

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

STEVEN SAYINE

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Transcript of the Oral Reasons for Sentence by The  
Honourable Justice L. A. Charbonneau, sitting in Hay  
River, in the Northwest Territories, on the 18th day  
of December, A.D., 2014.

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APPEARANCES:

Mr. M. Lecorre: Counsel for the Crown  
Mr. C. Davison: Counsel for the Defence  
Mr. M. Martin: Counsel for the Defence

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Charge under s. 236(b) Criminal Code of Canada

Official Court Reporters

1 THE COURT: Good afternoon. This  
2 afternoon it is my responsibility to impose  
3 a sentence on Steven Sayine for having caused  
4 the death of his common-law spouse, Mary  
5 Laboucan, back in June of 2012.

6 Deciding what a sentence should be for  
7 this crime is a serious responsibility and it  
8 is a difficult decision. I know that many people  
9 have already been deeply affected by these events  
10 and by the loss of Mary Laboucan. I know that  
11 nothing the Court does today will undo the harm  
12 that was done. Nothing will bring Ms. Laboucan  
13 back, and I expect that no sentence that the  
14 Court imposes will seem to measure up to the  
15 magnitude of the loss for those who cared about  
16 her.

17 Yesterday I heard submissions from Crown  
18 and defence. Their respective characterization  
19 of this matter is quite different and there is  
20 a significant difference in what they say the  
21 sentence should be. The Crown says it should be  
22 seven to eight years imprisonment, the defence  
23 says it should be four years.

24 In making my decision I have considered the  
25 pre-sentence report, the victim impact statement  
26 filed by Ms. Laboucan's sister, Mr. Sayine's  
27 criminal record, the two books of cases that

1           were filed by counsel. I have reviewed my trial  
2           notes and I have reviewed the transcript of the  
3           decision I rendered last October when I found  
4           Mr. Sayine guilty and, of course, I have given  
5           careful consideration to the submissions I heard  
6           from counsel yesterday.

7           In any sentencing the Court has to take  
8           into account the circumstances of the offence  
9           that was committed, the personal circumstances  
10          of the person who committed that offence, and  
11          the sentencing principles that are set out  
12          in the Criminal Code. That means that many  
13          interests, and often competing ones, have to be  
14          balanced, and this is what I have tried to do.

15          I went over the evidence called at this  
16          trial in some detail when I gave my decision  
17          finding Mr. Sayine guilty last October. I will  
18          not repeat now everything that I said then, but  
19          to put my sentencing reasons in context I do  
20          need to summarize the circumstances that led  
21          to Ms. Laboucan's death.

22          During the early morning hours of June  
23          16th, 2012, Ms. Laboucan and Mr. Sayine had  
24          been consuming alcohol. A number of people  
25          had been in their house drinking as well.  
26          These included Jason Larocque, Jennifer  
27          Singerling and Fred Lafferty. Mr. Larocque

1           and Ms. Singerling eventually left. Mr. Sayine  
2           and Mr. Lafferty also left for a short period  
3           to go buy another bottle of liquor and then  
4           they returned to the residence separately.

5           At some point after Mr. Lafferty returned  
6           something happened that made Mr. Sayine very  
7           angry at Mr. Lafferty. The reason for the  
8           dispute was the subject of conflicting evidence,  
9           but it is undisputed that in his angry state  
10          Mr. Sayine took an axe and struck a coffee table  
11          that was near where Mr. Lafferty was sitting.  
12          The table broke. Mr. Lafferty got scared and  
13          got out of the house and he reported the matter  
14          to police.

15          Two officers attended the Sayine residence,  
16          and by then, as far as the officers could see,  
17          nothing untoward seemed to be going on. The  
18          officers did not see the broken coffee table  
19          in the house because Mr. Sayine had already  
20          taken it outside, they did not see an axe.  
21          No one appeared to be injured or at risk in  
22          the home. The details of the conversations  
23          that the officers had with the occupants of  
24          the house were not adduced in evidence at  
25          the trial, but the officers testified that  
26          based on what the people told them and based  
27          on their observations at the house, they

1 believed everything was all right and they  
2 left without taking any further action.

3 Later that same day there was a further  
4 incident, this time involving Mr. Sayine and  
5 Ms. Laboucan. It was during that incident  
6 that she sustained the head injury, the  
7 bleeding inside her skull, that ultimately  
8 caused her death. I will go back to my  
9 findings about this in a moment. After  
10 Ms. Laboucan got hurt Mr. Sayine did various  
11 things to assist her. He helped her wash,  
12 change her clothes and get into bed. He was  
13 not aware that she was seriously injured at  
14 that point.

15 Jason Larocque and Jennifer Singerling  
16 stopped by the house at some point after  
17 Mr. Sayine helped Ms. Laboucan to bed. They  
18 saw the house was in disarray. They noticed  
19 what looked like blood in the living room and  
20 Ms. Singerling also noticed something that she  
21 thought was blood in the bathroom. There was a  
22 boot mark on the wall, broken glass on the floor.  
23 They noticed that one of the two coffee tables  
24 that had been in the living room the previous  
25 night was missing.

