

CITATION: *R v Toews*, 2024 MBPC 14

**THE PROVINCIAL COURT OF MANITOBA
Winnipeg, Manitoba**

BETWEEN

His Majesty the King	)	J. Negrea
	)	for the Crown
– and –	)	
	)	
Glen Toews	)	C. Schaan
	)	for the Accused
	)	
Accused	)	Reasons for Decision
	)	Delivered: February 8, 2024

DEVINE, P.J.

INTRODUCTION

[1] I convicted Mr. Toews after trial for assault cause bodily harm of his wife (*R v Toews*, 2023 MBPC 14). The Crown proceeded summarily and is seeking a sentence of 18 months to be followed by 18 months of supervised probation, citing the seriousness of the offence, the need for denunciation to be expressed, the offender’s high degree of moral culpability, and the limited mitigating factors.

[2] The defence is seeking a 90-day intermittent sentence, or a conditional sentence order (CSO) of between six and nine months if a jail sentence of longer than 90 days is required. The defence agrees that the jail sentence should be followed by 18 months of supervised probation. The accused did not have a criminal record before this conviction.

THE OFFENCE

[3] The offender and victim, who were mature adults, both retired, had been in a relationship for about seven years and then married about four years before separating. On the night of the offence, they were together at Ms. [REDACTED]'s home and discussing the potential for getting back together. When Ms. [REDACTED] insisted that Mr. Toews should have to make a financial contribution to her house if he intended to move back in, he exploded and became enraged, like he had on other occasions. Ms. [REDACTED] left the house for close to an hour and was surprised to find the offender still at her home when she returned. He had pulled things out of cupboards and strewn them around and was putting things in his truck in the attached garage. Ms. [REDACTED] confronted him, and he again became enraged, pushing her against the garage door then slamming her face into the wall of the garage. Ms. [REDACTED] is a petite woman; she weighed about one hundred pounds less than the offender at the time of the offence and is about a foot shorter than him. Mr. Toews is six feet, three inches tall and weighed about 215 pounds at the time. Ms. [REDACTED] blacked out for a moment and then remembered her face being slammed into the drywall. Her injuries were significant.

[4] After the assault she ran into the house and was in the bathroom. Her nose was bleeding profusely. She asked Mr. Toews to call an ambulance, but he said he could not do that and left. He was stopped by the police who were looking for him and he told them Ms. [REDACTED] had attacked him and he purported to show the police torn clothing and scratches on his face. His clothing was not torn, and he had no scratches.

[5] Ms. [REDACTED] suffered from a depressed fracture of her nasal bone, a deviated septum, two black eyes, the area between the upper lip and nose was heavily swollen and bruised, her upper chest was swollen and bruised, she had a reddened, swollen left cheek and neck, and lacerations and bruising to her left lower arm. She suffered

from facial pain and headaches for some time after. The area between her upper lip and her nose developed a lump; her dentist sent her to a dental surgeon who determined it was scar tissue. It took a year to resolve. She suffered from parasternal pain for some time when she coughed. Two weeks after the incident she lost a tooth related to mechanical force.

SENTENCING INTIMATE PARTNER VIOLENCE: THE RELEVANT SENTENCING PRINCIPLES

[6] The fundamental purpose of sentencing is to protect society and to contribute to respect for the law and the maintenance of a just, peaceful and safe society. This is accomplished by imposing just sanctions that have one or more objectives. The relevant sentencing objectives in this case are denunciation and deterrence, promoting a sense of responsibility in the offender, acknowledging the harm done to the victim and to the larger community, and rehabilitation. Section 718.2(a)(ii) of the *Criminal Code* requires that when the Court is sentencing an offence that involves the abuse of an intimate partner, primary consideration must be given to the objectives of denunciation and deterrence. Section 718.201 requires a Court sentencing an offender for abuse of an intimate partner to consider the increased vulnerability of women who are victims.

