

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *R. v. Gabriel*, 2017 NSSC 90

**Date:** 20170329

**Docket:** CRH No. 431738

**Registry:** Halifax

**Between:**

Her Majesty the Queen

and

Kale Leonard Gabriel

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**Sentencing Decision**

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**Judge:** The Honourable Justice Jamie Campbell

**Heard:** January 4, 2017 in Halifax, Nova Scotia

**Written  
Decision:** April 3, 2017

**Counsel:** Rick Woodburn and Tanya Carter, for the Crown  
Geoffrey Newton and Brandon Rolle, for the Defence

**By the Court (Orally):**

[1] Kale Gabriel was found guilty by a jury in the murder of Ryan White. The sentence is life imprisonment. The issue is the determination of the period of parole ineligibility.

**Summary**

[2] Kale Gabriel is both African Nova Scotian and Mi'kmaq. In addition to a *Gladue* Report, a Cultural Impact Assessment was prepared to provide insight into how he was affected by cultural and racial factors. The Cultural Assessment provided important information to enable the court to consider the context in which this crime took place.

[3] The case falls within the first category of second degree murder described by the Court of Appeal in *R. v. Hawkins*<sup>1</sup>. That would require a sentence of between 10 and 15 years of parole ineligibility. The fact that this was a murder committed using a handgun, by a person who brought it to a location where he provoked a confrontation, takes it outside the lower end of that first category. The victim was not a vulnerable person and there was not a notable level of viciousness or depravity. Kale Gabriel himself, while not merely a victim of his own circumstances was a very young man who came from a troubled background. The case does not reach the very higher end of that first category. The period of parole ineligibility is set at 13 years.

**Ryan White**

[4] Ryan White was murdered in 2010. His family still deeply feels the pain of his loss and always will. As his mother says, there is no closure. His father remembers him as a young man with a big radiant smile that could turn into a smirk.

[5] People often speak about “justice” for the victim. There will be no justice for Ryan White in this. No sentence imposed on the man who killed him will restore him to his family. No sentence will in any way repair the damage that has been done to the soul of a community that feels the pain, anger, grief, and frustration of

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<sup>1</sup> 2011 NSCA 7.

having some of its young men killed and some of its young men sent to jail. No sentence will undo what has been done or heal that wounded soul.

[6] A criminal sentence is not a memorial to the victim.

### **The Sentence for Second Degree Murder**

[7] The sentence for second degree murder is life imprisonment. Life imprisonment means just that. Under that sentence, Kale Gabriel will never be a free man. The most he can hope for is, at some point in his life, to be granted parole. He may be released from prison but he will never experience freedom in the way that other people do.

[8] The decision now is not even about when he will be granted parole. It is about when he can first apply for it. Section 745(c) of the *Criminal Code* says that when a person has been convicted of second degree murder he will serve a sentence of life imprisonment without eligibility for parole until he has served at least ten years of the sentence. Under s. 745.4 the sentencing judge can substitute a longer period of parole ineligibility up to 25 years, having regard to the character of the offender, the nature of the offence, the circumstances surrounding its commission, and any recommendation made by the jury.

### **The Sliding Scale**

[9] Murder is always a serious offence. Identifying gradations of seriousness with respect to murder could be interpreted as valuing the lives of some victims over others. The sliding scale of parole ineligibility for second degree murder reflects the various degrees of moral culpability that attach to those who commit that serious crime.<sup>2</sup>

[10] The considerations to which the judge is to have regard are not closely defined. The character of the offender, the nature of the offence and the circumstances of the commission of the offence are not limited in their scope except by “the boundaries of linguistics and logic.”<sup>3</sup> Those considerations have to be informed by the purposes and principles of sentencing as set out in the *Criminal Code*. Parole ineligibility is part of the punishment for the offence and it engages consideration of the overall framework of sentencing. That must be done

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<sup>2</sup> *R. v. Shropshire*, [1995] 4 S.C.R. 227.

<sup>3</sup> *R. v. Ryan* 2015 ABCA 286, para. 49.

recognizing that the decision is about eligibility to apply for parole at least ten years in the future at which time an assessment of risk and rehabilitation potential will be undertaken.

[11] Section 745.4 of the *Criminal Code* establishes a range for the period of parole ineligibility. It starts with reference to a ten-year period. It does not indicate that the ten-year period is either a presumption to be rebutted or a minimum reserved for the least morally culpable offenders. The Supreme Court in *Shropshire* did indicate that an extension of parole ineligibility will not be unusual though it may be that in the median number of cases, ten years will still be the period imposed.

[12] That suggests that while the ten-year period of parole ineligibility is not a presumption to be rebutted it is a broad category within which a significant number of cases may properly fit.

[13] The reasoning process has to manage the tension between predictability of outcome and transparency of reasoning on one side and the recognition of nuance and flexibility on the other. The concern expressed by Justice Wakeling of the Alberta Court of Appeal in *R. v. Ryan*<sup>4</sup> is that many sentencing decisions feature “modest if any analytical dimensions”.<sup>5</sup> They are nothing more than a conclusory statement followed by the recital of sentencing purposes and principles. The reader never knows what impact various principles had on the outcome. On the other side of the debate Justice Picard in that case noted that discretion is broad because the potential for variation of facts, both aggravating and mitigating is “as large as human behaviour can imagine”.<sup>6</sup> Concepts cannot be compartmentalized into discrete and closed lists of components and there must be room for nuance and ambiguity.

[14] The character of the offender, the nature of the offence, the circumstances surrounding the offence, and the recommendation of the jury each have to be considered while having regard to the purposes and principles of sentencing. The process is not to rebut a presumption of the ten-year minimum parole ineligibility period but to determine the appropriate period acknowledging the reasonably broad scope of cases for which that period is the proper response.

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<sup>4</sup> 2015 ABCA 286.

<sup>5</sup> Para. 79.

<sup>6</sup> Para. 47.

## The Offence

[15] It must be inferred that the jury did not accept that the defence of self-defence raised a reasonable doubt as to Kale Gabriel's guilt and did not accept that there was a reasonable doubt as to whether the gun that killed Ryan White was discharged by accident. Section 724 of the *Criminal Code* provides that in a sentencing after a jury trial the court must accept as proven all facts, express or implied, that are essential to the jury's verdict of guilt and may find any other relevant fact that was disclosed by the evidence at trial to be proven. A court must not accept as fact any evidence that would be consistent only with a verdict that was rejected by the jury. The judge is not expected to follow the logical process of the jury when the factual implications of the jury finding are ambiguous but must come to his or her own independent determination of the relevant facts.