26 They asked Mr. Sayine what happened.  
27 Mr. Sayine was upset. He made admissions to

1           them at that point that he kicked Ms. Laboucan  
2           after she threw an ashtray at him. He said he  
3           "fucked up" and "should not have done that to  
4           her." He was crying. They asked Mr. Sayine  
5           if she was all right and he told them that she  
6           was sleeping. He would not let them see her.  
7           Mr. Larocque and Ms. Singerling did not stay  
8           at the house very long. They were both upset  
9           and disturbed by what they saw and by what  
10          Mr. Sayine told them. At trial they both  
11          testified they "just wanted to get out of  
12          there" and they left the house.

13                 Mr. Sayine called the nurse twice later  
14          that day. The first time he said to the nurse  
15          he was having trouble waking Ms. Laboucan and the  
16          nurse said that she would come over. Mr. Sayine  
17          called back a short time after that to say that  
18          he thought Ms. Laboucan was awake and all right  
19          and that the nurse did not need to come. Later  
20          that evening he called the nurse again saying  
21          he still could not wake Ms. Laboucan up.

22                 So then the nurse went to the house.  
23          She determined that Ms. Laboucan was deeply  
24          unconscious, and she got assistance from two  
25          police officers to move Ms. Laboucan to the  
26          Health Centre. There she examined her again,  
27          did various tests, and provided treatment

1 under the direction of the emergency doctors  
2 in Yellowknife. Eventually Ms. Laboucan was  
3 medevaced to Yellowknife and later to Edmonton,  
4 but she had a brain injury resulting from the  
5 bleeding inside her skull, and that injury was  
6 so serious that the doctors could not do anything  
7 to reverse the damage that was done and they were  
8 not able to save her life.

9 As to how Ms. Laboucan got this head injury,  
10 Mr. Sayine's evidence was that it occurred as  
11 they were struggling over a bottle. He said her  
12 hand slipped and she accidentally fell backwards  
13 during that struggle and that she then got up and  
14 lunged forward at him, lost her balance again,  
15 and fell forward, hitting her face on the couch.  
16 He said his admissions to Mr. Larocque and  
17 Ms. Singerling that he kicked her were untrue.

18 For reasons I gave when I found Mr. Sayine  
19 guilty, I rejected that evidence. The findings  
20 that I made were that whatever happened between  
21 the two of them, at one point Ms. Laboucan threw  
22 an ashtray at Mr. Sayine. This made him angry  
23 and he kicked her in the head area, causing  
24 her to fall back and hit her head on the floor.  
25 I found that the brain injury that Ms. Laboucan  
26 sustained was caused by this.

27 The evidence called at the trial did not

1 make it possible to make more specific findings  
2 than that, such as whether this was a back kick  
3 or a front kick or how much force was used,  
4 where exactly it connected on Ms. Laboucan's  
5 head, or whether it was the kick itself or her  
6 head hitting the floor that resulted in the  
7 bleeding inside her brain.

8 The pathologist identified two impact  
9 sites, one bruise under the skin at the back  
10 of her head and one bruise around one of her  
11 eyes, but he could not tell which one was  
12 connected to the trauma that led to the internal  
13 bleeding of her skull. It was also part of the  
14 findings that I made, and I referred to this  
15 already, that after this Mr. Sayine did not  
16 realize how seriously hurt Ms. Laboucan was  
17 and he did the various things he described in  
18 his evidence to try to assist her. Those are  
19 the circumstances of the offence that Mr. Sayine  
20 is to be sentenced for.

21 Now I am going to turn to some aspects of  
22 his personal circumstances. I heard submissions  
23 from Mr. Sayine's counsel detailing his personal  
24 circumstances. I also have the benefit of a  
25 thorough pre-sentence report that talks about  
26 those circumstances. I am grateful to the author  
27 of the report for the work that has gone into



1           it and for the information it provides. I am  
2           also grateful to the various people who agreed  
3           to speak to her as she was preparing the report.  
4           That gives me some insight into Mr. Sayine's  
5           personal history and circumstances. It also  
6           gives me insight into how Ms. Laboucan's family  
7           members were affected by her death, as does  
8           the compelling victim impact statement that  
9           her sister filed and was read into the record  
10          yesterday.

11                 I am not going to refer to the pre-sentence  
12          report in detail or quote from it, it is an  
13          exhibit and it is part of the record. But  
14          I have read it several times and I have given  
15          it careful consideration. One area of the  
16          report that I do want to refer to relates  
17          to Mr. Sayine's circumstances as he is an  
18          aboriginal person, and this gives rise to  
19          specific legal obligations under the Criminal  
20          Code in accordance with instructions from  
21          the Supreme Court of Canada in the cases of  
22          R. v. Gladue, [1999] 1 S.C.R. 688, 133 C.C.C.  
23          (3d) 385, and R. v. Ipeelee, 2012 SCC 13.

24                 I am required to take judicial notice of  
25          systemic factors that have impacted aboriginal  
26          people in this country and have contributed to  
27          their overrepresentation in Canadian jails, and

1 I have done so. In addition to those things  
2 I am to take judicial notice of, the pre-sentence  
3 report sets out many circumstances specific to  
4 Mr. Sayine and that must be taken into account.  
5 It is clear that he has experienced firsthand  
6 some of the challenges that unfortunately many  
7 aboriginal people have faced growing up and that  
8 we hear about regularly in the courts. There  
9 is a specific section of the pre-sentence report  
10 that addresses this on pages 7 and 8, but there  
11 is also information throughout the report, even  
12 apart from what is in that section, that is  
13 relevant to that issue.

