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Docket: A-1-AP-2023-000 001

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HIS MAJESTY THE KING

-and-

EMRAH BULATCI

Corrected judgment: A corrigendum was issued on July 10, 2025; the corrections have been made to the text and the corrigendum is appended to this judgment.

MEMORANDUM OF JUDGMENT
SCREENING OF FAINT HOPE APPLICATON - S. 745.61 *CRIMINAL CODE*

I) INTRODUCTION

[1] On October 7, 2007, the Applicant shot and killed Cst. Christopher Worden in Hay River, Northwest Territories. He was charged with first degree murder and elected to be tried by a jury. At the start of his jury trial, he offered a plea of guilty to the lesser offence of manslaughter. The Crown did not accept that plea and proceeded to trial. Ultimately, the jury convicted him of first-degree murder.

[2] On November 19th, 2009, the Applicant was sentenced, as mandated by the *Criminal Code*, to life imprisonment without eligibility for parole for 25 years. He now applies, pursuant to s. 745.6 of the *Criminal Code*, to have a jury empanelled to hear his application to have his parole ineligibility period reduced.

[3] Applications made pursuant to s. 745.6 are commonly referred to as "faint hope applications". The legislative framework that governs these applications was first introduced in the *Criminal Code* 1976 when capital punishment was abolished. Since then, it has been amended a number of times.

[4] The regime contemplates a two-step process. The first step is a screening stage: the application is reviewed by a judge, on the basis of a written record, without *viva voce* evidence or an oral hearing. The task of the screening judge is to determine whether the applicant has shown, on a balance of probabilities, that there is a substantial likelihood that the application will succeed. *Criminal Code*, s.746.61(1). If so, a jury is empanelled to hear the application.

[5] Before I turn to the Application itself, I wish to address a procedural and jurisdictional issue. This Application was filed in the Court of Appeal for the Northwest Territories. I am a Deputy Judge of the Supreme Court of the Northwest Territories. If this Application is to be dealt with in the Court of Appeal, I do not have jurisdiction to hear it. But in my view, this Application must be dealt with in the Supreme Court of the Northwest Territories.

[6] I expect the confusion arose because at its initial stages, there is a slight difference in how the regime operates in the three northern territories, as opposed to the provinces.

[7] Section 745.6(1) requires the Application to be made to "the appropriate Chief Justice". Section 745.6(3) defines who "the appropriate Chief Justice" is for these purposes. In the ten provinces, the appropriate Chief Justice is the Chief Justice of the superior court of the province. However, for the Northwest Territories, Yukon and Nunavut, it defines the appropriate Chief Justice as the Chief Justice of the Court of Appeal.

[8] Section 745.61(1) states that the Chief Justice can either screen the application or designate another judge of the superior court of criminal jurisdiction of the province or territory where the matter arose. If the screening threshold is met, the Chief Justice designates a judge of that same court to empanel a jury to hear the application.

[9] It follows that while faint hope applications in the Northwest Territories are sent to the Chief Justice of the Court of Appeal, they proceed in the Supreme Court, both at the screening stage and at the hearing stage if one is ordered.

II) THE CONSTITUTIONAL ISSUE

[10] In his written submissions, the Applicant argues that the "substantial likelihood" threshold violates his rights under the *Canadian Charter of Rights and Freedoms* (the *Charter*). This is based on amendments that Parliament made to the faint hope regime after the Applicant committed his crime.

[11] This issue must be understood in the context of the statutory evolution of the faint hope regime. That evolution has been described in a number of cases, and need not be repeated here in detail. *R v Jenkins*, 2014 ONSC 3223, paras 8-25; *R v Khela*, 2021, BCSC 1949, paras 16-23 [*Khela*]; *R v Simmonds*, 2018 BCCA 205, paras 8-13 [*Simmonds*] and 20-28; R *v Dell*, 2018 ONCA 674, paras 11-26 [*Dell*]; *Bari v R*, 2022 NBCA 53, paras 12-18 [*Bari*]. For present purposes, I will focus on the changes that are more directly relevant to the issue that the Applicant raises.

[12] When the regime was first introduced, there was no screening stage: offenders serving a life sentence with more than 15 years of parole ineligibility were entitled, after having served 15 years of their sentence, to apply for a reduction of their parole ineligibility period and to have that issue decided by a jury.

[13] In 1996, Parliament amended the regime and, among other changes, introduced a screening stage. *An Act to Amend the Criminal Code (Judicial Review of Parole Ineligibility) and Another Act*, SC 1996, c 34 (the 1996 amendments). A jury would only be empanelled to hear the application if the screening judge determined, on a balance of probabilities, that there was a reasonable prospect that the application would succeed. Parliament made this screening stage retrospective: it applied to offenders who were already serving a sentence. Those offenders lost the automatic right to a faint hope jury hearing. This version of the regime was the one that was in place at the time of Cst. Worden's murder.

[14] In 2011, Parliament amended the legislative framework again. *An Act to Amend the Criminal Code and Another Act*, S.C. 2011, c.2 (the 2011 amendments). This legislation abolished the faint hope regime altogether on a "going forward" basis. The regime was maintained for offenders already serving sentences, but for those cases, Parliament introduced the "substantial likelihood" screening threshold.

[15] The Applicant argues that being subject to the higher threshold at the screening stage violates his rights pursuant to the *Canadian Charter of Rights and Freedoms*, and is not saved by section 1.

[16] In response, the Crown presents a number of alternative arguments. First, it argues that the constitutional challenge is moot because the Applicant fails to meet either threshold. Alternatively, the Crown argues that the elevation of the screening threshold does not constitute an increase or additional punishment, and therefore does not trigger the *Charter* protections that the Applicant invokes. Finally, the Crown argues that if the legislation infringes the *Charter*, it is saved by section 1.

A) Mootness

[17] The Crown argues that, as the Applicant does not meet either the reasonable prospect threshold or the substantial likelihood threshold, the constitutional issue is moot. It relies on *Phillips v Nova Scotia (Commission of Inquiry into the Westray Mine Tragedy)*, 1995 CanLII 86 (SCC) for the proposition that courts should decline to deal with issues of law that are not necessary to dispose of a case.

[18] There is further support for this proposition in *R v Lloyd*, 2016 SCC 13. In that case the Supreme Court of Canada confirmed that courts are not required to consider constitutional issues simply because a party has raised it. The Court also noted that the doctrine of mootness should be applied flexibly. *Lloyd*, para 18.

