SUPREME COURT OF YUKON

Citation: *R v Chief,* 2022 YKSC 52

Date: 20220818
S.C. Nos. 20-01500A
20-01500
17-01505
Registry: Whitehorse

BETWEEN:

HER MAJESTY THE QUEEN

AND

EVERETT MARK CHIEF

Before Chief Justice S.M. Duncan

Counsel for the Crown — Noel Sinclair and Sarah Bailey

Counsel for the Defence — David C. Tarnow

Publication, broadcast or transmission of any information that could identify the undercover investigator is prohibited pursuant to s. 486.31 the *Criminal Code*.

This decision was delivered in the form of Oral Reasons on August 18, 2022. The Reasons have since been edited for publication without changing the substance.

REASONS FOR SENTENCE

[1] DUNCAN, C.J. (Oral): On March 25, 2022, Everett Chief pled guilty to one count of manslaughter of Sarah MacIntosh and one count of manslaughter of Wendy Carlick, contrary to s. 236 of the *Criminal Code*, R.S.C., 1985, c. C-46 ("*Criminal Code*"). I accepted his pleas of guilty and found him guilty on the basis of an Agreed Statement of Fact filed with the Court for the purpose of the guilty pleas and sentencing.

[2] Counsel have presented the Court with a joint submission for sentence. It is nine years for each count of manslaughter, to be served consecutively, in addition to a designation of long-term offender with a 10-year supervision order.

[3] For the long-term offender designation, both counsel rely on the written report of Dr. Shabehram Lohrasbe, whose qualifications as an expert in the area of assessments of risk for violence, treatability and risk management were agreed upon and accepted by this Court. His written report was accepted for the truth of its contents. *Viva voce* testimony from him was not required.

[4] I note the decision of *R v Anthony-Cook*, 2016 SCC 43 at paras. 29 to 34, in which the Supreme Court of Canada held that, unless the proposed sentence on a joint submission from Crown and defence counsel would bring the administration of justice into disrepute or would otherwise be contrary to the public interest, it should be accepted by the court.

[5] With this high threshold in mind, in the following I will examine the circumstances of the offences, the circumstances of the offender, the impact of the offences on the victims' family and community, the legal parameters of the offence of manslaughter and case law in the area of manslaughter, the mitigating and aggravating factors in this case, and whether the test for long-term offender has been met. I will then apply the principles of sentencing and provide my reasons and orders.

[6] A brief word about the process in this case. Counsel for the defence had concerns about Mr. Chief's ability initially to provide instructions to him. As a result of the Court's view that expert opinions on this issue were conflicting, a trial to determine

Mr. Chief's fitness to stand trial was ordered, pursuant to s. 672.23 of the *Criminal Code*.

[7] As required by the *Criminal Code*, this trial was held before a judge and jury. Mr. Chief, as part of this process, was sent to Ontario for a period of 30 days for further psychiatric/psychological assessments and was interviewed by other assessors. During the two-week trial, much evidence was heard about Mr. Chief's capabilities and disabilities. At the end of the trial, he was found fit to stand trial by the jury.

[8] After this finding, the joint submission on the proposed sentence was agreed to and Mr. Chief entered the guilty pleas.

Circumstances of the Offences

[9] It is not necessary to repeat all the admitted facts, as they have been read into the record on March 25, 2022. The following summary, though, is necessary and sufficient for the purpose of sentencing.

[10] On April 19, 2017, the daughter of Sarah MacIntosh went to visit her mother at her home in Whitehorse, Yukon, and discovered a dead body inside the home. Police were called and two decomposed and injured bodies found on the living room floor of the home were identified as Sarah MacIntosh and Wendy Carlick.

[11] Ms. MacIntosh, age 53 at her death, was a member of the Kwanlin Dün First Nation and Ms. Carlick, age 51 at her death, was a member of the Kaska Dena First Nation. The women were friends and lived together at Sarah MacIntosh's home where they were found. They were both part of the Kwanlin Dün First Nation community. They had not been seen since April 10, 2017 and were found wearing the same clothing as

they had been wearing when their images were captured on a local business video camera in a downtown Whitehorse store on that day.

[12] The death of both women was the result of multiple blunt force injuries combined with high blood alcohol levels (Sarah MacIntosh 258 mg%, and Wendy Carlick 312 mg%). THC was also identified in Ms. MacIntosh's blood toxicology report.

[13] Ms. MacIntosh's multiple injuries included extensive bruising and abrasions to her face, scalp and inner lips, extensive haemorrhages over the left side of her face, haemorrhages in her skull, fractures in her hyoid bone and larynx, multiple rib fractures, cardiac laceration and contusion, and right lung laceration.

[14] Ms. Carlick's multiple injuries included extensive heavy scalp and facial bruising and abrasions, central forehead laceration, haemorrhage in her skull, multiple rib fractures, lacerated liver and lacerated abdominal tissues, and intra-abdominal bleeding. Ms. Carlick's injuries were not necessarily fatal in and of themselves, but there was no other apparent cause of death. The pathologist concluded it might have ultimately resulted from an obstructed airway when Ms. Carlick was unconscious.