[7] Unfortunately, despite decades of legal and social changes that have shone the light on this ugly and hidden crime, it is still very, very prevalent. Our society cannot function optimally if men physically terrorize women they are married to, live with, or have children with, behind closed doors. This type of violence is insidious. Sentences that demonstrate that intimate partner violence is a serious criminal offence must be imposed.

[8] The Manitoba Court of Appeal only last week released a decision involving intimate partner violence in which Justice Mainella for the Court wrote:

Unfortunately, domestic violence is an all-too-common problem in our society. Such crimes are disproportionately gendered offences that have long-lasting negative

individual and systemic consequences. Courts have few tools to address this corrosive threat to social order; however, in clear and egregious cases such as this one, the message to offenders, victims and the public generally must be that such conduct will not be tolerated and the consequences for those who abuse their intimate partners will be significant (see *R v GGS*, 2016 MBCA 109 at paras 41-42 [*GGS*]).

[*R v Buboire*, 2024 MBCA 7 at para 35]

[9] The facts in *Buboire* are far more egregious than in this case; it involved years of sexual violence as well as physical violence. The sentencing principles however are the same.

[10] A CSO would trivialize the magnitude of this offence – both Mr. Toews’s offending behaviour and the experience that Ms. [REDACTED] endured. It would not be in line with the principles of sentencing these types of offences and ultimately would not be fit and appropriate. As the Crown observed, while advances have been made in recognizing and addressing domestic violence, it remains just as serious today as in 1990 when *R v Lavallee*, [1990] 1 SCR 852 was decided, and in 1997 when the *Lavoie* inquiry report was produced (see *The Study of Domestic Violence and the Justice System in Canada - Commission of Inquiry into the Death of Rhonda Lavoie and Roy Lavoie - a study of domestic violence and the justice system in Manitoba*, report of the Honourable Mr. Justice Perry W. Schulman, Commissioner, June 27, 1997).

[11] In the case of *R v Donnelly*, 2010 BCSC 1786, which has been referred to and cited numerous times in the jurisprudence, Justice Joyce stated:

Spousal assault is a very serious matter, and a sentence for a serious spousal assault must impress upon the offender and others the abhorrence with which society ought to view violence committed in a person’s home. All persons have a right to feel safe within their home, from their spouse, as well as from strangers. If it is to act as a deterrent to others, the sentence for a serious spousal assault must impress upon others who might be inclined to engage in similar conduct that, if they are convicted, they will receive a punishment that is more than simply a partial denial of one’s liberty.

[at para 28; cited in *R v Hildebrandt*, 2015 BCPC 130 at para 70]

[12] A CSO would rarely be an appropriate sentence for a violent intimate partner offence. Counsel filed several cases which articulate the reasons for that. In *R v*

Thomas, 2016 BCPC 87, filed by the defence, *Donnelly* was again relied on for the proposition that a CSO is not an appropriate sentence in cases involving intimate partner violence (at para 121, citing *Donnelly* at paras 32-33):

It is my view that a conditional sentence in this case would not adequately address the principles of denunciation and general deterrence. A conditional sentence that would enable the offender to carry on with his daily life, going to work, watching his television, sleeping at home, subject perhaps to a curfew forcing him to remain in his home during the evening and night-time hours, would not, in my view, send the message that spousal assaults are considered serious. Even a condition akin to house arrest would not, in my view, serve as an adequate deterrent.

In my view, this case demanded a sentence that informs others that if a spouse allows a domestic dispute to develop into physical violence, that spouse will face serious consequences. I believe that a sentence of incarceration was appropriate.

[See also *R v Rose*, 202 ONCJ 381 at para 49; *R v CTH*, 2022 BCPC 90 at paras 76, 84 and 93.]

[13] Ultimately, the sentence must be proportional to the gravity or seriousness of the offence and the degree of moral culpability the offender had in committing the offence.

