
22 ing of that case is that there was a fair amount of
23 physical force, and that's why the Trial Judge was out-
24 raged by the conduct of the three accused and his sent-
25 ence reflected it.

26 MR. BROGDEN: Yes.
27



1 THE COURT: The facts, even as stated in the report, ind-
2 icate that the two partners in the venture, in addition to
3 the accused, the primary accused, if I may call him as
4 such, did assist in removing clothing and that, of-course
5 gives you some indication from the report as to the part-
6 icipation.

7 MR. BROGDEN: Yes, one offender, of course, in the
8 Morrissette case did not involle in any sexual activities.

9 THE COURT: No, he was a party.

10 MR. BROGDEN: Yes. So, aside from that there are some
11 similarities, however, my Lord, that are striking, that
12 is, the ages and so on --she ran off. The victim in the
13 Morrissette case appears to have originally gone volun-
14 tarily with one of the people, unaware that this sort of
15 thing would happen, and then we add the other two brothers,
16 the other two Morrissettes, to the incident - which is
17 not dissimilar to the case before you, except that the
18 order of who called who varies a bit. However, she did
19 go voluntarily with one man, and then ended up in trouble
20 with all three.

21
22 One of the striking differences between
23 Morrissette and the case before the Court now I wish to
24 draw the Court's attention to, with regard to Pat
25 Laviolette in particular, that he, of course, received
26 a much heavier sentence because he was the leader and
27 involved the other two. I suggest the same thing



1 applies to Pat Laviolette. If it had not been for
2 Pat I don't think the other two would have committed this
3 offence. Certainly from what we saw, Pat Laviolette
4 brought it about. He committed the first offence in
5 the absence of the others, and then he encouraged Teddy
6 and he encouraged Neil.

7 But the Morrisettes had this in their favour
8 when it came to sentencing. They had no criminal records,
9 any of them. They had good work records. They had good
10 family background. James was a good worker, a family
11 man, married. Notwithstanding that, the five-year
12 sentence was upheld --at least it was reduced from ten
13 to five by the Court of Appeal.

14 Pat Laviolette is twenty, single, has
15 completed as far as I can tell from the report - Grade
16 Eight; he has not worked steadily, and he had a very
17 substantial criminal record, including offences against
18 a person - including assaults, which I suggest makes this
19 situation actually worse than that of James Morrisette
20 in that regard. I don't know what would have happened
21 if Marjorie Nukik had put up a greater resistance.

22 She is also, as your Lordship may recall a
23 very tiny girl, four foot, eleven, and would see instantly
24 that physical resistance would result in her immediate
25 injury.
26
27



1 My Lord, that's as far as I wish to go
2 with the Morrisette case - just to point out the analogy.

3 THE COURT:

4 Yes, I must tell you that in my view the
5 Saskatchewan Court of Appeal has somewhat varied its
6 approach over the last number of years. I've been
7 reading some of the recent unreported judgments of
8 that Court where in more recent times the sentence has
9 been in the neighbourhood of between two to three years,
10 and it appears to be on the footing that if an accused
11 doesn't learn their lesson with a sentence like that,
12 they won't learn it in four or five.

13 I did a fair amount of work in this area
14 when I was dealing with some of the cases in Inuvik
15 when the two accused, Ross and another chap, were con-
16 victed of rape and they had very serious records of
17 violence, much more serious than this man, and I came
18 to that conclusion as a result of my research in that
19 case. I notice that the Crown didn't appeal that
20 sentence and the time for appeal has, in fact, gone by,
21 so I must tell you that one of the more recent ones that
22 I was reading from that same Court with the same Chief
23 Justice involved a sentence of in the neighbourhood of
24 two years.

25 MR. BROGDEN:

26 Well, I wouldn't want to comment on the
27 reasons why the Crown didn't appeal.



1 THE COURT:

2 Oh, I can guess at some of them, but the
3 plain fact of the matter is that the facts of that case
4 are indelibly imprinted in my mind, because there was
5 violence in that case which was what I would character-
6 ize as serious, and I did a great deal of soul-searching
7 before I rendered my judgment on it; but I think I have
8 to render a judgment which I think is sustainable in
9 the Court of Appeal. If it is inconsistent with
10 authorities being laid down in the higher Court, then
11 I'm causing a lot of difficulty for everyone by not
12 following those principles, whether I agree with them
13 or not.

14 MR. BROGDEN:

15 That, my Lord, leads right into the second
16 point I wish to make, and some of these things I am
17 sure your Lordship is aware of. It should be made
18 largely because, also, Mr. Laviolette should know the
19 position the Crown takes, and what is being answered
20 in the press.

21 The issue that you have led to is the issue
22 of deterrent. You have indicated that the sentence -
23 if two years won't deter, then ten years won't do either.
24 There's another side to that and I think it has been
25 loudly touted of recent years - that deterrents are
26 not an effective protector of the public. There has
27 been much said on the capital punishment issue, and so
on - that deterrent sentences don't have the right effect.



1 My Lord, I put forth now the position that
2 I take , and I think there's something of a word trick
3 involved in that representation, something of a misnomer.
4 It's not really the issue that a heavy sentence or
5 a long sentence deters a particular person, but if
6 there is not a sufficient sentence it amounts to a
7 licence by the Court; and the community, I think, then
8 sees it as being treated indifferently. I think that
9 communities view a particular offence has got to be
10 reflected in the sentence. They certainly have the
11 right to feel they are protected, and to feel that --

12 THE COURT: --I don't dispute that in any way at all,
13 and I'm sure you won't find any Counsel who will,
14 whether for the defence or for the Crown, but the
15 obligation that is imposed on me as I see it is to
16 impose a sentence that not only vindicates the law,
17 which is for the benefit of the public, but at the same
18 time does not crush or destroy any reasonable possib-
19 ility of the rehabilitation or reformation of the
20 accused.

21 My task is then to strike what is a delicate
22 and difficult balance in arriving at a just conclusion,
23 and I realize that whatever sentence I impose can be
24 criticized as not emphasizing one factor enough or
25 emphasizing one to the detriment of the other, and
26 you will appreciate that in trying to arrive at a
27



1 reasonable balance I have to take into account a number
2 of factors, such as punishment, deterrence, protection
3 of the public, and the reformation and rehabilitation
4 of the offender.

5 Now, as far as punishment - I don't think
6 the Courts in this day punish for the sake of punish-
7 ment. Lex talionis is not the order of the day,
8 so to speak, but the other factors are of particular
9 importance, and that's where striking the balance poses
10 a real difficulty.

11 MR. BROGDEN: Yes, my Lord. The point, of course, which
12 I am stressing --

13 THE COURT: A jury have said in clear, unmistakable
14 terms that the accused is guilty of this offence, and
15 I think that indicates the community have said in no
16 uncertain terms that they disapprove of this type of
17 conduct, whether it is by a local person or an out-
18 sider, and I think that is one of the great advantages
19 of a jury system - that their assessment of the facts
20 is an assessment of people in every walk of life, and
21 it is not one that is made by a judge who may get bound
22 up in legal jargon on occasion.

23 MR. BROGDEN: I agree. Certainly there's no argument with
24 that, my Lord, and I think your Lordship can see that
25 the point I'm making is that the Crown's major thrust
26 here is to indicate that there should be compassion for
27



1 Mr. Laviolette in this situation and hope for his ref-
2 ormation, yes, but that that has to be very seriously
3 tempered in this case because of the very visible
4 nature of it; and you will remember that Marjorie Nukik
5 testified to the fact that she was having trouble as
6 it was with people talking about her on the street.
7 Right at the time, it's visible, and the public interest
8 in this, the public's confidence that this type of
9 behaviour is severely dealt with is I think the para-
10 mount consideration in this case. In the case of
11 Pat Laviolette I think that's the most important consid-
12 eration and one which I press most heavily.

13 THE COURT: You see, when I look over the list of
14 convictions that you have read out, you have observed and
15 quite properly that it is a long list, but most of
16 those offences are summary conviction liquor offences,
17 and this, I think, is another one of those cases where
18 a young man gets involved in the extensive use of liquor
19 and ultimately it leads to a very serious situation.

20 There's just a whole series, and you have
21 to say to yourself, "What a pity that a person really
22 allows himself to be destroyed by liquor".

23 The offences that are under the Criminal
24 Code are all summary conviction offences --

25 MR. BROGDEN: Yes.
26
27



1 THE COURT: There's not a conviction for assault caus-
2 ing bodily harm. The only ones are common assault, so
3 that we have to say in terms of record those offences
4 are not what are called indictable, or the serious
5 offences, and yet I suppose hindsight is always twenty-
6 twenty, but you can see a gradual building up of the use
7 of liquor to a point where it culminates in this incid-
8 ent, which really is tragic not only for the girl but
9 for the accused. It's not an excuse. It may be an
10 explanation, but it's unfortunate that young people
11 often - and older people, don't realize until it's too
12 late the tragic consequences of letting this get out of
13 hand.

14 MR. BROGDEN: My Lord, following right on to that -
15 you seem to be almost ahead of me as I go along; follow-
16 ing right along that is the fact that alcohol-related --
17 although there's no indication that this man was really
18 drunk - he had certainly been drinking; but what I draw
19 the Court's attention to is that there is no evidence,
20 or nothing has been led or shown to us to indicate that
21 after this incident Mr. Laviolette - and we have the
22 pre-sentence report before us as well, showed any
23 remorse, any compassion for the victim. Even sober,
24 following this incident he has not shown --He has
25 never returned the girl's jeans; never attempted to
26 apologize; never attempted to correct the situation.
27



1 THE COURT: Well, of course, Mr. Brogden - I don't
2 know if you've defended any cases or not --

3 MR. BROGDEN: Yes, my Lord, I have.

4 THE COURT: --I would think that Defence Counsel would
5 be duty-bound to give certain advice to a client, and
6 you know, you would be the first one to lead evidence
7 of an admission to the victim or an apology --

8 MR. BROGDEN: Yes, my Lord.

9 THE COURT: --if you were Crown Counsel prosecuting.

10 MR. BROGDEN: Yes, my Lord, but I'm thinking in terms
11 of the eleven days --

12 THE COURT: I have to be realistic on that.

13 MR. BROGDEN: Yes, my Lord, but I'm thinking in terms
14 of the eleven days before any charge was processed or
15 started, the period of time in which there was no
16 charge pending, no complaint made - no formal, official
17 complaint, no investigation launched --that period of
18 time in which something could have been done. An
19 apology could have been made - an attempt to correct
20 it, and say, "Look, I'm sorry I got out of hand".
21 Well, there was no approach. You heard Marjorie say
22 "He never spoke to me again." She spoke to Neil,
23 trying to get her jeans back, and I think that reflects
24 what the pre-sentence report shows - no indication of
25 remorse, no indication of concern for this girl who,
26 I don't think anyone will dispute, will probably be
27



1 marked for the rest of her life, and a great deal of
2 consideration must be given to that.

3 THE COURT: Oh, yes, I agree with that. I don't dispute
4 that. On the other hand, I think you have to concede
5 that, in giving instructions for the conduct of the
6 trial, this accused and none of the other accused
7 instructed instructed their Counsel to take a vindictive
8 or caustic approach towards the girl. No effort was
9 made to enquire into her past or to in any way discredit
10 her as a person prior to this date.

11 MR. BROGDEN: Of course, without the formal application
12 under the amendments it could not have been done.

13 THE COURT: That is correct, but the fact is it was
14 not done and there was no skirmishing around that issue
15 in any way, because I came frankly prepared to have to
16 deal with the matter of law if aspects of that did
17 arise, but you would have to concede that the case
18 was not conducted in an offensive way towards the girl,
19 other than within the proper bounds.

20 MR. BROGDEN: No, not at all. I agree with that.

21 THE COURT: You must realize that there are some
22 accused persons who would give instructions that it be
23 handled in quite a different way. Counsel might have
24 difficulty accepting those instructions in some cases,
25 but on the other hand, there are many cases where they
26 would pursue it.
27



1 MR. BROGDEN: Well, perhaps --

2 THE COURT: I think frankly that any of the Counsel
3 involved in this case certainly treated the girl with
4 as much compassion as could be extended under the cir-
5 cumstances.

6 MR. BROGDEN: I haven't any mistake about that.

7 THE COURT: I have never seen a rape case conducted in
8 a better manner by Counsel.

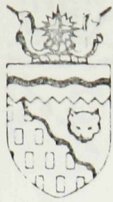
9 MR. BROGDEN: My Lord, I agree, but again I am speaking
10 about that eleven-day period --

11 THE COURT: You know, I'm not oblivious to the fact
12 that we really had three Counsel involved.

13 MR. BROGDEN: Again, my reference there was to the eleven-
14 day period. No effort was made by the Defence, by Pat
15 Laviolette --and the pre-sentence report indicates that
16 he still sustains no feeling of guilt, no feeling that
17 he has done something wrong. There's nothing else but
18 feeling bitter about the outcome.

19 But moving quickly because I don't want
20 to take up too much of my Lord's and the Court's time -
21 I'm sure my friends will have a fair amount to say:

22 I have indicated that Pat Laviolette was
23 the leader. He sort of orchestrated the entire incident
24 after it got under way, and just to support that he
25 was the first person to have a sexual relationship with
26 the girl; he was the first one to use physical force
27 on her; he told the others what he had done - boasted



1 about it, if I might use that word, right after it
2 happened as soon as the others arrived; he told Ted
3 to go at it; told Neil to go at it; pulled Neil off;
4 it was his house and his booze. He orchestrated the
5 entire thing and I suggest that without Pat Laviolette,
6 my Lord, it is the Crown's position - and of course my
7 friend will undoubtedly comment on that, the Crown
8 takes the position that Pat Laviolette was the prime
9 mover. Without him this would not have happened -
10 the other two would not be involved. Not only would
11 the girl not be marked, not only would she not have
12 been hurt, not only would Rhoda not have been hurt as
13 well because she has been deeply disturbed by this incid-
14 ent, but his friends, Neil Heron and Teddy LaHache
15 probably would not be here before this Court either,
16 as I see the facts, and it's not difficult to assume.

17 THE COURT: Yes, but you know, they're of an age
18 where they have to accept the responsibility for their
19 own actions.

20 MR. BROGDEN: Yes.

21 THE COURT: You may urge that they were easily led,
22 but by the same token I think the time has come when
23 they have to realize that they are responsible for their
24 own actions.

25 MR. BROGDEN: Yes, my Lord, that's correct.
26
27



1 THE COURT: I don't think that the law throws up any
2 shield for a man to hide behind and say, "Well, I wouldn't
3 have done it if it hadn't been for so-and-so. It's
4 just like, you know, the person who acts as a lookout
5 in a bank robbery. Nobody makes him act as a lookout.
6 He does it himself, and I don't think it's commendable.

7 MR. BROGDEN: No, my Lord. I agree with you there as
8 regards the other two. I'm referring to the offence
9 as regards only Pat Laviolette, and my Lord, without
10 belabouring it too much, just look at Morrissette on
11 page 399, the judgment, second paragraph, the first
12 four or five lines are directly on this point and isol-
13 ated from the rest of the problems:

14 "The offence of James Morrissette was agg-
15 "ravated by the fact that he was the cause
16 "of his two brothers being involved. He
17 "was the instigator --he got his brothers to
18 "go with him --they followed his instructions.
19 "Under these circumstances, his offence
20 "cannot be viewed leniently."

