Court of Queen's Bench of Alberta

Citation: R v Delorme, 2019 ABQB 2

Date: 20190102
Docket: 151551876Q4
Registry: Edmonton

Between:

Her Majesty the Queen

Crown

- and -

Laylin Cole Alex Delorme

Accused

Reasons for Sentence
of the
Honourable Mr. Justice Robert A. Graesser

Introduction

[1] Laylin Cole Alex Delorme was convicted by a jury in June 2018 of two counts of first degree murder (*Criminal Code* section 231), and two counts of robbery with a firearm (*Criminal Code* section 344). His sentencing was adjourned to December 10, 2018 so that a ***Gladue*** Report could be prepared having regard to his indigenous background.

[2] Mr. Delorme's convictions for first degree murder mandate a sentence of life imprisonment, with a parole ineligibility period of 25 years. Section 745.51 of the *Criminal Code* enables the Court to make the offender's period of parole ineligibility consecutive or concurrent in the event the offender has been convicted of multiple murders.

[3] Counsel are agreed that any sentences for Mr. Delorme's robbery convictions should be made concurrent to the sentences for the first degree murders.

[4] The Crown seeks consecutive sentences for parole ineligibility such that Mr. Delorme would not be eligible for parole consideration for 50 years. The Crown also seeks ancillary orders including an order requiring Mr. Delorme to provide a sample of his DNA, that Mr. Delorme be subject to a lifetime weapons ban under section 109 of the *Criminal Code*, and that Mr. Delorme pay a victim fine surcharge of $200 per indictable offence, totaling $800.

[5] Mr. Rauf for Mr. Delorme made no submissions regarding the ancillary orders or the sentences for the robbery convictions. He argued that Mr. Delorme should be sentenced concurrently for the first degree murder convictions, such that he would not be eligible for parole for 25 years.

[6] Mr. Delorme's criminal record was entered as an exhibit, as was a ***Gladue*** Report prepared by Brenda Joy Sinclair. Victim impact statements were read for or by a number of members of the family of Ricky Cenabre, one of the robbery and murder victims. Crown and Defence made submissions regarding sentencing, and Mr. Delorme addressed the Court.

Offences

[7] Mr. Delorme and two co-accused robbed two Macs convenience stores in Edmonton on December 18, 2015. They were masked and armed. At the first store in Mill Woods, the three assailants entered the store. Mr. Delorme brandished a handgun at the clerk, Karanpal Singh Bhangu. The other assailants followed Mr. Delorme behind the till. As Mr. Delorme held Mr. Bhangu at gunpoint, the others roughed Mr. Bhangu up, and stole cigarettes, lottery tickets and money. Mr. Bhangu was fully compliant with the assailants' demands. As they were leaving the store, Mr. Delorme fired several shots at Mr. Bhangu, who fell to the floor and bled to death. One of the other assailants can be seen on the store video surveillance watching the shooting.

[8] The assailants fled in a van. They arrived shortly afterwards at the second Macs store, on 109 Street and 63 Avenue. They were still masked and armed. Mr. Delorme brandished the gun at the clerk, Ricky Cenabre. The three assailants went behind the till where the other two assailants assaulted Mr. Cenabre while they robbed the store of cash, lottery tickets and cigarettes. As they were leaving the till area, Mr. Delorme handed the handgun to the adult co-assailant, who fired a shot at Mr. Cenabre who was hiding behind the counter. The shot struck vital organs, and Mr. Cenabre quickly bled to death. Mr. Delorme can be seen on the store video surveillance watching the shooting.

[9] The assailants fled the scene of the second murder and were located near the Callingwood McDonalds restaurant where they had stopped for a meal. A high-speed chase ensued, resulting in the van crashing on a nearby freeway. All three assailants were arrested without incident.

[10] The non-adult co-assailant was a thirteen-year-old boy, Mr. Delorme's nephew. The boy has recently been convicted of two counts of manslaughter and sentenced. The adult co-assailant has yet to be tried.

[11] At trial in June 2018, the jury convicted Mr. Delorme of two counts of first degree murder and two counts of robbery.

Victim Impact Statements

[12] Erlinda Sanceda, Mr. Cenabre's sister-in-law, described the trauma of learning from her sister of Mr. Cenabre's death. Her own health has been affected because of the trauma and the impact on her sister, Mr. Cenabre's widow Editha. She worries for her sister and her nephew Cedric and is struggling to assist them herself.

[13] George Sanceda, Mr. Cenabre's nephew, wrote of how his life has been severely affected as a result of Mr. Cenabre's death and how he and other family members have sacrificed their own resources to help his Aunt Editha and cousin Cedric. He too has had health issues resulting from the stress worrying about his mother and his aunt. Financially, his business has suffered as a result of supporting his aunt.