PROPORTIONALITY: THE GRAVITY OF THE OFFENCE

[14] The photos of the victim showing her black eyes, the swollen area between her mouth and nose, and the bruising and redness on her body, are demonstrative of the violence and brutality of this offence. The much taller and fitter Mr. Toews, in a rage, attacked his much smaller wife. The attack and injuries were exacerbated by his post-offence behaviour which demonstrated a chilling lack of concern and lack of remorse. Rather than help his bleeding and injured wife, he told her he would not call an ambulance and instead left, and then lied to the police, alleging that she attacked him.

[15] The victim chose not to file a victim impact statement because she is eager to move on in her life. She found the trial very difficult, particularly the cross-examination, which left her feeling like she had done something wrong. She did not want to retraumatize herself.

[16] After the attack, she moved away from Winnipeg to be nearer to her family because she was afraid the offender would “come back and try and finish the job”. When Ms. [REDACTED] spoke those words during her testimony, her fear was palpable.

[17] The injuries sustained by the victim were significant both physically and emotionally.

**PROPORTIONALITY: THE CIRCUMSTANCES AND MORAL
CULPABILITY OF THE OFFENDER**

[18] Mr. Toews is 63 years of age and does not have a criminal record.

[19] Unlike almost every presentence report (PSR) that comes before the court, the only person interviewed for the purpose of the report in this case was the offender. That is because he refused to provide the PSR writer with contact information for the numerous people in his life. It is concerning that Mr. Toews has chosen to keep this offence a secret. He declined to allow the PSR writer to contact his sister, his new intimate partner, long-time friends, or anyone, because he sees it as a “delicate and personal” and “extremely private” matter and does not want to trouble them or expose his sister and current intimate partner to “trauma”. This demonstrates no understanding of the nature of the offence he has committed, no insight, no empathy and bodes very poorly for any rehabilitation – and it contributes to the problem of intimate partner violence.

[20] This is not an extremely private matter. That minimizes the crime. It is a crime codified in the *Criminal Code of Canada*. It was publicly adjudicated in a public court to which the public has access, and the decisions of the court are public.

[21] It is also concerning because he apparently has a new female partner in his life.

[22] It also means that the only information the Court has about Mr. Toews is what he has told the PSR writer. It is not corroborated or balanced by any information from his family, new partner, friends, acquaintances, and former co-workers. Given

the adverse credibility findings about Mr. Toews I made at trial, I therefore accept the information in the PSR with some guardedness.

[23] He grew up in Winnipeg with his parents, and sister who is one year older than him. His parents have now passed. He graduated from high school and completed one year of Electronic Technology at Red River College. He worked in construction as a very young man and then commenced his employment with the Canadian National Railway Company until his retirement at age 58. He worked as a train conductor for 35 years. He apparently loved his work and is financially stable, with a full pension. He has never used illegal drugs and drinks alcohol only occasionally. He has four close friends with whom he cycles, golfs, attends concerts, visits, watches hockey and attends social gatherings. He has been a member of the Manitoba Historical Society for the past 10 years and regularly attends meetings and discussion forums online. He is a member of the Winnipeg Mandolin Orchestra. He regularly attends meetings at the Ukrainian Labour Temple and is a member of the Transcona Golf Club.

[24] Even where there have been convictions after trial, some offenders demonstrate insight, empathy, or remorse for their crimes. This offender did not. The PSR writer stated that Mr. Toews took no responsibility for his actions in committing this offence and showed no empathy for the victim, Ms. [REDACTED].

[25] He told the PSR writer that he does not trust the justice system, which he denied he told the PSR writer at the sentencing hearing. He also told the PSR writer that the justice system is biased, and he believes himself to be a victim of that system. He specifically requested a male probation officer to interview him for the PSR. At the sentencing hearing, the defence advised that Mr. Toews said that these were not his exact words.

[26] He has no criminal history. Although he was considered by the PSR writer as a low risk to reoffend, I take that with some caution, given Mr. Toews's decision

and efforts to hide the crime from all the people in his life, even after conviction in a public court of law. His perspective on this crime of intimate partner violence which he views as “extremely personal” raises red flags for his current and any future intimate partners.

