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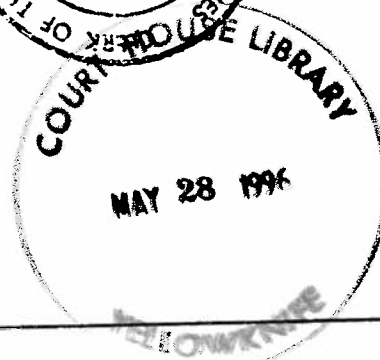
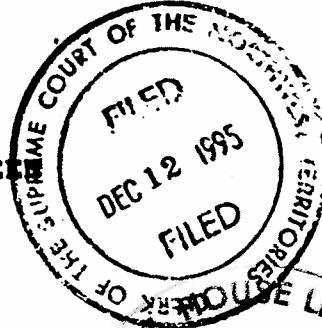
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

FRANK DAVID GRUBEN




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Transcript of Submissions on Sentence and Reasons for  
 Sentence delivered by The Honourable Mr. Justice  
 E.P. MacCallum, sitting at Tuktoyaktuk, in the Northwest  
 Territories, on Thursday, November 30, A.D. 1995

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**APPEARANCES:**

Mr. A.R. Regel:

For the Crown

Mr. S. Melnick:

For the Defence

(Charges under Section 266 and Section 267(1)(a) of the  
 Criminal Code)

1 MR. REGEL: Moving on then to the submissions I  
2 have on the sentence.

3 My friend and I are in agreement here with a joint  
4 submission that we're presenting to the Court, and it's  
5 a joint submission in the range of five years. ..

6 With respect to the circumstances that mitigate the  
7 offence, the accused did plead guilty. He indicated  
8 very early on that that was his intention and he waived  
9 the preliminary inquiry for the purpose of pleading  
10 guilty. The Crown, in discussing with the Defence the  
11 joint submission, has taken that into account as well  
12 as the fact that he has spent just over three months on  
13 remand as well.

14 On the aggravating side of things, you have a prior  
15 record with a number of related convictions. As I  
16 calculate it, there are at least 17 offences involving  
17 personal violence, 11 offences with weapons. Seven of  
18 those had knives and three were spousals. One of those  
19 three spousals was on the same victim.

20 The accused was on parole at the time of this  
21 offence for assaulting this victim. That one, as you  
22 note from the Summary of Prior Circumstances, involved  
23 a knife and the removal of her clothes as well. So I  
24 would suggest, if you conclude that the clothes were  
25 ripped off her on this occasion, that would be a  
26 significantly aggravating feature.

27 As well, I'd ask you to consider that this is

1 another spousal assault. There are many of them before  
2 the courts. There is not merely violence, but it's  
3 accompanied by threats in addition to the violence, and  
4 I suggest it creates an atmosphere of oppression and  
5 domination which very clearly is part of a pattern,  
6 and, in addition to that, there is the use of a knife  
7 and some physical abuse resulting that are well  
8 documented in the medical report.

9 As well, if you conclude that the clothes were  
10 removed, I suggest you could conclude there were sexual  
11 overtones. However, it's clearly not a sexual assault;  
12 it's not what the Crown is alleging. But the overtones  
13 are something you could take into account.

14 Finally, there is no indication of provocation in  
15 this report of any of the circumstances here, and I  
16 suggest that should be considered.

17 Subject to any questions Your Lordship has, those  
18 are the submissions I intended to make.

19 THE COURT: Thanks.

20 MR. MELNICK: First of all, My Lord, I believe the  
21 Crown made reference to the aggravating circumstance  
22 that Mr. Gruben was on parole at the time. My  
23 understanding is that he was not. He was released  
24 earlier on parole and, basically, ended up doing his  
25 time before these assaults occurred in August. I  
26 believe he was released in June, if I'm not mistaken.  
27 I believe the Crown --