14 Mr. Sayine grew up in a home where alcohol  
15 abuse led to a fair amount of dysfunction.  
16 This is a story we hear all too often in this  
17 jurisdiction. Children should not have to go  
18 to sleep in sheds to get away from parties that  
19 are going on in their home, which is the place  
20 where they should feel safest, yet it is the  
21 type of thing we often hear happens to children  
22 in this jurisdiction when those children grow  
23 up to be adults and are being sentenced. It is  
24 something that I always find heartbreaking to  
25 read.

26 What makes it even more disturbing maybe  
27 is that we also know, because of the many cases

1           that come up before the courts where drinking  
2           is involved, that these kinds of things are  
3           still going on today in many homes in this  
4           jurisdiction. These are not just things of  
5           the past. Children today are subjected to  
6           the same kind of dysfunctional environments  
7           in many of our communities. Many adults  
8           continue to abuse alcohol and drugs and  
9           expose their children to neglect, dysfunction,  
10          and things that are bound to have an extremely  
11          negative impact on them.

12                 It struck me as I read the decisions  
13                 filed by counsel at this sentencing hearing  
14                 that in almost every one from this jurisdiction,  
15                 and also some from other jurisdictions, the  
16                 sentencing judges talk about the ravages of  
17                 alcohol abuse, the harm that it causes, and  
18                 how communities must take very real steps  
19                 to address these issues because they are  
20                 not issues that can be resolved from the  
21                 outside by outsiders. But sadly, those  
22                 changes do not seem to be happening in  
23                 many cases.

24                 I do accept that some of the dysfunction  
25                 that Mr. Sayine has been exposed to growing up  
26                 played a part in his getting into conflict with  
27                 the law when he was a youth and also later as

1 an adult. I accept that it has contributed to  
2 the unhealthy relationship he has developed with  
3 alcohol and with his sometimes uncontrollable  
4 and uncontrolled anger. These things seem  
5 to be at the root of many of the offences  
6 he has been convicted for.

7 In the pre-sentence report Mr. Sayine  
8 is reported saying that he recognizes and  
9 identifies the direct link between the  
10 consumption of alcohol and the commission  
11 of offences. He is reported saying he needs  
12 to stop drinking and that he needs to take steps  
13 to learn to deal with his anger. I think there  
14 is no doubt that he is right about those things.  
15 On the other hand, there is also no doubt that  
16 he has been aware of this or ought to have been  
17 aware of this for a very long time given how  
18 far back his criminal record goes and how much  
19 trouble he has been getting himself into with the  
20 law, in part through his consumption of alcohol.

21 The pre-sentence report also describes  
22 the community of Fort Resolution, which is  
23 where Mr. Sayine is from and has spent his life.  
24 It describes some of the social issues in that  
25 community, which again unfortunately are present  
26 in many other communities in this jurisdiction.  
27 There are limited resources to help people deal

1 with issues stemming from addiction, abuse,  
2 exposure to trauma and other social problems.  
3 Many adults in that community are from families  
4 that have been impacted by the fact that  
5 the people in the generation of Mr. Sayine's  
6 grandparents went to residential schools.

7 The report also refers to some positive  
8 aspects of Mr. Sayine's upbringing, however.  
9 He was raised in a household where cultural  
10 traditions were practiced, and he spent time  
11 on the land with his grandparents and learned  
12 a lot of skills from them. He has those skills,  
13 he is proud of them, and he has put them to good  
14 use to provide food to some of his family members  
15 and other members of his community. I have  
16 also heard he has had a good work record and  
17 has skills quite apart from his skills on the  
18 land. Those are all positive things that he  
19 can hopefully use and build on for the future.

20 One of the sentencing principles that  
21 applies in any sentencing is the principle of  
22 restraint, but the instructions from the Supreme  
23 Court of Canada are that this principle must  
24 be given particular attention when dealing with  
25 aboriginal offenders for the reasons explained  
26 in R. v. Gladue and R. v. Ipeelee. This does not  
27 mean that aboriginal offenders should necessarily

1 receive less severe sentences than non-aboriginal  
2 offenders, but it does mean that the systemic  
3 and case-specific factors that I have already  
4 referred to must be examined carefully. In  
5 some cases it may result in sanctions other  
6 than imprisonment being used on sentencing.  
7 Here no one suggests that that should be the  
8 case. But even when a jail term has to be  
9 imposed these factors may have an impact on  
10 the duration of the jail term because that  
11 is another aspect of restraint. I have  
12 considered this principle and Mr. Sayine's  
13 overall circumstances in my deliberations  
14 on this matter.

15 Of course, there are many other sentencing  
16 principles that I must also consider, and I will  
17 turn to those now. The fundamental sentencing  
18 principle is proportionality. That means the  
19 sentence must be proportionate to the seriousness  
20 of the offence and the degree of blameworthiness  
21 of the offender. All the other sentencing  
22 principles that are written in the Criminal  
23 Code flow from that fundamental one. The  
24 fundamental purpose of sentencing is also set  
25 out in the Criminal Code. More specifically,  
26 at Section 718, which reads as follows:  
27

1           The fundamental purpose of  
2           sentencing is to contribute,  
3           along with crime prevention  
4           initiatives, to respect for  
5           the law and the maintenance  
6           of a just, peaceful and safe  
7           society by imposing just  
8           sanctions that have one  
9           or more of the following  
10          objectives:

- 11           (a) to denounce unlawful conduct;
- 12           (b) to deter the offender and  
13           other persons from committing  
14           offences;
- 15           (c) to separate offenders from  
16           society, where necessary;
- 17           (d) to assist in rehabilitating  
18           offenders;
- 19           (e) to provide reparations for  
20           harm done to victims or to  
21           the community; and
- 22           (f) to promote a sense of  
23           responsibility in offenders,  
24           and acknowledgment of the  
25           harm done to victims and  
26           to the community.

