

AMENDED ORIGINAL

R v Lockhartt, 2023 NWTSC 16

S-1-CR-2022-000093

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HIS MAJESTY THE KING

-v-

FIIONALYNN LOCKHARTT

**Transcript of the Reasons for Judgment of the Honourable Deputy
Justice L.A. Charbonneau, sitting in Yellowknife, in the Northwest
Territories, on the 6th day of June, 2023**

APPEARANCES:

B. MacPherson:

Counsel for the Crown

P. Harte:

Counsel for the Defence

Charges under s. 268 and 267(a) of the *Criminal Code*

ORIGINAL amended as of July 27, 2023 to correct spelling of Crown Counsel

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1 **(VIDEOCONFERENCE COMMENCES)**

2 THE COURT:

3

4 Fiionalynn Lockhartt is before this Court
5 to be sentenced for the aggravated assault of her
6 younger sister Elise. The assault happened in the
7 house where they lived with their adoptive parents,
8 Tom and Rosa Lockhartt, and Fiionalynn's uncle, Peter
9 Lockhartt. Normally, in a decision, I would refer to
10 people using their surnames. But here everyone
11 involved has the same surname, so I will use their first
12 names to avoid confusion. In doing so I mean no
13 disrespect to any of them.

14 Fiionalynn suffers from post-traumatic
15 stress disorder, schizophrenia and bipolar disorder. In
16 the weeks preceding the assault on her sister, she had
17 not been taking the medication prescribed to assist with
18 her mental health conditions. She had been having
19 dark thoughts. She had been hearing voices in her
20 head. She was behaving strangely, and she was
21 saying strange things.

22 On March 9, 2022, she got a knife from
23 the kitchen in the house, she went upstairs and
24 knocked on the door of Elise's bedroom. When Elise
25 answered, Fiionalynn pushed her on the bed, got on
26 top of her and slashed her cheek and throat with the
27 knife. Peter realized what was happening and

1 intervened. He pulled Fiionalynn off Elise. Police were
2 called.

3 When the police arrived, Fiionalynn was
4 still in Elise's room. She had blood on her. When
5 police asked whose blood that was, her answer was,
6 "it's precious." She was acting strange. She lifted her
7 shirt and slapped her stomach. She took her pants and
8 underwear down to her ankles.

9 Based on what they observed in the
10 house and the information they obtained, the officers
11 placed Fiionalynn under arrest. Soon after she was
12 taken into custody, they took her to the hospital and
13 she was committed involuntarily. She remained there
14 for a number of months. Eventually in late December
15 2022, a placement with a residential program called "I
16 Have a Chance," ("IHAC"), in Stony Plains, Alberta,
17 was arranged for her. She went there and has been
18 living there since.

19 As for Elise, she was taken to the hospital
20 immediately after the attack. She underwent surgery.
21 The main purpose of that was to determine the extent
22 of the injuries caused by the 10-cm long, 2-3-cm deep
23 cut to her throat. It was determined that, most
24 fortunately -- and I do not hesitate to say, miraculously -
25 - her larynx, trachea and esophagus were not
26 damaged. The knife missed one of her jugular veins by
27 a few millimetres. Her wounds were cleaned and

1 closed with stitches.

2 This left Elise with visible scars. Also, not
3 surprisingly, these events had a significant emotional
4 and mental impact on her. She suffers from post-
5 traumatic stress syndrome, and she has nightmares.
6 Elise has chosen not to prepare a Victim Impact
7 Statement but this information is included in the Agreed
8 Statement of Facts.

9 The author of the pre-sentence report
10 stated that he had not been able to reach Elise through
11 the phone numbers that he had been given. According
12 to Rosa, Elise has not reached a point where she can
13 forgive her sister. That day may come, but
14 understandably, it may take a long time. My
15 understanding from submissions yesterday is that
16 Fiionalynn, having been herself subjected to
17 considerable trauma in her life, understands the
18 consequences of her actions, understands what it has
19 done to Elise, and is very remorseful about that.

20 Fiionalynn is now 30 years old. She has
21 no criminal record. She is of Chipewyan descent. As I
22 said, I have the benefit of a pre-sentence report; it is
23 very thorough, and it provides a lot of information about
24 her background.