[14] Faith Alcazaren, Mr. Cenabre's niece, spoke of the pain and anguish the entire family felt on Mr. Cenabre's death. She talked of the hardships on the family emotionally and financially, as well as their lives without happiness because of their loss. She spoke of her Aunt Editha's suffering, and of Mr. Cenabre as a good friend, a good natured person, a good uncle, a good husband and an even better father who valued his family more than anything else. She describes her family as "emotionally broken" and as a family broken because of the loss of emotional and financial support from Mr. Cenabre.

[15] Cedric Cenabre addressed the Court with his victim impact statement. He is Mr. Cenabre's son. Cedric spoke of his overwhelming sadness for losing his father. He has anger towards Mr. Delorme and fear of him. He worries about what may happen to his future and his dreams, and what he may become without a father. Cedric has been physically and mentally affected by the loss of his father, and worries for the future. He and his mother have been left in financial distress and they struggle to meet their basic needs, especially his educational needs.

[16] Editha Alcazaren, Mr. Cenabre's widow, spoke of her ongoing pain, discomfort and how her loss has aggravated her asthma, caused weight loss and higher blood pressure. She too spoke of the huge financial impact on her and Cedric resulting from the loss of Mr. Cenabre's economic contribution to the family. She has been stressed by the loss of her husband and remains sad and depressed. She feels she is losing concentration because of her worries and sadness, and especially her worries for Cedric growing up without his father.

Crown Submissions

[17] The Crown seeks consecutive periods of parole ineligibility, such that Mr. Delorme would receive a life sentence without the possibility of parole for 50 years. The Crown cites four authorities in support of its position:

R v Saretzky, 2017 ABQB496;

R v Klaus, 2018 ABQB 97;

R v Garland, 2017 ABQB 198; and

R v Baumgartner, 2013 ABQB 761.

[18] The Crown notes the provisions of section 745.51 of the *Criminal Code*, which provides:

> 745.51 (1) At the time of the sentencing under section 745 of an offender who is convicted of murder and who has already been convicted of one or more other

> murders, the judge who presided at the trial of the offender or, if that judge is unable to do so, any judge of the same court may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, and the recommendation, if any, made pursuant to section 745.21, by order, decide that the periods without eligibility for parole for each murder conviction are to be served consecutively.
>
> Reasons
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> (2) The judge shall give, either orally or in writing, reasons for the decision to make or not to make an order under subsection (1).

[19] The Crown argues that the character of the offender is impacted by his prior criminal record, which includes an assault with a weapon conviction and a theft over $5,000 conviction in 2010, convictions in 2011 for possession of drugs for the purposes of trafficking and failing to comply with a recognizance, a number of other minor offences in 2011, convictions for assault with a weapon and mischief in 2013, and a common assault conviction in 2018. Mr. Watson notes that Mr. Delorme is a drug addict and crystal meth user. Mr. Delorme was admittedly involved in gang activities. The Crown points to the fact that Mr. Delorme involved his 13-year-old nephew in the subject crimes.

[20] The Crown also points to what it describes as a lack of remorse and failure to take responsibility in Mr. Delorme's discussions with Ms. Sinclair, the ***Gladue*** report writer. Mr. Delorme expresses the view that he was wrongfully convicted of murder and should only have been convicted of manslaughter, as he says he didn't intend to hurt anyone and was high on drugs and alcohol. Mr. Watson describes the assailants as callous as they went to McDonalds for a meal after robbing and killing the two clerks.

[21] As for the nature and circumstances of the offences, Mr. Watson points to the planning that went into the robberies and murders, including the use of weapons, masks and a method of taking control over the clerk in each store, holding the clerk at gunpoint, having his accomplices assault and rob the clerk, and then committing a murder as they exited. The murders were senseless, as both clerks cooperated fully with the assailants' demands, and they appeared planned by virtue of the video surveillance showing the non-shooting assailant watch as the clerks were shot. Mr. Watson suggests that the meal at the Callingwood McDonalds was likely a break before the assailants robbed a nearby convenience store.

[22] Mr. Watson notes that the victims, Mr. Bhangu and Mr. Cenabre, were vulnerable having regard to their employment in convenience stores late at night and in the early morning hours.

[23] The jury recommendations were two jurors for consecutive parole eligibility periods; three jurors for concurrent periods, and seven jurors who made no recommendations.

[24] Mr. Watson emphasized the need for denunciation of these senseless and brutal crimes and specific deterrence of Mr. Delorme, suggesting that 25 years of imprisonment is not enough to ensure public safety if Mr. Delorme is released. He also emphasized the importance of general deterrence.

[25] The Crown likened the circumstances of this case to ***Saretzky***, ***Garland***, and ***Baumgartner***. Each of those cases involved multiple murders. Saretzky and Baumgarter were of a similar age to Mr. Delorme, although neither had any previous criminal record. As with

Baumgartner, the killings here were unnecessary, cold blooded and committed in conjunction with theft or robbery.