27

1           Sentencing is not about revenge, it is  
2           about protecting the public, about making people  
3           accountable for their actions without losing  
4           sight of their rehabilitation. It is about  
5           expressing society's disapproval and denunciation  
6           of certain conduct, it is about discouraging the  
7           offender before the Court and anyone else from  
8           committing offences.

9           Because proportionality is the fundamental  
10          sentencing principle, the seriousness of the  
11          act committed and the offender's level of  
12          blameworthiness for that act must be determined.  
13          In manslaughter cases this requires a close  
14          examination of the unlawful act that was  
15          committed and the overall circumstances  
16          when it was committed.

17          When someone is being sentenced for  
18          manslaughter it is always because they have  
19          caused the death of another, not by accident,  
20          but because they committed an unlawful act.  
21          If someone kills someone and intends to cause  
22          death, that is not manslaughter, that is murder.  
23          If someone causes someone's death but not by  
24          committing an unlawful act, which is when there  
25          is an accident, that is not a crime. There  
26          is a whole range of unlawful acts that can  
27          result in someone's death, and that is why



1           there were submissions yesterday on the level  
2           of seriousness of the unlawful conduct that  
3           led to Ms. Laboucan's death.

4           I want to pause here to note something  
5           important about language, the language that  
6           the lawyers used yesterday and the language  
7           that I am using now. Any manslaughter is  
8           serious. Any time there is a loss of life  
9           resulting from an unlawful act it is a very  
10          serious offence. So when we speak of "more  
11          serious end of the scale" or "less serious  
12          end of the scale" in this context, it is only  
13          a comparative analysis, comparing different  
14          levels of seriousness. It does not take  
15          anything away from the fact that the crime  
16          is in itself always a serious one. Even a  
17          manslaughter that involves an unlawful act  
18          at the lower end of the spectrum remains  
19          a serious case and a serious offence.

20          But because the range of available sentences  
21          is so broad the specifics of each case must be  
22          assessed to determine where each case falls in  
23          the spectrum, and that is what the Alberta Court  
24          of Appeal was talking about in its discussion  
25          in the case of *R. v. Laberge*, 1995 CarswellAlta  
26          556 (C.A.). At paragraph 9 of that decision  
27          the Court outlined that there were three broad

1 categories of unlawful acts:

2

3 Unlawful act may be divided into  
4 three broad groups, those which are  
5 likely to put the victim at risk of  
6 or cause bodily injury, those which  
7 are likely to put the victim at risk  
8 of or cause serious bodily injury,  
9 and those which are likely to put  
10 the victim at risk of or cause  
11 life-threatening injuries. Only  
12 when the offender's proven mental  
13 state at the time of the commission  
14 of the offence is evaluated in  
15 the context of the crime itself,  
16 in other words in terms of its  
17 relative degree of seriousness,  
18 is it possible to classify for  
19 sentencing purposes the degree  
20 of fault inherent in the crime  
21 committed.

22

23 The Court went on to explain that in  
24 assessing moral blameworthiness the personal  
25 characteristics of the offender that might  
26 aggravate or mitigate culpability must be  
27 considered. These themes were elaborated

1 on later in the decision, although I do not  
2 intend to quote anymore from it.

3 In this case Crown and defence disagree  
4 as to where this particular case falls on the  
5 spectrum of seriousness. Crown Counsel argued  
6 that I should conclude in all the circumstances  
7 that a kick to the head belongs to the second  
8 broad category of acts referred to in the  
9 paragraph I have just read because of the  
10 inherent danger in applying force to that  
11 part of the body, but Crown Counsel goes  
12 further. He argues that on the whole of the  
13 evidence I should conclude that Mr. Sayine  
14 intended to cause serious harm to Ms. Laboucan.  
15 He points to some of the things he did  
16 afterwards, such as dragging her by the  
17 feet, not seeking medical help right away,  
18 not letting Mr. Larocque and Ms. Singerling  
19 see her, and cancelling his first call for  
20 assistance to the nurse.

21 Defence counsel argued, by contrast, that  
22 I should conclude that this unlawful act belongs  
23 to the first and least serious of the three  
24 categories referred to in Laberge. Defence  
25 also argued that the case should be assessed  
26 on the basis of Mr. Sayine having aimed a kick  
27 at Ms. Laboucan generally, not necessarily at

1 her head.

2 I have considered these arguments carefully,  
3 and in the final analysis I do not adopt either  
4 the Crown's position or the Defence's position  
5 on this. I do not agree with Defence that this  
6 unlawful act should be assessed on the basis that  
7 Mr. Sayine was not aiming the kick at her head.  
8 There is no basis for me to conclude Mr. Sayine  
9 was aiming at another part of her body. In his  
10 trial testimony he denied kicking her at all,  
11 so there is no evidence from him to the effect  
12 that he was aiming at her body and inadvertently  
13 hit her head. What he told Mr. Larocque and  
14 Ms. Singerling was that he kicked her in the  
15 jaw without any reference to having aimed at  
16 some other part of her body. There is no direct  
17 evidence about where Mr. Sayine intended his kick  
18 to land, but that is often the case because it is  
19 difficult to prove what goes on inside a person's  
20 head. Often triers of fact have to rely on the  
21 common sense inference that people intend natural  
22 consequences of their actions, and here I am not  
23 referring to the ultimate consequence, the death,  
24 but simply the fact that the kick hit her in her  
25 head area.