21 THE COURT: That's fairly stated there.

22 MR. BROGDEN: Yes.

23 THE COURT: But in this particular case, looking at the
24 physical appearance of Heron as compared to Laviolette
25 you know, I don't think that Heron would exactly have to
26 back off if Laviolette came at him and said, "You do
27



1 this or you do that". The Morrissette case involved
2 and older brother, and the younger brothers were seventeen
3 and eighteen and, you know, there is some basis for
4 saying that often an older brother does have a little
5 more influence on younger brothers than strangers.

6 MR. BROGDEN: Your Lordship has the advantage of reading
7 all three pre-sentence reports, and I think the thrust
8 there is pretty clear that Teddy LaHache and Neil Heron
9 are both followers and are both subject to following Pat
10 Laviolette.

11 THE COURT: --Within reasonable limits, but you know,
12 I don't like the idea of persons coming along and saying,
13 "I did this because I was a follower". It seems to
14 me when you're at maturity you accept the responsibility
15 for what you do, and you don't hide behind some shield
16 that is erected.

17 MR. BROGDEN: I would agree to that if I were speaking to
18 the other two men. I am speaking of Pat. That's the
19 other side of the coin. He can still be the leader and
20 can still be more responsible, and I think he is.

21 THE COURT: Yes, and he has been found guilty of rape.

22 MR. BROGDEN: 'Yes, and that's a very big difference between
23 him and the others.

24 THE COURT: And I have to deal with it on that footing.

25 MR. BROGDEN: My Lord, what I only want to do now is go
26 through the pre-sentence report on Pat Laviolette very
27



1 briefly now that it's been admitted. I have a few brief
2 comments.

3 It indicates that he remains bitter at the
4 outcome of his trial, and I would suggest there still
5 seems to be in his mind no remorse. The last two words
6 on the bottom of the first page going to the second page --

7 THE COURT: What does it say?

8 MR. BROGDEN: It says, "He remains bitter at the outcome
9 of his trial".

10 I read through that report and I seem to
11 find nothing in there that suggests any sense of remorse.
12 Perhaps my friend can indicate that there is, but it
13 doesn't show there, and on page five of the report in
14 the summary - about the sixth line there:

15 "Patrick has not expressed any particular
16 regret, or for that matter any concern, for the girl
17 who was involved."

18 Now these reports, I know, are produced on
19 very short notice. Much is said in there about potential
20 epilepsy and I don't think it's that relevant, and I
21 don't mean to overly criticize the report.

22 THE COURT: That is a factor that should be placed before
23 the Court.

24 MR. BROGDEN: Except, my Lord, my comment is this - he
25 has been examined by doctors several times. They have
26 never diagnosed epilepsy. It's a social worker diagnosing
27



1 epilepsy, and I suggest that --

2 THE COURT: It raises the possibility of it. There's
3 nothing wrong with a social worker passing along inform-
4 ation in a report for what it's worth.

5 MR. BROGDEN: I just put it that it has to be taken very
6 lightly.

7 THE COURT: It's like police officers often give social
8 workers information which they pass along for what it's
9 worth. Other members of the community do. It would be
10 unfortunate if we did or said anything which would fore-
11 close the cooperation we seek from those people.

12 MR. BROGDEN: Yes, Sir.

13 My Lord, on the report there are two
14 further points I draw attention to. Under "Education",
15 he left school out of disinterest, and he stayed out
16 of school for the next five years until January, 1977 --
17 and this trial was scheduled for February. He didn't
18 go to school until it was directly before his trial,
19 and I think the Court can take strong notice of the
20 fact that this attempt at education may have been strongly
21 influenced by the impending trial and possible sentence;
22 especially when you consider the rest of the report which
23 shows he has a reluctance to participate in programs.

24 On the bottom of page four of the report
25 there's something else that is interesting and I have
26 a final point.
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He had a chance at the Detox Centre. Your Lordship has indicated an alcohol problem. He was there under compulsion. He didn't go there voluntarily, and even at the Detox Centre there is indication his attitude towards this whole process towards - not just his lack of concern about the girl, but at the Detox Centre he had what is called a seizure because he was drinking while out on a week-end pass. I think we all know there's no drinking while at the Detox Centre, including week-end passes.

THE COURT: That's not the ideal situation, but we all know that things do happen. There's not supposed to be any liquor in Prince Albert Penitentiary, but we all know that on occasions it does get smuggled in, so I would think the Detox Centre has no monopoly on virtue either.

MR. BROGDEN: No, my Lord, but we're dealing with Mr. Laviolette and I am suggesting there is continual evidence of the fact he has no regard for the process of order, no regard for other people. He is not concerned -- he is still not concerned about the girl, who is probably damaged for life in many ways, and I would say that the chances of rehabilitation at the present time are marginal, if they're there at all, and that the penal sanction is the only thing available to the Court, and that sanction I think should above all else reflect the view of the community of this type of offence,



1 particularly by this leader.

2 THE COURT: Well, you know, nobody is going to suggest
3 this case has to be treated like a traffic ticket or
4 even like an impaired driving charge. You know, the
5 offences that have been referred to have been dealt
6 basically by fines.

7 One of the things I would like to ask you,
8 though, is this: Do you see this as a case where the
9 ends of justice and the ends of society would be well
10 served by a term of probation, so that some control is
11 maintained after his release from imprisonment?

12 MR. BROGDEN: Well, thinking in terms of having some
13 compassion for Mr. Laviolette --

14 THE COURT: --I'm not talking in terms of compassion.
15 I'm talking now about the ends of justice and the
16 interests of society. In other words, it's open to the
17 Court to impose a sentence which, when served - subject
18 to release for good behaviour on parole, is in effect
19 over except for the parole aspect of it. It is open
20 to the Court to impose a sentence and in addition to that
21 sentence provide for probation after release, which gives
22 society some element of control.

23 MR. BROGDEN: My Lord, my problem with that --I understood
24 what your Lordship meant but the problem I am faced with
25 now is that based on that report and with this offence
26 on the record - unless during the period of incarceration
27



1 there's a major reformation in there, probation I can't
2 see as assisting this person.

3 He has not been a successful probationer.
4 It doesn't seem to be getting through to him at all.
5 There's no indication of attempting to correct his beh-
6 aviour or even recognizing yet that it's wrong. I can't
7 see that probation is going to be of any assistance to
8 him or to --

9 THE COURT: --We're talking about probation after a
10 sentence.

11 MR. BROGDEN: Yes, and that's the only qualification of
12 the matter --if that sentence --sometime during the course
13 of his incarceration, and I would like to suggest to the
14 Court that that period of incarceration should be suff-
15 iciently lengthy - that we're talking about a period so
16 far in the future it's difficult to project. I really
17 don't see him being amenable to probation. Certainly
18 not on anything we have before us now. My friend may
19 produce something of which I am not aware. From my own
20 material he just doesn't seem to be the proper candidate
21 for probation services, and to put people on probation who
22 are not good candidates merely handicaps the time and
23 efforts for those who are good candidates. I can't see
24 anything here that there has been any change as yet.
25 With a long period of incarceration perhaps sometime
26 during that process somebody can reach him. Maybe there
27



1 will be a change. Maybe he will grow up in that time.
2 If that's the case he might be amenable, but there's
3 nothing now for forecasting, I would suggest to the
4 Court, very far in the future.

5 THE COURT: Mr. Searle --

6 MR. SEARLE: My Lord, I must say that I am surprised by
7 Mr. Brogden's comments. I am surprised at the attitude
8 that he has taken with respect to Mr. Laviolette and the
9 harsh, if I may say, approach he has taken to this young
10 man.

11 I would like to suggest on behalf of Mr.
12 Laviolette that the evidence does not establish anything
13 near the relationship that existed in the Morrissette
14 case. In that case, and only two pages of it really
15 need be read to get the meaning of it --the last pages,
16 398 and 399.

17 It's clear that James Morrissette was
18 twenty-three years of age, married, with three children.
19 Attending a business college, he was a responsible young
20 man who then, as the older brother - much, much older,
21 with seventeen and eighteen year old brothers, and got
22 them involved as a leader in the situation. How that
23 case can possibly be relied upon for any purpose is beyond
24 me.

25
26 THE COURT: Well, I think, Mr. Searle, the case does
27 state the principles that are applicable.



1 MR. SEARLE: Oh, yes.

2 THE COURT: And it serves as a useful guide in that

3 respect. I agree with you that each case has to be judged

4 on it's own facts, but as I indicated to Mr. Brogden,

5 I have had a background of information on this case

6 which is not really available for Counsel here, and

7 that information if it were read by going through the

8 extensive transcripts would indicate substantial force

9 was used and the two brothers helped to remove the

10 clothes, and that's an indication in the report --

11 MR. SEARLE: Yes.

12 THE COURT: --that there was substantial force used

13 against the girl.

14 MR. SEARLE: And struggling and screaming, etcetera --

15 THE COURT: That's right, and also the accused, James

16 Morrissette, in that case had the benefit of a reason-

17 ably good education, and I think frankly the Court was

18 outraged by the thought of a person who had been employed

19 as an orderly for two and a half years in the hospital

20 at Prince Albert getting involved in this type of thing.

21 In other words his very training in later life should

22 have told him that this is not the way to conduct himself.

23

24 MR. SEARLE: Well, Sir, that certainly does appear from

25 the case. Now, looking at the facts of our case and

26 comparing them briefly with that, obviously you have three

27 young men here, all of them as I understand it, twenty



1 years of age; they're not related in the sense of one
2 being an older brother and the others being younger
3 brothers. In fact, they're not related at all, as I
4 understand it.

5 What you have on the evidence is the young
6 man in the beer parlour drinking and the two young girls.
7 The evidence clearly indicates that Neil went over to the
8 girls, spoke to them, left their table and proceeded
9 over to Pat's - apparently obtained his permission to
10 use the basement for a party, then returned to the girls
11 and put the invitation to them.

12 When they went to the house, of course,
13 Pat and Neil and the girl, all three, were together.
14 Her impression was, as I understand the evidence, was
15 that she was going with Neil.

16 Then, of course, as the three separate
17 acts occurred -- dealing with the first one, there's no
18 evidence that Neil helped Pat. Dealing with the second
19 there's no evidence that Pat or anyone else --

20 THE COURT: No, but in that sense it was not a joint
21 venture.

22 MR. SEARLE: Exactly, so how my friend arrives at the
23 conclusion that Pat was orchestrating this whole thing
24 and was its leader and compares it to the Morrissett
25 case, I don't know how he gets there. Rather it seems
26
27



1 to me to be a preconceived idea arrived at prior to
2 hearing the evidence which he is hanging on to, not-
3 withstanding the evidence, and I suggest, having heard
4 the evidence you might wish to arrived at an entirely
5 different conclusion.

6 THE COURT: I think the furthest I would go is this,
7 that I think your client would have to accept the resp-
8 onsibility for being the first man to be involved sexually,
9 and probably it's a fair inference that if he hadn't
10 led the way in that sense the others would not have got
11 involved; but as far as taking the view that the other two
12 were just followers - I've already said I think there
13 have to be some limits placed, because as I see it, where
14 you have, you know, three young men of about the same
15 age group and there's no family relationship, one or
16 two of them cannot duck behind the idea that, "Well, there
17 was a leader and we followed our leader". We're not
18 talking about a military operation here, and I am not
19 prepared to go that far and it shouldn't be treated that
20 way.

21 MR. SEARLE: Nor, indeed, Sir, is there any evidence
22 that these two other young men subscribe to the theory
23 that he is their leader, as I understand it.

24 THE COURT: Well, they have to accept the responsibility
25 for what they did.
26
27



1 MR. SEARLE: As to the previous convictions I think you,
2 Sir, have already made the points with Mr. Brogden
3 that I was going to make. It looks to me that 1974
4 was indeed a bad year for liquor offences, and that's
5 essentially what we have throughout the whole of the
6 period, and it is that liquor problem that I want to
7 briefly address the Court's attention to if I might.

8 My friend makes much of the comments
9 in the pre-sentence report about Mr. Laviolette remaining
10 bitter at the outcome of his trial. He didn't read
11 the next words, "...and apprehensive about what is to come"
12 which are the next few words following. He makes much
13 of, "Patrick has not expressed any particular regret,
14 or for that matter any concern, for the girl who was
15 involved."

16 On that point, Sir --those points, the
17 liquor intake and liquor involvement which is so apparent
18 from the previous convictions which my friend has prod-
19 uced, the evidence as to the drinking on that night -
20 I would suggest it's very open to you to clearly conclude
21 that, although the jury found that a rape in fact took
22 place --though you yourself may be satisfied that
23 a rape took place and that you would have come to that
24 conclusion had you been the trier of fact, it is still
25 possible for Mr. Laviolette, because of the liquor
26 involved, to be firmly convinced (though even wrongly)
27



1 that a rape did not, in his opinion, take place.
2 I would suggest to you, in consulting with him, that
3 that is the view he indeed takes.

4 THE COURT: Yes, well I think the authorities indicate
5 that the day has long since gone by when a trial judge
6 in imposing sentence should be vindictive for the sake
7 of being vindictive.

8 MR. SEARLE: I suggest to you, Sir, that he honestly may
9 hold that view, but he may still be wrong in it in your
10 opinion.

11 THE COURT: You know, there are many occasions when
12 people under the influence of liquor, in driving vehicles,
13 will give a version of what happened and how they drove,
14 which they probably honestly believe is true - their
15 mind being so befuddled by liquor that they really don't
16 clearly know what happened, and yet they think they know.

17 MR. SEARLE: And I am suggesting, Sir, that that essent-
18 ially is the situation here.

19 Now, there is in addition to the comments
20 here, and maybe while I'm on the pre-sentence report
21 I should just deal with it - the summary on the back
22 page --I won't read the whole thing because your Lordship
23 has it. It's part of the record.

24 THE COURT: Would you amplify any portion you would
25 like to? Mr. Brogden did and all other Counsel are
26 entitled to do the same.
27



1 MR. SEARLE:

Well, the report says:

2 "In the event of a jail sentence, the family
3 "has requested that Patrick be allowed to
4 "serve his time in the Territories, so that
5 "he does not become completely isolated and
6 "cut off from them."

7 That is a most important point which Counsel would like
8 to emphasize. That's not only the request of the family,
9 but it is as well of Patrick Laviolette. We don't feel
10 that a sentence served in one of the large penitentiaries
11 would do anything --

12 THE COURT:

Well, I would be astounded if Mr. Brogden
13 would disagree with that.

14 MR. SEARLE:

I would be astounded after what he said
15 if he didn't.

16 THE COURT:

You don't take issued with that, do you,
17 that this man should serve his sentence in the Territories?
18

19 MR. BROGDEN:

My Lord, I would agree it would be good if
20 the man could serve his sentence in the Territories,
21 however, the Crown is clearly and emphatically indicating
22 penitentiary time.

23 THE COURT:

No - that's not what I asked you.

24 MR. BROGDEN:

No, but that it be served in the Territories,
25 I would be very much in favour of that in the case of
26 a person who is Metis or of Metis origin, if it could
27 be done.