[26] Mr. Watson referenced in detail the discussions in the House of Commons when section 745.51 was passed in 2011. These were set out by Tilleman J in ***Saretzky*** at paragraph 21, and I will quote them because I believe them to be important in the considerations I am faced with here:

> [21] The February 1, 2011 Hansard debates summarize the intent of the legislature in enacting s 745.51, creating the possibility for Canadian courts to impose consecutive sentences in cases of multiple murders, where appropriate:
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> [22] The measures proposed in Bill C-48 will accomplish three things. First, they will better reflect the tragedy of multiple murders by enabling a judge to acknowledge each and every life lost.
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> [23] Under current law, multiple murderers serve life sentences and corresponding parole ineligibility periods for each murder concurrently. The result is that they serve only 25 years in custody before being eligible for parole, no matter how many lives they may have taken.
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> [24] Many Canadians are dismayed by this. They cannot understand why a sentence for murder is unable to take account in a concrete way of the fact that more than one life has been taken. Many argue that the law as it now stands seems to give a "volume discount" to multiple murderers.
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> [25] This symbolic devaluation of the lives of victims has a strong negative impact on the families and loved ones of murder victims. All too often they experience a greater degree of pain and experience a greater sense of loss because the justice system has failed to mete out a specific punishment for each and every life lost. Bill C-48 would help correct this.
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> [26] The second thing that Bill C-48 would do is reinforce the denunciatory and retributive functions of the parole ineligibility period attached to a sentence of life imprisonment.
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> [27] Murder is the most serious crime and must be denounced in the strongest terms. This has already been recognized by the highest court of the land. In the 1987 ***Vaillancourt*** case, the Supreme Court highlighted the extreme stigma attached to murder that flows from the moral blameworthiness of deliberately taking the life of another person.
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> [28] Bill C-48 would ensure that our communities are safe and that offenders convicted of multiple murders, who should never be released, will never be released.
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> [29] In this vein, the proposed amendments would also protect the families and loved ones of multiple murder victims, who are forced to listen all over again to the details of these horrible crimes at parole hearings held after the maximum parole ineligibility period possible under the current act expires.

[27] Mr. Watson observed that in ***Klaus***, Macklin J observed that concurrent sentences were generally appropriate where the crimes arose out of the same transaction or circumstance, and consecutive sentences were generally appropriate where the crimes were committed at different times and in different places. He stated at paragraphs 12 and 13:

> [12] Courts have generally held that concurrent sentences are appropriate where different offences constitute one continuous criminal act, or there is a sufficient nexus between them, whereas consecutive sentences are appropriate where the offences arise from "separate transactions", in the sense that they are essentially different in character and involved different subject matter: R v Keough, 2012 ABCA 14 (CanLII) at paras 58-61, [2012] AJ No 10.
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> [13] In determining whether to impose concurrent or consecutive sentences, courts have considered factors such as the nature and quality of the criminal acts, whether there is a temporal or spatial nexus between the acts, the nature of the harm caused to the community or to victims, the manner in which the criminal acts were perpetrated, and the offender's role in the crimes: R v Potts, 2011 BCCA 9 (CanLII) at para 89, [2011] BJC No 38.

[28] Mr. Watson submits that the two robberies and murders were separated by both time and distance as they were not committed at the same time or location. He likens this case to ***Saretzky***, where the accused had a significant time to reflect on his first killing before committing two more five days later.

[29] Mr. Watson describes Mr. Delorme's crimes as involving an extremely high level of moral blameworthiness and Mr. Delorme's participation in them or responsibility for them as being the "highest possible."

[30] The Crown submits that the 50-year parole eligibility period is appropriate, and that Mr. Delorme might hope for Royal clemency at some stage if his behaviour in prison is exemplary.

Defence Position

[31] Mr. Rauf describes the mandatory 25-year parole ineligibility period as cruel punishment, and the requested 50-year parole ineligibility period as "beyond the pale" and "vengeful." He suggested that a society like Canada should aim higher than that.

[32] Mr. Rauf emphasized the contents of the ***Gladue*** report, noting that Mr. Delorme is a 27-year-old Metis man who grew up in a household filled with alcohol abuse and violence. The drinking and violence were described by Mr. Delorme, his mother and his sisters, but denied by his father. He and his parents and siblings lived mainly in Edmonton, although lived on the Buffalo Lake Metis Settlement where his grandparents lived and both his parents were raised. His childhood was filled with prejudice against him at school. He was physically and sexually abused. He left school at a young age and worked for a time with his father, a welder. While Mr. Delorme showed promise as a welder, he soon abandoned that career and descended into a life of drugs and alcohol. He had no gainful employment by the time he was 18 or anytime since.