26 Objectively speaking, in my view, a kick  
27 to the head is, in the word of Laberge, "an

1 act that is likely to put the victim at risk  
2 of or cause serious bodily injury," the middle  
3 category. That said, I disagree with the Crown's  
4 position that on the overall circumstances it  
5 has been shown that Mr. Sayine intended to  
6 cause serious bodily injury to Ms. Laboucan.  
7 I am not prepared to draw the inferences that  
8 the Crown suggest should be drawn based on what  
9 he did after the fact. I find, actually, that  
10 his actions after the fact are inconsistent  
11 with any notion that he intended to cause her  
12 serious harm, because if he did it would not  
13 make a lot of sense for him to have then helped  
14 her. If he meant to cause her serious harm, one  
15 can assume he would have just left her there, as  
16 unfortunately we sometimes see in manslaughter  
17 cases.

18 The findings I made were that he assisted  
19 her and did not realize that she was seriously  
20 injured, and those findings remain. So I am  
21 analyzing this case on the basis that he  
22 deliberately kicked her in the head area,  
23 which places this in the second broad category  
24 described in Laberge, but that he did not do  
25 so with a specific deliberate intention to  
26 cause her serious injury, although in the  
27 end that was the consequence of what he did.

1           I now want to turn to comments about  
2           some of the cases that have been filed, but  
3           more importantly, how I have decided that  
4           I should use them. Counsel have filed several  
5           manslaughter sentencing cases and I have read  
6           them all. Crown Counsel, as I understood his  
7           submission, urged me to focus on the cases which  
8           he says have features similar to this one, and  
9           in defining what those similar features are,  
10          counsel focused on cases where there has been a  
11          trial as opposed to when there has been a guilty  
12          plea; cases where the victim was the spouse of  
13          the offender; and cases that are from this  
14          jurisdiction.

15                 As I said yesterday during the submissions,  
16          I think the use I can make of the cases filed  
17          is two-fold: First, case law is helpful in  
18          identifying what factors are properly taken into  
19          account as aggravating factors and mitigating  
20          factors. Secondly, more generally, case law  
21          assists in establishing the range of sentences  
22          ordinarily imposed for certain types of offences.

23                 In that sense, even in this case, there  
24          was a trial, a case that involved a guilty  
25          plea may be quite helpful if some aspects of  
26          the circumstances are comparable to the case  
27          being decided. We know that significant credit

1 is given to people who plead guilty. It is  
2 often said that up to a third of the sentence  
3 that would otherwise be imposed is taken off to  
4 recognize the mitigating effect of a guilty plea.  
5 So if there is a case similar to this one, but  
6 dealt with by way of a guilty plea, that can  
7 be helpful in assessing the proper range in  
8 a situation where that mitigating factor is  
9 not present.

10 Similarly, cases that occurred outside  
11 the context of a spousal relationship may be  
12 helpful even if they are not domestic violence  
13 cases. If some circumstances are similar the  
14 sentence can be instructive, bearing in mind  
15 that in the non-spousal cases that aggravating  
16 factor is not present. That is how I have  
17 approached my analysis of the various cases  
18 that have been filed.

19 Of course, ultimately no two cases are ever  
20 alike. I can turn to the guiding principles that  
21 emerge from the case law, but no case is going to  
22 give me the answer of what a fit sentence is for  
23 this offence committed by this offender in these  
24 circumstances. So I want to be very clear on  
25 what I find to be the aggravating and mitigating  
26 factors that are present in this case.

27 Dealing first with the aggravating factors,

1           the first one is that Mr. Sayine has a criminal  
2           record. Although he has never been sentenced to  
3           lengthy jail terms, his longest sentence I think  
4           was one of six months imprisonment, he has many  
5           convictions for crimes of violence. I emphasize  
6           that in referring to the record I am very mindful  
7           that people should not be sentenced over and  
8           over again for the offences that appear on their  
9           criminal record; that is not the point. But the  
10          record is relevant because it does speak to a  
11          pattern of violence and the risk that a person  
12          may pose to public safety.

13                 This particular record begins in 1988 when  
14          Mr. Sayine was still a youth and the last entry  
15          is from August of 2011. There are a number of  
16          entries on that record, I am not going to refer  
17          to them all, but the most relevant convictions  
18          are the following ones: There is a conviction  
19          in June of 1991 for possession of a weapon; this  
20          was in the Youth Court. Then in February, 1993,  
21          there was a conviction for assault and another  
22          conviction for possession of a weapon. A total  
23          of three months in jail were imposed. In March  
24          of 2000 there is a conviction for assault and a  
25          conviction for uttering threats, and I heard the  
26          assault was committed on Mr. Sayine's spouse at  
27          the time, who was not Ms. Laboucan. For the



1 assault he received a jail term of four months,  
2 and according to the document I have here he  
3 received another two months on the uttering  
4 threats, but it does not say whether that was  
5 consecutive or concurrent. In March of 2001,  
6 a year later, there is a further conviction  
7 for assault, and the sentence imposed was six  
8 months. Finally, in January of 2011, there is  
9 a conviction for uttering a threat, which I am  
10 told was a threat to cause bodily harm to Mary  
11 Laboucan, and for that Mr. Sayine received  
12 a suspended sentence and 12 months probation.