[16] Kale Gabriel and Ryan White were second cousins (*Gladue* Report, page 18) but there was a personal conflict that came between them. It went back to an incident that happened in 2005. Kale Gabriel made a police statement that resulted in the conviction of Michael Smith. He was labelled a "rat". Ryan White and others confronted and harassed him about that when they were together in the Nova Scotia Youth Facility at Waterville.

[17] By 2010 Kale Gabriel was selling crack in the Mulgrave Park area. Ryan White found out about it and became threatening. He showed Kale Gabriel that he had a gun. One of Ryan White's associates, the late Stacey Adams, also approached Kale Gabriel with a gun making threats regarding drug trafficking in the area. Kale Gabriel got a .357 calibre revolver for his protection. Kale Gabriel's concern for his safety was not unreasonable. The threat arose less from his reputation as a "rat" arising from an incident 5 years before, than from Ryan White's objection to the intrusion on what he perceived as his territory.

[18] On the day of the murder there were three different interactions between Kale Gabriel and Ryan White. In the morning, they saw each other and Ryan White had a baton and his brother Dakota White had bear mace. The parties went their separate ways. In the afternoon Kale Gabriel came across Ryan White who had a sawed-off shotgun. Kale Gabriel approached Ryan White and showed him the gun that he had just got. Again, they went their separate ways. The interactions were tense but did not erupt in physical violence. Kale Gabriel was not hesitant about showing Ryan White that he was armed and prepared to stand his ground.

[19] That night, Kale Gabriel believed that Ryan White and some of his friends were at an area locally known as Blaze Up where people would hang out. It is just a set of stairs by the side of a building. It's quite close to the home where Kale Gabriel lived with his children and their mother. He was told that there were two people down at Blaze Up putting on masks.

[20] Kale Gabriel left his home with some friends to go down to Blaze Up. He said that his intent was to confront Ryan White. He wanted to resolve the issue with a fist fight. But Kale Gabriel had his loaded gun stuck inside the waistband of his pants. He said that the .357 handgun was missing the trigger guard. He felt that it was likely that Ryan White would have his gun as well. He would not have known that for sure but it is significant that Ryan White had shown him a gun earlier in the day.

[21] When Kale Gabriel and his associates arrived Ryan White and a few others were just hanging out at Blaze Up. There was nothing that would suggest that they were on their way to his home and they did not approach Kale Gabriel's group.

[22] Kale Gabriel initiated the physical fight with Ryan White by kicking him in the head. Ryan White engaged in the struggle and managed to get his arms around Kale Gabriel. In the course of that fight, Kale Gabriel intentionally shot Ryan White, causing his death.

## **Background**

[23] Kale Gabriel was born in 1988. He's now 28. When Ryan White was killed in 2010 Kale Gabriel was 22 years old.

[24] There are three reports that outline his background: a Pre-Sentence Report, a Cultural Impact Assessment, and a *Gladue* Report. They each provide different levels of detail. The Cultural Assessment focuses on historical and community issues and was the result of somewhat limited contact with Kale Gabriel and collateral sources. The *Gladue* Report provides an in-depth and highly detailed history of the extended family.

[25] Kale Gabriel was born in Yarmouth. His parents, Ruth Osborne and Leonard Gabriel were never married and separated when he was two years old. He lived with his mother after the separation. He had limited contact with his father. Kale Gabriel took the separation of his parents very hard. He reported how his father

never bothered with him and how he was disappointed as a child that his father never showed up for important events in his life.

[26] Kale Gabriel moved with his mother and two brothers to Hamilton, Ontario when he was about 6 years old. The family stayed there with his mother's new boyfriend Ward Sims only for about a year until they came back to live in Nova Scotia. The move to Hamilton was said by Ruth Osborne to have come about after she saw another child in the neighbourhood sexually molesting Kale. After confronting the other child's family there was no more discussion about it and they moved to Hamilton, Ontario to limit exposure to the other six year old.

[27] The family lived in Hamilton until Ward Sims "fought with a Jamaican" and they moved back to Digby, Nova Scotia to avoid retaliation. They stayed there for about a year and eventually that relationship ended when Ms. Osborne caught Ward Sims smoking crack. The family then returned to Yarmouth.

[28] Kale Gabriel recalled seeing his father Leonard Gabriel in Yarmouth sporadically when he was between 10 and 15 years old. His father would be hanging around the playground selling drugs.

[29] Kale Gabriel was diagnosed with ADHD when he was around age 7 or 8 and was on medication until he was in Grade 7 or 8.

[30] Kale Gabriel's mother was actively involved in his life. His brother Kane Gabriel described Ruth Osborne as being both father and mother to them. He said that their mother instilled a good work ethic in her sons. Both brothers said that she was a very strong woman. There is nothing to suggest that she was abusive, or neglectful.

[31] Ruth Osborne describes Kale Gabriel as "respectful, kind, helpful and sentimental." He was doing well in school until he got to junior high. His mother believes that he was in Grade 7 or 8 when he started drinking, smoking marijuana and breaking into cars. By Grade 9 he was skipping so many classes that he stopped going to school at all and dropped out before finishing Grade 10. He made several attempts to finish high school through the Dartmouth Work Association and the Nova Scotia Community College. He did not succeed.

[32] Kale Gabriel reported that the criminal reputations of his father, his uncle and his older brother created problems for him in Yarmouth. He said that it resulted in additional scrutiny from school officials and he says caused some of his

bad behaviour in school. He began getting closer to his father and his father's family at this time and saw his father more as a friend than as a father figure. His brother said that Kale Gabriel was chasing the "father son dream" and loved his father.

[33] Kale Gabriel spent some time at the Waterville Youth Facility. He had been convicted of offences that included break and enter. Kale Gabriel recalled that when he returned from Waterville his mother's rules were enforced even more strictly. She stopped letting him hang out with certain people.

[34] From the time Kale Gabriel was 11 or 12 up until 2009 Ruth Osborne was in a relationship with John Borden. She said that things were good for a while but he became possessive, jealous and violent. When he was 15 Kale Gabriel saw John Borden stab one of his mother's friends in the chest 8 times on one occasion. He said that it was traumatic and had he not pulled John Borden off the other person he would have killed him. John Borden was sent to jail for the offence.