[33] One of his siblings rejected him. Mr. Delorme joined a gang and spent much of his time from age 18 until committing these offences in jail. He has two children, ages 5 and 2 and is

described in somewhat favourable terms by the children's mother stating "he was a good guy when he was sober." His parents describe him as caring and kind-hearted.

[34] In seeking a sentence that will give Mr. Delorme some hope of release, Mr. Rauf noted research on the lasting impacts of a child growing up without a normal loving childhood, and gang involvement as a common result of an abusive childhood where the child was rejected by adults. Children without loving childhoods are traumatized, and can become aggressive and engage in antisocial behaviour. He points to Mr. Delorme's shame and guilt arising out of the abuse he suffered as a child, yet at no fault of his own.

[35] Mr. Rauf describes the Crown's position as lacking any compassion, mercy or understanding. Mr. Delorme's criminal record does not show someone who is evil or a monster.

[36] Mr. Rauf notes that 25 years of parole ineligibility will not mean that Mr. Delorme is certain to be released at some time, but that such a sentence would leave Mr. Delorme with hope.

[37] Mr. Rauf discussed and distinguished the cases submitted by the Crown but for ***Klaus***. He argued that the circumstances here were in effect one continuous transaction, and notes that Mr. Watson argued that I should assume that Mr. Delorme and his accomplices were about to commit another robbery after they finished their meals at McDonalds. This was, in Mr. Rauf's description, a spree, not isolated events.

Mr. Delorme

[38] Mr. Delorme addressed the Court, expressing remorse for the events that brought him to court. He apologized to the families of his victims, and wished that he had not done what he did. He sought forgiveness, recognizing that it may take them a long time to reach that stage.

[39] Mr. Delorme did not try to minimize his responsibility, but said he was affected by drugs and alcohol. He expressed regret for depriving his victims' families of their loved ones, and regretted too that he has deprived his own children of a childhood where he can be part of their lives.

Analysis

[40] The contentious issue here is the extent to which parole eligibility should be denied. The other aspects of sentencing are not controversial.

Robbery

[41] Mr. Delorme is sentenced to eight years on each count of robbery, concurrent to themselves and to the mandatory life sentence to be imposed on the murder convictions. These robberies were planned, they involved robbing vulnerable clerks at convenience stores. Our Court of Appeal has denounced late night convenience store robberies and emphasizes denunciation and deterrence for those crimes. Aggravating to the robberies themselves were the use of weapons (including a firearm) and being masked. Actually committing violence, as opposed to merely threatening it, is also aggravating.

[42] Mr. Delorme has essentially no mitigating features to offset a sentence at the high end of the range but for ***Gladue*** factors. Because the robbery sentences are concurrent to the first degree murder sentences, I will consider the ***Gladue*** factors in the context of the murder sentences.

Ancillary orders

[43] Mr. Delorme will provide a DNA sample. That shall be facilitated at either the Edmonton Remand Centre if Mr. Delorme is returned there before placement in a federal penitentiary, or it may be done at the federal penitentiary once Mr. Delomre has been transferred there. The DNA order is made under the count relating to the murder of Mr. Cenabre.

[44] Mr. Delorme is subject to a lifetime weapons prohibition under section 109 of the *Criminal Code*. That is made under the count relating to the murder of Mr. Bhangu.

[45] Mr. Delorme shall pay a victim fine surcharge of $800, being $200 per count. He is given no time to pay that fine, and is sentenced to eight days' imprisonment in default of payment. That sentence is to be concurrent to the life sentences to be imposed on the two murder counts.

[46] The reason for this is that Mr. Delorme has been in custody for nearly three years and will remain in custody for at least 22 more years. He does not and will not have the ability to pay any amount.

Parole Ineligibility

[47] Mr. Delorme committed terrible crimes on December 18, 2015. He terrified, robbed and murdered two defenceless men. These were planned crimes. The jury found that Mr. Delorme intended both killings and that they were planned and deliberate. That is amply made out in the video evidence that captured the robberies and killings at both Macs stores. The videos do not support Mr. Rauf's description of the shootings as unplanned and like a saloon gunfight. Instead, the videos show Mr. Delorme coldly and deliberately firing a handgun at Mr. Bhangu several times until Mr. Bhangu fell to the floor. I agree with Mr. Watson's characterization of events that the accomplice turned and watched the shooting as if he knew what was going to happen.

[48] While Mr. Cenabre was shot by the accomplice, Mr. Delorme can be clearly seen handing him the handgun and then watching while Mr. Cenabre was shot.

[49] These were cold, senseless killings. The victims had cooperated fully; the assailants were masked and were very unlikely to be identifiable from the videos. There was no need for there to be any shooting, let alone any killings. These crimes were shocking and horrific. Why they happened is a mystery which has not been solved and it would be wrong for me to speculate.