1 THE COURT: Frankly, I think the penal institutions
2 here, contrary to popular belief, have a lot more to
3 offer than in some other centres, and I say that with
4 all due respect. I think you, being from Ontario orig-
5 inally, Mr. Brogden, would be aware of some of the problems
6 there. When you compare the institution in Yellowknife
7 and the South Mackenzie Correctional Centre I'm of the
8 view there is a great deal more by way of opportunity
9 for an accused person to learn something.

10 MR. BROGDEN: Yes, I wouldn't want you to misunderstand.
11 I agree.

12 THE COURT: You know, arrangements can be made for up-
13 grading in education and if you have been at the Instit-
14 ution you can actually see them at the work sessions.
15 There are other facilities there and it is very seldom
16 that I do not recommend that a resident of the Territories
17 serve a sentence here in the Territories. In other words,
18 there has to be some very compelling reason why I would
19 not make that recommendation. I have had the benefit
20 of tours of not only Yellowknife Correctional Centre,
21 but the South Mackenzie Centre, including one of the
22 Camps, and also the Frobisher Bay Camp, and it seems
23 to me that there are many advantages from the standpoint
24 of the accused, society, and his family, who I hope will
25 maintain some interest and endeavour to get things
26 straightened out for their son.
27



1 MR. SEARLE: As well, Sir, I have a report from the
2 Northern Addiction Services in Yellowknife, signed by
3 Mr. Gerry Busch, the Executive Director, as a result of
4 a request. We wanted to know what happened in the
5 compulsory twenty-eight day period that Mr. Laviolette
6 spent there. He said the following:

7 "As a result of a Probation Order issued
8 "December 7, 1976, Mr. Laviolette completed
9 "the Rehabilitation Program at Northern
10 "Addiction Services between January 10 and
11 "February 7, 1977."

12 Now, the point is, he did complete it. That, in talking
13 to Mr. Busch, notwithstanding there being a Court Order,
14 is not always the case. In other words, some people with
15 serious problems will take part of the course and just
16 leave, you know, not being able to finish it.

17 "From the time of his arrival ..."

18 I'm continuing to read the letter:

19 "...Mr. Laviolette expressed minimal motiv-
20 "ation to participate fully in all aspects of
21 "the program including individual counselling,
22 "lectures, group therapy, crafts, etc."

23 The fact is, at the beginning he was pretty reluctant.

24 "On occasion a client who initially expresses
25 "disinterest becomes more involved in the
26 "program and actively avails himself of the
27



1 "services available; in changing from his
2 "present lifestyle to an abstinent lifestyle.
3 "During the first ten days Mr. Laviolette
4 "remained quiet, withdrawn and passive, and
5 "often would only interact or respond when
6 "spoken to directly. A little later in the
7 "program he began verbalizing his feelings,
8 "including anger a little more. On January
9 "31, 1977, Mr. Laviolette was admitted to
10 "Stanton Yellowknife Hospital as a result of
11 "a 'grand mal seizure'. We have not received
12 "medical confirmation from the hospital staff
13 "as to whether there was an epileptic or
14 "alcohol related cause to the seizure."

15 THE COURT: It was certainly an epileptic form seizure.

16 MR. SEARLE: Yes. Mr. Laviolette was discharged on
17 February 1, and continued the program until February 7;
18 so what you have, then, is a situation of minimal partic-
19 ipation at the beginning and some improvement later.

20 THE COURT: Would you have any objection to filing that
21 letter as an Exhibit on the issue of sentence?

22 MR. SEARLE: None at all.

23 THE COURT: Maybe we could file that as "S"-2, and that
24 may be made available to some of the authorities that have
25 to follow up on the program.
26

27 EXHIBIT NO. "S"-2 - Letter from Northern
Addiction Services to Mr.
Searle



1 MR. SEARLE: Yes, Sir. I think the reason for reading
2 that and looking at that is to point out that, although
3 there was indeed on admission the reluctance to participate,
4 there was at least a marginal participation, and I think
5 that goes to show against my friend's suggestion that
6 he is not going to rehabilitate, etcetera. That doesn't
7 say it's necessarily so. Even Probation Officer Cavanagh
8 indicates the brief period is important.

9 Now, as to his family --as I came into Court
10 this morning Mr. Laviolette produced to me a letter signed
11 by himself and his wife, which says:

12 "Patrick has a background from childhood of
13 "taking fits early in the morning. It happens
14 "quite frequently. After these fits he needs
15 "a lot of rest and relaxation. Dr. Cazabon,
16 "a former doctor of Fort Smith, treated him
17 "on a number of occasions in our home. He
18 "also went to Edmonton for a check-up, but he
19 "did not take one of these fits while in the
20 "Hospital there. Pat also went to the Detox
21 "Centre in Yellowknife this past January for
22 "a period of one month. During his last week
23 "at the Centre he took one of these fits and
24 "was admitted to Stanton Yellowknife Hospital,
25 "and it was there he was given medication for
26 "these fits. Since his stay at the Detox
27



1 "Centre his behaviour has improved greatly.
2 "His problem of drinking is controlled a great
3 "deal. We would like Patrick to be left in
4 "the Northwest Territories as our family
5 "resides here and we can visit him as often
6 "as we could."

7 THE COURT:

8 Let me interject the question that I was
9 going to ask somewhere along the way and which, neverthe-
10 less, I can consider. Since January of this year --
11 I realize the matter has been, you know, hanging over his
12 head as being very likely to come forward for trial in the
13 near future - and I'm not talking about bars, but has he
14 been in any difficulty with liquor and so on in the last
15 two or three months? You know we can always say, because
16 he is awaiting trial he is putting his best foot forward,
17 but if a person has been behaving himself for a period
18 of three or four months, this is an indication that he
19 was capable of some self-discipline. I would be inter-
20 ested to hear, not only from you, but also from the Crown
21 on that because police officers live in this Town and if
22 persons are stamping around every night and raising a
23 ruckus in local establishments, they would know about
24 it even if there wasn't a charge.

25 MR. SEARLE:

26 Well, Sir, from the time of that report
27 until February seventh he was in the Detox Centre, and
just asking him the very question now as to what has



1 happened since February Seventh he has indicated that he
2 has been behaving. Now, I don't suspect that the Police
3 have anything other than that, but maybe you should confirm
4 it.

5 THE COURT: Maybe we should ask.

6 MR. BROGDEN: I spoke to Constable Small and Constable Small
7 advises me that in the last three or four months, although
8 he has been seen in the Bars, he has not had to be removed
9 and there has been no difficulty.

10 THE COURT: He hasn't been found in an advanced state of
11 intoxication.

12 MR. BROGDEN: I wonder if I might read this in, too?

13 THE COURT: --That, I think, answers my question, Mr.
14 Searle. I often find that when asked the local R.C.M.P.
15 officers are able to give favourable information as well
16 as unfavourable information, and I commend Constable Small
17 for passing that opinion along to Mr. Brogden because
18 it indicates that, contrary to what people often think,
19 he has no axe to grind --he is just doing his duty, and
20 if there is something helpful to the accused he is prep-
21 ared to state it.

22
23 MR. SEARLE: My Lord, I think there is only one other
24 comment I wish to make with respect to this whole matter
25 and that is, of course, to point out that, unlike so
26 many cases of this nature, there was no undue force
27 used on the victim. She didn't suffer a beating at the



1 hands of any of the three boys. There was just no
2 evidence of that sort of thing. There is also no evidence
3 of anything more than sexual intercourse. In so many of
4 these cases, if you have a sort of motorcycle gang
5 approach, you can have the girl put through any number
6 of humiliating experiences that range from normal sex to
7 abnormal sex. This didn't occur, but this case because
8 of the three boys, may be referred to indelicately as
9 sort of a "gang" affair. In fact, it was not really the
10 sort of gang affair that occurs in respect of motorcycle
11 cases. This girl had in the basement what you call a
12 normal --without her consent a normal sexual act was
13 committed by each of the three boys without injury to her.

14 Surely in your experience as Counsel before
15 the Bar, and now as a member of the Judiciary, this has
16 to be the least objectionable rape case, because of the
17 lack of violence and because of the lack of what you
18 might call unnatural sex acts which often occur --totally
19 and completely humiliating the victim. Indeed, with the
20 use of the blanket and one thing or another, it wasn't
21 even something that was particularly done in the pres-
22 ence of the others, although they were sitting there
23 drinking.

24 And finally - though we have this accused
25 convicted of rape by a jury, and even though we have the
26 other two accused, whom you may hear facts about of a
27



1 lesser offence as a result of pleas of guilty, surely
2 the evidence cannot be ignored that each and every one
3 of these men did essentially the same thing; and when
4 it comes to sentence, just because plea bargaining, in
5 effect, took place (quite properly - I'm not suggesting
6 there is anything improper about it), but surely when
7 it comes to sentence you must look upon the three as
8 being no more or less than the other. None helped each
9 other hold the girl down. None did any more or less
10 apparently than a normal sexual act --nothing abnormal
11 about it.

12 THE COURT: I have to sentence the accused, Laviolette,
13 though, for rape.

14 MR. SEARLE: Yes.

15 THE COURT: And there is no doubt that he was the first
16 one, if I may use that term. If he hadn't led the
17 way in terms of the sexual act, it may well be that the
18 others might not have become involved. However, it is
19 easy to speculate now. Hindsight is twenty-twenty vision.

20 MR. SEARLE: I suggest to you that it could just as
21 easily have been Pat Laviolette who went up to place a
22 telephone call or stayed outside --and Neil was down
23 there.

24 THE COURT: He was the host, if I may use that term.
25 It was his place.

26 MR. SEARLE: Maybe that entitled him to be first.
27



1 THE COURT: That's one way of looking at it, too. if
2 you're pleading the order of priorities, but I don't
3 think that seriously because you might be admitting a
4 sort of conspiracy between the three, and there was no
5 evidence of that, but he was the host, and there's
6 nothing wrong with being a good host - don't misunderstand
7 me, but one thing led to another and it did happen that
8 he was first.

9 MR. SEARLE: Well, there's no doubt about that. The
10 only point I am making is that if Mr. Brogden has his
11 way my man will be sentenced very much more heavily
12 than the other two, and I assume my friends who are
13 next to speak would agree, and that's when we part
14 company.

15 THE COURT: I was wondering when you would come to that.
16 We have reached the point when pals become remote.

17 MR. SEARLE: I think we have reached that stage, because
18 they have pleaded guilty to lesser offences, and knowing
19 Mr. Brogden's position, who will argue with you that
20 they're really in an entirely different position than
21 Mr. Laviolette and my friends will want to argue
22 that before you, I want to say before they do that that
23 I don't see the facts in that way.

24
25 The facts are that they all separately did
26 what they did and that's clear; and although they have
27 not been convicted of rape, you may take into consideration



1 the facts as you know them for the purposes of
2 sentence.

3 THE COURT: I think you would agree for the purpose of
4 sentence that rape carries a longer sentence than indecent
5 assault.

6 MR. SEARLE: Depending on the circumstances --

7 THE COURT: But, you know, in applying the principles
8 of sentencing it's difficult to equate them as such,
9 but I agree with you - we have to take into account the
10 whole stage.

11 MR. SEARLE: I won't admit that my sentence should be
12 a heavier sentence than the other two.

13 THE COURT: I wouldn't expect you to say that formally.

14 MR. SEARLE: --or, indeed, informally. You are pressing
15 me. Having said that, I say no more but that the
16 sentence be served in the Territories, and you might
17 consider probation thereafter; and if there is a variance
18 between the other two and he, it shouldn't be anything
19 in the magnitude of what my friend says, nor, indeed,
20 should Mr. Laviolette be looked upon as the leader and
21 instigator, etcetera that my friend portrays him to be.

22 THE COURT: Mr. Brogden, do you want to say anything
23 in reply in this matter?

24 MR. BROGDEN: No, my Lord. I think I have said everything
25 I have to say. I think the Court should read the full
26 letter with reference to that.
27



1 THE COURT: Well, I thought I would now hear submissions
2 on the second case and the third case; then I think I
3 can deal with the actual sentences at the end of the
4 proceedings, if that's all right.

5 Now, Mr. Brogden, we will hear from you
6 on the LaHache matter if we follow that order.

7 MR. BROGDEN: Yes, my Lord. The first item is the
8 criminal record for Isadore Leo LaHache, otherwise known
9 as "Teddy" LaHache.

10 Starting in 1974 - on the 26th January, 1974,
11 Section 91 of the Criminal Code, unregistered restricted
12 weapon - six months probation.

13 On the 22nd June, 1974, Section 65 (1) of
14 the Liquor Ordinance, a twelve dollar fine.

15 On the 23rd October, 1974, Section 65 (1)
16 of the Liquor Ordinance --

17 On the 9th of May, 1975, Section 306 (1) (b)
18 of the Criminal Code - four months in gaol consecutive.

19 On the 9th of June, 1975, Section 294 (b)
20 of the Criminal Code - sixty days in gaol.

21 My Lord, that "consecutive" is to a con-
22 viction I didn't read because the Section doesn't make
23 sense what I have here, so I have left that out. The
24 Section it referred to doesn't have meaning.

25 THE COURT: 294 - that's theft.

26 MR. BROGDEN: Theft under.
27



1 On the 30th of January, 1974, Section 306,
2 (1) (b) of the Criminal Code, which is breaking and
3 entering - ninety days in gaol and a year probation.

4 THE COURT: One year probation?

5 MR. BROGDEN: Yes, Sir.

6 On the 5th of June, 1975 --

7 THE COURT: Just a moment. Does that man --was he on
8 probation at the time this incident occurred on the 30th
9 of January?

10 MR. BROGDEN: On the 30th of January?

11 THE COURT: Yes. That probation would start to run after
12 he served his sentence, so as I read it --the alleged
13 offence was February 28th, and he was sentenced to ninety
14 days on January 30th --

15 MR. BROGDEN: Yes, it's automatic. There was a subsequent
16 Probation Order, but he was on probation at the time.
17 I didn't work out that one because there's a subsequent
18 one that does get him.

19
20 5th June, 1975, Section 294 (a) of the
21 Criminal Code, theft over - One hundred and fifty dollar
22 fine.

23 18th of July, 1975, Section 666 (1) of the
24 Criminal Code, breach of probation - three months in
25 gaol, concurrent.

26 On the 19th November, 1975, Section 64 of the
27 Liquor Ordinance - five days consecutive.



1 On the 22nd of November, 1975, Section 235
2 of the Criminal Code, refusing a breathalyzer test -
3 ten days concurrent.

4 Same date, 22nd November, 1975, Section 295
5 of the Criminal Code, take auto without owner's consent -
6 ten days consecutive.

7 22nd of November, 1975, Section 234 of the
8 Criminal Code, impaired driving - thirty days in gaol.

9 12th November, 1975, Section 133 (5) (b)
10 of the Criminal Code - ten days concurrent.

11 On the 24th of November, 1975, Section 294 (b)
12 of the Criminal Code - ten days consecutive and one year
13 probation. That was on the 24th of November, 1975. He
14 was then on probation for a year. That Order would be
15 in effect at the time of the offence.

16 17th of March, 1976, Section 133 (3) (b)
17 of the Criminal Code - ten days in gaol.

18 THE COURT: That's after the alleged offence --

19 MR. BROGDEN: Yes, I believe that's a breach of the
20 undertaking. There were some breaches of the undertaking
21 on the offence I don't have here.