[35] Kale Gabriel was also a victim of serious crime when he was only 15 years old. His older brother Kyle was then a well-known successful crack dealer who was making a lot of money. While Kale Gabriel was babysitting his two-year-old niece, three men from Dartmouth arrived to confront his brother Kyle. They confined everyone in the home and threatened to kill them. The men eventually left after stealing what they could. Ruth Osborne insisted that Kale Gabriel make a police statement. As referenced above, that resulted in Kale Gabriel being labelled a "rat" and there were threats of retaliation.

[36] Kale Gabriel moved to Halifax. He met Juanita Jordan when he was 18. He soon moved into her home and they have been in a relationship ever since. They have two children together and she had two children from before they were a couple. Juanita Jordan described Kale Gabriel as a good dad and a good boyfriend who is slow to anger. She said that he never took money from her and "the kids were priority". He didn't go out much as was not a "drinker".

[37] The couple moved from Dartmouth to Mulgrave Park after someone made inquiries in the neighbourhood about Kale Gabriel. He believed the person to have been Michael Smith, the man who spent time in jail for confining and assaulting him when he was 15. Just after that someone shot at his mother's home and he believed it to have been the same man or someone sent by him.



[38] For the first year and a half in Mulgrave Park things were relatively uneventful. Kale Gabriel started selling crack in and around the area near his home. He had limited education and limited marketable employment skills. He worked in a fish plant and later with Maritime Demolition. Most recently he was with two temp agencies and picked up a job cleaning a naval ship. He worked for a while as a short order cook and dish washer. With limited education and job experience he had almost no ability to provide for his family, who relied on Juanita Jordan's social assistance. He had sold crack before in Yarmouth and he felt the financial pressure to start bringing in an income.

[39] Kale Gabriel said that Ryan White showed up when he found out that he was selling crack. He says that he was put under pressure to sell for Ryan White. He says that he tried to avoid Ryan White but would not call the police. He had no confidence that calling the police would be of any benefit at all to him and said that involving the police was what got him labelled a "rat" in the first place. It is not entirely difficult to understand that a person might be hesitant to involve the police when the complaint or concern involves threats made by one drug dealer to another over perceived territorial rights.

[40] Kale Gabriel called "someone" and got a handgun for protection.

[41] Ryan White was shot the next day.

[42] Because Kale Gabriel is both African Nova Scotian and Mi'kmaq two reports have been prepared.

### **Cultural Impact Assessment and *R. v. Gladue***

[43] A cultural impact assessment was prepared by Lana MacLean, MSW, RSW. Ms. MacLean was qualified by consent as an expert to give opinion evidence regarding racial and cultural factors specific to an African Nova Scotian individual and to provide culturally appropriate recommendations for the court to consider at sentencing.

[44] Ms. MacLean met with Kale Gabriel and obtained information from two identified collateral sources, his mother and an education advocate. The stated goal of the assessment is to provide the court with a context similar to what might be provided in what has come to be known as a *Gladue* report. The Supreme Court of

Canada recognized in *R. v. Gladue*<sup>7</sup> that there are mitigating factors and historical circumstances that should be considered when sentencing aboriginal offenders. Ms. MacLean notes:

It is not this writer's intention to exploit or expropriate historical or present day struggles for equity and justice that Aboriginal communities have righteously fought and advocated for; rather this writer aims to provide the court with a similar framework to explore and contextualize the historical and social realities of the historical African Nova Scotian (ANS) communities.

[45] Aboriginal people in Canada have a unique constitutional position. Other disadvantaged groups have suffered systemic discrimination and have felt the multigenerational impacts of racism. Those have to be redressed. But those moral responsibilities cannot be legally equated with constitutionally enshrined obligations that arise from the Crown's special relationship with aboriginal people. *Gladue* reports arise from that special relationship.

[46] Section 718.2(e) of the *Criminal Code* establishes as a principle of sentencing in criminal matters that all available sanctions, other than imprisonment that are reasonable and consistent with the harm done should be considered for all offenders, "with particular attention to the circumstances of Aboriginal offenders." The Supreme Court in *Gladue* found that the section was intended to ameliorate the serious problem of overrepresentation of aboriginal people in prison. It was to encourage sentencing judges to consider a restorative approach and to consider the unique systemic and background factors that brought Aboriginal offenders before the court.

[47] The court made it clear that the intent was not to automatically reduce a prison sentence for aboriginal offenders. The sentence imposed depends on a number of factors and all of those factors have to be considered.

[48] In *R. v. Ipeelee*<sup>8</sup> the Supreme Court affirmed the special sentencing approach that applied to aboriginal offenders. While systemic factors may not justify a different sentence for an aboriginal offender they provide a context for considering information about that person. In some cases an aboriginal offender may receive a sentence that is less than the sentence imposed on a non-aboriginal offender.

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<sup>7</sup> [1999] S.C.J. No. 19.

<sup>8</sup> 2012 SCC 13.

[49] Aboriginal offenders are treated differently. The Cultural Assessment in this case does not have the same constitutional implications as a *Gladue* report. But that doesn't mean it isn't vitally important. It is a historical fact and present reality that African Nova Scotians were and continue to be discriminated against. As the criminal justice system must take into account the overrepresentation of Aboriginal people in custody, it must also take into account the effects of discrimination on members of the African Nova Scotian community.

[50] As my colleague, Judge Derrick noted in *R. v. "X"*<sup>9</sup> citing the Ontario Court of Appeal in *R. v. Q.B.*<sup>10</sup> black offenders now account for 9.5% of the total federal prison population while representing only 2.9% of the Canadian population. The underlying reasons for the overrepresentation of Aboriginal offenders – poverty, substance abuse, lack of education, lack of employment opportunities and dysfunctional communities – could also be factors in the overrepresentation of African-Canadians. As Judge Derrick said, the Ontario Court of Appeal viewed the consideration of such factors as a legitimate undertaking for a sentencing judge but also said that the matter should be assessed at trial where the evidence can be tested and its relevance to the offender can be explored.

[51] Some of the principles from *Gladue* are applicable to a racial and cultural group that has been the subject of such notorious centuries long systemic discrimination. It is important to know about the systemic and background factors that bring any person before the court for sentencing. That is particularly so when they relate to members of a group that is disproportionately represented in the prison population, disproportionately economically disadvantaged, disproportionately disadvantaged in education, and disproportionately disadvantaged in health outcomes.