[50] I reject alcohol and drug abuse as any excuse for Mr. Delorme doing what he did that night. He may well have been a drug addict and he may well have consumed drugs and alcohol. But there was minimal evidence of alcohol impairment and no evidence of impairment by drugs. The video evidence show all three assailants in full control of their actions. When apprehended, Mr. Delorme was coherent, not observed to be significantly impaired by alcohol, and there was no indication of any impairment by drugs.

[51] Mr. Delorme's statements to the ***Gladue*** writer were in my view a self-serving attempt to lessen the extent of his moral blameworthiness. Nothing I saw or heard at the trial suggests that Mr. Delorme was wrongly convicted of first degree murder.

[52] It is in that context that I proceed to consider the requirements of section 718 of the *Criminal Code*. Application of that section is mandatory in all sentencing hearings. It provides:

> 718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance

> of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:
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> > (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
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> > (b) to deter the offender and other persons from committing offences;
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> > (c) to separate offenders from society, where necessary;
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> > (d) to assist in rehabilitating offenders;
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> > (e) to provide reparations for harm done to victims or to the community; and
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> > (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

[53] The sentencing principles are set out in other sections, which include proportionality to the gravity of the offence and the degree of responsibility of the offender (s 718.1) and various principles under s 718(2) relating to the extent of impact on the victim and the victim's family, parity with sentences for other offenders for similar offences committed in similar circumstances and the totality principle where consecutive sentences are imposed, that the combined effect should not be unduly long or harsh.

[54] Sentencing involves consideration of all of these elements. The Supreme Court has made it clear that sentencing is an individualized process (***R v Ipeelee***, 2012 SCC 13; ***R v Pham***, 2013 SCC 15).

[55] Where the offender is indigenous, as is Mr. Delorme, consideration must be given to the impact of colonization, cultural genocide, residential schools and intergenerational trauma on the offender, following ***R v Gladue***, 1999 CanLII 679 (SCC) and ***R v Ipeelee***. Those cases require that more than lip service be paid to those factors when they apply to the offender.

[56] Here, there is a detailed ***Gladue*** report, outlining Mr. Delorme's connection to the Buffalo Lake and Elizabeth Metis Settlements, as well as his mother's mother and father's grandparents attending residential schools.

[57] It is not difficult to connect some of Mr. Delorme's troubled childhood, lack of education, antisocial activities, abuse of drugs and alcohol and criminal activities to historic discrimination and marginalization of the Metis people.

[58] In that regard, I was troubled by the Crown's dismissal of ***Gladue*** as essentially irrelevant here.

[59] As far as completing the exercise of evaluating mitigating and aggravating factors, there are only two mitigating factors that I can discern. The first is Mr. Delorme's relative youth – he was 24 years old when he committed these offences. My understanding of brain development is that it is not yet complete in males under 25. The second is his Metis heritage and the connection between his own lived experiences and those commonly suffered as a result of colonization.

[60] There are far more aggravating features. Mr. Delorme has a not insignificant criminal record. He has demonstrated an unwillingness to live by society's rules. These were

opportunistic crimes committed for profit and committed against vulnerable members of the community. While he is remorseful, he has yet to take responsibility for his behaviour. The consequences of his actions on his victims were horrendous. There is nothing worse than ending someone's life. His victims include Mr. Bhangu's family and particularly Mr. Cenabre's family.

[61] Mr. Cenabre was a fine, hardworking man living away from his loving family and working so he could provide them with a better living than he could in the Philippines. His death deprived his family, and in particular his wife Editha and son Cedric, of his companionship and support. They have struggled emotionally and financially as a result of his death. His death has impacted his extended family as they sacrifice and struggle to support his widow and son.

[62] I do not know of Mr. Bhangu's personal circumstances as his family have elected to deal with their loss outside of the court process. But I expect the impact on the Bhangu family is as tragic and heart-wrenching as it is on Mr. Cenabre's.

[63] Words cannot express the sorrow and loss these families have experienced and will continue to experience for the rest of their lives. People like me who have not suffered such tragic losses cannot comprehend such sadness and devastation.

[64] In their victim impact statements, Mr. Cenabre's family express a hope that there will be some justice done in this sentencing. From their point of view, that undoubtedly means that the Court will impose a harsh and lengthy sentence. That is certainly one of the objectives of sentencing: to provide reparations for harm done. But putting Mr. Delorme in jail for 25 or 50 or more years will provide no reparations. Such a sentence will not replace Mr. Cenabre as a father, or help support a struggling family.

[65] Mr. Cenabre's widow, son and niece express the hope that they might be able to work in Canada, as did Mr. Cenabre, so that they can enjoy a better life. That unfortunately is in the hands of Canada Immigration, and not the courts. If governments were sincerely concerned about reparations for victims of crime, there would be more programs available to replace victim's losses rather than simply providing assistance through the court process. But that is the stuff of politics and not law, and can only be dealt with by Canada Immigration officials and not the Court.