1 THE COURT: Do you concede that, Mr. Regel?  
2 MR. REGEL: No, I don't, My Lord. But I'll be  
3 looking into it.  
4 THE COURT: Well, I see that the last --  
5 MR. REGEL: I'll look into that and I'll advise the  
6 Court of my decision shortly, My Lord.  
7 THE COURT: All right.  
8 MR. MELNICK: As to the actual evidence that was  
9 called today regarding the issue of clothes, my friend  
10 has indicated the complainant has nothing to gain from  
11 lying. From the agreed facts that have been presented  
12 before the Court and the pleas of guilty from  
13 Mr. Gruben, he has absolutely nothing at all to gain  
14 from lying. It's a situation that, really, I would  
15 suggest has not much bearing one way or another on the  
16 overall situation that occurred.  
17 My friend also indicated there were sexual  
18 overtones to that. I dispute that fact. It is simply  
19 an assault that was there. He's admitted to choking  
20 her. He's admitted to a number of situations which are  
21 contained in the statement of facts -- or the Agreed  
22 Statement of Facts. He simply does not want to admit  
23 the facts that, in his opinion, in his mind, did not  
24 occur. He indicates he was drinking during that period  
25 of time, that he was not exceptionally drunk at that  
26 period of time, and that his recollection of events is  
27 that that did not happen. I will leave that to the

1 Court to come to whatever conclusion on the normal  
2 issues the Court determines in the finding of  
3 credibility and the finding of fact.

4 The photos that were taken -- there was a comment  
5 again by the Crown with regard to the marks on the neck  
6 and normally blood doesn't come right from them.  
7 Again, in the Agreed Statement of Facts, there is no  
8 indication that she bled at a later date, and we're not  
9 prepared to admit that she did. The medical report  
10 there describes those marks on the neck. I seem to  
11 have misplaced my copy, Your Honour.

12 THE COURT: Yes, I have it before me. Thank you.  
13 Two small bruises were noted to the right side of her  
14 neck. A small abrasion approximately one-half by  
15 one-half centimetre was apparent to the centre front of  
16 her neck and another small abrasion to the left front  
17 of the neck. This one less than half a centimetre.

18 MR. MELNICK: My submission is the report, with  
19 respect, shows there were very small abrasions. The  
20 photographs themselves -- it's very hard to tell  
21 whether the marks are scratches from being choked.  
22 Mr. Gruben, in the Statement of Facts indicates he had  
23 no intention of cutting her at the time -- did not  
24 intend to cut her at the time. That's not a defence to  
25 the charge of an assault with a weapon, Your Honour.  
26 It is with regard to what injuries occurred as a result  
27 of the assault. So in that respect he does not believe

1           that the marks on the neck were as a result of the  
2           knife. With the series of assaults that occurred over  
3           a few number -- a couple of days there, it's possible  
4           they could have come from any situation. Perhaps even  
5           the choking on the last day, on the 20th. It was more  
6           to the expression of the scratches or abrasions or  
7           that.

8           So our submission is simply that the Court again  
9           can look at the medical evidence, the Court can refer  
10          to the photographs, and come to the conclusion which  
11          the Court feels most appropriate based on the  
12          submissions of both the Defence and Crown and the  
13          Agreed Statement of Facts.

14   THE COURT:            You are, however, a party to a joint  
15          submission suggesting five years more or less?

16   MR. MELNICK:          Yes, and I will address that in  
17          particular, My Lord.

18          The record is quite lengthy. By my calculations, I  
19          count 19 appearances actually before the Court over a  
20          30-year period. Some 13 assaults. A total of  
21          approximately -- a total of 29 charges, sir. Jail time  
22          was imposed. On a quick calculation, it seems to be  
23          roughly about 15 years or so over a 30-year period. So  
24          approximately half the period of time. The last  
25          sentence that was imposed was three years and that was  
26          for assault with a weapon, and at the same point in  
27          time, for assault causing bodily harm, 15 months jail

1 concurrent.

2 The range Crown has indicated of five years, I  
3 would ask the Court to consider going on the low end of  
4 that. It is a five-year range that is being submitted  
5 to the Court. It does seem to be appropriate given the  
6 record, given the charges that are before the Court.

7 There are some mitigating factors. Crown has  
8 referred to a few of those. In particular, the early  
9 guilty plea and the early acknowledgment to the Crown  
10 that it would be a guilty plea. In this particular  
11 area, in this particular jurisdiction, an early guilty  
12 plea usually carries with it quite a mitigating factor  
13 for the courts to consider. It has saved the  
14 complainant and Court undue time and expense, and the  
15 complainant undue embarrassment at having to testify.  
16 Also, from the accused's point of view, it has saved  
17 him a situation, too, because we have been able to come  
18 to an Agreed Statement of Facts which he acknowledges  
19 actually happened.