[52] The purpose is not to justify a discount with respect to an otherwise appropriate criminal sentence. In a community wracked by violence and struggling to find ways to deal with the complex web of causes that have its young men being killed or sent to jail, it would be wrong to suggest that there should be a lowered standard of moral responsibility. The purpose of the Cultural Assessment is not to justify lower expectations or to offer excuses. It is to provide some level of understanding.

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<sup>9</sup> 2014 NSPC 95.

<sup>10</sup> [2003] O.J. No. 354.

[53] Sentencing involves attention to both incident and context. The seriousness and devastating consequences of a crime are considered in the context in which it was committed. The context may be narrow and it may be broad. The context may involve the capacity for moral judgment or regulation that is diminished by immaturity or intellectual deficit. Those are both examples of context that are easily related to the individual and the crime that he committed. A background of family dysfunction and childhood abuse may, in part, form the person who committed the crime and despite sometimes being less obviously related to the offence are widely considered as part of the relevant context in sentencing. What may be otherwise inexplicable may become understandable with the benefit of that contextual information.

[54] A person's racial background is also a part of his identity. It does not determine his actions. It does not establish a lower standard for assessing moral culpability. It does not justify or excuse criminal behaviour. It may however help in understanding the broader circumstances that acted upon the person.

[55] That is why the Cultural Assessment is both a fascinating and a challenging document. It provides information that makes it harder, not easier, to reach a conclusion. That is a good thing. The challenge comes from acknowledging the role that race plays in the prevalence of violent crime among young African Nova Scotian men while not falling into racist traps. It is hard to read because at every turn one has to question where the line is drawn between these general conclusions and generalizations based on assumptions from race.

[56] The Cultural Assessment is not a single simple answer to a complicated question. It does not suggest that Kale Gabriel was destined by his race or his circumstances to find himself here. Like the *Gladue* report it provides important context and raises as many questions as it answers.

[57] Sentencing judges struggle to understand the context of the crime and person being sentenced. To do that judges rely on our own common sense and understanding of human nature. Sometimes that isn't enough. Our common sense and our understanding of human nature are products of our own background and experiences. An individual judge's common sense and understanding of human nature may offer little insight into the actions of a young African Nova Scotian male. The Cultural Impact Assessment serves as a reminder of the fallibility of some assumptions based on an entirely different life experience.

[58] It is such a significant document that it should be summarized in some detail.

### **The Cultural Impact Assessment**

[59] Lana MacLean provides a very brief history of the African Nova Scotian experience. The province has been home to an indigenous black community for about 400 years. Systemic racism has been part of their experience for the entire time. The members of that community who are most disenfranchised, stereotyped and criminalized are young black men and boys. They are failing and dropping out of schools at an increasing rate while increasingly are incarcerated and involved in criminal activity. Ms. MacLean notes the growing agreement that social factors are part of the root causes of criminal behaviour. Those factors include race, cultural experiences, and worldviews.

[60] Ms. MacLean says that it is important to appreciate the connection between Kale Gabriel's ethnicity and his psychological development. His racial identification, as an African Nova Scotian male has shaped his "maturation, development, racial formulation, and gender identification". It has played a role in his academic standing, mental health status and exposure to trauma and traumatic events. Ms. MacLean reports that over the past 20 years gun violence in African Nova Scotian communities has become more prevalent. The focus of that violence has shifted from settling "beefs" or interpersonal disagreements involving fist fighting, to "manning up" in reaction to being "dissed". This means inflicting serious injury in response to challenges to one's manhood. "Dissing" are acts of disrespect in relation to one's manhood and they are seen as requiring a serious response.

[61] The records of the Halifax Police show that there have been 10 unsolved homicides of young black men in HRM since 2000. Seven of those happened between January 2000 and June 2016. Between April and May of 2016 HRM's black communities were on high alert with six shootings, four of which resulted in deaths of young black men. These were all Kale Gabriel's "cohorts". Ms. MacLean makes a chilling statement. "Death by gun violence has ultimately become normalized and acceptable within a subsection of the African Nova Scotian community. Death is regarded as an expected outcome in settling disputes."

[62] Gun violence is being recognized as a public health and safety issue. Ms. MacLean questions whether the community is not only experiencing a public health crisis but also a mental health crisis. The social and cultural context of the

lives of people who encounter gun violence requires mental health experts to consider the variations of post-traumatic stress disorder that may be present. Ms. MacLean notes that criminal acts, and the consequences of criminal acts have been “normalized within urban Black male culture”. That normalization is essentially a coping strategy “to combat the daily micro racial aggression experienced by young Black males.” She suggests that the normalization actualizes itself in characteristics such as poor anger control, poor impulse control, increased hyper vigilance, and apathy/low mood. Symptoms like those in the non-black community are perceived as evidence of mental health issues but when present in black males, society shifts its focus to social pathology. The behaviour of the young black male is criminalized “with little comprehension of the social and psychological impacts of racism on these individuals.”

[63] Ms. MacLean says that within the African Nova Scotian community black males continue to face an increase in black on black crime and high levels of PTSD with no capacity to address the internalized oppression that affects their mental well-being. That internalized oppression develops through adverse childhood experiences, “vacant esteem” and “coolness posturing”.

[64] Young black men are chronically exposed to gun violence. Negative images of black maleness arise from social media and popular culture but also in the more immediate context such as “generational internalized racism” and family and community expectations. The negative images are also furthered by systemic racism and limited access to secure employment and social opportunities. Adverse childhood experiences prevent black male children from perceiving the world as a safe place.

[65] By the time young black males mature into adolescence, their worldview is shaped by those adverse experiences and they develop adaptive cultural practices to survive. Individuals may come into an environment on “high alert” which shapes responses to certain situations. “In other words, constant alertness and guardedness is part of a Black male’s fundamental development: From an early age, many Black males learn to ‘vet’ their surroundings.”

[66] Frequent exposures to adverse childhood experiences combined with chronic exposure to criminal activity and limited social supports results in a kind of personal development that is “informed through a lens of nihilism and ‘vacant esteem’.” Vacant esteem refers to a primary esteem along with a feeling of hopelessness, depression and a general self-destructive outlook. It is marked by a

propensity for anger and violence and an extreme feeling of suspicion. It is a form of deep running despair. Many young black males have seen poverty, violence, and degradation and are less afraid to die than they are to live.