[19] Judicial economy, which is one of the underlying justifications for the doctrine of mootness, is not always a reason for a court to decline deciding a constitutional issue. For example, some courts have addressed constitutional challenges of mandatory minimum sentences despite the fact that the ruling would not have any impact on the offender before the court. *R v C.B.A.*, 2021 BCSC 2107; *R v Griffith*, 2023 QCCA 301.

[20] A court's exercise of its discretion in this area should be guided by what is in the interests of justice. This is especially so for superior courts, who, unlike provincial and territorial court judges, have the ability to declare legislation unconstitutional.

[21] When the constitutional validity of legislation is called into question, declining to decide the issue is not necessarily the proper course of action, particularly when the issue has been properly argued. Among other things, deciding the issue avoids the need for resources being deployed to have the issue addressed in a subsequent case. It is also in the interests of justice to have offenders dealt with on the basis of constitutionally sound legislation. *R v E.O.*, 2019 YKCA 9, paras 37-40.

[22] In this case, the Applicant has raised the issue. It has never been raised in the Northwest Territories. Both parties have addressed it in their written submissions and filed materials in support of their positions. In my view, it is appropriate and in the interests of justice for this Court to deal with it.

B) Whether the 2011 amendments infringe the *Charter*

[23] The Applicant contends that the retrospective change in the screening threshold violates his rights pursuant to section11(h) of the *Charter* (the right not to be punished twice for the same offence) or section 11(i) of the *Charter* (the right to have benefit of the lesser punishment if punishment changes between the commission of the offence and the time of sentencing).

[24] Both these *Charter* protections are linked to "punishment". The Supreme Court of Canada has examined what is captured by this concept in a number of cases. *R v Rodgers*, 2006 SCC 15; *Canada (Attorney General) v Whaling*, 2014 SCC 20 [*Whaling*]; *R v K.R.J.*, 2016 SCC 31 [*K.R.J.*].

[25] In *K.R.J.*, the Court, said:

> a measure constitutes punishment if (1) it is a consequence of conviction that forms part of the arsenal of sanctions to which an accused may be liable in respect of a particular offence, and either (2) it is imposed in furtherance of the purpose and principles of sentencing, or (3) it has a significant impact on the offender's liberty or security interests.
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> *K.R.J.*, para 41.

[26] The legislation at issue in *K.R.J.* was the retrospective amendment of s. 161 of the *Criminal Code*, which allows a sentencing Court to prohibit certain sexual offenders from engaging in certain activities. The amendments introduced the power to restrict the offenders' use of the internet and other digital network. The Supreme Court of Canada concluded that the additional prohibitions constituted punishment and that, as a result, the amendments resulted in an increase in punishment that triggers s. 11(i).

[27] *Whaling* arose in a different context. The legislation at issue in that case retrospectively abolished the "Accelerated Parole Review". That mechanism allowed first-time, non-violent offenders to be considered for parole on a simplified process. The legislation was challenged on the basis that the change in the parole regime resulted in additional punishment in contravention of s. 11(h).

[28] The Court concluded retrospective changes that have an impact on parole eligibility may constitute additional or increased punishment that triggers *Charter*

protection, but not in all cases:

> (...) the dominant consideration in each case will in my view be the extent to which an offender's settled expectation of liberty has been thwarted by retrospective legislative action. It is the retrospective frustration of an expectation of liberty that constitutes punishment. At one extreme, a retrospective change to the rules governing parole eligibility that has the effect of automatically lengthening the offender's period of incarceration constitutes additional punishment contrary to s. 11(*h*) of the *Charter*
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> *Whaling*, para 60.

[29] The Court went on to say:

> a retrospective change to the conditions of a sentence will not be considered punitive if it does not substantially increase the risk of additional incarceration. Indicators of a lower risk of additional incarceration include a process in which individualized decision making focused on the offender's circumstances continues to prevail and procedural rights continue to be guaranteed in the determination of parole eligibility.
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> *Whaling*, para 63.

[30] The retrospective change to the screening threshold of the faint hope regime must be examined in light of these principles.

[31] First, in my view, the faint hope regime itself is part of the "punishment". Its purpose is to mitigate the harshness of the sentence imposed for murder. As such, it is an integral element of the sentence, even though it is necessarily invoked long after the sentence is imposed. It is embedded in the sentence itself. *R v Jenkins*, 2014 ONSC 3223 at paras 70-76; *R v Simmonds*, 2018 BCCA 205 at para 88. *R v Dell*, 2018 ONCA 674 at para 54.

[32] A retrospective change to the faint hope regime is capable of engaging s. 11(h). The screening threshold is an integral part of that regime. A higher threshold makes access to a faint hope hearing more difficult and may result in an offender spending a longer period of time in custody. Like the impugned legislation in *Whaling*, it can have an impact on the parole eligibility.

[33] I don't understand the Crown to be arguing that a retrospective change in the faint hope regime could never engage the *Charter*. Rather, it argues that the particular change at issue here is not significant enough to trigger *Charter* protection. The Crown acknowledges that the new screening threshold is higher than the previous one, but argues that the change is modest. Harkening back to *Whaling* for the proposition that not every change in the condition of sentence will necessarily engage the *Charter*, the Crown notes that under the current faint hope regime, the

process includes procedural safeguards, decisions remain individualized and must take into account the offender's circumstances. The Crown argues that the change in screening threshold changes very little. I disagree.

[34] First, several courts have concluded that the 2011 amendments imposed a significantly more stringent test than did the 1996 amendments. *R v Gayle*, 2013 CanLII 57631 (ON SC); *R v Morrison*, 2012 ABQB 619; *R v Paul*, 2014 ONSC 1285; *R v Al-Shammari*, 2022 ONSC 4113, para 10; *Dell*, para 25; *R v Liu*, 2022 ONCA 460, para 6.

[35] Second, the Crown's position is at odds with general principles of statutory interpretation. The fundamental principle of statutory interpretation is that the words of a statute be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of the legislature in interpreting legislation. *Bell ExpressVu Limited Partnership v Rex*, 2002 SCC 42, para 26.

[36] Overall, changes brought about by the 2011 amendments were geared at restricting access to the faint hope regime. The amendments limited the number of faint hope applications an offender could bring, placed strict timelines on how they were brought, and abolished them altogether for future cases. *Dell*, para 24.