25 Fiionalynn grew up in Lutselk'e and was
26 custom adopted by her grandparents when she was
27 still an infant. When she was 15, the family moved to

1 Yellowknife.

2 She witnessed violence and alcohol
3 abuse when growing up in the community. But she has
4 positive memories of her childhood as well. She spent
5 time on the land with her grandfather and learned
6 traditional skills such as hunting and trapping, fishing
7 and basic survival skills. She says she has since lost
8 touch with those skills but that she would like to
9 reconnect with them someday. Her adoptive parents'
10 home was, and remains, alcohol and drug free, and is a
11 loving home.

12 Fiionalynn started to get into drugs after
13 the move to Yellowknife and developed a serious
14 substance abuse problem. At one point she went to
15 live in Edmonton with her boyfriend, got introduced to
16 crack cocaine, and became addicted to it. This made
17 her problems spiral down even more.

18 She has faced considerable trauma and
19 loss in her life. I will not go into all the details of what is
20 referred to in the pre-sentence report, but among other
21 things she had to cope with two significant deaths in the
22 last few years. Her biological father was beaten to
23 death in Fort Smith in 2018, and a cousin who she was
24 very close to committed suicide in 2021. It was
25 sometime after her cousin's suicide that she suffered
26 her first psychotic episode, which led to a
27 hospitalization in 2021.

1 The materials refer among other things to
2 her increased awareness about situations where she
3 may be tempted to relapse in substance abuse and
4 how she has coped with her cravings. According to the
5 report, she has been honest and open about those
6 challenges and with help has developed some
7 strategies to address them. This is the very real
8 long-term work that is key to her rehabilitation.

9 In short, Fiionalynn is on the right path,
10 and although one can expect that this is a process that
11 will take time, on the evidence before me, she has
12 already been able to effect very meaningful changes in
13 her life. I heard as well that she is currently enrolled at
14 the Academia of Esthetics in West Edmonton Mall, that
15 she has completed a third of the program and is very
16 enthusiastic and motivated about it.

17 She is fortunate in that she continues to
18 have also support from her family. She speaks to her
19 biological mother regularly; she is in regular contact
20 also with her adoptive parents, and her mother Rosa
21 has visited her on several occasions. In the
22 pre-sentence report, Rosa is reported saying that
23 Fiionalynn sounds and looks much healthier and
24 happier than before.

25 Aggravated assault is a very serious
26 offence, as I think everyone acknowledges. This is
27 reflected in the fact that the maximum sentence that

1 can be imposed for it is 14 years imprisonment. There
2 is no minimum sentence. In *R. v. Morgan*, 2007
3 NWTSC 30 (affirmed on appeal, 2008 NWTCA 12),
4 (which also involved a stabbing although in very, very
5 different circumstances), this Court reviewed case law
6 from this jurisdiction and concluded that the general
7 range that emerged from that case law at that point for
8 an aggravated assault involving a stabbing was
9 between 30 months imprisonment and five years.

10 That sentence was upheld on appeal,
11 although the Court of Appeal did not make any
12 comments about the range evoked in the sentencing
13 decision. The *Morgan* decision is now somewhat
14 dated, but the same range has been referred to in
15 several cases since and was specifically adopted in
16 more recent decisions of this Court. Just as two
17 examples, there was *R. v. Hodges*, 2015 NWTSC 59 in
18 2015 and more recently, *R. v. St. Croix*, 2021 NWTSC
19 12.

20 There certainly has not been a noticeable
21 decrease in violence in this jurisdiction, or in crimes of
22 violence involving stabbings in particular, over the past
23 decade. On the contrary, there has been a steady
24 stream of them, including, tragically, cases where the
25 victim of the stabbing died. I do not think anyone is
26 suggesting that the range evoked in *Morgan* has
27 become excessive. On the contrary, there may be

1 good reasons to argue that the need to denounce and
2 deter knife attacks is more pressing than ever. That
3 does not mean, of course, that there can never be a
4 sentence below - or above - that range. Sentencing is a
5 highly individualized process.

6 The fundamental principle of sentencing
7 is proportionality. A sentence has to be proportionate
8 to the seriousness of the offence and to the degree of
9 responsibility or blameworthiness of the offender. This
10 case is a very good example, as counsel have said, of
11 the immense challenge in applying this sentencing
12 principle when a very, very serious crime is committed
13 by an offender whose blameworthiness is significantly
14 reduced by various factors.