20 The incidents, the majority or of all of them,  
21 occur while he's under the influence of alcohol. He  
22 has indicated that he didn't appear -- feel that he was  
23 that drunk on the last occasion. However, he was  
24 drinking homebrew. It's difficult to judge the amount  
25 that he was drinking at that point in time.

26 Mr. Gruben is 52 years of age. He was born on the  
27 11th of May, 1943. He has a Grade 8 education. He has

1 taken, in addition to that, some upgrading courses by  
2 correspondence and bookkeeping courses.

3 Even for the amount of time that he's spent in  
4 incarceration, he does have a work history. He's  
5 worked pretty steady, actually, for the amount of time  
6 he's been able to. 1971, he said, he first started  
7 with Esso on and off on a seasonal basis. To  
8 approximately 1987 that continued. He then worked at  
9 M & J Water for a while, swamping, 1990, approximately,  
10 to '95, on and off again. He's held various other  
11 labour jobs around, and also worked for Gruben's  
12 Transport. It seems that when he is able, when he is  
13 not drinking, he is a respected citizen, which is  
14 unusual given the record and the charges that he has on  
15 his record and charges that he has today. I will speak  
16 more about that in a moment, My Lord.

17 As far as Mr. Gruben's background, when he was six  
18 years old -- six years of age, he tells me, he was put  
19 into a residential school and taken out of this  
20 particular community. He was also taken from his  
21 family. He went to school in Aklavik. He stayed there  
22 until he was about 13 years of age. In fact, what that  
23 had done from him is take him completely out of his  
24 family. When he finally returned to this community, he  
25 knew where his mother and father were, but didn't have  
26 the ability to bond to them, as most people do, for  
27 being away that number of years at a very early, young



1 age.

2 His family actually made Tuk their permanent  
3 residence in 1956. His father, prior to that, was a  
4 trapper in Sachs Harbour. By the time Frank was  
5 brought home, Tuk was now his permanent residence.

6 During that six- or seven-year period -- it wasn't  
7 just on a seasonal basis that he was away. He was away  
8 for the full year, for a full six or seven years,  
9 during that period of time. In addition to that, he  
10 spent two years in Tuk partly living with his mother  
11 and father. He has five brothers and five sisters. He  
12 is the fourth oldest. Some of his brothers and sisters  
13 were in school in Aklavik with him. His sister spent a  
14 lot of time in the hospital, and so did his brother  
15 who's four years older and finish his schooling  
16 earlier, so that he didn't really have the ability to  
17 bond with him that much either.

18 After returning back from Aklavik, he went back to  
19 school again in 1958 and that was a school in  
20 Yellowknife. I believe it's called Akaitcho Hall.  
21 That was for a year, from 1958 to '59. In 1959 to '60,  
22 he went to live in Inuvik and worked for the DEW Line  
23 there. By this point in time, he was about 19 years of  
24 age.

25 He began drinking at a relatively early age as a  
26 teenager and drank steadily until his last release this  
27 year. He indicates to me that at this point in time,

1 actually, as of his last release, he was getting sick  
2 of the alcohol. But it was a very difficult  
3 relationship he had with Miss Chicksi. It caused them  
4 a lot of difficulties and he returned to alcohol,  
5 unfortunately, and finds himself before the Court again  
6 for a similar type of offence.

7 He himself considers himself to be, basically, a  
8 lone wolf because of his lost childhood years.  
9 However, he did manage to learn hunting and trapping  
10 skills and his traditional lifestyle from his mother  
11 and his father.

12 His mother is still alive. I understand she  
13 resides here in Tuk and is a non-drinker now. He  
14 describes his family life as not an abusive situation.

15 He says he learned to fight and become the  
16 aggressor, as he sees it, anyway, in his earlier school  
17 years. What he indicates to me is that, literally, in  
18 order to be able to get along, basically survival of  
19 the fittest in his early school years in Aklavik. He  
20 says, as far as he can see, anyway, that's where his  
21 aggressive behaviour developed at a very early age, and  
22 he's never been able to, to this day, be fully able to  
23 control it.