[37] Viewed in this context, and looking at the language used to describe the new screening threshold, the effect of this amendment is that some offenders who would have met the previous threshold will not meet the new one. Those offenders will not get the opportunity to have their faint hope application heard by a jury to attempt to have their parole ineligibility period reduced. The change in screening threshold is a change in punishment and its retrospective application engages *Charter* protections.

[38] This interpretation is in line with the current prevailing view in Canadian jurisprudence. *Simmonds*, *Dell* and *Bari* are three appellate decisions where the court concluded that retrospective amendments to the faint home regime constitutes increased punishment that triggers s. 11(i) of the *Charter*.

[39] In *Simmonds*, the offender committed his crime at a time when there was no screening threshold. By the time he applied under the faint home regime, the reasonable prospect threshold had been established. The British Columbia Court of Appeal concluded that the introduction of the screening threshold constituted an increase in punishment, but found that, given that the threshold was very low, the legislation was saved by s. 1 of the *Charter*. *Simmonds*, paras 96-107.

[40] In *Dell* the offender was in a similar position as the one in *Simmonds*. The Ontario Court of Appeal agreed that the retrospective introduction of a screening threshold resulted in an infringement of s. 11(i). However, while the Court found the s. 1 analysis in *Simmonds* persuasive with respect to the reasonable prospect threshold, it concluded that the same could not be said of the substantial likelihood threshold:

> I find the s.1 analysis in Simmonds persuasive. However (...) I think the 2011 amendments are properly the subject of a constitutional challenge. Those provisions go far beyond the screening out of meritless applications and foreclose applications which have a reasonable prospect of success before the jury.
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> *Dell*, para 100.

[41] The Crown seeks to distinguish *Simmonds* and *Dell* on the basis that the offenders in those cases dealt with the introduction of a screening threshold, not the alteration of the existing one. This overlooks the fact that in *Dell*, the Ontario Court of Appeal also addressed the difference between the two screening thresholds and found the difference determinative of the s. 1 analysis. Moreover, *Bari*, which was concerned with the change in screening standard, adopted the conclusions in *Dell*.

[42] I conclude that the retrospective elevation of the screening threshold brought about by the 2011 amendments constitutes an increase in punishment and contravenes s. 11(i) of the *Charter*.

[43] In my view the change in screening threshold also contravenes s. 11(h) of the *Charter*. Although procedural safeguards and individualized decision making remain part of the regime, the elevated screening threshold, in the words of *Whaling*, substantially increases the risk of additional incarceration because it will result in some offenders not being granted a jury hearing to seek a reduction of their parole ineligibility.

C) Whether provision is saved by s. 1 of the *Charter*

[44] The Crown bears the onus of establishing that the impugned legislation is valid despite breaching the *Charter*. To do so, it must establish on a balance of probabilities that the infringing measure is in furtherance of a pressing and substantial objective; that it is rationally connected to the government's objective; that it minimally impairs the *Charter* rights; and that the deleterious effects of the infringing measure are not disproportionate to its salutary effects. *R v Oakes*, 1986 CanLII 46 (SCC).

[45] The Crown has filed the Parliamentary Record with respect to the enactment of the 2011 amendments. It has presented no other evidence.

[46] As noted by the Crown, comments made by the Minister of Justice speaking to the Standing Committee on Justice and Human Rights on October 19 2009 and to the Standing Senate Committee on Legal and Constitutional Affairs show that the purpose of the objective of the amendments was to attempt to address the suffering experienced by families and loved ones of murder victims who have to relive their trauma at faint hope hearings. The Minister spoke about screening out "the most unworthy" of applications and of making the screening test "tougher".

[47] Restricting the availability of faint hope hearings was in line with changes that had been made to the regime in earlier amendments.

[48] As the Court said in *Dell*:

> The legislative history pertaining to both the 1996 and 2011 amendments indicates that the Crown has correctly identified at least one of the objectives behind the introduction of the judicial screening process. Both Ministers of Justice who introduced the amendments justified the screening mechanism as a means of protecting friends and relatives of murder victims from the needless pain and trauma associated with going through a clearly meritless "faint hope" proceeding before a jury.
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> The government objective described by Ministers of Justice is sufficiently important to justify a limitation of an individual's right under s. 11(i). The trauma and re-victimization visited on friends and relatives of murder victims applies equally to applications brought by offenders who committed murder before or after the introduction of the judicial screening mechanism. To prevent that needless trauma, legislation aimed at pre-empting applications before they reach the jury had to be made retrospective.
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> The 2011 amendments serve a valid and important societal objective. The question becomes whether their effect is proportionate to that objective.
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> [all citations omitted]
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> *Dell*, paras 93-95.

[49] I wholeheartedly agree that preventing, to the extent possible, the re-victimization and trauma that families and relatives of murder victims experience through the faint hope hearing process is a pressing and substantial objective.

[50] The more difficult issue for the Crown is establishing that it has met the other branches of the test. In order to show that impugned legislation passes constitutional muster under the *Oakes* framework, the Crown must demonstrate that it has a

pressing and substantial objective, but also that the means chosen to achieve that objective are proportional to it, in that the law is rationally connected to its objective, minimally impairing the right in question, and is proportionate in its deleterious and salutary effects. *R v Nur*, 2015 SCC 15 at para 111.

[51] As already noted, in *Simmonds*, the Court, in considering the introduction of the reasonable prospect threshold, concluded that the measure chosen - the addition of a reasonably low screening threshold to the regime - would avoid jury hearings for meritless applications while maintaining the possibility of a jury hearing for applications that had a reasonable prospect of success. *Simmonds*, paras 106-107. In other words, the measure was tailored to the objective, and was proportionate.

[52] As mentioned above at paragraph 40, *Dell* concluded that the same could not be said of the substantial likelihood threshold introduced by the 2011 amendments. The same conclusion was reached in *Bari* and *Khela*. The Ontario Court of Appeal reiterated that view in *Liu*.

[53] One would think that if the objective is to avoid “needless” hearings and screen out the “meritless” applications, it is because Parliament considered that the previous screening threshold made it too easy to get a jury hearing, and meritless applications were not being “weeded out”. Arguably, a hearing can only be characterized as “needless” or "meritless” if the application ultimately fails. An application that is heard by a jury and succeeds can hardly be labelled as having been “needless” or “meritless”.