15 There are aggravating features in this
16 case. The first is that a weapon was used, a knife. Not
17 all aggravated assaults involve the use of weapons.
18 The second is that the victim was attacked in her own
19 bedroom in her own home, which is the place where
20 she should have been able to feel the safest. It is an
21 immense loss to lose that sense of security. The third
22 is that there is a familial relationship between the
23 offender and her victim. There was an element of
24 breach of trust here. This attacked came from the
25 victim's older sister, someone she should have been
26 able to count on for protection.

27 There was a significant impact on the

1 victim. She has physical scars, which remind her every
2 time she looks in the mirror of what happened. There
3 are also emotional scars. I do not doubt that it will take
4 her a very long time to recover emotionally from what
5 happened. I can only hope that she can have access
6 to the help that she will need to make her way through
7 that long process.

8 There are also mitigating factors. The
9 first is the guilty plea. It did not come at an early stage.
10 At one point a preliminary hearing date had been
11 scheduled, It was later cancelled. But there are some
12 things in this case that go some distance in explaining
13 this delay.

14 First, Fiionalynn's counsel was trying to
15 gather information needed to build a case for a
16 conditional sentence request. This I think is fair to say
17 is a highly exceptional disposition to be seeking for an
18 offence this serious. So it is not surprising that counsel
19 needed time. Perhaps more importantly, until not long
20 ago, conditional sentences were not available on an
21 aggravated assault charge if serious bodily harm was
22 inflicted. While this matter was pending, the
23 government was in the process of amending the
24 *Criminal Code* such that a conditional sentence would
25 be available again in a case like this one. Counsel,
26 understandably, wanted to wait for the amendments to
27 come into effect before proceeding with the sentencing

1 hearing.

2 In addition, there may have been triable
3 issues here. Because of the direction that the case was
4 taking and the resolution discussions, the Crown did
5 not retain an expert to examine issues related to
6 Fiionalynn's mental capacity at the time of the attack on
7 Elise. That said, some the behaviour observed before
8 the events and at the time of arrest, as well as the
9 evidence about Fiionalynn's psychiatric history,
10 suggests that there may have been triable issues linked
11 to her diagnoses and mental state at the time of these
12 events. I am not saying that she would have been
13 successful if she tried to raise those defences, but I
14 think there is enough in the facts before me to suggest
15 that her mental state could have been a live issue. By
16 pleading guilty, she gave up her opportunity to pursue
17 any argument or defence she might have had in this
18 regard.

19 For all those reasons I accept that she
20 should get considerable credit for her guilty plea, and I
21 accept that that guilty plea is further evidence of her
22 genuine remorse.

23 The next mitigating element is the
24 reduction of her blameworthiness because of her
25 circumstances as an Indigenous offender and the
26 various struggles and losses that she has faced. These
27 factors are outlined in detail in the pre-sentence report.

1 I have already talked about some of them, and I will not
2 repeat them. I will just say that following the principles
3 elaborated in the cases of *R. v. Gladue*, [1999] 1 S.C.R.
4 788, *R. v. Ipeelee*, [2012] 1 S.C.R. 433 and countless
5 others, her circumstances as an Indigenous offender
6 and the effect that those circumstances have on her
7 blameworthiness has to be taken into account.

8 Third, her moral blameworthiness is
9 reduced by the serious mental health issues that she
10 has struggled with for some time.

11 The fourth, and in my view, very
12 significant consideration when assessing what the
13 sentence should be -- whether we call it a mitigating
14 factor or just a circumstance -- is the progress that she
15 has made in her rehabilitative efforts.

16 Ultimately, the best way to protect the
17 public is for Fiionalynn to continue doing what she has
18 begun doing: address her past trauma and all the
19 underlying issues that have gotten her where she is
20 today, continue her treatment and work towards leading
21 a healthy, productive, happy life. When rehabilitation
22 is possible, it is the ultimate way to protect the public. It
23 is a win-win for the offender, for the community, and for
24 society at large.

25 No doubt having taken all of this into
26 account, the Crown has joined the defence in asking
27 that a conditional sentence be imposed. This means

1 the jail term has to be under two years, and it means
2 that giving the offender permission to serve it not in a
3 jail, but in the community under a regime of conditions.