13 Even bearing in mind the relatively short  
14 jail terms and non-custodial sentences that  
15 Mr. Sayine received for these various offences,  
16 the criminal record is aggravating because, as  
17 I said already, it shows a pattern of violence  
18 over many years, and as I mentioned earlier as  
19 well, Mr. Sayine has known for a very long time  
20 that he has issues with anger, just the same as  
21 he has known for a long time he has got issues  
22 with alcohol.

23 I have mentioned that the assault from  
24 March of 2000 was for an assault on an earlier  
25 spouse, and the last entry in January of 2011  
26 was for uttering threats to cause bodily harm  
27 to Ms. Laboucan. While I am on this topic I do

1 want to say a word about certain portions of the  
2 pre-sentence report. Mr. Sayine's previous  
3 spouse was contacted by the author of the report.  
4 She did not want to be interviewed, but stated  
5 that she had called the police often during her  
6 relationship with Mr. Sayine. On page 4 of the  
7 report the author writes about her interview  
8 with Corporal Pernell St. Pierre, who is an  
9 RCMP officer who testified at this trial and  
10 used to be posted in Fort Resolution. He  
11 is reported saying "when sober Steven was  
12 an extremely nice man to talk to, but when  
13 intoxicated he could become violent. I have  
14 attended several calls at his home regarding  
15 violent behavior towards Mary." There is a  
16 similar comment from the same source, Corporal  
17 St. Pierre, on page 11 of the report.

18 Defence did not take issue with those  
19 comments in the pre-sentence report. I am  
20 acutely aware that I cannot sentence Mr. Sayine  
21 to a harsher sentence or treat him more harshly  
22 because of other offences that are not before  
23 me and for which he has not been convicted.  
24 So I have not placed any weight on those  
25 comments to that extent. What I do take though  
26 from the criminal record, the prior conviction  
27 against his spouse, and the conviction for having

1           threatened Ms. Laboucan, is that the incident  
2           that I must sentence Mr. Sayine for today cannot  
3           be characterized as an isolated incident.

4           The second aggravating factor is that  
5           this offence was committed against Mr. Sayine's  
6           spouse. The Criminal Code specifically says this  
7           is an aggravating factor, and even before it was  
8           in the Criminal Code the case law treated it as  
9           an aggravating factor for many years.

10          I need to talk about this some more  
11          because defence counsel urged me yesterday  
12          to give minimal weight to this factor. He  
13          argued that the circumstances of this offence  
14          are unique because Ms. Laboucan threw an ashtray  
15          at Mr. Sayine before he kicked her, and counsel  
16          argued that this places this case outside the  
17          typical domestic violence situation, and so  
18          although an aggravating factor statutorily  
19          provided in the Criminal Code, the spousal  
20          context, where this happened, should be  
21          given minimal weight.

22          The fact that Ms. Laboucan threw  
23          an ashtray at Mr. Sayine is part of the  
24          circumstances. It is a form of provocation  
25          that is a mitigating factor, as I will explain  
26          later, but I do not agree that it reduces the  
27          significance of this having occurred in a spousal

1 context, especially in circumstances where there  
2 are two earlier convictions for crimes committed  
3 in a spousal context.

4 Spousal violence occurs, sadly, frequently.  
5 It also occurs in a variety of contexts. This  
6 is evident from the cases that have been filed  
7 at this hearing and also from the experience  
8 of the courts in dealing with such matters.  
9 Sometimes there are suggestions that the  
10 relationship is volatile, that the violence  
11 went in both directions. Sometimes there are  
12 suggestions that, if not physical violence,  
13 verbal abuse goes in both directions. I am  
14 not aware of a principle of law that suggests  
15 that any of this in and of itself reduces the  
16 significance of the existence of a spousal  
17 relationship as an aggravating factor when  
18 violence occurs. The Criminal Code provision  
19 that makes this an aggravating factor does not  
20 draw the distinction, and I am not aware that  
21 the case law does either.

22 I find guidance in the principles set  
23 out several years ago by the Alberta Court  
24 of Appeal case of Brown, Highway, Umpherville  
25 (1992), 73 C.C.C. (3d) 242, 125 A.R. 150 (C.A.).  
26 That decision involved three cases of spousal  
27 violence. None of the cases were homicides,

1 but the decision explains why spousal violence  
2 is so serious. It describes and recognizes  
3 it as a serious social problem. It talks about  
4 the harm it causes, even when no one is actually  
5 killed, and why it has to be met with stern  
6 sentences. The comments made in that case,  
7 that have been adopted in this jurisdiction  
8 and applied for years, are consistent with  
9 what the Supreme Court of Canada said in  
10 *R. v. Stone*, [1999] 2 S.C.R. 290, at paragraph  
11 240:

12  
13 Spousal killing involves the breach  
14 of a socially recognized and valued  
15 trust and must be recognized as a  
16 serious aggravating factor.

17  
18 There are many cases where these principles  
19 were applied in this jurisdiction even in the  
20 context where there were suggestions that the  
21 relationship was tumultuous. *R. v. Raddi*, 1998  
22 NWTSC, is one example, and *R. v. S.W.*, 2013 NWTSC  
23 50, which was not a manslaughter case and is not  
24 a case that was quoted by counsel, is another  
25 example, recent example of this. So I do find  
26 the fact that Mr. Sayine and Ms. Laboucan were  
27 in a spousal relationship highly aggravating.