24 He ran away from that school on several occasions  
25 and was eventually brought back to the school again by  
26 the R.C.M.P. At one point he attempted to -- he  
27 disliked it so much, he attempted to walk to

1 Tuktoyaktuk from Aklavik in the wintertime. He was  
2 about 11 or 12 years of age at that time.

3 He indicates that there was some abuse by some of  
4 the teachers, but nothing to any great extent. They  
5 were corrected because of -- when they used their own  
6 native language. They had difficulty in school in that  
7 respect. They were corrected by the teachers for using  
8 their own language.

9 He feels now that it would be beneficial to speak  
10 to a psychiatrist or psychologist. He says that when  
11 he is sober, he's a good citizen. I have letters from  
12 several people in the community that seem to indicate  
13 that, and I'll present those to the Court shortly. I  
14 have shown them to Mr. Regel and he has agreed they can  
15 be brought before the Court.

16 He himself really doesn't understand why he acts  
17 the way he does when he consumes alcohol. He indicates  
18 that he doesn't want to be involved with alcohol  
19 anymore, but it's very difficult for him at this  
20 point. He also indicates that he's spoken to a lot of  
21 young people, to some young offenders who have been  
22 around, that he's run into when he's been in the  
23 community here. He would at times take them out to his  
24 camp on the land, try to talk to them about the evils  
25 of alcohol, and give them his firsthand knowledge.  
26 Seems when he's sober, and sober for a while, he can  
27 understand it. But that still makes it a weakness. He

1 still has that weakness for it, and when he does drink  
2 he becomes depressed. He does feel that he's helped  
3 some people. In particular, there are some young  
4 individuals he's talked to about furthering their  
5 education. I believe one is -- I'll find it in my  
6 notes in a moment, My Lord.

7 He has, in addition, taken programs while he's been  
8 incarcerated. Most recently, the Life Skills Program  
9 in 1993.

10 He's not bitter. He takes full responsibility for  
11 his actions. He's apologized, apparently, to Rosa, and  
12 he has clearly, by his ability to come to the Agreed  
13 Statement of Facts here and his early pleas, has really  
14 accepted full responsibility and shows a true and  
15 genuine sign of remorse.

16 He did most recently request to see a psychiatrist  
17 while he was at remand in the Yellowknife Correctional  
18 Centre. He did see him on one occasion, but has not  
19 been able to see him since. He does acknowledge that  
20 it has taken virtually his whole life to realize that  
21 alcohol is a problem and, generally, his life has been  
22 wasted away. But he does see that there is still some  
23 positive life experiences for him and he feels he can  
24 still benefit the community and society when he's  
25 released, at the very least by helping others to avoid  
26 a life like his; he knows it firsthand. He doesn't  
27 actually at this point in time feel that he is actually

1 institutionalized. Says he's not. Says that when he's  
2 out, he obtains steady employment, and he has a lot of  
3 skills to offer in that respect. When I spoke to him  
4 about that, he said, "I didn't care about life anymore  
5 when I came out. I wouldn't just do nothing." Yet it  
6 seems that he does tend to gain employment. By the  
7 Statement of Facts, he was employed at the time. He  
8 doesn't feel that he has a criminal mind in the sense  
9 that -- sometimes, however, he has difficulty with  
10 aggression. That does seem to be his main, severe  
11 problem; that is when he's consumed alcohol. He likes  
12 to help people, he says, but he says he hasn't been  
13 able to help himself. It's only now that he's  
14 beginning to realize this.

15 I know the Court has heard that type of plea on  
16 many occasions. But in our conversations with  
17 Mr. Gruben, he seems to be sincere in his efforts.  
18 Coming to an Agreed Statement of Facts and  
19 acknowledgment of his guilt here, he seems to be very  
20 sincere. When he says that it's only now he's realized  
21 it, I have no doubt (sic) to disbelieve that in fact it  
22 has taken this long to come to realize what has  
23 happened with his life. He has lost it with his  
24 children. He hasn't had the time to spend with them.  
25 I think that plays heavily on his mind and his  
26 conscience.

27 So in respect to the range that's been submitted to

1 the Court, for the reasons that I've set out, I've  
2 asked the Court to at least be on the low scale of that  
3 range.

4 THE COURT: Well, what was suggested was five  
5 years. How can I be on the low range of five -- ..

6 MR. REGEL: I believe what was suggested, My Lord,  
7 is the range of five years. Whether it's exactly five  
8 or four...