[27] Although the case of *R v Hepburn*, 2013 ABQB 520, dealt with another type of crime also hidden from the public – child sex abuse – the observations of Justice Jeffrey are *apropos* to intimate partner violence and this case:

These crimes are committed by people from all walks of life, out of the public eye, clandestinely and secretly, often to the surprise of people who thought they knew the perpetrator best. It cannot be that because of a person's abundant good deeds and potential for societal contribution that they are given a free pass on a crime against another, that they can in a secret double life victimize the vulnerable of our society with impunity.

[At para 37; cited in *R v Pettitt*, 2021 ABQB 773 at paras 141-142.]

[28] The moral culpability of the offender is very high.

[29] He was a well-established, successful, engaged member of the public with an unremarkable childhood and youth. He had an excellent career and now enjoys a retirement with full pension and has an active life with friends and colleagues in an impressive breadth of activities. He suffers from no addictions. There is no information about any mental health difficulties.

[30] He decided to physically assault his wife, a much smaller woman, and badly injured her. That act violates the normative rules of Canadian society to resile from resorting to physical violence when we are angry or upset, and to beat our intimate partners, particularly when they are much smaller and female. The consequential harm to Ms. [REDACTED] was significant.

[31] There is nothing in Mr. Toews’s background that would tend to reduce his moral culpability.

OTHER RELEVANT SENTENCING PRINCIPLES, SECTION

718.2 Aggravating factors (section 718.2(a))

[32] As I indicted at the beginning of this decision, it is statutorily aggravating that the victim was his intimate partner, (*Criminal Code* section 718.2(a)(ii)), and that the offence had a significant impact on her (section 718.2(a)(iii.1)).

[33] His callous disregard for the victim when she asked him to call an ambulance is aggravating.

[34] His size compared to her size is aggravating.

[35] The fact this occurred in her home is aggravating.

Mitigating Factors (section 718.2(a))

[36] This is a sentencing after trial, so the mitigating factor of a guilty plea is absent. Mr. Toews's attitude towards the offence and insight into his offending behaviour is concerning.

[37] He does not have a criminal record, and has had a long productive life of work, an active social circle and family support. The fact he did not violate any of the conditions of his release is positive.

Parity (section 718.2(b))

[38] Subsection 718.2(b) of the *Criminal Code* requires that:

[A] sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[39] The defence filed three cases which can be distinguished because they all involved guilty pleas. That is a significant factor. The impact of having to testify in an intimate partner abuse trial was demonstrated in this case. Ms. [REDACTED] advised that the experience of being cross-examined left her feeling that she deserved the assault and injuries she received. The mitigating effect of a guilty plea in circumstances like this one cannot be underestimated.

[40] In *R v Ranspot*, 2017 BCPC 101, the Crown proceeded summarily and sought a suspended sentence and probation. The defence sought a discharge, which was

granted. The facts and offender are completely distinguishable. There was an agreed statement of facts before the sentencing judge. The female complainant provoked the physical interaction and initially the offender was defending himself. It was not clear how the complainant's injuries were sustained, and the offender was also injured. The offender had long-standing alcoholism issues preceding and at the time of the offences. He stopped drinking and immediately sought counselling after the assault and was actively engaged in treatment (see paras 23 to 26) and counselling (see para 9). He was extremely remorseful. He had significant support from friends and business associates who provided letters of support and were all aware of the guilty plea to assault causing bodily harm (see para 27). None of those factors are present here.

[41] In *Thomas*, the 23-year-old first-time offender pleaded guilty. He was an Indigenous man from the Fort Nelson Slavey First Nation and suffered from many traumas associated with being an Indigenous person, including severe alcoholism and substance abuse. In imposing the CSO, the sentencing judge placed significant weight on the *Gladue* factors affecting him and contributing to the offence, as well as his guilty plea, heartfelt remorse, age, lack of record, and the efforts he had made since his arrest. He had full support from his family, who, again, were fully aware of the charge. He had also been in custody the equivalent of 4 months, which was subtracted from the 12-month CSO imposed.