[15] An empty 750 ml vodka bottle with blood staining, located on the kitchen counter, showed a fingerprint matching Mr. Chief's right ring finger. Police also found another two empty 750 ml vodka bottles, an empty 1140 ml vodka bottle, three empty beer cans and a beer can bong in the home. A broken vodka bottle was found in the front yard of the residence.

[16] There was no sign of forced entry into the home and the side door was unlocked.

[17] Mr. Chief could not be excluded after forensic testing as the source of bloody footprints found in the residence from blood smears near the bodies of the deceased.

[18] Everett Chief and Sarah MacIntosh were known to have been in an on-and-off romantic relationship. There was a history of violence in their relationship, and at the time of the deaths, Everett Chief was bound by a probation order prohibiting him from having contact with Sarah MacIntosh. This resulted from his 2016 conviction of assault of Sarah MacIntosh.

[19] There is no forensic material or eyewitness evidence indicating that anyone other than Everett Chief and the two victims were present inside the residence at the time of the deaths.

[20] On May 28, 2018, Everett Chief was arrested while detained in custody on another matter and charged with the homicides of Sarah MacIntosh and Wendy Carlick. He participated voluntarily in a 5-hour and 40-minute interview with a police officer. While initially denying any involvement in the homicides, he ultimately confessed that he was present at the residence with the victims on April 10, 2017, and that they were all drinking alcohol together. He and Sarah MacIntosh were arguing about their relationship and when she told him she would be resuming her relationship with another man, that "set him off" and he became very angry. He said he was grossly intoxicated after two days of drinking alcohol excessively with Sarah MacIntosh. He said he blacked out during the killings. Later, he woke up, saw the bodies, and left the home.

[21] Many of the details Mr. Chief provided during the interview with the police officer are consistent with the physical evidence gathered by the RCMP investigators from the home and in the community.

[22] Mr. Chief also told an undercover officer in his holding cell immediately after his interview with police that he had confessed the homicides to police, that he did not plan

to kill the victims and he did not recall many details of the homicides because he had blacked out due to alcohol. During both the interview and the later conversation in cells, Mr. Chief presented as very emotionally distraught.

[23] Mr. Chief admitted before this Court that he unlawfully killed both Sarah MacIntosh and Wendy Carlick while he was grossly intoxicated by alcohol and that he is criminally responsible for their deaths.

Circumstances of the Offender

[24] Everett Chief was born on February 11, 1974 and is 48 years old. He is a member of the Kaska Nation, more specifically from the Dease River First Nation community located near Good Hope Lake, British Columbia. Both of his parents attended residential school in northern British Columbia. He is the third youngest of 10 children.

[25] Everett Chief's early life was marred by physical, sexual, and emotional abuse from within his family. Alcohol and violence were a constant presence in his family and extended family life. Mr. Chief's history of being a victim of abuse continued during his time as an older child in foster care and group homes. Not only was Mr. Chief a victim of inter-generational trauma resulting from the legacy of residential schools, but he himself attended residential school in Whitehorse: Villa Madonna and Yukon Hall hostel. There again, Mr. Chief experienced physical, emotional, and sexual abuse.

[26] Although Mr. Chief says he completed high school, he is unable to read or write well. He has had many different jobs in construction, at mining camps or as a mechanic. None has lasted very long.

[27] Mr. Chief has had several longer-term relationships with women. He has a daughter and a son. He is estranged from his daughter. He does have some relationship with his young son, now 12 years old, and being cared for by the son's maternal grandmother and mother.

[28] Mr. Chief has no contact with his family. His main source of support since 2017, the beginning of his most recent incarceration, has been workers at Fetal Alcohol Syndrome Society ("FASSY"), two of whom have been visiting him regularly at Whitehorse Correctional Centre. Both women, Elder Jerry Soltani and Mary-Michelle Dove, have written letters of support for Mr. Chief, filed as exhibits at this sentencing. A third FASSY worker, Gerard Heijne, now retired since 2021, travelled in person from Alberta to provide testimony in support of Mr. Chief at this hearing. All three FASSY workers were present throughout this hearing.

[29] Mr. Chief acknowledges he is an alcoholic. He has attended at least one residential treatment program of 28 days which was successful in helping him to maintain his sobriety for approximately two years. However, he was drinking heavily at the time of these offences.

[30] Mr. Chief has a lengthy criminal record, dating from 1992. In total, he has fifty-six previous convictions. Twenty-nine of them are administrative offences, including eleven convictions for failure to comply with probation orders, eight convictions for failure to appear or attend court, three breaches of undertakings and two failures to comply with recognizance. There are twelve property offences such as theft under or mischief, two impaired driving convictions, and one weapons offence. More significantly for the purpose of this sentencing, Mr. Chief has twelve convictions for offences of violence,

including two convictions for assault causing bodily harm, four convictions for simple assault, one conviction of assault with a weapon, one further conviction for sexual assault, one conviction for resisting a peace officer, and three convictions for uttering threats. Several of these assault convictions were for intimate partner violence.