[54] There is no evidence showing that a large number of applications screened in under the reasonable prospect threshold ultimately failed before juries, resulting in a corresponding number of families and loved ones having gone through a traumatic jury hearing needlessly.

[55] There is also no evidence comparing outcomes of hearings resulting from the two levels of screening. The “reasonable prospect” threshold was in place for roughly 15 years. The “substantial likelihood” standard has now been in place for almost as long. Presumably, many applications have been screened in under both standards and proceeded before juries across Canada. Statistical information about the outcomes of those applications would help establish whether the substantial likelihood standard has resulted in fewer unsuccessful hearings than applications screened under the reasonable prospect standard. This is the type of data that may assist in demonstrating a rational connection, between the measure chosen and the stated objective, and its proportionality.

[56] I realize that it may be difficult to gather information and put together this type of evidence. At the same time, the infringement of *Charter* rights is a serious matter and the Crown does bear the burden of justifying it on a balance of probabilities.

[57] I acknowledge that the Crown is not always required to adduce evidence in these matters, and that evidence is not necessary where the application of common sense, logic and inferential reasoning support justification. *Sauvé v Canada (Chief Electoral Officer)*, 2002 SCC 68. However, the absence of evidentiary foundation for the Crown to meet its onus was the subject of comments by courts who entertained constitutional challenges to this regime, even in cases where it appears some statistical evidence was adduced. See for example *Khela*, paras 52-57; 87- 90; 118-119.

[58] Given the existing jurisprudence on this issue, the Crown has been on notice for some time that if it seeks to justify this legislation under s. 1, it must do more than rely on the parliamentary debates.

[59] I note that there are a number of jurisdictions in Canada where this issue has not been litigated, including cases where the constitutional issue could have been raised and was not. See for example *R v Baker*, 2023 ABCA 136 and *R v Tam Le*, 2023 MBKB 118. The fact remains that, where challenged, the retrospective application of the substantial likelihood threshold has been found to infringe the *Charter* and to not be saved by s. 1.

[60] I have come to the same conclusion. The application of the "substantial likelihood" screening threshold in the Applicant's case contravenes his *Charter* rights. I declare that it is of no force and effect, as it applies to his circumstances, pursuant to s. 52(1) of the *Charter*.

III) WHETHER THE APPLICATION HAS A REASONABLE PROSPECT OF SUCCESS

A) The reasonable prospect threshold

[61] Given my conclusion on the constitutional issue, I will screen this Application using the threshold that was in place when the Applicant committed the offence. I must decide whether the materials filed in support of the Application establish, on a balance of probabilities, that there is a reasonable prospect that 12 jurors would unanimously decide that the Applicant's parole ineligibility period should be reduced.

[62] The reasonable prospect threshold was, for a time, interpreted as being extremely low. Subsequent cases distanced themselves from that view, finding that this interpretation frustrated the purpose of the judicial screening stage. *R v Phillips*, 2012 ONCA 54.

[63] A reasonable prospect of success is not "any" prospect, however remote. It is not enough for an offender to show that the application is "not hopeless". The prospect of success must be one that is reasonable.

B) The factors to be considered

[64] The Application is screened using the same factors as those the jury would be called upon to consider at a hearing if one is ordered. These factors include the applicant's character, their conduct while serving their sentence, the nature of the offence, information provided by victims and any other matter the judge considers relevant. *Criminal Code*, ss. 745.61(2) and 745.63(1).

[65] At the screening stage, these factors are assessed on the basis of a written record. Here, the parties have filed extensive materials.

[66] The Applicant has filed an Affidavit; a number of letters of support both from family members and individuals who have been in contact with him and have counselled him at the Grand Cache Institution; a number of correctional records dating from 2022 to 2024; information about the Pathways Program, for which the Applicant was approved in 2022.

[67] The Crown has filed excerpts from the 2009 court proceedings, including the transcript of the Applicant's trial testimony and of the sentencing hearing, including the Victim Impact Statements that were presented orally at that time. The Crown has also filed a number of Victim Impact Statements and two Community Impact Statements that were prepared in 2023 and 2024 in conjunction with this Application. Finally, the Crown has filed a report entitled "Parole Eligibility Summary Report for Judicial Review" dated June 13, 2023, and a Psychological Risk Assessment dated November 15, 2022.

[68] These materials are relevant to the factors to be considered and I will discuss them in that context. I have reviewed them all carefully and taken them into account in my analysis. I will not, however, refer to them all in detail.

1. The nature of the offence

[69] The Applicant was 23 years old when these events took place. He lived in Alberta and had no ties to the Northwest Territories. He travelled to Hay River with a significant amount of cocaine because he knew he could make a lot of money selling it there. He was operating out of a "drug house". He was on probation and bound by two separate Firearms Prohibition Orders. He brought a semi-automatic handgun with him to Hay River.

[70] Cst. Worden came upon the Applicant as he was responding to a call involving a possible suicidal person in the neighbourhood where the drug house was located. The Applicant just happened to be leaving the drug house when Cst. Worden arrived. The Applicant was carrying the loaded gun in his pocket.

[71] Cst. Worden asked him for his name. The Applicant told him. Cst. Worden told him he was under arrest. The Applicant ran away. He did not want to be found in the possession of the firearm.

[72] Cst. Worden chased him. While he was running, trying to escape from Cst. Worden, the Applicant took the loaded gun out of his pocket. He fired two shots at Cst. Worden. The shots hit Cst. Worden in his pelvis and thigh but he continued the chase.

[73] The Applicant tripped and fell. Cst. Worden either fell or jumped on top of him and they struggled. The Applicant was still holding on to the gun and fired two more shots, which hit Cst. Worden in the neck and chest. The shot to the neck was fatal.

[74] The Applicant ran away. He got rid of the gun and of his clothing. He retrieved his drug stash and money. He drove to Alberta. Once there he dyed his hair and used coloured contact lenses to change his appearance.

[75] The Applicant was on the run for approximately a week but was eventually arrested in Edmonton. He was charged and remanded at the North Slave Correctional Center in Yellowknife. While he was in custody, he had conversations with members of his family where he suggested that someone should go "fuck up" a potential witness, and that someone should "take care" of another witness.