[42] Finally, the defence filed *R v Daley*, 2021 ONSC 2282, where at paragraph 70 the Court outlined the reasons that a CSO was an appropriate sentence in that case, being remorse, rehabilitative potential, family support and stringent bail conditions for significantly longer than in this case. Again, the offender's family was aware of the offences and supportive.

[43] None of the factors reducing the offenders' moral culpability or mitigating the sentences in these cases are present in Mr. Toews's case.

[44] The Crown argued that the only fit sentence in this case is a sentence of incarceration, because it involves intimate partner violence, because of the seriousness of the injuries and because of Mr. Toews's intractability, lack of remorse, lack of insight and attitude that he has done nothing wrong, and that the offence should remain a secret from everyone in his life. The Crown stated trenchantly that the lack of insight and remorse holds no promise for rehabilitation, as follows: "If you are a person who reacts with anger and violence in a relationship, the chances of change if you don't accept there is a problem in the first place are very low."

[45] The Crown filed several cases involving assaults causing bodily harm where the injuries were comparable to the injuries in this case and where custodial sentences were imposed.

[46] There was only one case filed by counsel from this jurisdiction, *R v Cleroux*, 2017 MBQB 156. The offender was convicted after trial of three counts of assault with weapon, two counts of assault cause bodily harm, one count of assault, and one count of forcible confinement. ACJ Perlmutter sentenced him to three years in totality; 10 months on one of the counts of assault cause bodily harm most similar to the facts in this case. He took into consideration the offender's Indigenous heritage and his expressed willingness towards rehabilitation.

[47] The case of *R v Hildebrandt*, 2015 BCPC 130, involved a similar attack and similar injuries, where the offender knocked the victim down and then slapped and punched her on the head for about two minutes. Her nose was broken, eyes were swollen, and she had a soft tissue injury under her eye. The offender had a prior conviction for domestic assault, but it was dated, being 11 years earlier. He expressed remorse in court. He also sought a CSO. Relying again on *Donnelly* case, Justice Young declined to impose a CSO. A nine-month jail sentence was imposed.

[48] In *R v Buhara*, 2019 QCCQ 3129, the offender pled guilty to assault cause bodily harm and forcible confinement. The injuries were a concussion and dislocated jaw. The considerable size difference between the parties was noted in that case and several others. The sentence was 18 months concurrent on both charges. Judge Galiatsatos included in his decision several other cases on which the Crown relies, including *R v STM*, 2004 BCPC 430 where the 21-year-old offender received a sentence of two years (see *Buhara* at para 105). He also referred to *R v Cawston*, [1994] BCJ No 373 (BCCA), where the accused had no record, was steadily employed, and pleaded guilty. The injuries were a concussion, a fractured rib, contusions, abrasions and swelling, and a chipped tooth. There were attenuating circumstances in the offender's life which he had been addressing during the presentence period, including alcohol counselling, and he appeared to be motivated and open. The Court of Appeal confirmed the 12-month custodial sentence.

[49] Judge Galiatsatos also attached a lengthy appendix of intimate partner sentencing decisions which demonstrate that although a range of sentences have been imposed in these cases, many have resulted in significant jail sentences. Some of the decisions are dated. No two cases are identical. I have noted decisions where the injuries were similar to the injuries in this case and where the accused did not have a criminal record.

- In *R v Paterson*, [1998] BCJ No 109 (BCCA), the 36-year-old first time offender slapped and punched his girlfriend in the face, tangling his rings in her hair, such that she struck her head on the vehicle and then was thrown out of the vehicle. On a second occasion, he kicked and punched the victim and threatened to kill her. The victim weighed between 90 and 120 pounds. The accused was assessed as having a strong, narcissistic sense of self. He was sentenced to 18 months jail.

