

1 IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

2
3
4 IN THE MATTER BETWEEN:

5
6 HER MAJESTY THE QUEEN

7 Plaintiff

8 - and -

9
10 MARCEL LAFFERTY

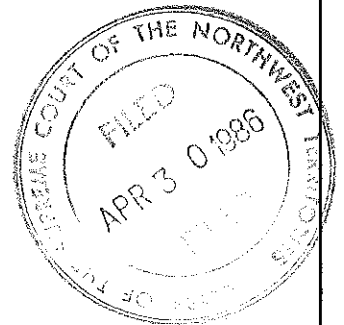
11 Defendant

12
13 -----
14 Transcript of the Sentencing Judgment of His Honour
15 Judge T. B. Davis, heard at Yellowknife, in the
16 Northwest Territories, on February 7th, A.D. 1986.
17 -----

18 APPEARANCES:

19 MS. L. WALL: Counsel for the Plaintiff

20 R. SPAULDING, ESQ.: Counsel for the Defendant



1 THE COURT: Marcel Lafferty, now of Yellowknife, formerly
2 of Rae, in the Northwest Territories, admits that on the 28th day
3 of September, 1985, he was with his common-law wife, Bernadette
4 Steedsman, and after a dance, had an argument, at which time
5 he dragged her from the vehicle in which they were driving and
6 assaulted her, causing her to have a sore arm on that occasion,
7 and therefore violated section 245 of the Criminal Code. At
8 the time, he was on probation from an order given by a local
9 justice of the peace, and he therefore violated the probation
10 order by failing to keep the peace and be of good behavior.

11 He also admits that on November the 3rd, 1985, at Rae, in
12 the Northwest Territories, he went into his common-law wife's
13 residence when she and he were separated and he woke her and
14 slapped her on the face and under the left eye, leaving only
15 after she began to scream. By assaulting her on that occasion,
16 he violated section 245 of the Criminal Code, and because he
17 was on probation as a result of a different probation order, he
18 failed to obey that probation order by failing to keep the peace
19 and be of good behavior.

20 He also admits that on the 23rd of December 1985, at Rae-
21 Edzo, in the Northwest Territories, he did in committing an
22 assault on Bernadette Steedsman cause her bodily harm. On
23 that occasion, he was in a vehicle with his common-law wife and
24 became upset and abusive to her, striking her to the right of
25 her face. He apologized, then cried and, again, after apologizing
26 for such an offence, he became abusive and had struck her again,
27 to the extent that the photographs before the Court show that

1 she has had a substantial bruising of her face, swelling of
2 her cheeks, a cut under her eye, and was treated in hospital
3 for this assault, which did cause her bodily harm. On that
4 occasion, the accused must have been substantially upset or
5 affected by his state of intoxication, because he even cracked
6 the windshield on the vehicle with his hands.

7 He was on probation at this time, which required that he
8 abstain from the consumption of alcohol, but he is not charged
9 with the second offence on that occasion. He violated section
10 245.1 of the Criminal Code.

11 The accused comes before the Court with, in recent years,
12 having been convicted of a number of assault charges. In April
13 of 1985, he was given six months probation on an assault. He
14 had been before the Court in May of 1985 and was required to
15 take a detox. program. And because of the situation that he
16 found himself in, he was given a suspended sentence for an
17 assault charge at that time, and placed on probation for a
18 period of one year. Counsel has indicated that he has completed
19 the detox. program, as was required.

20 In November of 1985 he appeared before the Court and was
21 convicted of an assault which, during the assault, would have
22 caused bodily harm, and at that time was given a \$1,000.00 fine
23 and one day in gaol, or in default of payment, three months in
24 gaol. He also, on the same occasion, was fined \$250.00 for the
25 breach of his probation, or in default, 21 days, consecutive,
26 in gaol, to the three months for the default under the \$1,000.00
27 fine. As yet, neither of the fines have been paid, although

1 the accused expects that he will have sufficient money to do
2 so when he receives some money expected to be paid to him in
3 the near future.

4 At the present time he is unemployed, although he has had
5 regular employment over the past number of years. During
6 the period of approximately four years in which he was living
7 with his common-law wife, although he recently has become
8 separated from her, he realizes that they probably are not in
9 a position where that relationship should be resumed.

10 The important consideration for the Court in assault
11 charges, and especially in spousal charges are, as has been
12 pointed out by Justice Marshall in the Supreme Court, that
13 assaults on wives or common-law wives or girlfriends are to be
14 considered no different than assaults on any stranger, in that
15 there is no right whatsoever for a husband to assault his wife
16 even to any minor extent.

17 The Court, therefore, must consider each sentence to be
18 one that the public must recognize as being a deterrent to such
19 assaults, because the assaults on wives and common-law wives
20 seem to becoming far more prevalent than they have been in
21 the past, and we are noticing an increase in this type of
22 offence in the Northwest Territories, as I understand they
23 are doing in courts elsewhere. Therefore, general deterrence
24 must be of substantial concern to the Courts in considering
25 sentences on these offences.

26 In addition thereto, I think the accused himself must
27 realize that he is subject to specific deterrence when the Court

1 considers sentencing, because he now has had the benefit of
2 very light sentencing by the Courts in 1985, when he was placed
3 on probation and required to attend detox. programs and then
4 was only fined, along with an indication of gaol being an
5 appropriate consideration of the Court, when one day gaol was
6 imposed. As pointed out to the Court today, those previous
7 sentences did not seem to work.