[66] Victims and their families rarely leave a courtroom feeling that justice has been done, especially as justice is commonly measured by the degree of punishment meted out by the judge. But you will note from the provisions of the *Criminal Code* that punishment is not mentioned; neither is vengeance. Sentencing requires a balancing between the interests of victims and society to keep everyone safe and secure, and to try to rehabilitate people who have committed crimes. Any mercy or leniency shown to the offender to encourage rehabilitation is viewed as an affront to the victims who seek, quite naturally, a measure of vengeance for what they have suffered or lost.

[67] Canada abolished the death penalty in 1967. Most advanced countries and most emerging countries like the Philippines have followed suit. The Philippines abolished the death penalty in 2006 and I understand the longest possible sentence there is 40 years' imprisonment.

[68] Lengthy parole ineligibility was introduced in 1967 as a measure to demonstrate that Parliament was still intent on treating murder as a serious crime warranting the most severe sentences. 25 years of parole ineligibility was then seen to be appropriate.

[69] That changed in 2011 with the enactment of section 745.51. *Hansard* is telling about the Government's intentions surrounding that Bill. The Bill is stated to be a response to public concerns about the devaluation of lives when sentences are not imposed for each murder victim. The judge is stated to be allowed to acknowledge each life lost.

[70] *Hansard* speaks of the need for denunciation and deterrence, but there is to my knowledge no body of research demonstrating that there is a correlation between harsher penalties and crime reduction. There is no body of research suggesting that a minimum of 25 years of imprisonment is not sufficient deterrence for multiple murderers. And there is no explanation as to why things needed to change after nearly 35 years under the previous laws.

[71] My reading of *Hansard* suggests that the Bill was intended to introduce a greater element of punishment on multiple murderers. It is addressed to victims, and appears to assume that victims of murder and their families will always be appearing at parole hearings to oppose the release of the offender, no matter what the circumstances. The specific acknowledgment of each life lost and punishment for each life lost enshrines a measure of vengeance and retribution. Those elements were previously absent from Canadian sentencing principles. But Parliament has that right, subject to respecting *Charter* imperatives, and there is no *Charter* challenge here to the legislation.

[72] One of the first principles of sentencing is parity, which requires a comparison with how other offenders have been sentenced for similar crimes in similar circumstances by similar offenders.

[73] I recognize that section 745.51 involves the exercise of discretion by the sentencing judge, and that discretion must be exercised in keeping with sentencing principles. There is, as yet, no appellate authority on this relatively new provision in the Criminal Code. There are only a small number of cases where the section has been applied across Canada. I am advised that ***Saretzky*** is under appeal, as is ***Klaus***. So the Alberta Court of Appeal will soon have the opportunity to weigh in and provide guidance to at least the Alberta courts.

[74] Until that happens, there is some uncertainty. It is in my view not possible to easily reconcile ***Klaus*** with ***Saretzky*** and ***Garland***. ***Baumgartner*** was a sentence resulting from a guilty plea and a joint submission, so has limited precedential value. It should be noted that in ***Baumgartner***, three lives were taken by the offender, and one victim suffered extensive permanent brain injuries. His sentence was life with no parole eligibility for 40 years.

[75] In ***R v Bourque***, 2014 NBQB 237, the offender was sentenced to 75 years of parole ineligibility following a guilty plea for killing three RCMP officers and wounding two others. He was described as an "incorrigible offender" and the Court discussed the need to account for "each lost life."

[76] In ***R v Ostamas***, 2016 MBQB 136, the trial judge accepted a joint submission for 75 years of parole ineligibility on a guilty plea for killing three homeless men. That case is of limited precedential value as it was the result of a joint submission. It is interesting that despite the offender's indigenous background, there was no discussion of ***Gladue*** factors in the decision.

[77] The offender in ***R v Garland*** was well into middle age, so parity with that case is not really a consideration there. It involved a horrendous crime involving a young child and his grandparents. In that case, it was unlikely that the offender would live to be considered for parole even if the ineligibility period was 25 years. Indeed, the *Hansard* objective of keeping a multiple

murderer in jail for the rest of his life would likely have been satisfied without the imposition of three parole ineligibility periods.

[78] ***Saretzky*** involved horrific crimes committed over an extended period of time. One of the victims was a child. The accused had five days between murders to contemplate his actions and he committed unspeakable acts.

[79] The cases cannot really be reconciled on the principles relating to concurrent and consecutive sentences as articulated by Macklin J in ***Klaus***. The killings in ***Baumgartner***, ***Bourque***, and ***Garland*** all occurred in the same "transaction."

[80] I do not think that it is particularly useful to dwell on the details of the individual murders. These are all horrendous crimes that clearly need to be denounced. The sentence must deter the offender from committing further crimes. To the extent that others might be deterred because of a strong, denouncing sentence, that is appropriate too. It is frequently necessary to separate the offender from society to keep society safe from the offender.