22 THE COURT: You said 133 --?

23 MR. BROGDEN: Yes, 133 is the breach Section.

24 THE COURT: O.K. - breach of undertaking.

25 MR. BROGDEN: That's not failing to appear. It's breach
26 of undertaking to appear.
27



1 That's the criminal record with regard to
2 Mr. LaHache, subject to any comments by Mr. Bayly, and
3 I believe he has seen that record. He is also, as I
4 read it, twenty years of age.

5 My comments in regard to Mr. LaHache, my
6 Lord --previously my general comments with regard to
7 Mr. Laviolette apply to Mr. LaHache, in particular the
8 following comments: He also has expressed no remorse
9 that I have seen or indicated any regret.

10 As I heard the evidence, and subject to your
11 Lordship's interpretation and the comment of my friend,
12 he was the roughest handling the girl. I'm not suggesting
13 he intended to be rough --it's probably his nature. You
14 will recall the man saying, "Shut up and let me finish"
15 when she was crying.

16 Now, Mr. LaHache is, of course, before this
17 Court on a charge of indecent assault only, not a charge
18 of rape, and that is very significant in the sentence
19 to be imposed, of course, because of the difference in
20 the charge. The Crown has expedited the included plea
21 for various reasons --

22
23 THE COURT: Well, that depends on what view I take of the
24 facts for the purpose of sentence.

25 MR. BROGDEN: That's why I don't stress it too much.

26 THE COURT: If these people are looked upon as being
27 individually responsible for their acts, it's pretty



1 hard to see there should be a great disparity in
2 sentence.

3 MR. BROGDEN: I don't wish to go into that. That's something
4 for the Court to decide and I can't make a represent-
5 ation in that area.

6 THE COURT: I can't help but ask myself, "Suppose one
7 of the others had gone first?"

8 MR. BROGDEN: Yes. The Crown's position as to those acts
9 --of the nature of the boys, and you saw two of them
10 testify and you heard the evidence of that - that they
11 were practically instructed by Mr. Laviolette to go
12 ahead. The Crown continues to take the position that
13 Laviolette was the leader and LaHache was a follower.

14 THE COURT: But when you look at LaHache's record it
15 would be difficult to convince me he was a follower.
16 If you look at his record it doesn't suggest he was a
17 follower on every one of those actions. That would be
18 pushing it beyond the bounds of what I would call
19 "acceptability" in my mind.

20 Let's go back to the major criminal
21 offences - theft, breaking and entry, breach of probation --
22 you know, which is what you might say is a shrill warning
23 when you have subsequent offences. November, 1975,
24 Section 294 you referred to --

25 MR. BROGDEN: The 294, my Lord, for example, that's a
26 case in which - in an intoxicated condition he wandered
27



1 into a room where there was a person who had passed
2 out drunk, and walked out with items in the room, a
3 watch --

4 THE COURT: What about theft under in June, 1975, and
5 the breaking and entering and theft in January, 1975
6 where he got ninety days?

7 MR. BROGDEN: The breaking and entering is a break-in of
8 a store, where again, in a group - the group broke into
9 a store, knocked the door off and walked in the Lion's
10 Den. I remember the case now --went into the Lion's Den,
11 did a little damage. They took, as far as I know, a
12 lighter and cigars, both of which were recovered. It
13 was almost mischief. In that particular case another
14 man named Bruno did the break-in. Mr. LaHache followed
15 him in and LaHache carried some of the stuff out. The
16 stuff was found on the other person.

17
18 The theft in June, it was again a situation
19 where entry was gained through the steel door of the
20 Royal Canadian Legion. There were some cigarettes and a
21 small amount of cash --eight dollars in cash was taken --
22 some scarring to the door, that type of incident.
23 And again, he was involved with another man - another
24 man who has a record for theft and perjury.

25 THE COURT: You see, as between Laviolette and LaHache,
26 LaHache's is the more serious criminal record.



1 MR. BROGDEN: Except there are no offences against persons --

2 THE COURT: And even professional hockey players have
3 been known to plead guilty to that.

4 I take it we are agreed this pre-sentence
5 report can be filed as "S" - 1?

6 MR. BAYLY: Yes, I am content with that.

7

8 EXHIBIT NO. "S"-1 - Pre-sentence Report
9 on Isadore Leo "Teddy"
10 LaHache (Lahace).

10

11 THE COURT: Go ahead, Mr. Brogden --

12 MR. BROGDEN: I am not suggesting in this situation the
13 thing Mr. LaHache has done should be belittled. If
14 anything I think it should be stressed, and as I ind-
15 icated he was probably more rougher than the others.
16 I'm not suggesting he wanted to be rough, but perhaps
17 that's because of his nature.

18

19 This man has never worked. The longest job
20 he held is three weeks.

20

21 On alcohol, it says in the Report:

21

22 "Teddy enjoys drinking alcohol very much and states that
23 he does this every chance he gets." That, as your
24 Lordship has already mentioned, is an unhappy situation
25 and brings him now before the Court and he has to pay the
26 price.

26

27



1 THE COURT: Has he been a problem in the last three
2 months for the Police around Town, or is he in the same
3 situation as the previous accused?

4 MR. BROGDEN: He hasn't been in trouble, but he was picked
5 up drunk a few times.

6 THE COURT: But when he was picked up he was involved
7 in nothing?

8 MR. BROGDEN: He was just picked up intoxicated to the
9 degree he was a danger to his own safety. On my instr-
10 uctions no charges were laid at the time because I thought
11 it would be unfair to the trial.

12 THE COURT: But he hasn't been in any difficulty for
13 raising a "ruckus", if I may use that term, around Town?

14 MR. BROGDEN: No, my Lord. As I said, he is now paying
15 the price for alcohol, and I think, for being a follower.

16 Something that strikes me odd, and I am
17 sure my friend will comment --I was surprised when I
18 saw this Report to see the names of his siblings (ones
19 he doesn't know) and they all have extensive records
20 and serious offences.

21 THE COURT: But that's not his fault.

22 MR. BROGDEN: No.

23 THE COURT: It's just a story of human tragedy when
24 you read about the whole family. It's really appalling
25 when you think about it. You just have to sit back and
26 say, "What a terrible waste!", and from society's
27



1 standpoint it is an even greater tragedy.

2 MR. BROGDEN: I think the facts in the Report speak for
3 themselves. In the case of Teddy LaHache it's "indecent
4 assault". This is still a serious offence. I don't
5 wish to justify him or exonerate him in the Report, but
6 as you have said and Mr. Bayly will point out, it is
7 a tragic background.--which doesn't help Marjorie Nukik
8 or the other girl. It's unfortunate they should have
9 imposed on them the tragic background of this man.

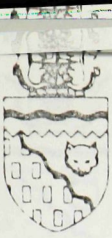
10 THE COURT: Mr. Bayly --

11 MR. BAYLY: My Lord, I'd like to go over some of the
12 facts of the incident, although I am not disputing the
13 facts that have been alluded at the trial of Mr.
14 Laviolette as they referred to Mr. LaHache.

15 There are some things, because there was
16 a plea of guilty, that did not come out at the trial
17 that would be useful to the Court in considering what
18 to do with Mr. LaHache.

19 I am informed Mr. LaHache was in the Bar
20 the night of the incident; that he was for some of the
21 time in the company of a Mr. Benwell, who appeared as
22 a witness before you, and during that time he consumed
23 eight or nine bottles of beer; and he stayed in the Bar
24 until approximately closing time.

25 He had been invited by either Mr. Heron or
26 Mr. Laviolette to attend the house for the party, but
27



1 he had declined because he and Mr. Benwell were hoping
2 to get a ride to Chipewyan by a friend. Apparently
3 they missed the ride and following their unsuccessful
4 attempt to go to Fort Chipewyan they did attend the
5 Lavolette house.

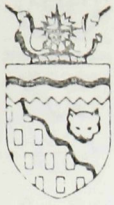
6 At this point Mr. LaHache has indicated to
7 me he was fairly intoxicated. I have mentioned those
8 facts, my Lord, because I think it is of some signif-
9 icance in your determination of sentence. We know that
10 this man came along afterwards - that he was not part
11 of the incident that was involved in arranging the
12 party and picking up one girl and appearing to pick up
13 the other. In fact, he walked into the situation sub-
14 sequent to the first act of intercourse taking place.

15 That does not exonerate him. That doesn't
16 mean he should have taken advantage of the situation.
17 but I do say his guard was down, and when the first plans
18 for the evening's activities had fallen through he did
19 go to this house and got involved with this trouble.

20 THE COURT: He certainly wasn't a reluctant participant.

21 MR. BAYLY: No, Sir. I'm not saying he was.

22 Much has been said of the possibility of
23 one being more of a leader than the other, and one of
24 the things that I am concerned about, my Lord, is this
25 falling in a position of not using the fact that one
26 may be led by another is not an excuse for doing the act,
27



1 but perhaps as an explanation of conduct.

2 We have heard a pre-sentence report prepared
3 by a Miss Marie, who was the person heard earlier this
4 week, and she goes over the background of this young man,
5 and I will be going over that because it does indicate
6 something of his character - to show why he would get
7 involved in an activity like this. It doesn't exonerate
8 him, but in sentenceing one may see the sort of person
9 being sentenced, to see why he would get involved in
10 such an activity.

11 You have drawn the distinction with Mr.
12 Searle between this case and the Morrissette case. It
13 may be it's more reprehensible for one of the older
14 brothers, as the Morrissette brother was of a trio,
15 than such a man as this with his guard down, whose
16 history is not enviable and whose future is bleak.

17 Mr. Brogden has referred to the criminal
18 record of Mr. LaHache, and the criminal record involved
19 is a series of property offences and it indicates a
20 considerable involvement with liquor, not only by itself -
21 because he has been convicted several times of breaches
22 of the Liquor Ordinance, but because he has been in-
23 volved in a number of property offence convictions,
24 and, of course, he has been convicted of the alcohol
25 and driving offences. There is no doubt this young man
26 had a problem with alcohol.
27



1 Now, at no time has Mr. LaHache admitted to
2 me that he considered himself to be completely led and
3 bound by Mr. Laviolette. That doesn't mean that he wasn't
4 influenced by him, but we are not seeking to duck out
5 under that fence.

6 THE COURT: Well, I think I made it pretty clear I won't
7 let you.

8 MR. BAYLY: I don't think that is a valid excuse to
9 excuse conduct of the nature of the offences that have
10 been committed here, but the Crown has for various
11 reasons and in its best judgment accepted a plea of
12 indecent assault, and the Court must consider that the
13 sentence must be given for indecent assault, although
14 the range of sentences is wide and includes a maximum
15 of, I think, five years.

16 THE COURT: I have to take into account the overall
17 circumstances --

18 MR. BAYLY: Of course.

19 THE COURT: --involving this incident.

20 MR. BAYLY: You would give a greater sentence to a man
21 who commits an indecent assault than you would for a man
22 who pinches somebody's bottom in an elevator; and also
23 the range would be different in sentence again.

24 THE COURT: And also the fact that a person's resistance
25 is to some extent broken down by a previous act of
26 intercourse with the first accused is something that
27



1 I can take into account.

2 MR. BAYLY: Yes.

3 THE COURT: In other words, your client - putting it
4 bluntly, took advantage of a situation on the facts
5 presented.

6 MR. BAYLY: No, and I am not suggesting that he did not,
7 but let me refer you to cases decided by this Court in
8 the recent past which involved similar fact situations,
9 and although you're certainly not bound by the sentence
10 there because the facts are different, they do offer a
11 guide and they also will inevitably be compared by these
12 accused with the sentences of their fellow prisoners
13 when they're sent to a penal institution, and the
14 sentence, I submit, must make sense to them as well as
15 to the rest of the public.

16 You will recall in Rankin Inlet in November
17 of this year that the Crown consented to pleas of
18 indecent assault in charges that were originally rape
19 in the matter of Hakuluk, Tootoo and Kowtak, and the
20 sentence there was three weeks in gaol for Hakuluk
21 and a suspended sentence for a period of a year.

22 Certainly there was no comparison between
23 their backgrounds and their criminal records --

24 THE COURT: --And the Crown made it very clear in their
25 submissions on sentence as to the position they were
26 taking in the Community.
27



1 MR. BAYLY: Yes.

2 THE COURT: I might also say that Crown Counsel in that
3 case came as close to supporting your position as he
4 could.

5 MR. BAYLY: I was a little concerned that he would
6 submit my position and perhaps make it more difficult
7 for me to argue it. I would sooner have him fully
8 against me.

9 The case in this incident involved three men.
10 In that case the three came upon someone having inter-
11 course in a bush in the community and took advantage by
12 having intercourse with her. Again, for reasons that
13 are justifiable, and there's no complaint on the bargain
14 made between the Crown and Defence, indecent assault
15 pleas were taken. I was informed by Miss Green that
16 there was a comment by the Court that the sentence was
17 for indecent assault, although the facts disclosed what
18 amounted to gang rape, and if it had gone by a plea of
19 "guilty of rape" or conviction for rape the sentence
20 would have been more severe than it was. I understand
21 sentences of three months were given these young men
22 who were free of any criminal record and were very
23 young - so there's that difference between that case and
24 the one you have to decide today.

25 Now, I won't go into the things the
26 Court has to consider in sentence, but I know you must
27



1 balance the interests of society and the deterrence of
2 this accused and others, and the possibilities of re-
3 habilitation of these people.

4 THE COURT: I take it, Mr. Bayly, and this may be a
5 difficult question to put to you, but I am going to put
6 it to you anyway - if you would agree that really,
7 looking at the whole picture here, the disparity between
8 the sentences ought not be too great?

9 MR. BAYLY: I don't think it should be too great,
10 although each must recognize their responsibility for
11 this thing.

12 THE COURT: That's right, and that can work, you know,
13 in more than one way. It probably works to the advantage
14 of Mr. Searle's client.

15 MR. BAYLY: Well, it does. It probably forces you to
16 drop down the sentence you might otherwise have been
17 forced to give him if he had been alone in this act.

18 THE COURT: But you know, when you're talking about a
19 realistic sentence from the standpoint of the accused
20 collectively I think you would have to acknowledge that
21 there can't be too great a disparity.

22 MR. BAYLY: I think that's correct, my Lord, but there
23 must also not be too great a disparity between the
24 sentence given for this particular assault, the one
25 I am now making submissions on, and those in the
26 Territories in like circumstances - given, of course,
27



1 the background may influence the decision as to the extent
2 of the sentence.

3 THE COURT: Mind you, in this particular case there are
4 quiet a few distinguishing features from this case and
5 some of the cases put before me.

6 MR. BAYLY: My Lord, you must also look at the involve-
7 ment of this character, and then again we operate contra
8 as Counsel, and I emphasize for your Lordship that Mr.
9 LaHache was not the person who set up this person --was
10 not a person who even intended to go there, but was
11 the person who, under the influence of alcohol, went
12 there and took advantage of the situation, and that,
13 I submit, must be considered. Although they all did
14 the same thing, how they came to do that must be taken
15 into consideration.

16 Now comes the time, my Lord, for a look at
17 the accused himself, and I have a pre-sentence report
18 here and have a few comments upon it.