4 Because this is a joint submission, it
5 engages the well-known principles set out in *R. v.*
6 *Anthony-Cook*, 2016 SCC 43. That restricts my
7 discretion considerably.

8 The sentence being proposed is below
9 the usual range for an offence as serious as the one
10 that was committed here. The cases filed by the Crown
11 show that it is not unheard of, but I think it is fair to say
12 that it is exceptionally lenient. As I have already
13 noted, this was a few millimetres away from being a
14 homicide case, and it was completely unprovoked. It is
15 pure luck and only pure luck that this attack did not
16 have even more devastating consequences. And I
17 think everyone needs to understand that even on a
18 guilty plea, and even with mitigating factors, one should
19 expect a penitentiary sentence would be imposed for
20 slashing someone's throat.

21 Often times this Court has the very sad
22 task of sentencing a person for a very serious offence,
23 and the evidence before the Court makes it easy to see
24 how the offender came to become dysfunctional and
25 violent. The background of many offenders who come
26 before the Court is that they were themselves victims of
27 abuse, grew up in dysfunction and violence and that

1 some never really had a chance.

2 While this reduces their blameworthiness,
3 understanding the causes of the problems often does
4 not assist with the objective of protecting others from
5 being victimized by these offenders because all that
6 does is to move the cycle along to another group of
7 people in another generation. This is why so often,
8 significant jail sentences are imposed despite the
9 sympathy that the circumstances of an offender may
10 evoke and the fact that these circumstances do reduce
11 their moral blameworthiness.

12 Here, however, the fundamental
13 difference is that there are very real and tangible
14 indications that Fionallynn has taken significant
15 rehabilitative steps, with some help, and truly is on a
16 path of recovery. I am not faced with someone who is
17 simply expressing the wish or the hope to make
18 changes or address their issues. Those expressions of
19 a will to change are, I am sure, always or almost always
20 sincere. But the truth is that they often do not
21 materialize and translate into real action, real change.

22 Here, it is different. What I am faced with
23 here is someone who has made considerable strides in
24 that direction. Under those circumstances, and taking
25 into account the other factors I have talked about, a
26 sentence of two years less a day, although lower than
27 the usual range of sentence for this type of crime,

1 represents in my view a position of restraint, which is
2 appropriate and justified under the circumstances.

3 In light of the significant rehabilitative
4 efforts that Fiionalynn has already deployed and in light
5 of the conditions that are being proposed, significantly
6 the continuation of residency at the IHAC program, I am
7 satisfied that a conditional sentence will not endanger
8 the safety of the community, and I am satisfied that it
9 adequately addresses the principles and objectives of
10 sentencing. What is being jointly proposed represents
11 a delicate and careful balancing of those principles and
12 objectives. It has, in my opinion, a very high likelihood
13 of being far more effective in the long-term protection of
14 the public than taking this offender out of the program
15 and situation she is currently in to put her in a jail for
16 any length of time.

17 Given all of this, I will follow this joint
18 submission. I do so not only because of the principles
19 set out in *Anthony-Cook*, but because I agree with it
20 completely. In my opinion it is a just and fit sentence in
21 the circumstances. I commend both counsel for having
22 arrived at this resolution. And I also commend and
23 thank all of those who have evidently worked very hard
24 to assist Ms. Lockhartt in accessing the services that
25 she needs to address her issues and rehabilitate
26 herself.

27 So often we see offenders struggling with

1 serious issues and seemingly without there being
2 anyone who can truly help them, any program available
3 that can meet their needs. In this case people appear
4 to have found a way, and that is what serves the public
5 interest the best.

6 I do want to add, because I think it is
7 important to note, that in saying all of this and in
8 agreeing with counsel's suggestion, I have not lost sight
9 of the terrible consequences that these events had for
10 Elise Lockhartt and other family members. I hope that
11 they too are able to access the help that they will need
12 to address the trauma they have suffered as a result of
13 all of this because it must have been awful. I hope that
14 in time there can be healing and repaired relationships
15 within the family.

16 Finally, there is one more thing I feel
17 must be said. Fiionalynn is not responsible for her
18 mental health issues, but she is now on notice, the
19 clearest notice possible, the most brutal notice
20 imaginable, of what can happen and the level of harm
21 that she can cause if she does not do what she needs
22 to do to keep herself physically and mentally healthy.