[67] “Vacant esteem” involves a pattern of behaviour known as “coolness” or the “cool pose”. It is a strategy that many black males use to cope or make sense of their daily lives. As a mask it may contribute to dropping out of school, sliding into drug or alcohol abuse, and being sucked into criminal street gangs. It is a survival strategy that has an enormous price. It hides deeper vulnerabilities. It is a reaction to stress and a contributor to stress.

[68] The “cool pose” stance is often reinforced through mainstream movies and gangsta rap. They glorify the ability to remain undaunted in the face of gun violence, confrontations, money, substance abuse, and misogynistic behaviors. Ms. MacLean observes that the cool pose has specifically affected the development of the black male consciousness and identity roles. Many are exposed to things like hard-core rap at a vulnerable time in their social development. It contributes to normalizing and glamourizing drug culture and gun violence.

[69] Through his interviews Kale Gabriel showed that he was taking on the “cool pose”. He spoke of “holding it down” and “steppin’ up his game” when he felt threatened. He talked about maintaining the “street code” and of not ratting out others. He described his behaviour as “changing up” when he would go home to his wife and children. Ms. MacLean suggests that his capacity to shift his thought process and behaviour roles spoke to cognitive dissonance. He has two opposing perceptions of individuals and events. She says that it is a skill that many black men must master to balance their expected roles in the community which typically places a high value on relationships, family and community.

[70] These cognitive defences arise within the sub-culture of criminal activity within the African Nova Scotian communities. Previous traumatic experiences and tense environments in some communities have resulted in black men using “adaptive psychological practices as a defence mechanism”. The example is that a man may carry a concealed gun as a result of his worldview. His adverse childhood experiences have taught him to carry a weapon, his “vacant esteem” encourages him to believe that he will inevitably encounter violence, and his “cool pose” requires him to be armed. The legacy of racism reinforces that he, not the police, is responsible for his armed protection and the normalization of gun violence in his community normalizes his possession of a gun. “Ceasing to carry a weapon is

equivocal to dropping a key defensive mechanism, and places this individual at greater risk within the criminal subculture.”

[71] Ms. MacLean addresses the issues of race and the relationship with the health care system. She asserts that there is little clinical support to address the mental health needs of the black community in Nova Scotia. The health care system has made efforts to create health-equity throughout the province but systemic inequality remains. She says that few services are available to address the culturally-relevant, complex mental health and wellness needs of the black community.

[72] Kale Gabriel’s history of contact with mental health professionals dates back to his childhood. He was diagnosed with ADHD by a psychiatrist in Yarmouth when he was seven years old. He was prescribed drugs which his mother stopped giving him because she was concerned that she didn’t want him to become addicted. His mother said that teachers and others simply judged him to be a bad kid rather than a kid who needed help.

[73] Ms. MacLean reports that within the black community in Nova Scotia there is a stigma associated with mental health issues. Historically black parents and communities would shelter or restrict family members to the confines of the community where irregular behaviours were ignored or rationalized. This was due in part to the lack of access to services. Many black Nova Scotians still avoid seeking treatment out of fear of being harmed or mistreated by the system. Ms. MacLean says that these realities explain some of the distrust that Kale Gabriel’s mother felt toward the health care system.

[74] With regard to education Ms. MacLean notes that reports increasingly show that indigenous African Nova Scotian learners continue to fail academically at rates higher than white children. The education achievement gap has continued to increase even after it was identified in 1994. A disproportionate number of black students receive suspensions from school.

[75] Kale Gabriel was described as a “bright and smart child”. But he had the Gabriel last name. That didn’t refer only to his older brother but to his father, his uncles and others in the community. The Regional Educator for the Black Educators Association (South West Region) said that Kale Gabriel didn’t have a chance to be successful in school. The systems that were recommended for him were not implemented. When he failed, he internalized that failure and got into mischief instead. Once that happened, the police became involved and he was



labelled because of his family name. “School didn’t engage, care about or support him. It fails black learners. Kale was a boy who wanted to learn and this, I think, turned into anger, and he became hopeless, and he was only in Grade 6. He was 12 or 13 years old.”

[76] It’s hard to find a job with a Grade 9 education. But employment discrimination is not based only the physical differentiation of race. Geographic residence, civic address and last name appear to hinder black men, as well as others in low income communities, from securing employment opportunities.

[77] The temptation to enter the world of criminal activity “largely arises as a result of these poor employment opportunities.” Access to quick money prompts desperate or hopeless people to engage in criminal behaviour. Young black men and boys are actively recruited for participation in criminal activities.

[78] Ms. MacLean also addresses the issue of racism and its impact on the family. Ms. MacLean says that Kale Gabriel’s disrupted, disconnected family ties demonstrate the legacy of familial displacement and contemporary disruption of black families. His mother has aboriginal ancestry. Both she and Kale Gabriel have had little connection and have little knowledge of their aboriginal culture.

[79] Kale Gabriel’s mother reported that she was raised in “too many foster homes to count” from the time she was two years old. She also reported a history of abuse.

[80] Kale Gabriel’s description of his family revealed to Ms. MacLean a worldview that is shaped by his role as protector to his immediate family.

[81] Ms. MacLean comments as well on the impacts of systemic racism on African Nova Scotian communities. “The legacy of racism in Nova Scotia also impeded the development and establishment of healthy communities and neighbourhoods for the African Nova Scotian population.” She references the expropriation of land at Africville and the creation of developments such as Uniacke Square and Mulgrave Park, which she describes as “disenfranchised communities” that inherited community displacement as part of their creation narrative. “Well established, vibrant Black communities such as Africville were completely demolished. The relocation of those residents drastically impacted the community and neighbourhoods.”

[82] Ms. MacLean's comments on the changing values and norms within the African Nova Scotian community are thought provoking.

The relocation of communities resulted in a shift of values and norms amongst African Nova Scotian neighbourhoods. Long-held collaborative and community practices, many of which served as protective factors in the lives of children became more difficult to enact. Youth had much more limited access to elders and community leaders. For example, the destruction of the church in the community of Africville generated spiritual woundedness throughout the population, and deprived the community of a collaborative gathering space. Hope was replaced with hopelessness. Hoarding of community members into public housing stripped individuals of the pride of home ownership, which they had maintained in their own community. Young people witnessed the undoing of their parents' hard work, as homes were simply mowed down.