[31] There is some uncertainty on the record and disagreement between counsel about the extent of Mr. Chief's cognitive disabilities or abilities. As noted, he has been supported by FASSY workers, although he does not have a formal FASD diagnosis. This diagnosis is often complex and requires a significant investment of medical specialist expertise, which has not occurred in Mr. Chief's case. According to Mr. Heijne, the retired FASSY worker who testified, Mr. Chief presented with many of the characteristics common to those diagnosed with FASD such as poor memory, limited comprehension, inconsistency, and difficulty reading and writing. Dr. Lohrasbe in his report described Mr. Chief's psychiatric condition as difficult to assess but allowed for the possibility of an FASD diagnosis. Crown counsel describes him as having a mild intellectual disability, which is what one of the experts, Dr. Klassen, noted in his report after assessment. At the two-week fitness trial in this case, much expert and other evidence was received, but it is not before me for the purposes of sentencing.

[32] Crown counsel was concerned about my reaching a conclusion on Mr. Chief's psychological or intellectual condition based on the record before me, which, as I have said, does not include the reports from all the experts who have interviewed and examined him, or cross-examination on those reports. I do not intend or need to reach such a conclusion here. I will rely on Dr. Lohrasbe's conclusions, as they have been agreed to by counsel.

[33] In order for me to decide the long-term offender designation and supervision order, I need to determine the degree of risk to the community Mr. Chief poses and the ability to manage that risk. Dr. Lohrasbe's insights and descriptions are sufficient for this purpose, along with the other evidence relied on in this matter, such as Mr. Chief's criminal record. In order to decide whether the proposed joint submission is a fit and appropriate sentence, a determination of the specifics of Mr. Chief's cognitive challenges is not necessary on the facts of this case. However, I would note here simply that if Mr. Chief does indeed suffer from FASD, a formal diagnosis of that condition may be of great assistance to him and his supports in developing and accessing therapeutic programming and approaches. Mr. Chief has indicated he would like to know if an FASD diagnosis applies to him. I would encourage the facilitation of this for Mr. Chief while he is in custody.

[34] Mr. Chief spoke to the Court at the sentencing hearing. He apologized at least twice to the families of the victims. He said he wants to heal and he wants to change in order to have a letter life.

Community Impact Statement

[35] The Kwanlin Dün First Nation, in partnership with the Council for Yukon First Nations, prepared a Community Impact Statement. The ability to do this is provided for by the *Canadian Victim Bill of Rights* enacted in 2015 to allow communities to participate in sentencing hearings by explaining to the court and the offender how the offence has affected the community.

[36] This statement was prepared in August 2022 after interviews were conducted between June and August 2022 with members of the community, including

representatives of Kwanlin Dün First Nation staff and Chief and Council, who work for the community.

[37] The impacts of these offences were described as emotional, physical, economic, cultural, and spiritual. Separate consideration was given to the impact on security fears. The Community Impact Statement also addressed the community's efforts to heal.

[38] The statement made clear that Wendy Carlick and Sarah MacIntosh were well-known and well-loved in the community of Kwanlin Dün First Nation and in downtown Whitehorse.

> … They had big hearts, they were kind, gentle people that loved, and went through a lot of shit growing up like a lot of our older generation have. … They were older women who were involved with the vulnerable younger population. … When there was trauma, when there was grief, young girls and women would go to them for guidance and support and they could relate very well.

[39] The following is a summary of the descriptions of the impacts on the community set out in that statement:

(a) the grief, shock and ongoing pain from the loss of Wendy and Sarah contributed to an increase in drinking, drug use and suicide attempts by members of the community as coping strategies;

(b) the deaths of the women contributed to the reality of loss felt by the community and spoken about at the National Inquiry into Missing and Murdered Indigenous Women and Girls (MMIWG) that was occurring around the same time as the deaths;

(c) the trauma spread through the entire community in part because of how well-known and well-loved the women were and how widely their impact

was felt, in part because this occurred around the same time as a murder of another person from the community in their own home, and in part because of the loss of support of these two women for vulnerable people in the community, especially young women;

(d) women in the community felt their safety was jeopardized as they feared this could have just as easily been them. They felt more unsafe walking in the community and unsafe in their own homes. This was especially discouraging, as it occurred at the time when the environmental scan and community safety officer initiatives in the community were beginning;

(e) the death of the women resulted in a severing of the transmission of cultural Indigenous knowledge, as Sarah MacIntosh in particular attended many cultural events with her granddaughter and, along with her sister, created artwork, beading and regalia for her children and grandchildren;

(f) a house was taken out of much needed housing stock for one year, in keeping with cultural tradition after a death; and

(g) the Kwanlin Dün First Nation office was shut down out of respect for the women and some employees felt this was their breaking point in terms of burn-out and could no longer continue working for Kwanlin Dün First Nation.

[40] The Community Impact Statement concludes on a positive note by relating the ways in which the community is attempting to heal from these offences. They referred to the powerful mural painted on a wall in the Qwanlin Mall showing Wendy Carlick and her daughter, Angel (also presumed murdered, as yet unsolved). Many community

members participated in the painting and the project is intended for others to be added to, honoured, and not forgotten.