23 This means staying away from
24 substances that can induce her psychosis, and it
25 means following the advice and prescriptions of the
26 health professionals who are trying to help her.
27 Everything I have heard at the sentencing hearing and

1 that I have read in the materials filed suggests that she
2 is very compliant and motivated to keep herself healthy,
3 and that is very positive and encouraging. But it has to
4 continue, and it has to continue for the rest of her life.

5 I will begin with the ancillary orders.
6 There will be a DNA order because aggravated assault
7 is a primary designated offence. There will be a
8 firearms prohibition for a period of 10 years. There will
9 not be a victim of crime surcharge as I am satisfied that
10 to impose it would cause Ms. Lockhartt hardship, given
11 her present situation, the fact that she does not have
12 income at the moment and that she still needs to finish
13 the course before she can go work and make some
14 money.

15 As for the sentence itself, on the charge
16 of aggravated assault there will be a jail term of two
17 years less one day, and it will be served as a
18 conditional sentence. I am going to include in the order
19 the conditions that were suggested by counsel.
20 Mr. Clerk is going to prepare an order that has all of
21 these set out, Ms. Lockhartt, and a copy will be sent to
22 you as soon as the order is ready. There are a lot of
23 conditions and you will be bound by those conditions
24 for two years less a day.

25 There are conditions that have to be
26 included in every conditional sentence order, the
27 *Criminal Code* makes them mandatory.

1 The first statutory condition is you must
2 keep the peace and be of good behaviour.

3 Next, you must appear before the Court
4 when required to do so by the Court.

5 Three, you must report to your conditional
6 sentence supervisor within 48 hours and thereafter as
7 required.

8 Four, you must notify the Court or your
9 supervisor in advance of any change of name or
10 address and promptly notify the Court of any change in
11 employment or occupation; however, such change
12 must be made in accordance with the other terms of
13 this order. This is a statutory condition which, if I had
14 the choice, I would not put in because in this case I am
15 including a residency requirement in the order. So in
16 fact, Ms. Lockhartt does not have permission to reside
17 anywhere else, but it is a statutory condition and so it
18 will be included.

19 I would say the same for the fifth statutory
20 condition, which is that you must remain within the
21 Northwest Territories unless you have prior written
22 permission from the Court or the supervisor to leave. In
23 this case you are under an order to remain at the IHAC
24 facility, so that condition has no practical application in
25 this case.

26 The next conditions will be as follows:
27 you must live as directed at premises operated by I

1 Have a Chance Support Services Limited and follow
2 any written rules you are directed to follow by IHAC,
3 your supervisor and your Northwest Territories case
4 manager from the Division of Adult Services.

5 Next condition, you must be inside your
6 residence, which means within 5 metres of the
7 entrance to your residence, at all times unless you are
8 travelling directly to or from a scheduled appointment
9 with your supervisor or you are at or going directly to or
10 returning directly from a healthcare facility because of a
11 medical emergency. And if asked, you must provide
12 your supervisor or IHAC with proof of your attendance
13 at the facility.

14 Or if you are working or travelling directly
15 to or from a scheduled work commitment, and you have
16 provided your work schedule in advance to your
17 supervisor. Or if you are attending an educational
18 program or travelling directly to or from the program,
19 and you have provided your program schedule in
20 advance to your supervisor.

21 Or if you are attending counselling or
22 travelling directly to or from a counselling appointment,
23 and you have provided your travelling appointment
24 schedule in advance to your supervisor, or you have
25 permission from your supervisor to be outside your
26 place of residence for specified purposes.

27 The point of this is that you are not free to

1 go where you want when you want; there are specific
2 situations when you are allowed to be outside of your
3 residence. This is intended to be strict but at the same
4 time flexible enough to be workable.

5 These were the conditions drafted by
6 your counsel and agreed to by the Crown. I am relying
7 on the fact that those were the people in the best
8 position to craft a set of conditions that will work in your
9 present circumstances.

10 The next condition is designed to ensure
11 compliance with the house arrest: you must present
12 yourself at the door and respond to a telephone call if a
13 member of the RCMP or your supervisor or IHAC staff
14 wishes to monitor your compliance with this order.

15 Next, you must authorize IHAC staff to
16 provide any report requested by your supervisor or your
17 NWT case manager, Adult Services, to monitor your
18 compliance with this order.