9 MR. MELNICK: There are a series of letters, My  
10 Lord.

11 THE COURT: The letters can be marked collectively  
12 as the next exhibit.

13 EXHIBIT NUMBER 5 - LETTERS OF CHARACTER  
14 REFERENCE WRITTEN ON BEHALF OF FRANK GRUBEN

15 MR. MELNICK: Letters are, basically, from --

16 THE CLERK: Exhibit 5, sir.

17 THE COURT: Five.

18 MR. MELNICK: -- acquaintances within the community,  
19 My Lord. They indicate that at times he's a good  
20 person, and I ask the Court to take that into  
21 consideration, when he's not involved with alcohol. I  
22 believe the letters are --

23 THE COURT: There are two letters from Shirley  
24 Steen.

25 MR. MELNICK: Yes, My Lord. It took me a moment to  
26 realize --

27 THE COURT: Is that the same person?

1 MR. MELNICK: Same person. The letter appears to be  
2 written on behalf of two individuals. Actually, on her  
3 own personal behalf. You'll find the first line in the  
4 letter relates to where she works for a particular  
5 organization, and the letter is signed with that in  
6 mind. The second letter is a personal letter.

7 THE COURT: Okay. Do you have anything to add?

8 MR. REGEL: Just two points, My Lord. One, I did  
9 review my file. There is reference to parole and  
10 whatnot, but nothing from the Parole Board indicating  
11 that he was on parole. Accordingly, I'd ask you to  
12 proceed on the assumption that he was not on parole at  
13 the time; that his sentence had expired.

14 THE COURT: Thanks.

15 MR. REGEL: The second thing was, just to concur,  
16 the joint submission is that the sentence be in the  
17 range of five years. My friend asked that it be a  
18 little lower, but, at the same time, you could go a  
19 little higher if you wished.

20 THE COURT: Does your client have anything to say  
21 before I pass sentence on him?

22 MR. MELNICK: No, My Lord.

23 THE COURT: Would you stand up, sir.

24 Mr. Gruben has entered pleas of guilty to two  
25 charges of assault under Section 266 of the Code and  
26 one charge of assault using a weapon, namely a knife,  
27 pursuant to Section 267(1)(a) of the Code.

1           The Agreed Statement of Facts indicates that on the  
2 5th of August, 1995 - this relating to count number 1 -  
3 the accused assaulted Rosa Chicksi by pulling her arm  
4 and clothing, and her hair, tearing her shirt open, and  
5 later that evening, by kicking her while she lay on the  
6 floor.

7           On the 18th of August, 1995 and shortly before  
8 midnight, she went for a walk and met the accused  
9 later, returning home with him. He held a pocketknife  
10 to her throat. She thought the knife cut her throat.  
11 There seems to be some doubt about that, although she  
12 did have marks on her throat. At any rate, he clearly  
13 threatened to cut her when he was holding the knife to  
14 her throat. He hit her in the face and head a number  
15 of times. This incident continued off and on, so the  
16 statement says, until they reached their home at  
17 Reindeer Point, at which time he fell asleep.

18           Finally, on the 20th of August, 1995 - this  
19 relating to count number 3 - he and a friend were  
20 drinking at her home. She asked them to leave -- or  
21 told them to leave, whereupon he choked her and  
22 continued drinking in the kitchen. There is a disputed  
23 allegation by her that in the course of the assault he  
24 tore her pants off, ripping them in the process. He  
25 denies this. Or to use his words, he says he "disputes  
26 that." He didn't tear her clothes, he says, "to my  
27 recollection." But he admits that he was drinking at



1 the time and that she was not. I prefer her evidence  
2 on the point, and although it doesn't make any real  
3 difference with respect to the sentence I'm about to  
4 impose, I accept the fact that he ripped her clothing  
5 on that occasion.

6 Defence has proposed -- or at least the Crown has  
7 proposed a global sentence in the range of five years,  
8 and the Defence agrees that that would be appropriate,  
9 although the Defence would like to see something less  
10 than five years and has made lengthy submissions in  
11 support of that request. The paramount factor in this  
12 case given the accused's very long and violent record  
13 is protection of the public and particularly anybody,  
14 any female, with whom he might live.