1           I want to speak briefly about things that  
2           I consider are aggravating factors that are not  
3           present in this case. The Crown has argued that  
4           it is aggravating that Ms. Laboucan was in a  
5           particularly vulnerable state because she was  
6           intoxicated that night. The fact that a victim  
7           is particularly vulnerable is an aggravating  
8           factor that can be taken into consideration in  
9           some cases, but here, although it is clear that  
10          Ms. Laboucan was intoxicated, I do not find the  
11          evidence is consistent with her having been in  
12          a particularly vulnerable state. This is an  
13          entirely different situation from the one in the  
14          case of R. v. Bridle, 2007 BCSC 1302, referred  
15          to by the Crown. In that case the victim was  
16          seriously ill with cancer, she weighed 100 pounds  
17          at the time of her death and was emaciated, she  
18          was in constant pain and she had problems with  
19          her balance. The Court found her husband knew  
20          that she was "very ill and utterly vulnerable."

21                 The case of Berreault, 2001 NWTSC 25, which  
22                 is from this jurisdiction, is another example  
23                 where the victim's vulnerability was taken into  
24                 account, this time in the context of an assault  
25                 that was not a spousal assault, but the victim  
26                 was an 87-year-old woman who lived alone in  
27                 a tent in a campsite outside the community.

1           So she was particularly vulnerable, the Court  
2           found, to the 23-year-old man who came to her  
3           tent and brutally assaulted her. Her level  
4           of vulnerability cannot be compared, in my  
5           respectful view, to the situation in this case.

6           I do not disagree that there are cases  
7           where extreme intoxication can make a person  
8           particularly vulnerable, if they are nearly  
9           passed out or so intoxicated that they cannot  
10          possibly defend themselves or get away from a  
11          situation that is dangerous, but the evidence  
12          falls short of establishing that this was the  
13          case here. Had Mr. Sayine continued to strike  
14          Ms. Laboucan after she fell it would be another  
15          matter entirely, but that is not what happened.

16          There are other aggravating factors  
17          reflected in some of the cases that were  
18          presented to me that are not present here.  
19          This was a single-blow assault as opposed to  
20          repeated striking or a prolonged beating, as  
21          was the case in Berreault. No weapon was used,  
22          unlike was the case in Raddi, S.J.I., 2005 NWTSC  
23          92, or Emile, 2008 NWTSC 50. This was not a  
24          planned assault, unlike the cases of Bruha,  
25          2003 NWTSC 41, and Stromberg, 2002 NWTSC 49.

26          The absence of these factors is not  
27          mitigating. I am simply noting them to

1           indicate that these are some of the factors  
2           that were found to be aggravating in some  
3           of the cases I have reviewed and are present  
4           here.

5           In summary, I consider there are two  
6           aggravating factors here, the criminal record,  
7           for the reasons I have given, and the fact  
8           that this occurred in the context of a spousal  
9           relationship.

10          I also have to take into account mitigating  
11          factors. In his submissions, Crown Counsel  
12          made a comment to the effect that there was  
13          no provocation here. I disagree with that.  
14          There was no provocation if one considers that  
15          concept as a defence to what would otherwise  
16          be a charge of murder, and that is not the  
17          situation here, but there is another use of  
18          the term "provocation." It is not a defence,  
19          it does not mean that Mr. Sayine was justified  
20          in kicking Ms. Laboucan, but the fact that  
21          she threw an ashtray at him is part of the  
22          circumstances, it means that his assault on  
23          her cannot be characterized as an unprovoked  
24          assault. And that provocation is mitigating  
25          to an extent.

26          I want to address the issue of remorse.  
27          Remorse is often considered a mitigating



1 factor. The author of the pre-sentence report  
2 states, in the summary portion of her report,  
3 that Mr. Sayine "admitted responsibility for  
4 the offence before the court and appeared  
5 remorseful." When he was given an opportunity  
6 to speak to the Court directly yesterday  
7 Mr. Sayine said several times that he is sorry  
8 for what happened and that he loved Mary. He  
9 was very emotional when he spoke about this,  
10 and I do not doubt that Mr. Sayine is very  
11 sorry about Ms. Laboucan's death. I accept  
12 that her death was a loss to him.

13 I cannot say, however, that as far as  
14 these proceedings there is indications that  
15 he has taken full responsibility for his role  
16 in her death. He did not take responsibility  
17 for kicking her in the head. That is not an  
18 aggravating factor, he was entitled to have a  
19 trial, but I just want to make it clear that  
20 this is not a situation where, to me, there  
21 has been a full acknowledgment of responsibility.  
22 He acknowledges that he had a part to play in  
23 what led to her death, and I have absolutely  
24 no doubt that he is extremely sorry that  
25 it happened. I am just not convinced that  
26 this is the clearest case of someone taking  
27 responsibility fully for their actions.

1           I have already talked about the fact  
2           that I must take into account Mr. Sayine's  
3           circumstances as an aboriginal offender.  
4           Whether these circumstances are labelled  
5           as a mitigating factor or simply something  
6           that reduces overall blameworthiness in the  
7           proportionality analysis, I just want to  
8           reiterate that I have taken them into account  
9           and give them due weight to the importance  
10          of exercising restraint.