19 Mr. LaHache was nineteen years of age when
20 this offence was committed, and he has an unfavourable
21 family history. In fact, he has had no real family
22 history. He has been from one home to another, from
23 one group home to another, and he has no real close ties
24 with any one of his siblings or any other member of his
25 family. That has been confirmed by me and is reflected
26 in the report.
27



1 He left the group home in Fort Smith here
2 in 1974, it says here, after a particularly upsetting
3 incident. This is on page four --

4 THE COURT: Yes, I read that.

5 MR. BAYLY: I checked that with Mary Marie and appar-
6 ently Mr. LaHache was involved in a drinking episode
7 and was asked to leave the home, and at this point he
8 lost the only home that he had, and during his time at
9 the home he became very closely attached to the house
10 parents. They were a couple named Mercredi, and the
11 father of that family was killed in an automobile
12 accident apparently eight years ago, and checking this
13 with people in the community and Miss Marie, this was
14 a person very important to Teddy LaHache, and he was
15 left without a father figure.

16 Now, some of the things that have been
17 put into the report show some hope for the future of
18 this young man. The fifth page of the report says
19 that that the accused has done some self-appraisal
20 already. He has classified himself as moody,
21 emotional and quick-tempered, and states he can't
22 understand himself.

23 One of the suggestions made by the probation
24 officer is that he may be treated by psychiatry.

25 Now, when Mr. LaHache was in gaol for other
26 offences during the fall and winter just past I
27



1 requested the Zone Psychiatrist, Dr. MacKay, to see
2 Mr. LaHache in the Institute, and I have been informed
3 by Dr. MacKay that he would attempt to do so, and I had
4 promised Mr. LaHache that I would undertake to get him
5 to visit him. That visit never took place, although
6 I have reminded and requested Dr. MacKay on several
7 occasions.

8 Mr. LaHache told me he is agreeable to have
9 this kind of assessment - that he knows he has problems
10 and can't sort them out all by himself.

11 Now, the Crown has stated this young man
12 showed no remorse. I think a man who has had difficulty
13 understanding himself; who, as the probation report
14 says, is not able to express himself regarding the
15 offence, has nothing to do with remorse. It may be
16 he is unable to articulate his feelings about the
17 incident. If the person is willing to accept psych-
18 iatric help it is not surprising he doesn't apologize
19 and hang his head in front of the complainant. This
20 is a young man with very complex problems that need
21 sorting out.

22 Now, I questioned Mr. LaHache as well about
23 the comment on page two with regard to leisure-time
24 interests, and I confirmed with him that, in fact,
25 he is quite interested in art and has been reading and
26 particularly writing poetry. He says that the poetry
27



1 is for himself only and not on a wider basis, but it
2 does show a young man exploring his feelings. It
3 may be later in his life than it should be, but I
4 say this is a person who may be able to take hold of
5 himself, and he may be able to lead a life for himself.

6 Now, I have some other background sub-
7 sequent to reading the pre-sentence report from a number
8 of people who have known Mr. LaHache earlier in his
9 life.

10 The first person is Marg Jones and she
11 works at the Yellowknife Travel and formerly lived in
12 Fort Smith. She informed me she knew Teddy in the early
13 teen-age years when the family lived in Fort Smith.
14 She could not, from her recollection, imagine him
15 planning to get into this kind of trouble. She did say
16 he was a person easily led by his companions. She
17 described him as a youngster liked by companions in
18 school and liked by all.

19 I then spoke to Mr. Jones, husband of
20 Marg Jones, who works in Yellowknife, and he used to
21 coach Teddy in ball in Fort Smith. He says the other
22 kids would often tease him, and he watched him in this
23 regard. He describes Teddy as a child who was often
24 picked on. He had a few friends at the Receiving Home
25 and this man who was killed at the time raised Teddy -
26 also Mrs. Mercredi, the house mother of the Receiving
27



1 Home.

2 I then spoke to David Jones, the son of
3 this couple and he says he knew him fairly well between
4 fourteen and sixteen and says he was starving for
5 appreciation and wanted to be one of the boys and
6 had no definite personality, and David described him
7 in this term - that he was a pathetic character. Even
8 at this stage he was dominated by his younger sister,
9 but he also described him as a human and sensitive
10 person, and when Teddy was at the Y.C.I. David had gone
11 to play ball against him, and when they talked Teddy was
12 very concerned about the death of one of the people they
13 both knew.

14 I also spoke to Constable Small, and as
15 you know, the Police are often a source of information
16 helpful to the Court and to the Defence as well as the
17 Crown, and he said that one of the things that can be
18 said in Teddy's favour is that he doesn't lie; so when
19 a statement was obtained from him it was used to convince
20 the Police in their further investigation. They were
21 convinced of its truth, and that was helpful to them in
22 bringing this case on for trial. He is not personally
23 devious in this thing.

24 I also spoke to Mrs. Piper, Public Health
25 nurse for Fort Smith. She hasn't known Teddy for some
26 time, but she knew him as a young boy. She relates he had
27



1 a difficult upbringing, and when Mr. Mercredi was
2 killed, that Teddy lost a father figure when he
3 needed one the most.

4 Now, this young man, despite people saying
5 that he was somewhat slower than his companions or a
6 slow learner, has managed to achieve Grade Ten and has
7 taken some upgrading at Yellowknife Correctional Centre.
8 In other words, he seemed to have benefited from
9 school despite having some of the handicaps I have
10 described.

11 He doesn't have an extensive work history -
12 when one considers his age and incarcerations, for
13 determining a work record of any significance.

14 His only concern in the pre-sentence report
15 was with regard to the comments on alcohol. He knows
16 it is a problem with him, but doesn't feel he is an
17 alcoholic. He does say that before going to Court,
18 when this matter was building up, he drank fairly
19 heavily on occasion, and says that was at least in part
20 a result of the stresses he was under in regard to these
21 charges, and I think Constable Small has confirmed he was
22 a very upset young man in regard to these charges, part-
23 icularly in the latter months prior to trial.

24 I have no further comments, then, my Lord,
25 in regard to this matter. I don't think there is any
26 question that this young man will be going to gaol.
27



1 I think he may be a person who will benefit from a
2 period of probation following that, despite the fact
3 he hasn't responded completely favourably to probation
4 in the past.

5 I submit that in taking into account
6 what sentence may be given, his record as well as Mr.
7 Laviolette's should be looked at, not only for length,
8 but in determining if there are any similar offences
9 in the background, and my listening and taking notes
10 on that record shows no evidence that this young man was
11 involved with anything where he tried to hurt anyone
12 in the past.

13 THE COURT: No, but a distressing feature is that he
14 was on probation when this occurred.

15 MR. BAYLY: I realize that.

16 THE COURT: And that, of course, indicates that he
17 really didn't take the probation very seriously at
18 that time. This is not to say he will not treat it
19 seriously in the future, but certainly his record is a
20 very serious record in many respects. You're quite
21 right - it didn't involve personal violence, but one
22 step leads to another.

23 MR. BAYLY: I realize that, my Lord, but one of the
24 things about probation I would submit for your consid-
25 eration is that it works best where someone has the
26 support of the people around him. The evidence from
27 the probation officer is that this young man has no one



1 around him, and there is no Institution that has taken
2 care of him in the recent past, and he has no family
3 he can turn to. I don't think it's that surprising,
4 particularly with the lack of jobs in this area and
5 lack of motivation for training young men that this
6 young man had failed probation at least once. He
7 is probably developing maturity - at least in recent
8 years, and if he can benefit from the program in gaol
9 he may go on to be a person --

10 THE COURT: I'm a firm believer that a sentence of
11 sixty days or ninety days is of very little value in
12 many respects. A person just gets in there and is
13 processed in the system, and then he gets out. There's
14 no time to study. There's no time for training to be
15 of value in rehabilitation.

16 MR. BAYLY: There's a sentence of four months in 1975.
17 It may be that's the time he did the upgrading.

18 THE COURT: That may have given him a little more
19 opportunity.

20 MR. BAYLY: Yes, my Lord.

21 THE COURT: Do you have anything to say in reply,
22 Mr. Brogden?

23 MR. BROGDEN: No, my Lord.

24 THE COURT: All right. We will hear you in the Heron
25 case then --
26
27



1 MR. BROGDEN: The criminal record of Mr. Heron --and
2 my friend has had a chance to see this, my Lord -
3 this one can better be summarized than read.

4 In the period of time from March, 1973,
5 until the 30th April, 1975 (almost exactly two years)
6 there are twelve convictions under 65 (1) of the Liquor
7 Ordinance, ten of which resulted in fines in the mid-
8 twenty dollar range, and an earlier one - about the
9 third or fourth one - seven days in gaol.

10 Aside from that there are only two more -
11 one on the 16th of October, 1974 under 133 (5) (b),
12 which is failing to appear in Court. He was fined
13 seventy-seven dollars.

14 There's a Liquor Ordinance offence on the
15 same date.

16 The other is on the 30th of April, 1975,
17 under Section 666 (1) of the Criminal Code - breach of
18 probation. He was sentenced to sixty days in gaol.

19 There was a Liquor Ordinance conviction
20 on the same date.

21 There's also a 402 (2) of the Criminal Code,
22 which is cruelty to animals, on the 17th of September,
23 1975 - a thirty-two dollar fine;

24 And again, as with the other boys, there
25 has been some trouble as to breaches of undertaking for
26 this trial - that there has been a prohibition from
27



1 from drinking. All three suffered from that difficulty
2 from time to time.

3 THE COURT: How has he been behaving himself in recent
4 months?

5 MR. BROGDEN: In recent months, my Lord, there is an
6 unusual situation in regard to Mr. Heron. First of all,
7 he has been in the Hospital much of the time, so he
8 hasn't been available for gaol, but there is one part-
9 icular incident which reflects something in the probation
10 report.

11 He was serving time for a breach of the
12 probation; and as indicated in the report he is an
13 aggressive and hostile person at times and he damaged
14 Constable Small's motorcycle outside the Detachment,
15 and he has been breached and ordered to make restitution
16 of that, so there was some indication of that.

17 My Lord, the situation in regard to Neil
18 Heron places me in a rather unusual position. I
19 indicated to Mr. Geldreich some of the comments I would
20 make on this.

21 There is a kind of representation, or stand,
22 I think, I have been asked to make by Marjorie Nukik,
23 the victim. Not only has she asked, but it has cert-
24 ainly been clear from her testimony at the hearing -
25 notwithstanding whether I agreed or not, and I think
26 she has the right to be heard. She instructs Neil
27



1 Heron to be the least of the offenders. She wasn't
2 concerned in regard to Neil. He was the only boy she
3 spoke to since the incident occurred. She asked Neil
4 to get back the jeans, and it is not in evidence before
5 the Court - Neil indicated he wouldn't, that he was
6 afraid of Frank Laviolette --not of Pat, but Frank, the
7 father; so he would not go and get the jeans. She
8 considers him the least of the offenders at the
9 Preliminary and did not give evidence of penetration.

10 THE COURT: On the evidence before me there wasn't
11 much difference between the last two boys. On her sworn
12 evidence there seemed to be very little difference.

13 MR. BROGDEN: I think it's fair to advise the Court that
14 although the Crown accepted the plea of guilty for
15 LaHache I had difficulty in proving because of lack of
16 penetration.

17 THE COURT: There was enough evidence of going through
18 another two times. She had been through one, and I
19 think it's a difficult thing for a nineteen-year old
20 girl to go through the same thing twice afterwards.
21 The first one would be more traumatic to her.

22 MR. BROGDEN: And I advised the Court subsequent to that
23 occasion she indicated he was the least of the offenders,
24 and her evidence at the Preliminary did not evidence
25 penetration in his case. Her evidence at the trial
26 was different.
27



1 With regard to the further comment on
2 Neil Heron, I think I will go through the pre-sentence
3 report, drawing attention to a few of the things.

4 One page two --

5 "He does not have a great deal of ambition,
6 "being content to depend on his parents for
7 "financial support, and generally to take
8 "whatever comes his way."

9 I don't think the Probation Officer who wrote that
10 reflects "he takes what comes his way".

11 THE COURT: On the evidence that came before me Heron
12 admitted penetration. I can understand the girl, being
13 so distraught at that stage, not knowing what did, in
14 fact, happen, but he made it pretty clear in the language
15 of the street what happened --

16 MR. BROGDEN: I felt I had an obligation to say what I
17 did, following Marjorie Nukik's --

18 THE COURT: --So I don't see any difference there.
19 He was asked why he kept on going, and he said "because
20 I wanted to". You know, his mind may have been affected
21 by liquor, but there is no doubt that carnal lust was
22 paramount in his mind at that time, and of course, the
23 same comment can be made about the other boys.

24 MR. BROGDEN: The comment you have just made leads to
25 the last part of the paragraph --

26 "He does not have the inclination or desire
27



1 "to abide by any behaviour guidelines other
2 "than his own."

3 --which may reflect the whole situation.

4 I have nothing further to say in regard to
5 Neil Heron. I have nothing that I could say that hasn't
6 been before the Court several times.

7 THE COURT: Mr. Geldreich --

8 MR. GELDREICH: My Lord, notwithstanding the facts that
9 have been dealt with several times, firstly five days
10 ago, and now by Mr. Brogden, by Mr. Searle and by
11 Mr. Bayly today, I feel obliged to add a few additional
12 comments that may not have come out from the evidence.

13 THE COURT: You never have to apologize for making a
14 submission on behalf of your client, Mr. Geldreich.
15 That's what you're here for.

16 MR. GELDREICH: I think from the evidence that has come
17 out so far it is common ground that there is no offence
18 with any premeditation by any of the three boys. As
19 Mr. Brogden stated, my client did talk with the com-
20 plainant subsequent to the complaint --or subsequent
21 to the event, when she asked that he attempt to recover
22 her jeans and her radio.

23
24 In addition to that time, my client also
25 informs me that he talked to the complainant twice more -
26 once at a dance five days after this incident arose but
27 prior to the complaint of rape being laid. At that



1 time Miss Nukik asked Mr. Heron to join her at her
2 table and to dance with her. Mr. Heron, in fact,
3 declined.

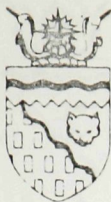
4 Miss Nukik also saw Mr. Heron subsequent to
5 the complaint being handed over to the Police or laid
6 with the Police and information being laid, and she
7 said that she regretted --my client informs me that she
8 said she regretted Mr. Heron being involved in the
9 incident. I suggest that this relevant information be
10 put before the Court. There is very little evidence of
11 any violence used by my client --

12 THE COURT: Mr. Geldreich, as I recall the evidence as
13 it came out, you know, the girl was distraught and
14 upset at that stage and at one point crying, and he just
15 --to use his words, "kept going", and when he was asked
16 why, he told us why. I know you're not suggesting that's
17 anything to be proud of, but this is the way it unfolded
18 in front of me. His position is really very similar
19 to LaHache's, isn't it, when you get right down to it?

20 MR. GELDREICH: My Lord, I don't believe --Although they
21 did accept the same plea in that sense they're similar.

22 THE COURT: No, but from the standpoint of conduct?
23 Let me put it this way. Do you say his conduct is
24 less culpable than LaHache's, and if so, why?

25 MR. GELDREICH: I would say there's evidence of less
26 violence being employed to achieve possibly the same
27



1 end, and I think that is the relevant factor when
2 assessing sentence.