15 Spousal assault is a terrible problem in society,  
16 not only here but everywhere, and there's a very strong  
17 element of general deterrence to be considered in cases  
18 like this. Individual deterrence is obviously very  
19 important as well given the accused's record and given  
20 the circumstances of this case, which is only a repeat,  
21 sad to say, of earlier assaults upon the same victim.

22 His rehabilitation, of course, is a factor to be  
23 considered, although it is much less important here  
24 than are the factors of protection of the public and  
25 deterrence.

26 This man is 52 years of age, and his record has  
27 been described by counsel as very long, very old - or

1 at least very long - and continuing and violent in  
2 nature. Mr. Gruben appears to be a tragic victim of  
3 alcohol abuse, but, to his credit, he does not blame  
4 alcohol alone for his troubles. He takes full  
5 responsibility for the assaults for which I am about to  
6 sentence him. And truth to say, he cannot lay the  
7 blame at the door of alcohol entirely. Many people  
8 drink too much, but not many people are as violent as  
9 you are, Mr. Gruben, even when they're drunk.

10 In mitigation, of course, it must be noted that you  
11 have served three months of pre-trial custody and that  
12 you waived the preliminary, thus sparing the victim the  
13 pain of testifying, and that you had made it known  
14 early on that you were going to plead guilty. All  
15 these things stand in your favour, and were it not for  
16 them, I can assure you that given your record and the  
17 history of violence towards this complainant that the  
18 sentence would exceed five years.

19 The Crown has pointed out that you have 17 prior  
20 violent offences on your record, 11 of them involving  
21 weapons, and 7 of those weapons were knives. Numbered  
22 amongst the assaults are three spousal assaults.

23 All of the material has been marked as exhibits in  
24 this trial and I need saying nothing further about it.

25 I take note of the letters of recommendation  
26 provided to me by some of your friends, and there does  
27 indeed seem to be hope that you can live a useful life

1 and that you are, in fact, not a bad man when you're  
2 not under the influence of alcohol. Let us hope that  
3 somehow, somewhere, you can beat that addiction and  
4 that when you finally are released from prison, you  
5 will continue to -- at least you will start life anew  
6 as a useful citizen.

7 The sentence I impose upon you is a global one of  
8 five years, and it will be structured as follows.  
9 On count number 2, assault with a weapon, I sentence  
10 you to five years in prison. On counts number 1 and 3,  
11 I sentence you to one year each to be served  
12 concurrently with the longer sentence imposed on count  
13 number 2.

14 There have been weapons prohibitions under Section  
15 100 in the past, and I'm sure that one is needed now.  
16 It's probably a life prohibition. Is that right,  
17 Crown?

18 MR. REGEL: I didn't serve the notice in that  
19 regard, My Lord. You do have some discretion as to  
20 whether you wish to impose life or ten years from the  
21 date released from custody, if I'm not mistaken. I  
22 will just double-check that.

23 Yes, the way it's worded -- you'll note Section 100  
24 says the order commences the day on which it is made  
25 and expires not earlier than, in the case of a first  
26 conviction for such an offence, ten years, and in any  
27 other case, life.

1           Now, again, there are notice provisions if the  
2 Crown intends to increase the minimum sentence beyond  
3 that which would ordinarily be imposed, and we have not  
4 served a notice in this case. So the Court has the  
5 discretion. But you're not bound to impose life..

6 THE COURT:           Well, it doesn't say -- it seems to be  
7 mandatory under Section 100(1). "Make an order  
8 prohibiting the offender from possessing any  
9 firearm..." et cetera. In the case of a first  
10 conviction, ten years, and in any other case, life,  
11 after the time. The Court "shall."

12 MR. REGEL:           In that regard, My Lord, I would  
13 suggest there is a parallel to be drawn between this  
14 and the impaired driving sections. With the impaired  
15 driving sections, you'll recall there's increased  
16 penalties for a second or subsequent offence. But  
17 under -- and if I can just have a second here, I'll  
18 give you a section number. If I could just have a  
19 minute, My Lord, I'll find the section that applies.

20           It's Section 665, My Lord. It's just the way  
21 subsection (1) is generally read is that the Court  
22 would have the discretion to impose the greater  
23 punishment, but the imposition of it is not mandatory.