8 I think the Crown counsel has properly pointed out to me
9 that a gaol term is probably necessary, and I think defence
10 counsel recognizes that the Courts must consider gaol terms for
11 assaults of this nature.

12 I will deal with information number 151, that is
13 the assault which caused bodily harm, under section 245.1 of
14 the Criminal Code. On that charge I am going to acknowledge
15 that the assault was the result of substantial abuse to the
16 victim, and I am going to impose four months in gaol, to run
17 consecutively to any other.

18 Now, on the information number 149, in which the assault
19 was on the 28th day of September, I am going to impose two
20 months in gaol, to run consecutively, on count number 1; and
21 because the breach of probation occurred as a result of that
22 offence, I will allow two months in gaol on the breach, but it
23 can be served concurrently.

24 MS. WALL: That is two months consecutive to the four months
25 on the assault causing, is it, Your Honour?

26 THE COURT: Yes.

27 MS. WALL: Thank you.

1 THE COURT: Yes. The only concurrent one would be the breach of
2 probation charge.

3 On the other charge, on information 150, an assault that
4 had occurred on the 3rd day of November, I am going to impose
5 two months in gaol, and that will run consecutively. On the
6 breach of probation on that charge, I am going to impose two
7 months in gaol, but because it occurred as a result of the
8 charge and, therefore, on the same date, I am going to allow
9 that to be served concurrently, as well.

10 In imposing these sentences, I also had thought of and had
11 taken into account a decision of the Supreme Court of Nova
12 Scotia, in The Queen v. Delaney, when that appeal court in
13 1982, in Nova Scotia Reports (50), felt that a man striking his
14 common-law wife several times by kicking her in the head, which
15 caused injury, was such that the Court must deter violence of
16 any vicious nature, and they felt a minimum sentence on that
17 occasion would have been six months in gaol.

18 MS. WALL: Your Honour, will there be a section 98 order?

19 THE COURT: Oh, yes, thank you. I had forgotten to issue a
20 section 98 order, but in this instance there is violence that
21 has been shown to the Court and, therefore, an order will be
22 issued under section 98 of the Criminal Code, whereby the
23 accused will be restricted from having possession of any
24 weapon, firearm or ammunition for a minimum of five years.

25 MR. WALL: I would also ask, Your Honour, pursuant to
26 subsection (13) of that section to make provision to allow the
27 accused to turn in any firearms that he has.

1 THE COURT: Thank you.

2 The accused will be allowed, then, one month in which to
3 turn in or dispose of any firearms -- dispose of, himself, or
4 if not, then to forfeit and turn into the RCMP, any firearms,
5 ammunition or weapons that he might have in his possession.

6 MS. WALL: Your Honour, could you perhaps provide just simply
7 that he turn over all firearms to the RCMP? I think that would
8 be easier to administer, if my friend has no objection.

9 THE COURT: I don't think that I have the power to do that,
10 because he is entitled to dispose of them without forfeiting
11 them to the RCMP -- he is entitled under that section of the act,
12 usually, to arrange for the transfer or disposal of them --
13 other than by forfeiting them.

14 MS. WALL: No, I didn't mean that he would lose ownership of
15 them, simply that the RCMP could hand them over to whomever he
16 directed; if he wished to give them away, the RCMP could deliver
17 them to whomever he wanted to give them to, but simply that they
18 would have them in their custody. And it's a matter of
19 ensuring that they are disposed of. I would submit it is easier
20 to administer.

21 THE COURT: That would be a very effective way, if it is
22 possible to do that under the section of the Criminal Law
23 Guide, but I was under the impression that I had to give him an
24 opportunity to dispose of them, himself, or to arrange for the
25 disposition of them without forfeiting them. And if, by
26 turning them over to the RCMP, he could immediately turn them
27

1 over, but not lose possession of them, other than to sell
2 them, then I would order that, but I don't see how we can
3 incorporate that in an order.

4 MR. SPAULDING: Your Honour, my submission would be that it
5 would be open to Mr. Lafferty to do that, but that the Court
6 can't require him to turn it over to the RCMP, that he
7 could choose an....

8 THE COURT: Not unless there is an actual direction from the
9 Court for forfeiture. I don't wish to make that; I would
10 rather that it be done

11 MS. WALL: The subsection uses the word "or", Your Honour --
12 "turn over to" (the RCMP) "to a police officer or otherwise
13 lawfully dispose of."

14 THE COURT: Yes.

15 MS. WALL: I think that many of the orders that are drafted
16 in the Territories just provide for turning over to the RCMP,
17 but as Your Honour has pointed out, the subsection provides for
18 both possibilities.

19 THE COURT: I think I will allow him -- he is not going to
20 have personal access to them, anyway, of course, because he is
21 going to be committed to gaol, but he still will have an
22 opportunity for disposing of them on his own during the next
23 month.

24 MS. WALL: Is that on the assault causing, Your Honour, that
25 order?

26 THE COURT: That might be the most convenient thing, to put
27 the order under section 98.(1) and subsection (13), on the

1 assault causing offence.

2 (CONCLUSION OF THE SENTENCING JUDGMENT)

3 -----

4
5 Certified a correct transcript,

6
7 Debra Chipperfield.
8 Debora Chipperfield,
9 Court Reporter.
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27