The removal of collaborative gathering spaces, customs, and traditions produced a population of Black children who no longer had meaningful rites of passage through the community. With the absence of regular access to community leaders, young people sought guidance from cultural icons and derogatory demonstrations of Black culture. The manner in which one contributed to his or her community were drastically altered: Criminal activity and gun violence became the new means of employment, purpose, and survival.

There is a colloquialism in the Black community that, "prisons are the new plantations." There is a steady increase of Black men being incarcerated in Canada. Young men are engaging in crime, and disappearing from their communities, either by way of death or imprisonment. Communities are experiencing the loss of a generation through gun violence and crime.

[83] It is in that context that Ms. MacLean offers the perspective that Kale Gabriel might "hold the position of both victim and perpetrator from the lens of the cultural impact assessment." Many of his choices and behaviours have been influenced by "systemic racism and psychosocial cultural and historic variables."

[84] The conclusion of the report affirms that its purpose is to provide the court with "awareness as to the criminogenic elements of how race and culture have contributed to Mr. Gabriel's charge and conviction of murder." Ms. MacLean notes that the report was not written to "alleviate Mr. Gabriel of his charge, but to provide reasonable understanding of Mr. Gabriel's psycho-social cultural etiology". She says that:

This etiology framed and shaped intrapersonal acts of violence that have brought Mr. Gabriel before the court for sentencing. No single variable or event is comprehensive enough to address the social factors that influenced Mr. Gabriel's

development. The court may wish to conceptualize the impacts of race, culture, and crime, as a complex web with many pathways and reasonable outcomes in its sentencing of Mr. Gabriel.

[85] The Cultural Assessment does not purport to be an in-depth study of the personality of Kale Gabriel. It contains observations with respect to the experience of African Nova Scotians that may not apply to him individually. Ms. MacLean spoke to Kale Gabriel himself for 4 hours and accepted what he said as truthful. She did not speak to his teachers or his parole officers. In that sense the assessment has its limits.

### **Use of the Cultural Impact Assessment**

[86] The Cultural Assessment confronts the concern about crime generally and gun violence specifically in African Nova Scotian communities. It offers a sociological and historical explanation for troubled communities where some young men have adopted values and norms that frequently lead them to violent crime. The root is the racism that has developed into branches of educational inequality, social inequality and economic inequality.

[87] All Canadians are equal before the law. But all Canadians are not equal in the sense of having equal opportunities. The barriers are not official ones. They are perhaps more pernicious because they can be made to seem like a natural and inevitable part of how a society is structured. Black men are incarcerated in disproportionately high numbers. That is not an inevitable reality. There are reasons why that is the case. Those reasons have to be identified in order to be addressed.

[88] That discussion involves a risk. If it is accepted that young African Nova Scotian men are disproportionately incarcerated and accepted that there are historical and cultural explanations other than a justice system that disproportionately targets them for arrest or disproportionately convicts them for offences with which they have been charged, it raises uncomfortable questions that have to be confronted. Does it mean that the rate of violent crime among young black men is greater than among other young men? Does that mean that young black men are more likely to be involved in violent crime? At what point does an explanation based on the shared experience of a racial or ethnic group feed the stereotypes that give rise to racist assumptions?

[89] An individual African Nova Scotian male like Kale Gabriel is entirely capable of making moral decisions. To the extent that he is relieved of some degree of responsibility or is considered to have in some way diminished moral responsibility based on his experience as an African Nova Scotian male he is treated less as an independent moral agent than someone else. Members of some communities would then be seen as products of their social and cultural environments who are acted upon by forces beyond their control, while others would be held to a standard of individual moral responsibility. If the decisions and actions of an individual African Nova Scotian male are “explainable” with reference to the experience of the community of which he is a part, the same presumably is true of everyone else. The lawyers, the judge and the writer of the cultural impact assessment are all members of communities that have shaped their attitudes and perceptions of the world. Kale Gabriel is not an object who is acted upon by other forces being assessed and judged by those who unlike him make determinations rising above and independent of those kinds of forces.

[90] Those questions are why a Cultural Assessment with respect to an African Nova Scotian offender serves such an important purpose. It does not provide a justification for a lighter sentence. Like a *Gladue* report it might prompt the consideration of restorative justice options where those are appropriate. It doesn't position the offender as helpless victim of historical circumstances.

[91] It does serve to disrupt some comfortable certainties. It prompts a judge to struggle with difficult questions for which there may not really be entirely clear answers. The offender is an individual capable of exercising his free will in making decisions about his life. At the same time and like everyone else, his world view is shaped to some extent by his experiences in the community of which he is a part. There is a tension between those things and the Cultural Assessment serves as a reminder of that tension. The Cultural Assessment is a reminder that moral judgments are always complicated.

[92] Sentencing is not a balancing. Synthesizing might be better word. It is not a matter of weighing one factor favouring a lighter sentence against another that favours a harsher one. It is a matter of bringing together a number of considerations some of which may compliment each other, some of which may militate toward different outcomes and some of which may help to inform and provide context for the others.

## ***Gladue Report***

[93] Many of the same concerns apply to the consideration of the *Gladue* report. That report was prepared by Robin Thompson, BA, JD, with the Mi'kmaw Legal Support Network.

[94] Kale Gabriel has not identified with his Mi'kmaw heritage. He has been estranged from it. But it is still very much a part of who he is. It informed his upbringing and the attitudes of his family.

[95] The Mi'kmaq in Nova Scotia have been subjected to discrimination since the time of the first European contact. The report provides a brief history of the more recent dislocations of the Mi'kmaq. Between 1942 and 1949 2,100 Mi'kmaq living in about 20 locations were pressured to relocate to communities now known as Eskasoni and Sipekne'katik (formerly known as Indian Brook.) The report notes that relocation affected the lives of Mi'kmaq in Nova Scotia more than any other post Confederation event. It's social, economic and political effects are still felt today. People's lives were disrupted and it destroyed the ability of people to be economically self-sufficient.

[96] The residential school policy was part of what the report, and others, refer to as cultural genocide. In 1920 it became mandatory for Aboriginal children between the ages of 7 and 15 to attend one of the residential schools. The policy separated them from their families and minimized and weakened family ties and linkages. That was its intent. The Shubenacadie School was opened in 1922 and was closed in 1968. It was intended to accommodate Mi'kmaw children who were considered underprivileged, orphaned, neglected or who just lived too far away to permit them to attend a day school. The consequences of the residential school policy and the effects of the residential school in Shubenacadie are still felt today.