2. Information from the victims

[76] The Victim Impact Statements that were presented at the Sentencing Hearing by Cst. Worden's wife, his parents, and two siblings described the devastating impact that his death had on them. The ones prepared more recently include some from those same family members and one from a close family friend. The Community Impact Statements describe the impact that the events had on the community of Hay River and on the RCMP.

[77] As would be expected, Cst. Worden's violent death had a profound impact on his loved ones, and on his community. Attempting to summarize the shock and grief that his loved ones expressed, both at the sentencing and more recently, would simply not do justice to the depth of the suffering and anguish they have endured, and continue to endure. One needs to read what they said and wrote in its entirety to get the true measure of the unspeakable grief they experienced. The trauma resulting from this has been significant and not surprisingly, despite the passage of time, the suffering continues.

3. The Applicant's conduct while serving his sentence

[78] The correctional records show that when he first began serving his sentence, the Applicant did not do well. He was impulsive, thrill seeking and aggressive.

[79] Between 2011 and 2018, he was involved in several incidents and institutional offenses, many of which involved violence. He also engaged in threatening, disrespectful and disruptive behaviour. He was found in possession of unauthorized items. He tested positive for use of unauthorized substances. Some of the incidents were serious enough that they resulted in him being placed in segregation.

[80] During this period of time, the Applicant participated in programming, including violence prevention programming. He attended programs and completed them but at that point, this was not resulting in positive changes in his institutional behaviour.

[81] The Applicant's institutional behaviour eventually improved. Since 2018, there have been no incidents involving violence and very few institutional infractions. His parole officer notes this improvement in the Updated Correctional Plan from January 22, 2024. She writes that there has been a "significant and steady decrease in information that suggests active involvement in any illicit activities" and that the Applicant has made a "conscious effort to remove himself from negative associations and prison subculture involvement, with relative success".

[82] In this period the Applicant has also actively participated in counselling, has completed multiple educational and skills programming. He has maintained steady employment within the institution, including positions that are considered "positions of trust". He has engaged in spiritual pursuits and has been active in faith groups. He appears to have made the most of the resources available to him.

[83] An important indication of the Applicant's progress is that his case management team eventually recommended that his security classification be downgraded to minimum security. This was approved, and he was transferred to Stan Daniel's Healing Lodge in January 2024.

[84] In summary, while the Applicant's conduct in custody was problematic from 2009 to 2018, there has been considerable improvement since 2018. People who have worked with him in the institution describe him as hardworking, insightful, and remorseful for the lifestyle he used to lead and for Cst. Worden's death.

4. The Applicant’s character

[85] The Applicant was born in Turkey in 1984. He moved to Canada with his mother and sister in 1991, to join his father who had moved to Canada 10 years before. The family settled in Edmonton.

[86] The family circumstances were difficult. His father was abusive towards his mother. His parents ultimately separated, and his mother returned to Turkey and did not return for 4 years. The Applicant moved out of his father’s home when he was 17.

[87] The Applicant started getting into trouble with the law as a youth. This resulted in his being expelled from school. When he was still a teenager, he was approached by an acquaintance about selling drugs and he agreed. From then on, this became his full-time activity.

[88] From 1999 up to August 2007, just a few months before killing Cst. Worden, the Applicant accumulated several criminal convictions which included crimes of violence, weapons offenses, drug offenses, and numerous breaches of court order. By then, he was well entrenched in a life of crime, despite his young age.

[89] In 2007, the Applicant’s intimate partner, Sarah McAulay, gave birth to a daughter. At that point the Applicant was using 3 phones to sell drugs in 3 northern Alberta towns. After the birth of his child he decided he would stop selling drugs. He sold two of the phones for $90,000. He sold the third for $70,000 and a

significant amount of cocaine. He travelled to Hay River to sell that cocaine because he knew he could make a lot of money doing so there.

[90] His conduct following the offence while he was on the run, as well as conversations he had with family members after being taken into custody, suggesting witnesses be interfered with, is further evidence of his anti-social lifestyle and values at the time. The Applicant's conduct during the first several years of serving his sentence continued to reflect this lifestyle and values.

[91] The progress that the Applicant has made in more recent years is of course relevant to the assessment of his character. His parole officer and others who have had regular contact with him in recent years speak positively of his attitude and his motivation to live a pro-social life. The efforts the Applicant has made to extricate himself from past patterns, associations, and attitudes, are relevant in assessing his character.

[92] Regard must also be given to his insight and views about the crime he committed. Genuine remorse, empathy for victims and insight into one's conduct are useful indicators of a person's character.

[93] The materials filed show that a number of people who have interacted and worked with the Applicant in recent years believe that he has gained considerable insight into the harm he has caused, is genuinely remorseful for that, and that he feels empathy for Cst. Worden's loved ones. There are several references, in the correctional records, to him having expressed that to various people in various contexts.

[94] While many people view the Applicant in this positive light, a notable exception is his second ex-wife, Rena Bulatci. The Applicant separated from Ms. McAuley in 2013; he and Rena Bulatci married in 2016 and had a son together. Their relationship ended in 2020, and they divorced in 2021.

[95] The Applicant notes in his written submissions:

> It should be noted that the Applicant's ex-wife, Rena Bulatci, was interviewed and provided a different perspective on the Appellant's character. She described him as being manipulative and refusing to accept responsibility for what he had done.
>
> *Applicant's Written Submissions*, paragraph 45.

[96] The Applicant urges caution in considering Ms. Bulatci's views, because they have a child and his eventual release could have an impact on custody and access. It seems clear as well that their separation was not amicable.

[97] The materials before me also include information about the Applicant's own perspective and descriptions about the crime he committed. Those views appear to have evolved over time.

[98] As outlined in his Affidavit, the Applicant offered a plea of guilty to manslaughter at the start of his trial. The Crown did not accept that plea and the trial proceeded. In his testimony, he acknowledged that he fired the first two shots deliberately at Cst. Worden. He said that he aimed low and intended only to injure him so that he could escape. He was adamant that he did not intend to fire the third and fourth shots and that those went off accidentally while Cst. Worden was on top of him and they were struggling.

[99] The jury convicted him of first-degree murder. He appealed that conviction. His appeal was dismissed.