3 THE COURT: How much less - when you analyze it?

4 MR. GELDREICH: Well, my Lord, it comes into the area of
5 conjecture, but should she have resisted him in the
6 manner in which she resisted the other two, it may be
7 he wouldn't have been inclined to have sexual inter-
8 course.

9 There is evidence from the complainant --
10 I may be getting mixed up with the evidence that came out
11 on the Preliminary, but there is evidence either from
12 the Preliminary or the trial that Mr. Heron may have
13 pulled Mr. LaHache off, and talked to Miss Nukik for
14 twenty minutes and had a drink with her before attempting
15 to have sexual intercourse with her, and I see that as a
16 relevant difference.

17 THE COURT: Well, at one point when she was cross-
18 examined - or when there was cross-examination by Mr.
19 Searle I think she said there was a bit of a struggle.
20 She started pushing him off for perhaps a minute, and
21 then she also mentioned --I think it was also mentioned
22 that she was crying and told him not to, and he kept
23 going.

24 MR. GELDREICH: But I would suggest there is less evidence
25 before the Court of violence or use of violence.
26
27



1 THE COURT: Mind you, there isn't evidence of a great
2 deal of violence, compared to some rapes, by any of
3 them. There's no evidence of physical injuries that
4 required medical attention and things like that, which
5 is often the case.

6 MR. GELDREICH: That's correct, my Lord.

7 In addition there's only one other fact
8 I would like to point out to the Court - I believe
9 that when the complainant originally gave her evidence
10 to the R.C.M.P., in her first statement --although
11 this isn't evidence before the Court, she did not
12 mention Mr. Heron as even being there or, in fact, having
13 sexual intercourse with her. Now, I would suggest it's
14 up to the Court to place what weight it wishes on that
15 fact and the fact of subsequent conversations and the
16 request to dance with my client within five days of the
17 incident.

18 Regarding the history of Mr. Heron, it's
19 contained in the pre-sentence report. In addition to
20 the information contained there I would like to supple-
21 ment that information with some information I received
22 from Constable Small. On the bottom of the first
23 page --Personal History --

24 "Neil has been described by various people
25 "as a quiet person, of average intelligence
26 "who tends, on occasion, to be abrasive and
27 "aggressive."



1 According to Constable Small, Mr. Heron is not a
2 problem in the Community and, in fact, his record
3 would substantiate that statement. There is no
4 history of any crimes against a person or property -
5 only liquor offences and breach of undertaking and
6 failing to appear.

7 Mr. Small also, and I believe he can correct
8 me if I am wrong, says Neil is a person who you can talk
9 to, and insofar as this disagrees with parts of the
10 probation report or pre-sentence report, I would request
11 the Court take that into consideration.

12 In addition to the cases Mr. Bayly mentioned
13 which have been dealt with by this Court, I would also
14 call to the Court's attention the most recent one that
15 I have dealt with, and that is Bruce Francis and Barry
16 Roberts in Fort McPherson. Notwithstanding the fact
17 that these individuals were two or three years younger
18 than Mr. Heron, I would submit that the facts were
19 similar - there being sexual intercourse, or a similar
20 situation to this, and then the individuals pleading
21 guilty of indecent assault. In that case there was
22 considerable more violence employed by the two boys
23 and other individuals than there was by any of the
24 individuals in this case. In that case I believe the
25 boys received a term of imprisonment of six weeks, and
26 two years suspended sentence.
27



1 I would only bring the Court's attention
2 to this for the matter of having consistency of sentence.

3 THE COURT: Mind you, I can see a number of differences
4 in the other case.

5 MR. GELDREICH: The individuals were younger and they had
6 less of a record --

7 THE COURT: --Much younger and less of a record, and
8 once again, the Crown fully recognized that, knowing
9 their position in the community, and I think, indicating
10 they weren't asking for much of a gaol sentence, if
11 any. I think that would have been one where the
12 Crown wouldn't have been surprised if I directed no
13 gaol sentence.

14 MR. GELDREICH: The Crown was asking for a gaol sentence.

15 THE COURT: Their submissions were very lukewarm, Mr.
16 Geldreich. Maybe it was because Mr. Brogden wasn't
17 there, but the plain fact of the matter was they weren't
18 pushing for any meaningful sentence there as far as
19 gaol, but I gave those boys a sentence at that time
20 where I think they had reached the stage where they
21 needed more than a slap on the wrist and perhaps a
22 sentence for a short term. If they come before me again
23 I will not forget that they were given a chance.

24 MR. GELDREICH: In that regard I would only repeat again
25 that Mr. Heron has been convicted of no offences against
26 person or property. His only problem seems to be
27



1 alcohol, and of course, failing to appear, which is
2 probably also liquor related.

3 Continuing with the pre-sentence report -
4 in the Education section on page four, the report does
5 point out in 1974 Mr. Heron enrolled at A.V.T.C. in
6 the Heavy Duty Mechanics course and spent four months
7 there before being terminated from the School because
8 of lack of attendance.

9 Mr. Heron expresses some interest in that
10 course and would like to return. His teachers there
11 report his work was satisfactory, but was slipping
12 towards the end due to lack of attendance.

13 Just to add to the comments contained in
14 the Employment section on page four of the pre-sentence
15 report I have some additional information. The first
16 four lines of the section state:

17 "Since leaving school, Neil has held a few
18 "jobs but most have been short-lived. He
19 "has been able to find work in the summer,
20 "but seldom anything that would last over the
21 "winter."

22
23 From information I received from Neil he was able to
24 assist me further and said that he does work at casual
25 employment. He has worked for the same Company --that
26 Company, J. and E. Enterprises, for the last five or
27 six years during the summer months when employment is



1 available. I would submit it is not uncommon, because
2 of the labour or unemployment situation, for a great
3 many people of this Community to be unemployed during
4 the winter months.

5 I have nothing further to say.

6 THE COURT: Have you anything to say in reply,
7 Mr. Brogden?

8 MR. BROGDEN: No.

9 THE COURT: I think it's only fair, since you were
10 called upon to go, really, first, Mr. Searle, for the
11 Defence - is there anything you would like to say,
12 having heard the submissions that the others have made?
13 I will give you that opportunity --and similarly, Mr.
14 Bayly, if there is anything you have heard uttered by
15 Mr. Geldreich you would like to raise with me, I will
16 extend that latitude to you.

17 Mr. Searle --?

18 MR. SEARLE: No, Sir. I don't have anything further to
19 say.

20 MR. BAYLY: I have nothing further out of Mr. Geldreich's
21 comments.

22 THE COURT: In this particular case I propose to deal
23 with the matter of sentencing at this time.
24
25
26
27



1 I must tell you gentlemen that at the out-
2 set I found this case a very perplexing one from the
3 standpoint of imposing a sentence, and even before today
4 I was giving the matter my most anxious consideration.

5 First of all, I would like to thank all
6 Counsel for the comprehensive submissions they have
7 made which supplement the pre-sentence reports and the
8 letter which Mr. Searle has filed as Exhibit "S"-2 from
9 Northern Addiction Services.

10 I can assure you that you never need apol-
11 ogize for taking time in pleading a sentence. There are
12 perhaps some Courts would feel two hours or more is a
13 waste of time on the issue of sentence, but I adopt the
14 view that if we can spend two or three days in determ-
15 ining the guilt or innocence of an accused, we certainly
16 have time to hear full submissions on sentence and give
17 adequate opportunity to the people involved for the
18 preparation of reports and gathering whatever information
19 may be necessary.

20 I would also like to comment on the fact
21 that in my opinion, based on my experience as Counsel
22 and as a Judge, the case was conducted with full recog-
23 nition by all Counsel concerned of their function as
24 advocates. I earlier remarked on that this morning
25 and it is, I think, to the credit of all concerned that
26 the complainant was, I think, treated to that measure
27



1 of respect to which she is entitled in proceedings of
2 this nature. The case was not conducted in a vindictive
3 or caustic manner which was designed to cause un-
4 necessary embarrassment to her.

5 Some of you may have either observed or
6 participated in trials where the case opens on the
7 footing that this is to be a character assassination
8 of the complainant, who is then really the one placed on
9 trial. Nothing of that nature occurred here and no
10 effort was made to embark on that type of proceeding.

11 The cross-examination that was conducted
12 of the girl was direct and conducted with the utmost
13 propriety, recognizing full well the duty of the Defence
14 Counsel.

15 I would also like to add a word to members
16 of the Bar in this context - I cannot help but have
17 observed the fact that Mr. Searle saw fit to bring
18 with him his articling student, Mr. Sissons, and I,
19 for one, think it is to be commended. In this way
20 young lawyers develop by watching others in Court, and
21 I can only say for the rest of you that I hope that
22 you see fit to bring your juniors with you so that they
23 learn early in their career how a jury is empanelled,
24 how a juror is challenged, and unless this is done it
25 seems to me that the Criminal Bar will be the poorer
26 for it.
27



1 Turning now to this particular case I want
2 to tell you gentlemen that at the outset I have tried
3 as best I can to instruct myself on the principles of
4 sentencing.

5 In doing this I have, of course, referred to
6 the case of the Queen vs Morrissett et al, 12 Criminal
7 Reports, New Series, at page 392.

8 In addition to the Morrissette case I
9 have also gleaned, I hope, some assistance from the
10 British Columbia Court of Appeal case of the Queen vs
11 Hinch, 62 Western Weekly Reports, page 205; and the
12 Ontario Court of Appeal case of the Queen vs Wilmot,
13 1967, 1 Canadian Criminal Cases, page 171, and part-
14 icularly at pages 177 to 179.

15 I have also considered the principles of
16 sentencing discussed by the Alberta Supreme Court
17 Appellate Division in the case of Regina vs Beacon
18 and Modney, 31 Canadian Criminal Cases, Second Series,
19 at page 56.

20 I am not going to summarize those cases
21 in my oral remarks because, having heard submissions of
22 Counsel, it is obvious to me you are all fully aware
23 of the principles that must be applied by the Court.
24 I can state them succinctly by referring to the
25 Morrissette case, which is an Appeal Court judgment,
26 and that points out that the factors to be considered
27



1 by a Trial Judge or an Appellate Court in reviewing
2 sentence are: punishment, deterrence, protection of
3 the public, and the reformation and rehabilitation
4 of the offender.

5 It has been pointed out time and time again
6 and, indeed, in Court here today, that the real problem
7 arises in deciding what factor is to be emphasized in
8 a particular case.

9 Of necessity the circumstances surrounding
10 the commission of an offence differ in each case, so
11 that even for the same offence sentences may show a
12 wide variation. Indeed, the Morrissette case is a
13 classic example because, of the three participants, the
14 Court of Appeal imposed a sentence of five years on
15 one accused and the younger brother received a sentence
16 of one year.

17 I mention that in passing because it
18 illustrates that the Court, in applying the various
19 factors, must try to strike a reasonable balance.

20 I have already mentioned that in imposing
21 a sentence I must try to impose one that will not only
22 vindicate the law, but also will not crush or destroy
23 any possible reformation or change in the case of the
24 accused. If, of course, there was absolutely no
25 hope for change, then Courts might take a different
26 approach, but in this day and age I think it is fair
27



1 to say that punishment for the sake of punishment
2 is not viewed as a major factor. It is an element
3 to be considered, but frankly, when I consider the
4 factors, I think the other three are far more important,
5 and I refer particularly to deterrence, protection
6 of the public, and the reformation and rehabilitation
7 of the offender.

8 The problem that confronts any Trial Judge
9 in imposing sentence is to try to strike a reasonable
10 and fair balance between those factors.

11 Sentences, of necessity, will be criticized
12 in various quarters, and the Court recognizes that
13 fair and legitimate criticism can be made, but I think
14 at the same time people appreciate that the task of a
15 Trial Judge in imposing sentence is never an easy one.

16 You can always abdicate your responsibility
17 by not troubling yourself to take into account these
18 factors. I do not think that that is a proper approach,
19 and in dealing with the matter as I am going to deal
20 with it today I have tried to take into account the
21 factors that I have mentioned and strike a reasonable
22 balance between them.

23 The public are entitled to be protected,
24 and in the case of sexual offences there is a vital
25 interest in what is done. The public can best be
26 protected, in my view, by the imposition of sentences
27



1 that deter the accused and others from committing
2 such an offence, but at the same time leave room for
3 the reformation and rehabilitation of accused persons,
4 particularly when they are young.

5 Recent studies have indicated that the
6 Courts must be mindful, not only of the effective
7 enforcement of the Criminal law, but also the offender's
8 reformation and rehabilitation. Of course reform-
9 ation and rehabilitation involves a genuine desire on
10 the part of the accused person to participate in the
11 programs that are available. Young men can learn early
12 in their lives that there is a possibility of change
13 if you choose to cooperate with the authorities that
14 are involved.

15 I want to say a word now about the nature
16 of the offences that are involved.

17 Rape is and always has been a serious
18 offence. Indecent assault, which is a lesser included
19 offence, is also a serious offence. Society, in the
20 Criminal Code, have indicated this is a type of rep-
21 rehensible conduct that is not acceptable in our
22 society, regardless of whether it is in Yellowknife,
23 Fort Smith, Frobisher Bay or Inuvik - to quote a few
24 areas in the Territories.

25 It is viewed by the Courts in a more-
26 serious light when two or more people sexually assault
27



1 a girl.

2 In this case we do not have a joint venture,
3 as such, where one is holding the other, but once the
4 resistance of a girl is broken down by the first part-
5 icipant, it is much easier for the subsequent partic-
6 ipants to have their own way - if I may use the term.

7 Quite frankly I find it difficult to under-
8 stand why young men of no previous sexual record as
9 far as criminal convictions are concerned would place
10 themselves in this type of position. Probably some
11 blame can be assessed on the basis of excessive use of
12 liquor. Perhaps the alcohol consumed by them aroused
13 their passions and clouded their judgment. I must,
14 however, point out that this is and would be no justif-
15 ication for their actions, but might be an explanation.

16 The highest Court in the land has indicated
17 that drunkenness is no defence to a charge of rape
18 or the included offence of attempted rape or indecent
19 assault. I mention that again because in my charge
20 to the jury I pointed that out to them.

21 I do not intend to review the facts in
22 this case at any length because they have been ably
23 discussed by Counsel, and I have had the benefit of
24 reviewing my own notes along with the reports that have
25 been filed.
26
27



1 In this particular case the accused,
2 Lavolette, was convicted by the jury of rape. Put
3 in clear, unmistakable terms, this means a jury of his
4 peers - members of this Community, have indicated in
5 clear, unmistakable terms that the conduct on the night
6 in question was a breach of the law and is clearly
7 unacceptable in this Community.

8 I mentioned earlier I see that as being
9 one of the great virtues of the jury system. This is
10 not a judgment that was imposed upon the accused by me
11 or some other Judge of this Court, or a Judge of the
12 Magistrate's Court. It was a judgment imposed upon him
13 by the people in the Community who, weighing the evidence,
14 decided the issue.

15 In the case of the accused, LaHache, and
16 the accused, Heron, they followed the unlawful act of
17 the accused, Lavolette.