24 THE COURT:           Well, except that 665 says, "Where an  
25 accused or a defendant is convicted of an offence for  
26 which a greater punishment may be imposed by reason of  
27 previous convictions..." That's not the way Section

1 100 reads. It says "shall."

2 MR. REGEL: I know, My Lord, that that section is  
3 also the section that's used to require an increase on  
4 the drinking and driving, and if we draw a parallel to  
5 those ones, 253 -- the penalty section, I believe, is  
6 255.

7 THE COURT: Well, Section 255 says the accused is  
8 "liable." Doesn't say anything about "shall" -- about  
9 the judge "shall" make a prohibition for a certain  
10 period of time.

11 MR. REGEL: Here's another reference to a case, My  
12 Lord, under Section 100. In particular, page 145 of my  
13 1996 copy of the Martin's Code. The case of Jobb is  
14 referred to where the Court notes "Where the Crown  
15 seeks the longer prohibition for a subsequent  
16 conviction as provided for in paragraph (b), it must  
17 give notice as required by Section 655."

18 THE COURT: Speaking of what?

19 MR. REGEL: In other words, the way I'd suggest --

20 THE COURT: Are they speaking about the Section 100  
21 prohibition? Yes?

22 MR. REGEL: That's my understanding.

23 THE COURT: Where is that reference?

24 MR. REGEL: That's about halfway down the page of  
25 page 145. I don't know if the edition you're working  
26 on has the same page numbering system for each  
27 section.

1 THE COURT: Oh, I see. I don't know what they're  
2 talking about; paragraph (b).

3 MR. REGEL: I believe what they're referring to, My  
4 Lord, is --

5 THE COURT: 13(b).

6 MR. REGEL: I thought it was Section 100(1)(b),  
7 but... I note, under the annotations -- pardon me. It  
8 does fall under the annotations to subsection (1).

9 THE COURT: Well, all right. I see the authority  
10 and you're correct, it does seem to apply to that.

11 MR. REGEL: I do believe, My Lord, just as I'm  
12 thinking, there was a case in the Northwest Territories  
13 Court of Appeal on a similar issue recently, involving  
14 a firearms issue, where Judge Halifax -- and I'm not  
15 sure of the name of the case, but Judge Halifax  
16 considered he was bound to impose life. I think it was  
17 Judge Halifax. But, anyway, one of our Territorial  
18 Court judges was of that view, and the Court of Appeal  
19 set aside the life order.

20 THE COURT: I see.

21 MR. MELNICK: The only other comment I was going to  
22 make, My Lord, is that there are the provisions,  
23 dealing with the order, that it is not mandatory to be  
24 made if the Court comes to the conclusion that it is  
25 required for other reasons under Section (1.1).

26 When Mr. Gruben is released, if he is able to  
27 rehabilitate himself with his hunting and trapping

1 skills, he may be of some benefit to the community at a  
2 future point in time. So if the Court would be looking  
3 at it from that point of view, a period of ten years  
4 may be appropriate.

5 THE COURT: I'd be glad to look at it from that  
6 point of view if Mr. Gruben was facing the Court for  
7 the first time on a violent offence. But he has a  
8 record which clearly demonstrates that he's a danger to  
9 the public, and that includes weapons offences in the  
10 past. It seems to me, on a plain reading of Section  
11 100, that I'm obligated to impose a lifetime  
12 prohibition. But there appears to be authority to the  
13 contrary, and perhaps even more significantly, the  
14 Crown is not asking me to impose a lifetime  
15 prohibition, not having given notice of its intention  
16 to seek such an order.

17 Therefore, pursuant to Section 100 of the Criminal  
18 Code, sir, I make an order prohibiting you from  
19 possessing any firearm or any ammunition or explosive  
20 substance for a period of ten years after your release  
21 from imprisonment.

22 You may sit down. Anything further, Counsel?

23 MR. REGEL: Victim of crime surcharge is waived, My

24 Lord?

25 THE COURT: Yes.

26 THE CLERK: Sir, for the firearms prohibition,

27 would that be surrendering forthwith?

1 THE COURT: Yes.

2 You are to surrender any firearms or ammunition  
3 that you now have in your in possession forthwith.


4 (PROCEEDINGS CONCLUDED)

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6 Certified Pursuant to Practice Direction #20  
7 dated December 28, 1987.

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Jane Romanowich  
Court Reporter

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