[100] In the November 2022 Psychological Risk Assessment Report, there is a brief reference to the Applicant's perspective on the offence. The author of that report writes:

> "During the current assessment, Mr. BULATCI stated that his offence occurred due to his lifestyle at that time in his life. He was selling drugs, he wanted to 'fit in' and he wanted to 'be cool' because he had been bullied when younger. He thought the clothes, having friends and lifestyle mattered. He thought violence solved problems. He believed if he had money, he would not have the problems his parents experienced. **His memory of his offence is vague. He believes he was scared, so he began to run. Once running, he believed/feared he would be shot and killed.** He was young, stupid and had limited sleep; he would sleep here and there as he was able. He stated that he did not know what he now knows. Now, he is aware that his lifestyle was high risk, clothes and having stuff do not matter; he avoids peers who promote such a lifestyle. At this point in his life, he believes that being with one's family, one's children, and maintaining good health are the things that matter.
>
> (my emphasis)
>
> *Psychological Risk Assessment dated November 15*, 2022, p.2

[101] In his Affidavit sworn January 11, 2023, the Applicant describes in some detail the events that led to Cst. Worden's death. With respect to the shots fired, he deposes:

> These was a wooded area beyond the building which I next ran to; my intent was to escape through the woods. There was a fence and I could not escape. I turned around and fired the Smith &Wesson twice. I aimed low. My intention was to wound Cst. Worden so that he could not follow me. I later learned that both these shots had struck Cst. Worden, but at the time he continued to follow me.
>
> I turned to run and tripped into a ditch. Cst. Worden jumped on top of me. I was face down initially. As we wrestled I fired the gun two more times. I later learned that both these shots hit Cst. Worden. While the thought in my mind was not to take these shots with the intention to kill Cst. Worden, I did fire the shots with the intent of escaping him. Regardless of my intent while firing those two shots in close proximity, they ultimately led to his death.
>
> *Applicant's Affidavit sworn January 11, 2023*, paragraphs 14-15.

[102] He concludes his Affidavit by deposing that over the course of his sentence he has come to acknowledge that he was appropriately convicted of first-degree murder.

5. Other factors

[103] As I noted already, s. 745.63(1)(e) states that in addition to the four other factors, the jury - and therefore the screening judge - can also consider "any other matters that the judge considers relevant in the circumstances". This is very broad language. For example, the fact that an offender is indigenous has been taken into account under this factor. *R v Belisle*, 2025 ONSC 2213 at paras 69-77 [*Belisle*].

[104] Presumably, this fifth factor contemplates taking into consideration things that are not already captured by the other factors, bearing in mind that certain things may be relevant to more than one factor.

[105] In my view, some of the contextual factors alluded to by the Crown in its written submissions about the context of northern communities can properly be taken into account under this heading. This includes the size of the communities in this jurisdiction, their relative isolation and the impact that this has on those entrusted with law enforcement responsibilities. It also includes, in my view, consideration of the prevalence of drug trafficking activities in this jurisdiction and the growing number of incidents involving firearms that are linked to those activities. Although it has not been raised specifically, this context also includes, in my view, consideration for the day-to-day reality of the work of police officers in this jurisdiction.

C) Analysis

1.General Considerations

[106] The legislative framework that governs faint hope applications, beyond setting out the screening threshold and the factors to consider, does not include any guidance on how the factors should be balanced.

[107] The Applicant and the Crown disagree about the role that clemency should play in the analysis. The Applicant argues clemency should be the paramount consideration. The Crown acknowledges that clemency has a role, but argues that sentencing principles should also figure prominently in the analysis, given that the subject-matter of the faint hope application is a key aspect of the offender's sentence.

[108] Without doubt, the concept of clemency is embedded in the faint hope regime. In effect, it is its *raison d'être*. The philosophy that underlies the existence of the regime is that individuals should not forever be defined by the crime they have committed:

> Faint hope is predicated on the innate capacity of individuals to rehabilitate. The process hinges on the understanding that persons are not forever or exclusively defined by a crime that they committed. As it was put by Lamer. J. in *R v Swietlinski*, [1994] 3 S.C.R. 481 at p.493: "the primary purpose of a s.745 hearing is to call attention to changes which have occurred in the appellant's situation and which might justify imposing a less harsh penalty upon the applicant" (emphasis in the original). Past events, including the original offence, are important in the assessment of character, but their relevance may be attenuated by changes in the offender's life.
>
> *Al-Shammari*, para 20.

[109] While I agree with these comments, I do not think that it necessarily follows that clemency should be elevated as the paramount consideration in the analysis.

[110] The purpose of the regime is to create an opportunity for the parole ineligibility period to be re-examined, taking into account, among other things, how the offender's situation may have changed. The offender's conduct while serving the sentence, which will in many ways reflect "what has changed", is one of the factors to be considered. But there are others, including some that don't change, such as the nature of the offence. The legislative framework does not give any of the factors precedence over the others.

[111] The recognition that clemency and mercy have a place in our law does not mean that it should drive the faint hope process at the exclusion of other considerations, or should be the paramount consideration at the screening stage.

[112] In my view, all the factors set out in the legislation must be considered at the screening stage, and the weight to give to each of them will depend on the circumstances. The seriousness of the offence should not overtake the analysis, as noted in *R v Baker*, 2023 ABCA 136. Otherwise no faint hope application would ever be screened in. Positive changes and the offender's progress while serving the sentence should also not overtake the analysis either.

[113] No judge can claim to "predict" what a jury might do in any given case. Still, the independent evaluation that the screening tasks requires inevitably involves an element of gauging how a jury might view the matter. The screening judge must however be careful not to usurp the function of the jury and must take into account that a case necessarily presents differently on paper than it would in a hearing with *viva voce* testimony.

[114] In conclusion, as far as the manner in which the screening task should be approached, I adopt the comments in *Belisle*:

> Arriving at the answer to that question involves an assessment that is discretionary by nature. It requires a consideration of the evidence and findings relating to each statutorily enumerated factor, some of which may work in favour of the applicant and some against, and then weighing them, as a whole, to arrive at a conclusion: see *Swietlinski*, at pp.493-493. As Durno J. explained in *R v Morrisson*, 2016 ONCS 5036 at para 36:
>
> > There is no 'score card' that gives each factor equal weight. Each application is a fact-specific determination. One or more factors may be decisive one way or another. Different factors will receive different weight depending on all the circumstances and evidence.
>
> *Belisle*, para 91.