[97] Kale Gabriel's great grandmother Viola Mitchel attended the Shubenacadie Residential School. As a young adult, she became an alcoholic and her family was seriously compromised. All of her children and all of her children's children were taken into foster care. They lost their connection with their culture.

[98] The report also touches on the African Nova Scotian experience as well. In 2011 the Black population was 2.3% of the total population in Nova Scotia. Unlike other provinces the legacy of slavery remains tangible in Nova Scotia with Black communities still living in segregation. Anti-black racism has been described as pervasive in this province.

“Black Indians” face particular identity challenges. Often the colonization process displaces the Black Indians from their connection to an Indigenous community and their ability to develop a relationship with land. Within Black communities identifying as a Black Indian can be perceived as an attempt to claim “some sort of light-skinned privilege.”

[99] Like the Cultural Assessment the *Gladue* Report provides an insight into the historical and cultural factors that form part of Kale Gabriel’s identity. He has not identified with his aboriginal heritage but it is still a part of who he is. The dislocation of his family, his great grandmother’s time in residential school and the multigenerational disruption of the family have had an impact on his family and on the way that Kale Gabriel was brought up. There are ways in which he is a product of the residential school system.

### **Circumstances of this Case**

[100] The murder of Ryan White was not planned but it was an intentional act. It involved a handgun. Kale Gabriel went with the intent to confront Ryan White and made the conscious decision to take a gun with him. He took his friends with him assuming that Ryan White was also armed. This was not a bar fight that got out of control. Kale Gabriel sought out Ryan White and had a gun and some friends with him when he did that.

[101] The two were not strangers. There had been a history between them. While Kale Gabriel was not acting in self-defence it is clear that in his mind it had come down to an altercation between himself and Ryan White. The insights from the Cultural Assessment provide a better understanding of his behaviour. Acting in accordance with the norms of behavior within a criminal subculture cannot be seen as a mitigating factor in sentencing. Given the tension between the two young men it would be understandable though that Kale Gabriel would assume that a violent confrontation was going to happen and that he had better make it happen on his terms. While calling the police might have been the logical response for some people, Kale Gabriel’s response of getting a gun and confronting Ryan White is at least more understandable in light of his background and his place in the community. The refusal to relocate or to back down in the face of potential violence again is more understandable in light of the culture of male bravado of which he was a part.

[102] This murder took place in the context of guns and drugs. When those factors are present there must be consideration given to the importance of denunciation of

the crime and deterrence of other offenders. Kale Gabriel was carrying a loaded handgun and was prepared to use it. Whatever efforts are made to eradicate violence in the community, people cannot feel safe in their community when young men carry dangerous, loaded, illegal handguns, stuffed in the waistbands of their pants.

[103] This was not a case of callous and depraved violence. It involved one gun shot. It was not a case in which a person was beaten or stabbed to death. Sentences are not imposed based on some perceived value of the life of the victim. Some victims are not valued over others. The moral culpability of the offender is an important issue and the assessment of moral culpability or blame involves some consideration of the extent to which the offender departed from accepted standards of behaviour. Murdering a person because of that person's race or gender or sexual orientation involves an increased level of depravity, not because of the "value" placed on the life of the victim but because of the motivation of the person who commits the crime.

[104] Ryan White, as the victim of this crime, was unarmed but he was not weak and vulnerable. The motive, to the extent that it can be determined, was not based on any personal characteristic of Ryan White. It does not appear to have been jealousy, greed or personal gain.

### **Character of Kale Gabriel**

[105] As noted in the Pre-Sentence Report, the Cultural Impact Assessment, and the *Gladue* Report, Kale Gabriel experienced dislocation and family dysfunction. His own perception of his childhood as being relatively stable is perhaps a comment on his diminished expectations rather than reality.

[106] His mother was there for him. That is true. Ruth Osborne was strong and made her expectations known to her three sons. Kale Gabriel was not a person who grew up without any moral guidance. He was not physically abused. But did witness very serious physical abuse and addiction within the family. As a child he saw his father dealing drugs at the playground in Yarmouth and dealt with the troubled family reputation.

[107] His older brother Kyle is no longer dealing drugs. He has been able to make what his mother described as a 180 degree change in his life. He is now successful as a personal trainer, actor and model. His younger brother Kane works as a baker

in Vancouver and has no criminal record at all. Kale Gabriel was not predestined for trouble. He made his own choices.

[108] He has limited education although he has made efforts to improve that while he has been in jail. Young people have diminished regulatory and judgmental capacity. Because of that they are held accountable by the criminal justice system in different ways than adults. Often young adults set a trajectory during their adolescent years that limits their choices as they mature. Following the story of Kale Gabriel's life it is hard to identify the time when he could have made a fresh start.

[109] He has been in trouble from a young age. His *Youth Criminal Justice Act* and *Criminal Code* records show a history of repeated offences, involving break and enter, robbery, assault, and numerous breaches of court orders. Kale Gabriel is not a young man who has made one terrible misjudgment and is now held accountable for it. He lived in a criminal subculture and adapted to the standards of that subculture. This crime came about, in part, because of that involvement.

[110] Kale Gabriel has expressed regret at the fact that Ryan White is dead. He has not expressed remorse in the sense of taking responsibility for his actions. Ms. MacLean provided some insight into the complexities of expressing remorse in a way that reflects the loss to the community as whole. More directly however, Kale Gabriel has not pleaded guilty to this offence. He has every right to maintain his innocence and his assertion of that right cannot be used against him in sentencing.

### **Jury Recommendation**

[111] Five jurors recommended a period of parole ineligibility of the minimum ten years, one recommended 15 years and the others made no recommendation at all. That recommendation cannot be used to attempt to guess the jury's reasoning. The jury were given specific instructions on the factors that they were to consider in making the recommendation. Those factors would not permit inferences to be made as to the reasoning process that the jury used to reach the conclusion it did regarding Kale Gabriel.

### **Sentencing Principles**

[112] In determining the period of parole ineligibility a judge must consider the nature of the offence, the circumstances surrounding the offence, the character of the offender, the recommendations of the jury, and also apply the general purposes



and principles of sentencing. Individual deterrence is not applicable in light of the sentence of life imprisonment.<sup>11</sup> General deterrence is. The principle can be rightly criticized in the sense that in respect of many crimes the perpetrators do not engage in a risk benefit analysis weighing the potential penalty as part of the calculation. Harsh sentences are not the solution to a community problem that has a complex set of root causes. Yet, failing to hold those responsible accountable for their actions in a full but measured way would count as a failure to act with respect to the most proximate of causes.