18 In using the term "followed", I do not
19 use it in the sense that they were followers, as
20 distinct from leaders. It is true that they may have
21 been influenced by the fact that the first accused
22 went first, but by the same token these boys are old
23 enough to have minds of their own, and this is not
24 their first difficulty with the law.
25
26
27



1 LaHache has a number of convictions that
2 have been referred to and Heron was involved in a number
3 of lesser matters, but which ought to have served as a
4 shrill warning to both of them that the conduct they
5 were pursuing, particularly with respect to the excessive
6 use of liquor, could only lead to grave difficulty for
7 them.

8 I have no intention of delivering a sermon
9 to boys of this age. If they have reflected on what they
10 did on the night in question they will realize that what
11 they did was wrong.

12 To some people it could be characterized
13 as outrageous conduct, and I think the jury's verdict
14 tells them, and I respect their verdict, in clear,
15 unmistakable terms that this kind of conduct is not
16 acceptable.

17 On the other hand I recognize that the
18 time has not come to deal in a harsh or vindictive way
19 toward any of the accused. It is my sincere hope that
20 they will learn their lesson and that, not only will
21 they overcome their liquor problem, but that they will
22 upgrade themselves, not only in an educational sense,
23 but in a moral sense.

24 Probably the hearing of these proceedings
25 in this Community has already served as a form of pun-
26 ishment towards them or on them, because if they have
27



1 any sense of common decency at all they will be
2 embarrassed at the events that have unfolded in this
3 particular Court; and I rather think from reading the
4 pre-sentence report on Mr. Heron that there is some
5 indication there that he among them did find that the
6 hearing of this particular case, where he was called
7 upon to testify, brought home to him just what this
8 can lead to.

9 On the other hand, these boys are not what
10 you would call "youthful first offenders". In the
11 Alberta Court of Appeal case, Regina vs Beacon and
12 Modney that I referred to - the Court in that case
13 pointed out that in the case of youthful first offenders
14 custodial sentences are generally to be avoided.
15 Further, where the Court considers that a term of
16 imprisonment is the only fit sentence and must be
17 imposed, it is undesirable that it be for very long.

18 Unfortunately I do not think that I can
19 follow that particular case here because of the diff-
20 erences that exist on a factual basis.

21 I have given very anxious consideration to
22 the submission of the Crown that the accused, Laviolette,
23 should be sentenced to a penitentiary term. I have
24 weighed that very carefully and examined all the cir-
25 cumstances surrounding this matter, including the
26 position of the other two that are before the Court,
27



1 and it seems to me that the principles that I have
2 discussed can be properly applied without sentencing
3 the accused to a penitentiary term. I much prefer to
4 see a person of his age serve his sentence in a gaol,
5 and while I realize that a penitentiary term can be
6 served in the Northwest Territories, there is no guar-
7 antee that it will be.

8 Furthermore, having carefully considered
9 the probation report, I feel that there is merit in the
10 suggestion that a term of probation should follow the
11 period of incarceration.

12 If I were to accede to the submission of the
13 Crown in this case the Court would be foreclosed from
14 imposing a probation Order by reason of the terms of
15 Section 663 (1) (a) of the Criminal Code of Canada.

16 Therefore, bearing in mind what I have
17 said, and the careful review of the facts by both Counsel
18 in this case, the sentence of this Court is as follows:

19 I sentence the accused Patrick Laviolette
20 to a term of eighteen months imprisonment, to be
21 served in a gaol in the Northwest Territories; and in
22 addition thereto I direct that the accused comply with
23 the conditions prescribed in a Probation Order which
24 are to be as follows:

25 Number One - The Probation Order is to be
26 for a period of two years from the date of the accused's
27



1 release, and in addition to the general terms set
2 forth in Section 663 (2) of the Criminal Code of
3 keeping the peace and being of good behaviour and
4 appearing before the Court when required to do so by
5 the Court, I direct and prescribe the following con-
6 ditions for the accused:

7 Number 1 - He shall report to and be under
8 the supervision of a Probation Officer at Fort Smith,
9 or such other person as may be designated by the Court;

10 Number 2 - He will abstain absolutely from
11 the consumption of alcohol; and

12 Number 3 - He will make reasonable efforts
13 to find and maintain suitable employment or to continue
14 with his education.

15 With respect to the accused, LaHache, and
16 the accused, Heron, I recognize that they have been
17 convicted of indecent assault and that I must sentence
18 them for that offence, and not for rape.

19 In my review of the authorities, both
20 reported and unreported, I find that there is a wide
21 range allowed to the Court in sentencing for an offence
22 of this nature. However, in my opinion the circumstances
23 surrounding this offence, in the case of each accused,
24 cannot be treated as what has sometimes been called
25 a "casual" type of indecent assault.
26
27



1 They must accept the responsibility for
2 their conduct. As I said earlier, they cannot hide
3 behind any shield by suggesting that the first accused
4 was the leader. Indeed, their Counsel have not raised
5 this as a mitigating circumstance, and I commend them
6 for the direct approach that they took on.

7 I do, however, know of at least one case
8 that went to an Appellate level where a sentence of
9 ten months was imposed for circumstances not dissimilar
10 to this.

11 I have thought very carefully about it,
12 and in my opinion this would be a reasonable and proper
13 sentence under all the circumstances for the offence of
14 indecent assault.

15 In the case of the accused, LaHache, I
16 therefore impose a sentence of ten months imprisonment
17 to be served at a gaol in the Northwest Territories;
18 and in addition thereto I direct that the accused
19 comply with the conditions prescribed in a Probation
20 Order which is to run for a period of two years from
21 his release, and which is to contain identical prov-
22 isions to the ones that I mentioned in the case of the
23 accused, Laviolette.

24 In view of the fact that this Probation
25 Order can be made in Yellowknife and signed by them
26 there, I will review it with them at the time, or the
27



1 Clerk of the Court will.

2 Put in brief, the conditions are that he
3 will report to and be under the supervision of a
4 Probation Officer at Fort Smith, or other person design-
5 nated by the Court; he will abstain from the consumption
6 of alcohol absolutely; and finally he will make reason-
7 able efforts to find and maintain suitable employment
8 or continue with his education.

9 In the case of the accused, Heron, I sim-
10 ilarly impose a sentence of ten months imprisonment
11 in a common gaol in the Northwest Territories, and I
12 direct that he enter into a Probation Order in exactly
13 the same terms that have been prescribed for the accused,
14 LaHache.

15 Since these Probation Orders can be completed
16 in Yellowknife, the question of reading the document
17 once it has been prepared and having it signed can be
18 attended to there. At that time a copy of the Probation
19 Order will be read to each accused and a copy will be
20 given to them.

21 I would, however, point out at this time
22 to each accused that if you wilfully fail or refuse to
23 comply with the Probation Order you may be brought
24 before any Court having jurisdiction and sentenced for
25 a breach of the Probation Order.
26
27



1 You must also understand that if you
2 commit any offence, including a breach of the Probation
3 Order, as well as being sentenced for that offence you
4 may be brought before this Court and this Court may
5 make any changes in or additions to the conditions
6 prescribed in the Probation Order, and may extend the
7 Order for an additional period of up to one year.

8 I realize that the thoughts of a Probation
9 Order over that period of time may not be too palatable
10 to the accused at this stage, but it is my hope that
11 every possible assistance is rendered by the appropriate
12 authorities when they are released to get them re-
13 established either in work or in upgrading their educ-
14 ation. Hopefully that process will start while they
15 are in custody, so that if the liquor problem is over-
16 come, the rest may be easy.

17 This concludes the matter of sentencing
18 in these three cases, but once again, I would be remiss
19 if I did not express my appreciation to all Counsel
20 for the lengthy and able submissions that were made
21 this morning. I don't think that I've had a case in
22 the Territories where more time has been taken than
23 today on dealing with the issue of sentence, and I
24 want to repeat what I said earlier - I welcome that
25 type of assistance, and you never need to apologize
26 for taking the time to do a commendable job, whether
27



1 ti be for the Crown or for the accused.

2 MR. BROGDEN: My Lord, there remains one matter in this
3 case.

4 I wonder if we could have an Order for the
5 return of Exhibits? There are two Exhibits that are
6 in the Court because of the Preliminary Hearing.
7 There's a pair of jeans that I would ask, subject to
8 the appeal period which may affect it, to be returned
9 to the victim, Marjorie Nukik, and there's a key I
10 would ask to be returned to Brehnat Hall.

11 THE COURT: I'll make an Order directing that the
12 Exhibits be returned to the lawful owners thereof
13 upon the expiration of the period for appeal if no
14 appeal is taken; or alternatively once the appeal is
15 exhausted if taken. Does that cover it?
16

17 MR. BROGDEN: Yes, it does.

18 THE COURT: Is there anything else anyone would like
19 to speak to on that?

20 REPORTER'S NOTE: There is no response.

21 ---Whereupon the proceeding concluded.

22
23 -----

24 Certified a true transcript of my
25 verbatim shorthand notes.

26
27 Rosalie Hobbs
Rosalie Hobbs, Court Reporter.

PRE-SENTENCE REPORT

NAME: Laviolette, Patrick
 ADDRESS: Fort Smith, N.W.T.
 OFFENCE: Rape. Sec. 144 Criminal Code
 Remanded for sentencing to May 4/77.
 JUSTICE: Chief Justice Tallis
 N.W.T. Supreme Court
 PROSECUTOR: Mr. Ed Brogden
 COUNSEL: Mr. David Searle
 PROBATION OFFICER: Patrick Cavanagh

[Handwritten signature]
 SUPREME COURT N.W.T.
 This is exhibit No. *[Handwritten]*
 the property of the
 filed by the *[Handwritten]*
 this *[Handwritten]* day of *[Handwritten]* 19 *[Handwritten]*
 CLERK OF THE SUPREME COURT
[Handwritten signature]

Sources of Information

1. Patrick Laviolette, the accused person
2. Dept. of Social Development files
3. Mr. & Mrs. Frank Laviolette, parents of the accused
4. Mr. Gerry Busch, Northern Addiction Services, Yellowknife
5. RCMP, Fort Smith
6. Mr. Wally Bybliw, Yellowknife Correctional Centre
7. Mr. Jim Haining, Dept. of Economic Development, Fort Smith
8. Mr. Don Gillis, student counsellor, AVTC, Fort Smith
9. Ms. Leona Ristau, upgrading instructor, AVTC, Fort Smith
10. Medical Clinic, Fort Smith

PERSONAL HISTORY

Patrick Laviolette was born in Fort Smith, of Metis parents, and he has lived here all of his life. Date of birth, 6 October, 1956. He has never lived or worked anywhere outside of this community with the exception of a few months in Hay River during 1974. He has the usual interests of someone his age, and participates in local softball and broomball leagues. He has been described by various people as a quiet, reserved type of person and this is my impression in any dealings I have had with him. He was cooperative during the preparation of this report, and if anything, communicated much more readily than at any other time. He remains

bitter at the outcome of his trial and apprehensive about what is to come. He does not use any of the "illegal" drugs, but has an extensive history of alcohol abuse.

Medical History

Mr. and Mrs. Laviolette report that Pat has suffered from fits or seizures from a very early age, and that these have continued right up to the present time. He received little treatment, if any, until 1973 when an investigation was conducted at the Camsell Hospital in Edmonton. This did not produce a definitive diagnosis and he was released without being put on any course of medication. This year, in January, he was also admitted to hospital from the Detox. Centre in Yellowknife, for the same reason. Medical reports available to me are inconclusive but seem to point to what is called grand mal epilepsy. No doctor, however, to my knowledge, has specifically stated this as a diagnosis. Mr. and Mrs. Laviolette indicate that the fits have always occurred regularly, and perhaps even increasing in frequency during the past four to five years, parallel to their son's growing use of alcohol. Patrick, on the other hand, denies this, and says that they occur only once in a while. He has been on medication for short periods of time, but never on a regular basis. No explanation was offered as to why their recourse to medical help has been sporadic and irregular. There are indications that they misunderstand the nature of the illness, and that Patrick himself was afraid of being sent away. It is not suggested that the presence of this condition has had any bearing on the commission of the offence.

Family Background

Patrick comes from a large family of nine children of which he is the fourth eldest. There are still five children at home with the parents. Mr. & Mrs. Laviolette have lived in Fort Smith for all of their married life. MR. Laviolette was at one time a Territorial Government employee, but for the past nine years has been running his own business by the name of Big Bison Game

Outfitters. At the present time the business is being managed by the Department of Economic Development until such time as Mr. Laviolette is once again in a position to run it on his own. At some time in the future, he would like his son to take over, and the government has offered to subsidize Patrick, on a management course of some kind, in preparation for that possibility. This will in turn depend on his aptitude and interest.

The family remains very much supportive of their son and have indicated that they will continue to help him in whatever way they can. In the event of a jail sentence, they hope that their son will be allowed to remain in Yellowknife, so that close contact can be maintained. Their interest is, in part, generated by the serious nature of the present offence.

Patrick, on the other hand, says he has been allowed to do more or less as he pleases since the age of fifteen or sixteen, and this includes his heavy use of alcohol.

Education

Patrick attended school in Fort Smith to the Grade Eight level before leaving in 1972 at approximately fifteen years of age. He left out of disinterest, and with the attraction of earning some money for himself. He stayed away from formal education during the next five years until January of this year, enrolling in an academic upgrading course at AVTC. His instructor reports that in two months there he has covered a great deal of material and raised his grade level from 8.2 to 9.5. It is her opinion that he has the ability to go much further with his education. Patrick says he would like to stay in school at least long enough to qualify for some type of trades training, or perhaps something that would allow him to take over the family business. The details of the latter, however, are far from being worked out at this time. AVTC itself has no objections to his returning to school there.

Employment

Patrick left school in 1972 and went to work immediately on the construction of the Roaring Rapids Hall for the Metis Association in Fort Smith. Since then he has held a variety of labourer's jobs, at times been unemployed, and has also worked for his father. In contrast to others his age, he has not had the same difficulty in finding a paying job. He was, however, unemployed at the time of the offence, and had been for a few months.

Probation History - Criminal Record

Patrick was first placed on probation with supervision in October, 1974, on a charge of minor consuming for a period of six months. It was completed successfully, and he is currently on probation to the undersigned, dating from December 1976, for another six months. The present probation order arose out a Breach of Undertaking charge for which he was sent to jail and also ordered to take the 28 day programme at the Yellowknife Detoxification Centre. He has a lengthy record that includes common assault and impaired driving, and with almost all offences related in one way or another to the abuse of alcohol.

Part of the above record is denied.
 Educational background is a white.

His use of alcohol is an outstanding problem and relates in a specific way to the present offence. He has not shown much desire to do anything about it although the Detox. Centre reports that his experience there may have started to bring about a change in attitude. They feel that he gained some knowledge about the physiological effects of drinking but at the same time was reluctant to participate to any great extent in the programme. It must be remembered that he was there, not out of choice, but because he was forced into it. While at the Detox. Centre, Patrick suffered two epileptic seizures, and says himself that it may have been brought on by the drinking he did while out on a weekend pass. He has continued to drink since returning to Fort Smith but apparently not in the same frequency and amounts as before. He says that he is now more aware of remaining in control while

drinking, which is a start.