2. Balancing the factors

[115] With respect to the Applicant's conduct while serving his sentence, the record demonstrates that he has made considerable progress during the last 5 years of his incarceration. He has succeeded in having his security classification downgraded to minimum security and being transferred to a minimum-security facility. He has maintained employment in the institution and has been actively engaged in counselling and spiritual pursuits. He has taken several correctional programs and vocational training. He has impressed his parole officer and many people who have

worked with him. All that is to his credit. This progress does not render irrelevant the less favourable evidence about the conduct he engaged in during the first 9-10 years of his sentence. In examining the Applicant's conduct while serving his sentence, the result is mixed, with a clear trend towards improvement.

[116] Turning to the nature of the offence, it is perilous to attempt to compare the levels of seriousness of murders. Murder can arise in a variety of contexts, but it is always an extremely serious offence.

[117] Murders of police officers engaged in the execution of their duty also arise in a variety of contexts. Police officers are often called upon to intervene in all sorts of volatile, high-risk situations. They sometimes intervene with individuals who are in emotional turmoil, under the influence of substances, or struggling with mental health challenges. These situations have led to tragic outcomes, including in northern Canada. See for example *R v Jaw*, 2009 SCC 42; *R v Kolola*, 2013 NUCA 8.

[118] The offence committed here was of another kind. The Applicant, despite his young age, was an experienced and prolific drug dealer. He was in the community of Hay River for the sole purpose of making money selling cocaine. He had armed himself before going to that community and was walking around with a loaded handgun. When he found himself in a situation where he thought he would be caught with this weapon, and to avoid being apprehended, he shot multiple times at a police officer. He then fled and enlisted the help of others to avoid being apprehended.

[119] The next factor to be weighed, the information from the victims, by its very nature underscores the terrible and irreparable consequences of murder. A jury hearing this application would have to weigh the information about the impact that this crime had on the RCMP, on the community of Hay River, and most significantly on Cst. Worden's family and loved ones. Hearing about it directly from these individuals would bring home the magnitude of their loss even more poignantly than reading about it does.

[120] The next factor to be considered is the Applicant's character. Under this heading, the jury would be called upon to consider the Applicant’s background and the difficulties he encountered, but also the choices he made leading up to this offence, after the offence, and during the first several years of his sentence. They would have to consider the progress that the Applicant has made since 2018 and the views of those who believe he has shown strength of character and remorse in recent years. This is where some of the materials submitted are relevant to both the Applicant’s conduct while serving his sentence and to his character, to the extent

that they show concrete things he did to better himself and adopt a pro-social lifestyle.

[121] The support of his parole officer and others who have worked with him in recent years would be helpful. According to the correctional records, several people who have worked with him regularly over the past few years believe that he is sincerely remorseful for his actions and that he and is committed to leading a pro-social life.

[122] In considering the Applicant's character, the jury would also consider the support that the Applicant has from his family, his wife, his ex-wife Ms. McAuley and of other members of his community, including their belief in the sincerity of his remorse.

[123] The jury would have to decide what to make of the dissenting views of the Applicant's second ex-wife about his sincerity and his character. In so doing the jury would have to consider their strained relationship and the fact she may have an ulterior motive for expressing the views she has. On the other hand, the same can be said about the Applicant's current wife, parents, and supporters. These people, sincere as they may be, are unlikely to be considered unbiased by a jury either.

[124] Moreover, the perceptions and support of Ms. McAuley would be assessed in light of her past association with the Applicant. She was the Applicant's intimate partner in 2007, when he was engaged in criminal activity. She also assisted the Applicant immediately after Cst. Worden's death, knowing what he had done.

[125] Of course, the views and perceptions of others, relevant as they are, can only go so far. As I noted previously, an important aspect of assessing the Applicant's character, including his insight and the sincerity of his remorse, is his perspective about the crime he has committed.

[126] At the time of trial, the Applicant did not take full responsibility for what he had done: he offered a plea to manslaughter, but there is a very significant difference between that and admitting to murder. In addition, while it was his right to appeal his conviction, the fact that he did suggests that even after having sat through the trial evidence and the sentencing hearing, including the Victim Impact Statements, he was not prepared to accept full responsibility for what he did.

[127] In addition, in his trial testimony, he was emphatic that the last two shots, including the lethal one, were accidental. In the Affidavit sworn in support of this Application he no longer describes the third and fourth shots as accidental. He says

he fired these shots with the intent to escape, while still maintaining he never intended to kill Cst. Worden.

[128] In his written submissions, the Applicant suggests that it would be unfair to give any weight to this change in his narrative because the Applicant would be left either acknowledging that he committed perjury at trial when he said the shots were accidental, or maintaining his trial version, which is inconsistent with the jury's verdict. In my view, far from being unfair, considering the shift in narrative is appropriate in weighing whether the Applicant fully acknowledges what he did.

[129] In the same vein, the statement in his Affidavit that he has "come to acknowledge that he was appropriately convicted of first-degree murder", without more, is not, in my view, a particularly compelling acknowledgment of responsibility.

[130] This is even more troublesome in light of the comments reflected in the November 2022 Psychological Risk Assessment Report. I accept that it does not purport to include a *verbatim* account of what the Applicant said. Still, the content of the report stems from the discussion the author had with the Applicant. It cannot be discounted simply because it is not a *verbatim* account, not any more than the many other correctional records that were filed and refer to things the Applicant has told to various people.

[131] It appears from the report that the Applicant claimed his memory of events was vague. This is inconsistent with the fairly detailed account set out in the Affidavit he swore in support of this Application. More significantly, the Applicant conveyed that at the time he was running from Cst. Worden, he feared he would be shot.

[132] In considering the Applicant's character and more specifically his level of insight and the sincerity of his remorse, I find the shifts in his narrative and some of its self-serving aspects troublesome. I expect a jury would as well.

[133] Finally, the legislation contemplates consideration of any other matter considered relevant.

[134] In considering this Application, regard must be given, in my view, to contextual factors about the Northwest Territories, its communities, and the growing magnitude of the problems stemming from drug trafficking and its associated use of firearms.

[135] Communities in the Northwest Territories are particularly vulnerable to the harm that comes from trafficking in hard drugs. The social problems resulting from the consumption and trafficking of hard drugs have been the subject of comments by courts in this jurisdiction for many years. *R v Baker*, 2009 NWTSC 75; *R v Mohammed*, 2015 NWTSC 38; *R v Omar*, 2022 NWTSC 12; *R v Gova*, 2025 NWTSC 31 [*Gova*].