[41] The participants in the Community Impact Statement talked about the need for action, including implementing the recommendations from the Missing and Murdered Indigenous Women and Girls Inquiry, the recommendations from the Truth and Reconciliation Commission and the recommendations from the Sharing Common Ground report. They noted the need to gather together more as a community through potlatches, hand games and other celebrations, to connect with and acknowledge who they are as people. Finally, they noted the incredible resilience of the community, including its capacity for forgiveness in the face of unspeakable tragedy, and the belief that something good will come from it. Kwanlin Dün First Nation has fulfilled this belief in part by announcing that Sarah MacIntosh's house will become a supported living residence for men, with the first managed alcohol program in the north, and it will be called Sarah's House.

Victim Impact Statement

[42] A Victim Impact Statement was filed with the Court and read in court today from the niece of Wendy Carlick. She described the grief she has felt over the loss of her auntie and how the family held a headstone potlatch for her and her cousin Angel two years ago. She described her aunt as a perpetually happy person whose laugh she can still hear and who had a lot to live for. She says the offence and the justice process has immensely impacted her and her family in a negative way.

Manslaughter

[43] Crown counsel noted that Mr. Chief was originally charged with murder (first degree for Sarah MacIntosh and second degree for Wendy Carlick). As part of this joint submission, the Crown replaced the indictments for murder with indictments for manslaughter. To be convicted of the offence of murder requires a finding that the person was capable of forming the specific intention to commit murder. Mr. Chief told police he was grossly intoxicated at the time of the offences, as he had been drinking for the previous two days. This is supported by the empty bottles of vodka and beer at the residence and the evidence from the autopsies that the victims had very high levels of alcohol in their blood. The Crown states that a realistic outcome if this matter proceeded to trial was that a jury could find Mr. Chief was not capable of forming the specific intent legally required for a conviction of murder because of his level of intoxication. The Crown noted that intoxicated people can still commit murder, but in all of the circumstances of this case, a charge of manslaughter was consistent with a possible and realistic outcome at trial.

[44] Manslaughter is defined in s. 234 of the *Criminal Code* as “culpable homicide that is not murder or infanticide”. If harm that is neither trivial nor transitory is objectively foreseeable from the actions of the offender, the intention required for manslaughter is met. Section 236 of the *Criminal Code* provides a maximum sentence of life imprisonment for manslaughter.

[45] The range of sentences emerging in the case law for manslaughter is very broad. This is due mainly to the variety of factual circumstances that can give rise to a conviction of manslaughter. Some fact situations can be close to inadvertence or

accident, while others are very close to murder. The penalties, therefore, can range from a suspended sentence and probation to life imprisonment.

[46] The Crown provided a number of cases, which I have reviewed. I will summarize the range of sentences revealed by these cases and refer to the specifics only of cases I consider most relevant.

[47] In the cases provided that contain certain similarities to this case in various ways such as the degree of seriousness of the injuries, the presence of intoxication by alcohol, or the fact that the victim was an intimate partner, the range of sentence is from five years to 12 years.

[48] In the case of *R v Bell* (1993), 85 Man.R. (2d) 139 (CA) ("*Bell*"), a decision of the Manitoba Court of Appeal, the accused violently beat his girlfriend's head and face with an aluminum baseball bat. Both he and the victim were intoxicated at the time of the offence. The accused had been convicted three times previously of aggravated assault where alcohol was a factor. The Court of Appeal increased the original sentence at trial of 5½ years to 12 years.

[49] In *R v Mintert* (1995), 57 BCAC 232 (CA), a decision of the British Columbia Court of Appeal, the victim had been the accused's roommate at times before the offence occurred. The night of the offence, the two were in the victim's home and they began arguing. The argument escalated, the accused pushed the victim and she fell, hit her head and landed in the bathtub filled with water. The accused held the victim's head under water for 15 to 20 seconds. She did not struggle, and he took no action to rescue her until she was blue. He then disposed of her body and belongings over a bridge. The

accused had one previous conviction of assault on a woman and had a difficult childhood and sporadic employment history. He was sentenced to seven years.

[50] In another British Columbia Court of Appeal case, *R v Aburto*, 2008 BCCA 78, the accused and his companion assaulted two men in the context of an argument over the right to control the sale of illicit drugs at a motel in Surrey, British Columbia. They struck the two victims repeatedly on their heads using billy clubs, causing serious injuries to their skulls and brains. One of the victims died a month after the attack. The accused had a prior criminal record with violent offences. The sentence for manslaughter and aggravated assault was 12 years.

[51] Turning to Yukon cases, I will refer briefly to the *R v Boucher (a.k.a. Johns) and Lange*, 2006 YKSC 53 case. Both accused men were drinking and they began arguing with the owner of the hotel in Carcross. They struck him 15 times, causing lacerations, fractures and other injuries to the victim's back, neck, scalp and face. When the victim was unconscious but still alive, the two accused moved him to a truck and drove towards Whitehorse. On the way to Whitehorse, the victim died and the two accused disposed of his body at the side of the road. The accused Boucher, who was the leader in the commission of this offence, had a long criminal record and suffered physical and sexual abuse as a child. He was sentenced to 12 years. The accused Lange also had a lengthy criminal record, was First Nations who was adopted by a white family and was sentenced to nine years and four months.