[113] The members of the community in which this murder happened have as much right as anyone else to live in peace and safety. They have a right to be supported in their search for solutions. The criminal justice system has an obligation to deter those who believe that some neighbourhoods are their turf or their battleground. A murder cannot be seen as somehow less of a concern because it takes place in Mulgrave Park.

[114] Sentencing involves elements of denunciation and retribution as well. It is important that crimes of violence be treated in a way that reflects society's abhorrence at the taking of the life of another person. Punishment for a crime is not an outdated concept.

[115] The *Criminal Code* provides that the use of a firearm in the commission of an offence is an aggravating factor in sentencing.

[116] The sentence imposed must be similar to sentences imposed upon similar offenders for similar offences in similar circumstances. That is the principle of parity. Judges cannot ignore case law in sentencing and rely only on principles. The principle of parity is a principle grounded in fundamental fairness. It serves as a check against the outlier. A person should not receive a sentence that departs from a normative standard established in case law.

[117] That doesn't mean that a judge is bound to impose a sentence identical to the one imposed in another similar case. It is not a form of particularly rigid *stare decisis*. It means that the principles should be applied in a way that is consistent in the result.

[118] The sentencing outcomes in other cases are based on the application of sentencing principles to the facts of those cases. Judges usually do not assign

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<sup>11</sup> *R. v. Hawkins* 2011 NSCA 7.

specific weights to factors that have been identified as being relevant to the determination. For example, an impulsive act with a gun may or may not generate a longer sentence than a less impulsive act with a knife. The murder of a stranger may sometime be an aggravating factor and sometimes a mitigating one. The review of the case law does provide a range of reasonable sentences but the unique circumstances of each case prevent it from being used to establish “the” sentence to be imposed.

[119] In *R. v. Hawkins*<sup>12</sup> the Court of Appeal accepted the categorization of parole eligibility into three parts. The first category of 10-15 years is reserved for those offenders for whom the prospects of rehabilitation appear to be good and little would be served by extending the period of parole ineligibility other than to further the sentencing objectives of denunciation and retribution. The third category of 20-25 years is reserved for the worst offenders who commit the worst offences. The category between 15-20 years is for those who do not fall into either of the other two.

[120] The review of the case law confirms the view taken by counsel that the appropriate range for parole ineligibility in this case is between 10 and 15 years. A sentence at either end of that range would not offend the principle of parity.

[121] I have reviewed the cases provided by counsel and those set out in detail by my colleague Justice Rosinski in *R. v. Beaver*.<sup>13</sup> There is no case that is so similar to this one and no set of common circumstances from the various cases that would establish a sentence more precisely than the range itself defines.

## **Sentence**

[122] Kale Gabriel shot Ryan White to death with a gun. While there is an element of impulsivity, in that the murder occurred directly in the context of a physical fight, the circumstances surrounding the murder suggest that choices were made by Kale Gabriel that led to the death of Ryan White. He acquired a handgun and kept it loaded and in his possession. On the night of the murder he didn't avoid contact with Ryan White. He left his house and went to confront him. He came seeking a confrontation. He said he wanted to fist fight but he had a gun and believed that Ryan White had one as well.

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<sup>12</sup> 2011 NSCA 7.

<sup>13</sup> 2014 NSSC 10.

[123] There had been a history of personal animosity but the immediate circumstances involved a turf dispute about drug dealing. The issue with Kale Gabriel having provided a police statement when he was 15 had not reached this direct level of violence until Kale Gabriel got himself involved with dealing crack in Ryan White's territory. However many layers of causes are peeled back the fact is that this was a murder, with a gun, by a person involved in the illegal drug trade in circumstances where he took the loaded gun, looking for a fight with the eventual victim.

[124] Kale Gabriel is not a person of otherwise good character who had a moment of bad judgment. He is not someone who has led an exemplary life of selfless service to family or community or even a life that was focused on bettering his own circumstances in a pro-social way. He is not even a person who has largely just kept to himself, done little and avoided trouble.

[125] The *Gladue* Report and the Cultural Impact Assessment broaden the context from the more proximate causes toward ultimate ones. Kale Gabriel was a drug dealer with a gun but he didn't become that by a single act of free will. Family violence and criminality were a part of his family life. They were not all of it though. He was not left without moral guidance and had a mother who took a strong and active role in his life. His education was compromised to some extent by his identification and self-identification with his background. He began to identify himself with a criminal lifestyle and adopted attitudes and behaviours that were consistent with that. That was a series of choices. He made them. But they are also a product of his background and his environment.

[126] His decision to remain in Mulgrave Park, to get a gun rather than to call the police and to seek out the confrontation with Ryan White make no sense at all unless they are considered in light of his background. With that context they are no more justifiable but they are capable of being understood on some rational level.

[127] Kale Gabriel has made some efforts to improve his circumstances with education while in jail. He seems to have not given up on himself. At the time of Ryan White's murder he was a young man of 22 whose regulative and judgmental capacity was limited by his age. The crime was not motivated by any characteristic of Ryan White and he was not a person who was weak or vulnerable. The murder was not characterized by intense brutality or depravity.

[128] A period of parole ineligibility for ten years would not be enough to denounce this crime, punish the offender and deter those who see disadvantaged

communities like Mulgrave Park as their turf. The full complex web of causes of gun crime have to be addressed but failing to provide a serious criminal justice response to murders like this one is not a way to do that. The community cannot tolerate crack dealers armed with guns resolving their disputes on the streets.

[129] The response to that concern must be a measured one. The case does not fall within the lower end of the first category of 10 to 15 years but comes within the higher range of that category. It does not however reach the full 15 years.

[130] The period of parole ineligibility is then set at 13 years. The ancillary orders for DNA and a lifetime weapons prohibition will be granted. The victim fine surcharge is waived.

[131] Kale Gabriel's counsel have asked that the warrant of remand be endorsed to enable Kale Gabriel to serve his sentence in Ontario to be closer to his family and to require that he be provided with culturally appropriate counselling with respect both his Aboriginal and African Nova Scotian heritage. That endorsement will be made.

[132] Counsel have also asked that Kale Gabriel have access to educational upgrading and any other programming that might be beneficial to his rehabilitation. That endorsement will be made as well.

Campbell, J.