[136] The Applicant travelled from southern Canada to Hay River for the sole purpose of making money selling cocaine. Unfortunately, this is not an unusual thing. Many people who have no ties to this jurisdiction come to the Northwest Territories to establish drug trafficking operations without any regard for the immeasurable harm that ensues. This reality has been repeatedly recognized and denounced by this Court:

> For many years, this Court has been concerned about the trafficking in cocaine in the Northwest Territories and the offence has been treated seriously by our Courts. Trafficking in cocaine has been described as a scourge on society. It continues to devastate lives, families, communities. It results in other crimes, people commit offenses of violence while on cocaine, they commit crimes to get cocaine, it results in injuries and death. The movement of the activity of trafficking in cocaine from the City of Yellowknife to the smaller, more isolated communities is of serious concern to the residents of the small communities and to the residents of the Northwest Territories in general. Communities that have had to deal with alcohol abuse, the legacies of residential school, dislocation, loss of culture, so many social problems, now have to deal with the impact of cocaine. People like Mr. Paradis who come from the south to traffic in cocaine and prey upon our communities should be soundly condemned. How can communities heal when people like Mr. Paradis appear like vultures to profit off the weakness and addictions of others?
>
> *R v Paradis*, 2019 NWTSC 27, pp. 11-12 (upheld on appeal *R v Paradis*, 2020 NWTCA 2). See also *R v Maie*, 2023 NWTSC 23, at pp. 3-4.

[137] It is also increasingly frequent to see cases involving the illegal possession of firearms in conjunction with drug trafficking activities. *R v Harris*, 2007 NWTSC 76; *Paradis; R v Abdullahi*, 2023 NWTSC 12; *Gova*.

[138] In short, trafficking in hard drugs, the violence associated with it, including the use of firearms, has been a growing problem in the Northwest Territories. Since Cst. Worden's death, the problem has not diminished, quite the contrary. It is an appropriate consideration at the screening stage because it is something a jury empanelled to hear this application would be well aware of.

[139] Another regional reality that a jury hearing this Application would be aware of is the unique challenges of policing in this jurisdiction. Many communities in the

Northwest Territories have RCMP detachments staffed by a small number of officers. Several communities are not connected by road year-round, and even those that have road access are often significant distances away from the larger centers. This makes police officers who serve in these communities more vulnerable. A jury composed of community members would be aware of this reality and take it into account in considering the Applicant's plea for clemency.

IV) CONCLUSION

[140] The Applicant cannot change what happened in 2007. It is undeniable that he has worked on himself and made meaningful progress in moving his life in a positive direction. A jury called upon to consider his Application would have to take those efforts, and their result, into account in making its decision.

[141] Those positive things may attenuate the nature of the offence and the aggravating context within which it occurred, but only to a point.

[142] The Applicant has expressed remorse to those who have worked with him over the past few years and has persuaded many that he has gained insight into his conduct and fully takes responsibility for it. He would also have an opportunity to tell the jury directly about his remorse. He would be able to elaborate on the basis on which he has come to acknowledge that he was properly convicted. However, he would also be confronted with his trial evidence and what he expressed in the context of the 2023 Psychological Assessment process. The shifts in his narrative and its self-serving aspects would not assist him.

[143] A jury would hear directly from Cst. Worden’s loved ones the heart-wrenching account of the impact his death had on their lives, as well as the impact that these events have had on the community. While an offender's plea for clemency may well be more compelling through in-person testimony than it is on the basis of written submissions, so would the information coming from the people who suffered as a result of this crime.

[144] Finally, in considering this Application, a jury composed of citizens of this jurisdiction would examine it bearing in mind the unique context of this jurisdiction, the vulnerability of police officers who serve in small isolated communities, and the magnitude of the problems resulting from people such as the Applicant who come to the Northwest Territories for the sole purpose of making money by selling drugs, and arming themselves with lethal weapons while conducting their "business".

[145] As I noted previously, no judge can claim to predict what a jury will do in any given case. In the context of a faint hope application, the screening function is

simply an independent evaluation of the record based on the relevant factors. In my view, considering all the circumstances and the record before me, there is no reasonable prospect of this Application succeeding before a jury.

[146] The Crown asks that I make an order pursuant to s.745.61(b) preventing the Applicant from making another faint hope application. The Crown has not provided any reasons in support of this request. I can infer that the main reason would be to avoid exposing Cst. Worden's loved ones to the uncertainty stemming from a further Application being brought. At the same time, shutting the door completely to another application would be excessive given the evidence showing that the Applicant has made some progress while serving his sentence, particularly in more recent years.

[147] The Application is screened out.

"L.A. Charbonneau"

L.A. Charbonneau
J.S.C.

Dated in Yellowknife, NT this
8th day of July, 2025

Counsel for the Respondent: Blair MacPherson

Counsel for the Appellant: Brian H. Greenspan

Corrigendum of the Memorandum of Judgment

of

The Honourable Justice L.A. Charbonneau

1. In paragraph 136 in the quotation it reads:

> (…) Communities that have had to deal with alcohol abuse, the legacies of residential school, dislocation, loss of culture, so many social problems, **not** have to deal with the impact of cocaine. People like Mr. Paradis who come from the south to traffic in cocaine and prey upon our **commumity** should be soundly condemned. How can communities heal when people like Mr. Paradis appear like vultures to profit off the weakness and addictions of others?

Paragraph 136 in the quotation has been corrected to read:

> (…) Communities that have had to deal with alcohol abuse, the legacies of residential school, dislocation, loss of culture, so many social problems, **now** have to deal with the impact of cocaine. People like Mr. Paradis who come from the south to traffic in cocaine and prey upon our **communities** should be soundly condemned. How can communities heal when people like Mr. Paradis appear like vultures to profit off the weakness and addictions of others?

2. The citation has been amended to read:

R v Bulatci, 2025 NWTSC 49.cor 1

A-1-AP-2023-000 001

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HIS MAJESTY THE KING

-and-

EMRAH BULATCI

Corrected judgment: A corrigendum was issued on July 10, 2025; the corrections have been made to the text and the corrigendum is appended to this judgment.

MEMORANDUM OF JUDGMENT
(SCREENING OF FAINT HOPE APPLICATION
S.746.61 *CRIMINAL CODE*)
OF
THE HONOURABLE JUSTICE L.A.
CHARBONNEAU