Mitigating Circumstances and Aggravating Factors

[52] The following are mitigating factors in Mr. Chief's case:

(a) Mr. Chief had a traumatic childhood filled with chaos, alcoholism, violence, and abuse resulting from the legacy of residential schools attended by his family members and by him;

(b) Mr. Chief has shown sincere remorse for his actions. This was apparent at the time of his confession to police, it was apparent through the *Gladue* report, and it was apparent at this sentencing hearing where he apologized several times to the families of the victims;

(c) Mr. Chief has entered a guilty plea to both these offences;

(d) Mr. Chief is showing a sincere desire to heal, including connecting with his Indigenous identity through cultural and spiritual pursuits, and is motivated by a desire to have an enhanced relationship with his son. This desire has been demonstrated in the support letters from the FASSY workers, who describe his activities of sewing and making moccasins and mukluks while in Whitehorse Correctional Centre, as well as by Mr. Chief's own statements in the *Gladue* report and at the sentencing hearing.

[53] The following are aggravating factors in this case:

(a) one of the victims in this case, Sarah MacIntosh, was an on-again/off-again intimate partner of Mr. Chief. Section 718.2(a)(ii) of the *Criminal Code* specifically states that an intimate partner as victim is an aggravating factor. Wendy Carlick was a friend of Mr. Chief's and distantly related to him. This situation is also encompassed in s. 718.2(a)(ii), which refers to the commission of an offence on a member of the offender's family, and in (iii) which applies to both victims, where the abuse of a

position of trust in relation to the victim is considered an aggravating factor;

(b) Mr. Chief was on probation at the time of the offences, which included a no-contact order with Sarah MacIntosh stemming from his 2016 conviction for assaulting her. This is also specifically stated to be an aggravating factor under s. 718.2(a)(vi);

(c) Mr. Chief has a lengthy criminal record and, in particular, has 12 previous convictions of violence against the person, including domestic violence;

(d) by his own admission, Mr. Chief was extremely intoxicated at the time of the offences. Mr. Chief showed awareness in the past of the problems created for him by alcohol and had expressed the intention to do something about this problem. All his convictions of violence referred to in the exhibited documents book at this hearing occurred when he was under the influence of alcohol. However, he failed to deal with his alcoholism before these offences occurred and this continued failure is an aggravating circumstance;

(e) the beatings were brutal. The injuries described in the admitted facts and summarized here were extremely serious and the result of repeated blows over a period of time as opposed to one impulsive hit. Added to this was the significant intoxication of the victims, resulting in their inability to defend themselves.

Application for Long-Term Offender Designation and Supervision Order

[54] The Crown application seeks an order designating Mr. Chief as a long-term offender under s. 753.1 of the *Criminal Code*, an order imposing a long-term offender sentence upon Mr. Chief under s. 753.1(3) of the *Criminal Code*, and an order requiring Mr. Chief be subject to long-term supervision for a period of 10 years following the expiry of any parole and the warrant of committal. This is agreed to by defence counsel on behalf of Mr. Chief as part of the joint submission.

[55] The designation of long-term offender is discretionary. A court needs to be satisfied the following three criteria have been met:

(a) a sentence of two years or more before any pre-custody credit is appropriate;

(b) there is a substantial risk of reoffending; and

(c) there is a reasonable possibility of eventual control of the risk in the community.

[56] The primary but not exclusive rationale for the long-term offender provisions, which are to be read harmoniously with the dangerous offender provisions, is the protection of the public.

[57] In this case, the first criterion is easily met. There is no doubt that, given the nature and circumstances of these offences and Mr. Chief's criminal record, he will receive a sentence of two years or more before any pre-sentencing credit.

[58] The main question here is whether the Crown can prove beyond a reasonable doubt that there exists a substantial risk that Mr. Chief will reoffend – not that he will

reoffend, but there is a substantial risk that he will reoffend. To prove that he will reoffend would be an impossible standard to meet.

[59] Substantial risk has been defined as “a risk the reality of which is well-grounded in the evidence” (*R v Mentuck*, 2001 SCC 76 at para. 34). To determine this risk, the evidence of the assessment of Dr. Lohrasbe as well as Mr. Chief’s history of offending and other background and behavioural characteristics must be considered. Past conduct provides the evidentiary basis for assessing the future threat, which Part XXIV of the *Criminal Code* is aimed at curbing (*R v Knife*, 2015 SKCA 82 at para. 55). It is a judicial assessment and a question of fact informed by expert evidence, usually psychiatric evidence, as in this case.

[60] The risk of reoffending must be a risk of violent reoffending (*R v Turner*, 2019 ONSC 5435 at para. 25).

[61] Dr. Lohrasbe’s opinion is that Mr. Chief’s history and clinical presentation “defies ready classification”. He describes Mr. Chief’s “vulnerabilities, deficits and disorders” as the cumulative impact and interactions between:

(a) a traumatic childhood with subsequent complex Post-Traumatic Stress Disorder;

(b) cognitive deficits that may be due to perinatal development (for example, FASD) or acquired (for example, a head injury);

(c) personality disorder (for example, primarily anti-social); and

(d) chronic substance abuse.