- *R v Lutes*, 1994 ABCA 409, involved a particularly vicious assault which was apparently an isolated instance. The offender was 45 years old with no prior convictions, and the offence was out of character. He received a sentence of 18 months which had been reduced from two years on appeal.
- In *R v Newdiacznyi*, [1995] AJ No 433 (ABCA), the offender had one prior assault conviction for which he had received a fine. He had grabbed his wife by the throat, slapped and headbutted her twice. Like this case, he prevented her from going to the hospital and slapped her twice again. She received a bruised eye, lips, and throat. He was sentenced to 15 months in jail.
- In *R v Minute*, [1996] NWTJ No 12 (NWTCA), the 61-year-old prominent businessman with no record, punched, kicked and pulled the hair of his wife in public. She was hospitalized for over two weeks. His sentence was 12 months reduced on appeal from 15 months.
- In *R v VPP*, [2006] NJ No 41 (NL PC), the offender was angry at his wife for having stolen his money. He hit her in the face and held her onto the bed. He tore the telephone wires when she threatened to call the police. The victim suffered from bruising and a bloodied face. The offender was 54 years old, with no prior convictions for crimes of violence. He had been raised in a turbulent home with an abusive alcoholic parent. He expressed remorse. A 10-month jail sentence was imposed.

SENTENCE

[50] The dark history of wife abuse has been brought to light over the past 60 years, with the resurgence of the modern women's movement in Canada, the shelter movement, and changes in the law, recognizing the "everywhere" of domestic violence against women. It was a secret for a long, long time. Unfortunately, this offender wants to keep it a secret.

[51] This sentence must reflect the objectives of denunciation and deterrence, both specific and general. The facts in this case are aggravating because the victim is a woman and was the offender's intimate partner, because of the size difference between the offender and victim, the fact that the offence took place in her home, and that he refused to call an ambulance, choosing instead to walk away. The victim's injuries and the harm to her have been significant and long-lasting. The offender's attitude towards the offence and the victim is very concerning; he exhibits no insight into the offending conduct, no remorse, and no empathy. His prospects of rehabilitation are non-existent when he sees himself as the victim and refuses to let anyone in his life know about this offence, including refusing access to any of his collaterals for the purpose of the PSR.

[52] There are essentially no mitigating factors in this case, only aggravating factors.

[53] I recognize there is some place for restraint, particularly where the offender does not have a criminal record and has never been incarcerated. And the overarching principle of proportionality ensures that an offender is not punished more than necessary (see *R v Nasogaluak*, 2010 SCC 6 at para 42). The CSO and an intermittent sentence of 90 days are wholly disproportionate to the seriousness of this offence and the high moral culpability of Mr. Toews. The 18 months sought by the Crown, while not overly excessive, may be more than is *necessary* to fully give expression to the necessary objectives of denunciation and deterrence in this case.

[54] The sentence will be 12 months of incarceration to be followed by 18 months of supervised probation.

[55] In addition to the mandatory conditions for the probation order, the following discretionary conditions are imposed:

- Report to probation services within two business days of your release and then as directed by your probation officer;

- Do not contact or communicate with [REDACTED] directly or indirectly, except through counsel for the purpose of family court proceedings;
- Do not attend within 200 meters of [REDACTED]'s home, workplace, place of worship or anyplace she regularly attends;
- Attend, participate and complete counselling as directed by a probation officer, including counselling on the issues of healthy relationships, anger management, and intimate partner violence;
- Do not own or possess any weapons.

Ancillary Orders

[56] The following ancillary orders are also made, pursuant to the *Criminal Code*: - 10-year weapons prohibition, section 110 for 10 years.

- Primary, section 487.051(1) DNA order, to be taken while in custody.
- No contact or communication with [REDACTED] while you are in custody, section 743.21(1).

[57] Costs and the victim surcharge in the amount of \$200 are payable within six months of your release.

Original signed by Judge Devine
Cynthia A. Devine, P.J.