[81] But what section 745.51 misses is any consideration at all of rehabilitation of the offender. Rehabilitation is undoubtedly at the low end of importance in the context of 25 years of parole ineligibility, but it is non-existent with 50 years of parole ineligibility. In that regard, I find Macklin J's decision in ***Klaus*** highly persuasive.

[82] That said, I am not critical of the sentencing judges in the other cases closely on point. ***Baumgartner*** and ***Ostamas*** involved joint submissions. Garland was a middle aged offender who murdered an innocent child in a carefully planned murder. Saretzky murdered an innocent child after days of planning and deliberation following another murder. ***Bourque*** involved a planned ambush and murder of three RCMP officers in the course of their duties.

[83] As I stated above, sentencing is an individualized process and involves consideration of a myriad of factors. We trial judges have yet to have appellate guidance on the subject.

[84] And judges are human and not computers. Sentencing involves an analysis of human factors and sentences are not determined by an algorithm. All of the sentences passed in these various cases are justifiable on their facts.

[85] There are many similarities between the circumstances in ***Klaus*** and those in this case. There, the offenders were young men. Their crimes were motivated largely by financial gain. The victims were Mr. Klaus's family and the actual killer was essentially a hit man. The victims were shot. There are, of course, differences. The offenders in ***Klaus*** had no previous criminal records. They were not gang members. But there was no evidence of them having had difficult childhoods or having been physically and sexually assaulted as children. And neither of them was indigenous.

[86] In my view, there is more parity with ***Klaus*** than with any of the other cases.

[87] I find Macklin J's comments at paragraphs 76 to 81 particularly germane and insightful:

> [76] Mr. Klaus and Mr. Frank will receive sentences of imprisonment for life. Even if eligible to apply for parole at some point during their lives, neither one is guaranteed to obtain parole. It is difficult to imagine how an additional 25 or 50 years of parole ineligibility will do more to impress upon them the fact that they should not commit crimes in the future. The objective of individual deterrence, to the extent that it can be satisfied, will

be fulfilled through imposition of a sentence of life imprisonment. Even if parole is granted at some point, the strict control of the parole system itself serves the sentencing goal of specific deterrence. I am not satisfied that a period of parole ineligibility longer than 25 years would provide greater individual deterrence for these offenders.

[77] Ironically, imposing 25 years of parole ineligibility may do more to effectively deter Mr. Klaus and Mr. Frank from committing crimes while incarcerated than would imposition of 50 or 75 years of parole ineligibility. Individuals who have no hope of ever achieving release arguably have much less deterrent to committing further crimes while incarcerated. The prospect of potential release may therefore serve to protect inmates, corrections officers and anyone else who may come into contact with the offender, from potential harm. Further, a prospect of freedom may encourage an inmate to attempt to improve his prospects for parole through treatment and programs provided in the corrections environment.

[78] In other words, life sentences imposed on these offenders with no parole eligibility for 25 years will require them to conduct themselves in an exemplary manner and to successfully complete all recommended and available treatments so as to convince the Parole Board, at the appropriate time, that their imprisonment is no longer required to protect society: Ramsurrun at para 110.

[79] As for general deterrence, any fixed period of parole ineligibility reflects Parliament's view that a minimum period of physical confinement is necessary to advance the causes of deterrence and denunciation even if the offender was completely rehabilitated and posed absolutely no threat to society at the time of sentence: CAM at para 64.

[80] However, there is nothing before the Court to establish or even suggest that an increase in parole ineligibility beyond 25 years might play any real role in deterring members of the public from committing more than one murder, nor is it reasonable to draw such an inference. I would go so far as to suggest that it would be folly to think that a person pondering more than one first degree murder would be deterred from committing a second or third murder by the possibility of consecutive parole ineligibility periods.

[81] In my view, a life sentence achieves the objective of general deterrence in these cases. I am not satisfied that increased parole ineligibility assists in achieving the objectives of individual or general deterrence.

[88] At paragraphs 92 to 98, Macklin J commented on rehabilitation:

[92] I have found for these offenders that the principles of denunciation and deterrence are met by a sentence of life in prison with no chance of parole for 25 years. I must also consider the principle of rehabilitation along with other secondary principles and objectives enumerated in the Criminal Code.