[62] Dr. Lohrasbe notes in his report that Mr. Chief was raised in a dysfunctional family and had inherited the dysfunctional legacy of the residential school system.

Dr. Lohrasbe writes “the stress that comes from trauma (past or present) can impose a multitude of negative effects such as humiliation, fear, anger, depression, financial problems, family conflict, neglect of healthcare, and many more.”

[63] Dr. Lohrasbe notes his agreement with Dr. Klassen’s (another expert who assessed Mr. Chief) formulation of Mr. Chief’s presentation. Dr. Klassen interviewed and examined Mr. Chief as part of the fitness for trial assessment process.

Dr. Klassen’s formulation is as follows:

> … I believe that Mr. Chief’s presentation is substantially trauma-informed, he might be understood to present with “complex” PTSD. “Complex” PTSD is a condition wherein individuals, having experienced repetitive trauma in their formative years, present with a constellation of difficulties that reflect the integration of chronic trauma into their personality and worldview, difficulties that include authority problems, mistrust, anger, anxiety/depression, addictions, a poorly integrated self-concept, somatoform symptoms, and other symptoms. Autonomy drive, and mistrust, often give rise to problematic peer and intimate relationships.

[64] Dr. Lohrasbe adds to that quote from Dr. Klassen:

> … Mr. Chief’s lack of a sense of belonging (also termed lack of connectedness or relatedness, the sense of isolation, loneliness, alienation, etc.) is a significant aspect of his dysfunctions. While many traumatized children grow up with their sense of belonging damaged by physical or sexual abuse, Mr. Chief also experienced parental abandonment and neglect and within a community that was itself alienated from its cultural roots, and from the dominant culture.

[65] The relationship of this analysis of Mr. Chief to a risk of violent reoffending is explained by Dr. Lohrasbe as providing context for his ongoing risk, treatability and risk management. According to Dr. Lohrasbe, childhood adversity and trauma are not causes or explanations for Mr. Chief’s acts of violence. Instead, Dr. Lohrasbe looks at Mr. Chief’s history of violence, which includes all three types of violence he categorizes:

intimate partner or domestic violence, sexual violence, and general violence, which is non-spousal or non-sexual. Mr. Chief has shown a pattern of violence, in Dr. Lohrasbe's view, in that there is a combination of repetitive acts of violence in a variety of circumstances over extended periods of time with a wide range of victims. Mr. Chief's criminal record demonstrates all these factors. Dr. Lohrasbe infers from this pattern that Mr. Chief has internal risk factors that suggest a high risk for ongoing violence; in other words, the violent acts are not situationally dependent, although situational variables may play some role in the acts of violence.

[66] Dr. Lohrasbe further notes that Mr. Chief has a number of risk factors, which he explains as such things as a disorder, a habit, an attitude, a relationship or historical event associated with the occurrence of violence and a possible cause. In Mr. Chief's case, he has the following risk factors:

(a) historical – childhood adversity and trauma;

(b) dispositional – anti-social attitudes;

(c) contextual – substance abusing or anti-social peer groups and absence of structure to his life;

(d) proximate precipitating – acute substance abuse, namely alcohol.

[67] Dr. Lohrasbe goes on to comment that substance abuse is a central risk factor for Mr. Chief, as it has been most consistently present when Mr. Chief commits violent acts. Dr. Lohrasbe concludes that Mr. Chief is at high risk of violent reoffending in the future.

[68] Dr. Lohrasbe then has some very helpful observations related to the third criterion for a long-term offender designation, that is, that there is a reasonable

possibility of eventual control of that risk in the community. He notes that the treatment of Mr. Chief will require high intensity programming. With adaptations to therapeutic, educational and vocational programs, they are likely to have some help for him. He notes the importance of encouraging Mr. Chief to connect with his Indigenous identity, and particularly Indigenous cultural and spiritual practices, in order to combat the marked absence of his sense of belonging. Participation by Mr. Chief in traditional spiritual and cultural practices are likely to improve his self-image, thus assisting him to reject substance abuse as an escape or lifestyle, provide him with meaning and purpose in life, especially if it helps him to connect with his son, and enhance his competencies and skills, especially but not exclusively if such practices are land-based.

[69] A further factor contributing to risk management for Mr. Chief is the aging process. Dr. Lohrasbe notes that significant data indicate the risk of violence decreases with age. By the time Mr. Chief is in his sixties, Dr. Lohrasbe concludes his risk for serious violence will be statistically negligible. Aging, he says, is the single most reliable risk-reducing factor for Mr. Chief.

[70] Finally, the hardship experienced during sentencing proceedings themselves may have at least a short-term effect on Mr. Chief that serves to reduce his risk.