Summary

This report has been prepared from the point of view that the court is most likely considering a jail term as an appropriate sentence. Due to the nature of the offence, the offender's previous experience with the conditions of an undertaking, and his present attitude, probation cannot be considered as a primary sentencing alternative. Patrick has not expressed any particular regret, or for that matter any concern, for the girl who was involved. There are certain factors, however, that the court may wish to take into consideration. They are as follows:

- in the event of a jail sentence, the family has requested that Patrick be allowed to serve his time in the Territories, so that he does not become completely isolated and cut off from them.
- continuing guidance and supervision for Patrick in the community remains important. This could be accomplished by the use of a probation order, that is secondary to some other form of sentence.
- it appears that Patrick Laviolette suffers from a form of epilepsy, although this has never been clearly stated, nor any long term treatment prescribed. It is recommended that he be seen by a medical doctor for the purposes of diagnosis and treatment.
- it is also recommended that he be given an opportunity to continue on with his education, and that alcohol counselling also be continued. It is particularly important that he be instructed in the relationship between the use of alcohol and the occurrence of epileptic seizures.

Respectfully submitted,

Patrick Cavanagh
Patrick Cavanagh
Probation Officer

NORTHERN ADDICTION SERVICES

BOX 1072 YELLOWKNIFE, N.W.T.

S-2

May 2, 1977

SUPREME COURT

Vs.

N.W.T.

This is exhibit No.

the property of the

filed by the

this 4th day of May 1977

CLERK OF THE SUPREME COURT

Mr. David H. Searle Q.C.
Box 939
Yellowknife, N.W.T.

Re: LAVIOLETTE, Patrick John
D.O.B. 06 10 56

Dear Mr. Searle:

Subsequent to your request and assurance that Mr. Laviolette is agreeable to its release; the following information is provided.

As a result of a Probation Order issued December 7, 1976, Mr. Laviolette completed the Rehabilitation Program at Northern Addiction Services between January 10 and February 7, 1977.

From the time of his arrival, Mr. Laviolette expressed minimal motivation to participate fully in all aspects of the program including individual counselling, lectures, group therapy crafts, etc.

On occasion a client who initially expresses disinterest, becomes more involved in the program and actively avails himself of the services available; in changing from his present lifestyle to an abstinent lifestyle. During the first ten days, Mr. Laviolette remained quiet, withdrawn and passive, and often would only interact or respond when spoken to directly. A little later in the program, he began verbalizing his feelings, including anger a little more.

On January 31, 1977 Mr. Laviolette was admitted to Stanton Yellowknife Hospital as a result of a "grand mal seizure." We have not received medical confirmation from the hospital staff as to whether there was an epileptic or alcohol related cause to the seizure.

David Searle
May 2
Page 2

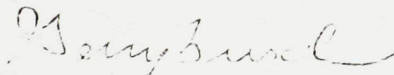
Mr. Laviolette was discharged from the hospital on February 1, 1977 and continued with the Rehabilitation Program. Until his discharge he continued to participate minimally in the program, and avoid peer or staff interaction where possible.

Upon discharge, Mr. Laviolette indicated that he wished to return to Ft. Smith to live with his family and hoped to take up-grading at A.V.T.C. He was interested in a Business Administration course with the government and was considering work with his father.

On summary, Mr. Laviolette was resentful about having to take the Rehabilitation Program. He felt that he had gained some knowledge about alcoholism and its effects. Mr. Laviolette agreed that he tended to repress his feelings regularly. Given his difficulty in expressing his feelings and his passive and depressive mood; consideration may be given to a psychiatric assessment in the future.

I trust this information is useful to you.

Yours truly,



Gerry Busch, M.S.W.
Executive Director
Northern Addiction Services

PRE-SENTENCE REPORT

NAME: Lahace, Isadore Leo "Teddy"

ADDRESS: Fort Smith, N.W.T. General Delivery

D.O.B.: 8 December 1956

AGE: 20

PLACE OF TRIAL: Fort Smith, N.W.T.

DATE OF TRIAL: 27 April 1977

SENTENCING DATE: 4 May 1977

JUSTICE: Chief Justice Tallis

PROSECUTOR: Mr. E. Brogden

COUNSEL: Mr. J. Bailey

PROBATION OFFICER: M. Marie

SOURCES OF INFORMATION: Subject, R.C.M.P., Social Development,
Mr. B. Levac - S.M.C.C., Mr. Bill VanLimbeck,
Wally Bybliw - Y.K.C.C.

S-1

SUPREME COURT N.W.T.
Vs. *Lahace*

This is exhibit No. *1*
the property of the *appeal*
filed by the *appeal*
this *4th* day of *May* 19*77*

CLERK OF THE SUPREME COURT

[Signature]

PERSONAL HISTORY

PLACE OF BIRTH: Rocher River, N.W.T.

RACIAL ORIGIN: Chipewyan, Treaty #118

RELIGION: Roman Catholic

EDUCATION: Mr. Lahace was enrolled at J.B.T. High School until
the end of March 1974. At this time he was
in the grade 10 level. Has also taken up-
grading in the Yellowknife Correctional Centre.

SKILLS: None

PRESENT OCCUPATION: None, but was enrolled on a Fire Suppression course since 2 April 1977.

FINANCIAL STATUS: No bank account and does not have any money.

EMPLOYMENT HISTORY: Teddy's work habits have been very sporadic. He worked only for a day or two here and there. His longest lasting job has been with the Maintenance Officer at A.V.T.C. which was for three weeks recently.

HEALTH: Has been taking pills for T.B. since July 1976 and will have to continue this program until January 1978. Otherwise states that he is in good health except for common colds and flu.

LEISURE TIME INTERESTS: Reads abit. Is very interested in art and reading and writing poetry.

ALCOHOL USE: Teddy enjoys drinking alcohol very much and states that he does this every chance he gets. He used marijauna but quit after being charged in Hay River.

MARITAL STATUS: Single

FAMILY HISTORY: Mother: Ms. Elizabeth Boucher
Address: Fort Smith, N.W.T.
D.O.B.: 14 April 1931
Occupation: Housewife

SIBLINGS: Frank Boucher - Yellowknife Correctional Centre
John Boucher - South McKenzie Correctional Centre
Hay River, N.W.T.

continued

SIBLINGS:

James Boucher - Penitentiary, Saskatchewan

Margaret Boucher - Foster Home, Fort Smith, N.W.T.

Bobby Boucher - Unknown

Raymond Boucher - Pine Point, N.W.T.

Teddy knows who his sister and brothers are.

At earlier ages some of them were taken into

the custody of the Superintendent of Child

Welfare and released when of age. Teddy is

not close to any one of them, has never tried

to develop any type of relationship but only

knows that they are family. Although Teddy's

natural mother Ms. E. Boucher lives in

Fort Smith, he never consults her nor does she

make any attempt to know him. He classifies

only the Lawrence Villebrun family as close

friends. He has never had a steady girl friend.

PERSONAL BACKGROUND: Teddy was made a Permanent Ward of the Superintendent of Child Welfare on May 20, 1965. He lived in the Receiving Home in Fort Smith for a lengthy period of time. When the Group Home opened in November 1973, Teddy was placed there.

Teddy's natural mother is Ms. Elizabeth Boucher.

He does have brothers and sisters but there

appears to be no family ties, nor much interest

on either part to develop such ties. He was

adopted by a Mr. & Mrs. Pat Lahache when he was

14 months old. When the Lahache's marriage broke up, Teddy was taken into the care of the Superintendent of Child Welfare.

On March 22, 1974, after a particularly upsetting incident, he was discharged from the Group Home. At the time, though still under the legal custody of the Superintendent of Child Welfare, Teddy was left to look after himself. Teddy's wardship expired December 8, 1974.

CRIMINAL RECORD: Teddy has been involved with Minor Consuming on various occasions. He was also charged for Breaking and Entering and Theft. Possession of Marijauna and probably more that is not known by the undersigned.

BEHAVIOURIAL PATTERN AS OBSERVED BY SOURCES:

Teddy portrays signs of being very insecure and immature. He seems to have difficulty in relating or confiding in anyone. Teddy does not seem to have the capabilities of planning for himself and somehow needs to acquire a responsible attitude. Teddy has been described as being a very mixed up person and a follower. He craves attention for close trusting relationships, and body contact, which is so domineering and is interpreted as homosexual tendencies which leads to rejection.

been known to have poor judgement and

and lack of physical and emotional stamina. His excessive drinking maybe to recapture importance with peer group.

SUBJECTS VIEWS:

Teddy classifies himself to be very moody, emotional and quick tempered. Teddy stated that he does not know nor understand himself. His feelings are hurt very easily. He is not able to express himself regarding the offense. He would like to eventually go back to school and study art.

ASSESSMENT:

Teddy definitely requires self confidence and ability for self expression. He lacks self control in his being able to cope in the use of alcohol. Diagnosis and treatment by a psychiatrist would be highly recommended. Due to Teddy's deviant behaviour he has difficulty with people and environment. A plan on helping to develop internal controls would be helpful.



Mary Marie

Mary Marie - Probation Officer

PRE-SENTENCE REPORT

NAME: Neil Heron
FORT SMITH, N.W.T.

OFFENCE: Indecent Assault Sec 149(1) Criminal Code
Remanded for sentencing to 4 May 1977

JUSTICE: Chief Justice Tallis
N.W.T. Supreme Court

PROSECUTOR: Mr. Ed Brogden

COUNSEL: Mr. David Geldreich

PROBATION OFFICER: Patrick Cavanagh

SOURCES OF INFORMATION:

- 1) Neil Heron, the offender
- 2) Department of Social Development files
- 3) Mrs. Berna Heron, mother of the offender
- 4) R.C.M.P., Fort Smith (verbally recommended)
- 5) Mr. Wally Bybliw, Yellowknife Correctional Centre
- 6) Mr. Bill Levac, South Mackenzie Correctional Centre
- 7) Mr. Don Gillis, A.V.T.C., Fort Smith

PERSONAL HISTORY:

Neil Heron was born in Fort Smith on 30 May 1956. He comes from a large family of 14 children of which he is the third oldest. Neil is single, of metis origin and maintains affiliation with the Catholic Church. Neil has been described by various people as a quiet person, of average intelligence who tends, on occasion, to be abrasive and aggressive. Aggressive behaviour

was particularly evident during time spent in correctional institutions. He does not have a great deal of ambition, being content to depend on his parents for financial support, and generally to take whatever comes his way. He does not seem to have learned a great deal from past experience. Neil states that he likes to go hunting for recreation, and denies categorically any use of drugs other than alcohol. He has been a user of alcohol for some years with a conviction registered as early as age 13. He has a number of alcohol related offences, primarily minor consuming and illegal possession. During the past two years the seriousness of the offences has increased, and his record now includes breach of probation, breach of undertaking, as well as the present offence. Neil admits that since the age of 18 he has been drinking heavily, practically every weekend, and at times on a daily basis. He did express some regret for what has happened and concern for the girl who was injured. He described himself as being tense and feeling guilty when required to testify at the trial. It is difficult to judge the sincerity of these statements. Neil is in good health and has no serious medical problems with the exception of a broken arm suffered in August 1976. This has prevented him from working but the cast is due to be removed

in the near future.

FAMILY HISTORY

Neil comes from a very large family, and a family that has resided in Fort Smith for a number of years. His father died in March 1976, leaving Mrs. Heron to look after the remaining children at home. Neil has been considered more or less an independent person for the past three years, living at home, but free to come and go as he pleases. His parents have been concerned about Neil's tendency to reckless behavior but have been unable to control him in any way. Mrs. Heron confirms that Neil greatly increased the amount of his drinking after reaching the age of eighteen. She has spoken to him about it on numerous occasions but to no avail. Nothing was really done about it other than not allowing him to drink at home. Mrs. Heron says that her son's present offence has distressed her a great deal and she has also felt the brunt of a certain amount of community backlash as well. She is moving to Yellowknife in the very near future and will be remarrying in approximately two months. She finds it difficult to continue living in Fort Smith, in part, due to the community's attitude. Mrs. Heron has stated quite emphatically that she does not think she can of any further

help to Neil and will not invite him to live with her in Yellowknife, at least not on a long term basis.

EDUCATION:

Neil went as far as grade eight in school in Fort Smith and was asked to leave as a result of poor attendance. This was in 1970. In 1974 he enrolled at A.V.T.C., in the Heavy Duty Mechanics course, and spent four months there before being terminated by the school, again for the same reason. Neil still expresses an interest in mechanics and may re-apply at some time in the future. The school would not have any objection to having him back there again. They report that his work was satisfactory but began to slip as the attendance went down.

EMPLOYMENT:

Since leaving school, Neil has held a few jobs but most have been very short-lived. He has been able to find work in the summer but seldom anything that would last over the winter. He has been unemployed since December 1975 and unable to work since August 1976. The present offence was committed while he was out of a job. Now more than ever Neil is doubtful about ever finding a permanent job in this area as a result of this charge. He spoke about the possibility of leaving

the north for good and trying his luck somewhere else in the country. What he would do, or where he would go, remains vague.

PROBATION HISTORY:

Neil has been placed on probation with supervision before and up to the present time has been in court at least twice on breach charges. On a previous probation order, dating from November 1974 to May 1975, he responded reasonably well, but was eventually breached near the end of that term for an offence of minor consuming. There has been another breach charge since, as well as two occurrences of breach of undertaking. He does not have the inclination or desire to abide by any behaviour guidelines, other than his own.

SUMMARY:

Despite his relatively young age, Neil Heron has been in and out of court for a number of years on liquor related offences and now faces sentencing on what must be considered a very serious charge. It is my impression that he has at least average intelligence and some degree of potential but at this stage in his life is not prepared to do anything about it. He has been drifting for some time now and most likely will continue to do so. There has been some opportunity presented to him which he has generally neglected to take advantage of. Neil has not worked in the past because

of his underlying attitude and that his attitude at the present time is not significantly different. This factor, coupled with the circumstances and serious nature of the charge rule out any consideration of probation in this case. On the other hand, it may still be prudent to include some type of probation order in the overall sentencing picture so that contact with Neil is not completely lost. By maintaining involvement with Neil, there remains at least hope for a change in his behavior pattern. Neil has a great deal of maturing to do before there will be any real change.

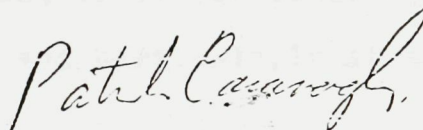
Although he has an extensive history of drinking, I am not prepared at this time to classify Neil Heron as an alcoholic. There are indications that he drinks not out of compulsion but simply because he finds it pleasurable, and with nothing much better to do. Until such time as he finds it less attractive he most likely will continue this particular lifestyle. For this reason it is not felt that alcohol counselling would be of any real benefit, unless he himself requests it.

Neil is young, with little experience and even less training. He does have some ability however, and should be encouraged to re-enter the school system. Should he acquire some training and a

change might become evident. I would suggest as a first step that he be allowed to take basic aptitude tests.

In the event that Neil's expression of sympathy for the victim is genuine, some type of restitution would be appropriate, this should be considered only if the girl is willing and if no other form of compensation is available to her. It may well be that she has incurred expense in pursuing this action or perhaps in re-establishing herself after leaving Fort Smith, payment for which would, in some small way, make amends for what has happened. Neil is in no position to do so just now but may be at some time in the not too distant future.

Respectfully submitted,



Patrick Cavangh,
Probation Officer.