19 The next is a reporting condition: you
20 must report to your supervisor by telephone by calling
21 the phone number that will be listed on the order before
22 4:00 p.m. on the 7th of June. This is tomorrow, but you
23 could also do that today,

24 Next, you must not directly or indirectly
25 have any communication or contact with Elise
26 Lockhartt.

27 Next, you must not go to places of

1 residence, work or education of Elise Lockhartt.

2 Next, you must not possess, consume or
3 purchase alcohol or illegal drugs except as prescribed
4 by a licenced medical practitioner.

5 Next, you must not possess a firearm,
6 crossbow, prohibited weapon, restricted weapon,
7 prohibited device, ammunition, prohibited ammunition
8 or explosive substance.

9 Next, you must participate in counselling
10 as directed by your supervisor, IHAC or your NWT case
11 manager, Adult Services.

12 Those are a lot of conditions. As I said,
13 they will be written down, and if you have any questions
14 about them, Ms. Lockhartt, you can ask the people at
15 IHAC; you can ask your conditional sentence
16 supervisor. It is important that you understand them all
17 so you can comply with them.

18 The period of conditional sentence will be
19 followed by probation for one year. I am going to make
20 this supervised probation, not with any intent of adding
21 to the punishment, but rather, so that Ms. Lockhartt can
22 continue to benefit from reporting from time to time as
23 directed, perhaps get support and assistance for
24 another year after the strict terms of the conditional
25 sentence term has ended.

26 I think this may assist with the transition
27 back into a life where there will be far less structure,

1 and it might be helpful to have that for another year.
2 But there will be very few conditions. Within a week of
3 the end of your conditional sentence, you are to report
4 to your probation officer and thereafter as directed.
5 And the only other condition will be that you continue to
6 not have any contact directly or indirectly with Elise
7 Lockhartt.

8 There are ways to get conditions
9 amended, and if it becomes appropriate, in particular,
10 that there be contact with Elise Lockhartt, that can be
11 done by application to the Court. It would of course
12 require Elise Lockhartt to be in favour of it because this
13 condition is there for her benefit to help her feel safe,
14 and support her in her own process of recovery.

15 The last thing I want to do is return briefly
16 to one of the issues that I raised during the sentencing
17 hearing yesterday. It has to do with who will supervise
18 Ms. Lockhartt during the period of her conditional
19 sentence. Mr. Pin who was in court yesterday is, as I
20 understand, employed by Probation Services. He has
21 been Ms. Lockhartt's bail supervisor while she's been
22 on release all this time. He wrote the very detailed and
23 helpful pre-sentence report that was filed as part of
24 these proceedings. He is very familiar with
25 Ms. Lockhartt's situation.

26 If Ms. Lockhartt were living in the
27 Northwest Territories, I fully expect his role as her bail

1 supervisor would move pretty much seamlessly to that
2 of her conditional sentence supervisor. And
3 presumably, if possible, he might continue even later on
4 as her probation officer when the period of probation
5 starts.

6 When I asked about supervision
7 yesterday, there seemed to be a suggestion that
8 because Ms. Lockhartt is staying at this residential
9 program in Alberta and will continue to reside there as
10 part of the conditional sentence, the responsibility for
11 her supervision would have to be transferred to Alberta.

12 It seemed that the main reason for this --
13 at least as what I understood from what Mr. Pin said
14 when I asked him directly -- was that in the event that it
15 would become necessary to file a breach report, that
16 would have to be done by someone in Alberta and
17 before the Alberta courts.

18 I want to be careful here not to overstep
19 the bounds of my role and jurisdiction at this stage
20 because I realize there may well be administrative
21 considerations that I am not aware of and that do have
22 an impact on this issue. But I have reviewed some of
23 the relevant provisions of the *Criminal Code*, and I want
24 to make a few observations for the record.

25 The first is that section 742.5 is the
26 section that deals with the transfer of a conditional
27 sentence order to another jurisdiction when an offender

1 becomes a resident of a territorial division or province
2 other than the one of the Court that has made the
3 order. This is the case here. So the transfer is not
4 automatic, far from it. It is done on application of the
5 conditional sentence supervisor to the Court that made
6 the order. This means the transfer application would
7 have to be brought to this Court.