11          I will also take into account the time  
12          that Mr. Sayine has already spent in custody.  
13          He has been in custody since his arrest, which  
14          adds up to two and a half years. Counsel have  
15          told me that they agree he should receive credit  
16          for this time on an enhanced basis on a ratio of  
17          one and a half days credit for each day spent in  
18          remand, which works out to three years and nine  
19          months. I have the discretion to grant credit  
20          on an enhanced basis in this case, and based  
21          on what I have heard and based on the governing  
22          principles, including those set out in the  
23          Supreme Court of Canada decision of R. v.  
24          Summers, [2014] 1 S.C.R. 575, I am satisfied  
25          it is appropriate to do so. So for the period  
26          of remand I will, as counsel have suggested,  
27          give Mr. Sayine credit for three years and

1 nine months.

2 As I have said already, some of the  
3 aggravating features that are present in  
4 the cases that were filed are not present  
5 here. This was a single-blow assault, but  
6 it was a kick to the head which inherently  
7 is extremely dangerous. It is aggravated by  
8 the fact that it occurred in the context of  
9 a spousal relationship and by an offender who  
10 has an extensive record for violence, which  
11 includes two prior convictions for crimes  
12 committed against a spouse. It is mitigated  
13 by what happened immediately before he threw  
14 that kick, the fact that she threw an ashtray  
15 at him.

16 I find that the range of seven to eight  
17 years sought by the Crown is excessive. No  
18 two cases are ever alike and comparisons are  
19 difficult, but courts must still strive and  
20 try to achieve some degree of parity in  
21 sentencing. I do agree with the Crown that  
22 the most persuasive cases are the ones from  
23 this jurisdiction, and with that in mind I have  
24 great difficulty seeing how the sentence in this  
25 case could, for example, result in a sentence in  
26 the same range as the sentence that was imposed  
27 in S.J.I., a case where the offender assaulted

1 his spouse for a prolonged period of time, struck  
2 her in the face numerous times, causing several  
3 injuries to her face, and ultimately stabbed  
4 her to death in the abdomen with a knife.

5 On the other hand, I find that a sentence  
6 of four years, which is what the defence has  
7 suggested would be fit, would not sufficiently  
8 reflect the aggravating factors that I have  
9 already referred to. Defence counsel urged me,  
10 as I have said already, to give little weight  
11 to the fact that this occurred in a spousal  
12 context, and for the reasons I have already  
13 given I do not agree with that submission.  
14 If I did perhaps I could agree with the  
15 range being proposed, but I do not.

16 Spousal violence is a prevalent problem  
17 in this jurisdiction. This has been the  
18 subject of comments in this court on a number  
19 of occasions in recent years, in fact in recent  
20 months. Where, as here, it leads to the worst  
21 outcome possible, the death of someone, the  
22 Court has a responsibility to impose sentences  
23 that denounces the conduct unequivocally.

24 I have taken into account the decision  
25 of Moses, (1988) 87 A.R. 239 (C.A.), which is  
26 included in the cases filed, but as I noted  
27 yesterday during my exchange with counsel, that

1 case dates back to 1988. It was decided before  
2 Brown, Highway, Umpherville was decided, and in  
3 my respectful view it no longer represents the  
4 appropriate range for sentencing on this type  
5 of offence.

6 As I said at the beginning, I know that  
7 nothing the Court does today will bring Mary  
8 Laboucan back. Mr. Sayine will have to live  
9 for the rest of his life with that loss and  
10 knowing his responsibility in her death. Her  
11 family and loved ones will have to live the  
12 rest of their lives with their loss as well.  
13 I am well aware that criminal proceedings rarely  
14 bring anyone any real comfort in the face of  
15 tragic events like this one. I can only hope  
16 that the conclusion of these proceedings will  
17 enable everyone to have some measure of closure,  
18 at least about the proceedings in the courts,  
19 and that they will be able to move forward in  
20 the grieving and healing, which I am sure is  
21 ongoing and I am sure will take a long time.

22 Mr. Sayine, stand up, please. Mr. Sayine,  
23 for the unlawful killing of Ms. Laboucan, and  
24 after much consideration, I have decided that  
25 a fit sentence is one of five and a half years  
26 imprisonment. I am going to give you credit  
27 for three years and nine months for the time

1           you have already spent in jail, and so there  
2           will be a further jail term of one year and  
3           nine months. You may sit down.

4                    There will be a DNA order because this is  
5           a primary designated offence. There will be a  
6           firearms prohibition order under Section 109,  
7           but I will grant an exemption to authorize the  
8           designated authority to permit Mr. Sayine to  
9           possess a firearm so that he can, when he  
10          is released, engage in hunting and trapping  
11          activities and continue to provide for members  
12          of his family and his community. Given the  
13          amount of time Mr. Sayine has already spent  
14          in custody and the further term of imprisonment  
15          I am imposing today I am waiving payment of  
16          the victim of crime surcharge.

17                   At the expiration of the appeal period  
18          I direct that any exhibits that should be  
19          returned to their lawful owners be returned to  
20          their lawful owners. For those exhibits where  
21          that is not appropriate to do I direct that they  
22          be destroyed, but again, only at the expiration  
23          of the appeal period.

24                   Before we close court I want to thank  
25          all counsel for their assistance in this case.  
26          With that, Madam Clerk, we will close court.

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Certified to be a true and accurate transcript, pursuant to Rules 723 and 724 of the Supreme Court Rules.

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Joel Bowker  
Court Reporter