[71] Dr. Lohrasbe's comments about risk management for Mr. Chief in the community are general in nature because at this point he says it is premature to propose specific strategies. But he concludes that close and lengthy supervision will be necessary given Mr. Chief's abysmal track record of failing to comply with court orders, particularly probation orders, and comments from past supervisors such as Mary-Jane Burr from 1994 who wrote: "Probation has been totally ineffective in dealing with Everett. It would

appear that there have been breach of probation Informations sworn in both Kitimat and Whitehorse …". This observation was echoed by Mr. Heijne in his testimony, who said that in his view, Mr. Chief needed supervision in a structured, supportive living environment to keep him on track.

Principles of Sentencing

[72] The *Criminal Code* sets out the purposes and principles of sentencing. The objectives of sentencing are one or more of the following: denouncing unlawful conduct and the harm to victims or community caused by unlawful conduct; deterring the offender and other persons from committing offences; separating the offender from society where necessary; assist in rehabilitating offenders; providing reparations for harm done to victims or the community and promoting a sense of responsibility in offenders and acknowledging the harm done to victims or the community. No one objective is more important than the others and it is up to the judge in each case to determine which objectives merit the greatest weight in the circumstances of each case.

[73] In this case, I will also add the long-term offender designation has an underlying rationale of protecting public safety.

[74] A fundamental principle of sentencing is that it must be proportionate to the gravity of the offence and the degree of responsibility of the offender. This means, among other things, that the sentence must be within the range of those recently imposed for similar offences. Proportionality also requires that the enormity of the tragedy not be allowed to overwhelm and distort the assessment of penalty. Appreciation of the totality of the penalty is part of proportionality. It applies in this case

given the long-term offender designation and supervision order request, and the proposed consecutive nature of the sentence.

Reasons and Order

[75] Counsel in this case have clearly given much careful thought to the development of this joint submission. Their good work in developing a recommended outcome to these horrendous occurrences ensures that Mr. Chief is held accountable for his actions, including their significant impacts on the families and community. The proposed sentence also protects the public and assists Mr. Chief by creating a structured approach for him as he moves through his sentence and eventually reintegrates into the community.

[76] I will accept the joint submission proposed by counsel of nine years consecutive for each count of manslaughter, a long-term offender designation for Mr. Chief, and a 10-year supervision order. I find it is a fit and appropriate sentence in the circumstances.

[77] I will first state the stark truth that nothing I can do today can ever make up for the loss of the lives of Sarah MacIntosh and Wendy Carlick. It is impossible to put a value on their lives or to think that any kind of sentencing process or outcome can fix the very real pain and grief felt by the community and the families as a result of this senseless and violent tragedy. I can only hope that this process will bring some measure of peace that may come with certainty and some closure to the community and the families, and that the community will continue, with all of their resilience, on the path of healing that was so well described in the Community Impact Statement.

[78] I give significant weight to the sentencing objectives of denunciation and deterrence in this case given the serious nature of the offences as I have described. Separation of Mr. Chief from society is also significant, as is the promotion of Mr. Chief's acknowledgement of the harm caused to the community. At the same time, the objective of assisting in Mr. Chief's rehabilitation is of value here.

[79] The proposed sentence of nine years for each count, for a total of 18 years, to be served consecutively, minus credit for pre-sentence custody is appropriate in comparison to other similar cases. The seriousness of these offences situates the nine-year consecutive sentence in the mid-range. It is consistent with the approach taken in the other cases where the injuries were similar, where the victim was an intimate partner or in a position of trust, and where intoxication was present.

[80] I agree with the observations of the Court in *Bell* about sentencing in manslaughter cases. The court noted at para. 10 that, for the most part, appellate courts have declined to develop guidelines for use by sentencing judges in manslaughter cases. This is because of the wide variety of circumstances, including the degree of culpability of accused persons, that can result in convictions for manslaughter. This was not to suggest there are no broad sentencing principles that apply to manslaughter. Factors such as age, criminal record, family circumstances, use of alcohol, the kind of victim, remorse, viciousness of the crime, deterrence and public protection must be considered. All of these factors have been discussed and considered in this case.

[81] A consecutive sentence is appropriate because in this case Mr. Chief's actions caused two deaths, even though they occurred in and around the same time. To make the sentences concurrent would be, in effect, to impose no sentence at all for one of the

offences. To make the amount of time different for each death would be to suggest that one life had more value than the other or that one of the killings was less serious than the other. That would be wholly inappropriate in the circumstances. A consecutive sentence in this case is not double counting, but an acknowledgment of the very real loss of both women, and the horrendous circumstances of each of their deaths.

[82] What makes this sentencing unique is the long-term offender designation and 10-year supervision order. I find that the test for a long-term offender designation has been met, based on Dr. Lohrasbe's thorough and clear assessment report, as well as the evidence of Mr. Chief's past criminal record and behavioural characteristics. All of this evidence shows, in part, Mr. Chief's failure to deal with his alcoholism, as alcohol abuse consistently co-exists with his violent acts. This, along with all the other factors noted by Dr. Lohrasbe in his report, including childhood trauma, allows me to find that the Crown has proved beyond a reasonable doubt that there exists a substantial risk that Mr. Chief will violently reoffend.