8 The section says that the transfer is
9 something that the Court who made the order *may*
10 grant; in other words, what I get from this -- and without
11 having done in-depth research on the issue -- is that
12 the geographical location of an offender does not
13 necessarily determine under whose jurisdiction the
14 conditional order will be.

15 Similarly -- and Crown counsel assisted
16 with this yesterday -- as far as dealing with breaches,
17 section 742.6, which sets out the procedure in the
18 event of a breach, says at paragraph 3.1 that:

19 The breach allegation may be heard by a Court
20 that has jurisdiction in the province where the
21 breach is alleged to have been committed.

22 The word "may" seems to indicate a
23 possibility, not something that is mandatory. This
24 suggests to me that the jurisdiction that the conditional
25 sentence originates from, in this case the Northwest
26 Territories, would also continue to have jurisdiction to
27 deal with a breach hearing.

1 All in all, it seems that the physical
2 presence of the offender in another jurisdiction within
3 Canada, essentially for treatment or programming
4 purposes, as is the case here, does not automatically
5 and should not automatically result in this Court no
6 longer being involved with the matter if there are, down
7 the road, breach allegations or even the need to amend
8 conditions of the order.

9 The offence happened here; those
10 directly affected by it live here; and this is where Ms.
11 Lockhartt may well eventually return to live. This
12 jurisdiction maintains a significant interest in this matter.

13 I would add that the core reason and
14 basis and objective of the sentence I have agreed to
15 impose today on the joint recommendation of
16 experienced counsel is to ensure that Ms. Lockhartt
17 continues to benefit from the program and intervention
18 plan that the team of people who worked on her case
19 were able to come up with and appears to be working
20 well. That being so, it certainly seems that the more
21 continuity, the better, in her case. This, I think, applies
22 to the question of supervision of her conditional
23 sentence as well. And I want to say again that by all
24 accounts, those involved here in the Northwest
25 Territories in assisting and arranging this placement for
26 her, in making all this work have done an admirable job.

27 All that being said, since a transfer of the

1 conditional sentence order to Alberta can only happen
2 on order of this Court, following an application, the best
3 time to hash out all these issues and explore the ins
4 and outs of such a transfer will be if and when such an
5 application is made.

6 And given that there may be changes in
7 the situation, things that I do not know and may not be
8 able to foresee sitting here this morning, I will not make
9 any formal endorsements relating to the issue of
10 eventual transfer of this order.

11 Mr. MacPherson, is there anything that I
12 have overlooked from your point of view?

13 B. MACPHERSON: No, thank you. That's fine.

14 THE COURT: All right. I thought you were going to tell
15 me something. Mr. Harte, anything I have overlooked?

16 P. HARTE: No, Your Honour, but I am grateful for the
17 fact that we started this morning at 9:30, and I thought I
18 should address the Court by way of thanks.

19 THE COURT: All right. Well, thank you, again, counsel,
20 for your work on this matter. I thank the people who
21 worked so hard to help Ms. Lockhartt. It is really
22 admirable and not a frequent story in my experience in
23 this court that we hear that something is working so
24 well and is making such a difference. And I think it
25 deserves being acknowledged.

26 And, Ms. Lockhartt, although you are on
27 a small screen and I can barely see your face in what I

1 am looking at, I just want to say that I wish you all the
2 best and good luck in your endeavours. You are doing
3 great, and I hope this continues. You have a lot of
4 years ahead of you, and you have a lot of things you
5 can do. And so stay on this path. You are definitely on
6 the right one, and it makes me very happy to know how
7 well you have been doing. So good luck.

8 THE ACCUSED: Thank you, Your Honour.

9 THE COURT: You do not need any orders with respect
10 to exhibits or anything of that sort?

11 B. MACPHERSON: No, thank you.

12 THE COURT: All right. Thank you all. We will close
13 court.

14 THE CLERK: All rise.

15 **(VIDEOCONFERENCE CONCLUDES)**

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17 **(PROCEEDINGS CONCLUDED)**

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1 **CERTIFICATE OF TRANSCRIPT**

2 Veritext Legal Solutions, Canada, the undersigned, hereby
3 certify that the foregoing pages are a complete and accurate
4 transcript of the proceedings transcribed from the audio
5 recording to the best of our skill and ability.

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8 Dated at the City of Toronto, in the Province of Ontario, this
9 23rd day of June, 2023.

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