> [93] As I discussed in relation to the principle of individual deterrence, there is social utility in allowing offenders to remain hopeful that they eventually will be released. A prisoner facing a period of parole ineligibility until very near or past his life expectancy will be left bereft of hope. A life wanting of hope can only leave one questioning the value of attempts at rehabilitation. Hope of eventual release logically encourages an individual to strive for rehabilitation.
>
> [94] The Report of a Committee Appointed to Inquire into the Principles and Procedures Followed in the Remission Service of the Department of Justice of Canada (Ottawa: Department of Justice, 1956) [the "Fauteux Report"] looked at the entire corrections system in Canada and recommended at 48-49:
>
> > At no time should any prisoner have reason to feel that he is a forgotten man.... Prisoners should have some hope that imprisonment will end and thereby have some incentive for reformation and rehabilitation.
>
> [95] I do not believe that other "exceptional remedies" such as the Royal Prerogative of Mercy, as discussed by the Court in R v Granados-Arana, 2017 ONSC 6785 (CanLII), [2017] OJ No 5964, truly provide offenders with a reasonable hope of eventual release.
>
> [96] In most criminal cases, once a sentence is imposed it falls to the Parole Board to further determine the date and conditions of parole eligibility. As noted, the CCRA now puts more emphasis than it previously did on the protection of the public and less on pure rehabilitation objectives and concerns. The decision-making process of the Parole Board under the CCRA is largely based on the ongoing observation and assessment of the personality and behaviour of the offender during incarceration to determine dangerousness and the offender's ability to re-enter the community: Zinck at para 19.
>
> [97] There was no evidence put forward that would support a finding that either Mr. Klaus or Mr. Frank is incapable of rehabilitation and therefore will be dangerous in 25 years.
>
> [98] The Parole Board would be in a much better position at that time to determine whether the public requires continued protection from Mr. Klaus or Mr. Frank.

[89] I also endorse Macklin J's "final comments" in paragraphs 118 to134. I will not repeat them here, but adopt his observations, with the sole comment that I could not have expressed these views better.

[90] My own comments are that mandatory periods of parole ineligibility are difficult if not impossible to reconcile with ***Gladue*** and ***Ipeelee***. How can a court give any consideration to ***Gladue*** factors and an offender's indigenous background when there is no discretion to do anything in sentencing to recognize these factors? The potentially-decreased moral culpability

arising out of ***Gladue*** factors becomes irrelevant. That is magnified in the context of a potential 50- or 75-year period of parole ineligibility.

[91] These mandatory periods of parole ineligibility are also inconsistent with the totality principle that seeks to avoid unduly harsh penalties. That problem is magnified by the arbitrary nature of section 745.51 in that the sentencing judge has no discretion as to the length of parole eligibility other than to set it in 25-year increments. It might be different if the sentencing judge had a discretion to increase parole ineligibility for a second or third murder by an amount to be determined by the trial judge. But there is no such discretion where the second or third murder is also first degree murder.

[92] In the result, I have concluded that the fit and proper sentence for Mr. Delorme is that he receive two life sentences for the murder convictions, but that they be served concurrently, including the 25-year parole ineligibility period.

[93] That means that he will be eligible for parole consideration when he is nearly 50 years of age. He will have had to earn parole through rehabilitation, accepting responsibility and displaying exemplary behaviour in prison. Even with those factors, release is not assured. Nevertheless, he is left with hope.

[94] I have greater faith in the National Parole Board than did Parliament in 2011. It appears then that they did not trust the Parole Board to keep dangerous people in jail. They will have the great benefit of hindsight as to how Mr. Delorme has actually acted over 25 years of incarceration. They are, in my view, in a far better position to view rehabilitation and public safety than am I, relying on a crystal ball into the future.

Closing observations

[95] It is ironic that included in the victims of Mr. Delorme's crimes are his family and in particular his own children. As he has deprived Cedric of a father and the love and support a caring father brings to his children, he has deprived his own children of the same. Yet Cedric has the memory of love and support in his childhood, while Mr. Delorme continues the cycle of dysfunction so prevalent in the indigenous community.

[96] This case has tragically impacted so many people. I hope the Cenabre family will not be too dismayed at the sentence imposed here. I hope they will be able to achieve a measure of reparation in Canada for their terrible loss. And I hope at some stage they are able to come to a measure of forgiveness for Mr. Delorme. Hatred and anger are a burden and a sentence to those who harbour them. But forgiveness must be earned and not given just because it is requested. Mr. Delorme has a minimum of 25 years to demonstrate that he has become worthy of some forgiveness. It has been said that forgiveness is a gift you give yourself, not the person forgiven. There is in my view great wisdom in that.

[97] I would be remiss in not commenting on the effective police work that resulted in the speedy apprehension of Mr. Delorme and his accomplices. Quick thinking on the part of the officers who attended at the 63 Avenue store in putting a plan together, and good execution of that plan resulted in prompt arrests without incident. That would have been much more difficult with the passage of time. Police are frequently criticized when their actions fail to meet public expectations, but they should be recognized and thanked when they meet and in many cases exceed expectations. This is one of those situations.

[98] I am grateful to Mr. Rauf and Mr. Watson for their professionalism throughout this difficult matter.

Heard June 4-8, 11-12, 18-22, 25-29, 2018 and December 10-11, 2018.
Delivered orally on the 11th day of December, 2018.
Dated at the City of Edmonton, Alberta, this 2nd day of January, 2019.

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J.C.Q.B.A.

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