[83] As I have noted, Dr. Lohrasbe has also provided helpful guidance on the third criterion for a dangerous offender designation, which is that there is reasonable possibility of control of the risk in the community. Dr. Lohrasbe has stated Mr. Chief needs high intensity programming. He says such therapeutic, educational, vocational programs are likely to be helpful to Mr. Chief. He specifically addresses Mr. Chief's Indigenous identity and states that treatment programs that incorporate Indigenous cultural and spiritual practices will be a particular help to him in addressing his profound absence of a sense of belonging or connection. Dr. Lohrasbe notes this loneliness and estrangement can be a risk factor for violence due to a lack of self-care, despair and

reactive anger. I recognize that decisions about Mr. Chief's participation in such programming is within the purview of the Correctional Services of Canada and not this Court, but I highlight this aspect of Dr. Lohrasbe's report for the consideration of Correctional Service Canada case managers, as well as the observations in the *Gladue* report of Mr. Chief's positive engagement in cultural and spiritual activities at Whitehorse Correctional Centre during his pre-sentence custody.

[84] Dr. Lohrasbe observes Mr. Chief's very poor track record of compliance with supervision in the community, evidenced in part by his numerous convictions for breach of probation given that Mr. Chief's advancing age is the most reliable risk-reducing factor. A lengthy time of close supervision is the next best tool for risk management until the likely risk-reducing factor of aging takes over.

[85] A long-term supervision order of 10 years for Mr. Chief means that he will be subject to such supervision as monitoring of his behaviour, release conditions and compliance with court-ordered obligations, developing and implementing interventions to address and respond to his risk and needs and documenting relevant information about his circumstances. There may also be conditions about where he will live and with whom he will socialize. Urinalysis is used if there is a condition relating to abstention from alcohol. A breach of conditions or increase in risk can result in the issuance of a warrant of suspension and apprehension to hold Mr. Chief in custody for a maximum of 90 days. The Parole Board can then recommend the laying of an Information for breach of a long-term supervision order condition. A breach is a serious criminal charge. Alternatively, if Mr. Chief is doing well, an application may be brought to reduce the length of the supervision order or change the conditions. All of this evidence related to

long-term supervision orders was not before me in this sentencing hearing, but it was before me in a previous long term offender application, which was included in the materials filed for this hearing – *R v J.M.,* 2021 YKSC 17. I have paraphrased here paras. 30 and 31 of that decision.

[86] This 10-year long-term supervision order will not only serve to protect society from the risk presented by Mr. Chief, but as defence counsel noted in his submissions, it will also help Mr. Chief. He does well in a structured and predictable environment. Comments from probation officers through his life as well as comments from Mr. Heijne during his testimony support Mr. Chief's need for consistent monitoring and close supervision. With those supports, Mr. Chief has the potential to heal. I find that the third criterion of long-term offender designation has been met. There is a reasonable possibility of eventual control of his risk in the community.

[87] I am required based on the *Criminal Code*, s. 718.22, and from judicial comments in the cases of *R v Gladue*, [1999] 1 SCR 688, and *R v Ipeelee,* 2012 SCC 13, to consider the unique systemic and/or background factors which may have contributed to Mr. Chief's offences and the types of sentences that may be appropriate because he is an Indigenous man.

[88] I accept the statements of both counsel that the very real *Gladue* factors in this case were considered in the development of this sentencing proposal. Dr. Lohrasbe's assessment report addresses these factors specifically as well. They are mitigating factors for the offences, and the proposal for risk management recommends specific programming to assist Mr. Chief in overcoming the absence of connection with a

community and an establishment of a positive self-image related to his Indigenous identity.

[89] Mr. Chief, would you please stand up?

[90] Mr. Chief, I sentence you to nine years' imprisonment for the manslaughter of Sarah MacIntosh, Count 1 on the Indictment.

[91] I also sentence you to nine years' imprisonment for the manslaughter of Wendy Carlick, Count 2 on the Indictment, consecutive to Count 1.

[92] I will give you 2,883 days — which is also seven years and 328 days — credit for time spent in custody pre-sentence.

[93] I order that you are designated to be a long-term offender pursuant to s. 753.1 of the *Criminal Code*.

[94] I order that you will be subject to a long-term supervision order for a period of 10 years after the expiry of parole and warrant of committal.

[95] I also make the following ancillary orders:

- an order pursuant to s. 487.051 of the *Criminal Code* authorizing the taking of samples of bodily substances reasonably required for the purpose of forensic DNA analysis and recording;
- a lifetime firearms prohibition order pursuant to s. 109 of the *Criminal Code*, and
- an order requiring that a copy of all reports and testimony given by psychiatrists, psychologists, criminologists and other experts and any observations of the Court with respect to the reasons for the long-term offender finding, together with the transcript of the sentencing proceedings

and exhibits filed to be forwarded to the Correctional Services of Canada for information and case management purposes pursuant to s. 760 of the *Criminal Code*.

Stay of Proceedings

[96] Mr. Sinclair, did you want to do anything with the other outstanding matters?

[97] MR. SINCLAIR: Crown directs a conditional stay of proceedings on the remaining two Informations or Indictments that are before the Court. I say conditional in the sense that, once the appeal period has lapsed, we would consider those be in full effect.

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DUNCAN C.J.