

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

HIS MAJESTY THE KING

-and-

NELSON LESAGE

MEMORANDUM OF JUDGMENT

I) INTRODUCTION

[1] On July 2nd, 2024, Nelson Lesage was sentenced, on a charge of sexual assault, to a term of imprisonment of two years less a day, to be served under the terms of a Conditional Sentence Order.

[2] On October 24, 2025, he appeared in this Court for a hearing into an alleged breach of the conditions of that Order. At the hearing, he acknowledged the breach. Crown and Defence jointly requested that no further action be taken. After hearing counsel's submissions in support of that position, I agreed with it. As there was some urgency in getting the matter concluded that day, I issued the Order, with reasons to follow.

II) BACKGROUND

1. The offence that Mr. Lesage was sentenced for

[3] The victim A.G. and her partner had been celebrating their recent engagement at Mr. Lesage's house in Fort Providence. They were staying at his house. There were a number of people there, consuming alcohol.

[4] In the early morning hours A.G. and her partner went to sleep in the bedroom where they were staying. There was no one else in that room. They went to sleep fully clothed. At some point during the night Mr. Lesage entered the bedroom and sexually assaulted A.G. while she was sleeping. She woke up on the floor at the foot of the bed, with a blanket on top of her and her pants and underwear pulled down. She was shaken awake by Mr. Lesage. He accused another person of having raped her. He told her he had found this person in the residence.

[5] A.G.'s partner left the bedroom to look for the alleged aggressor and found him and another person in the house. Meanwhile, A.G. realized that there was semen on her pants.

[6] The matter was reported to the police and an investigation was undertaken. Forensic D.N.A. testing ultimately showed that DNA extracted from the male semen found on the victim's pants matched Mr. Lesage's DNA.

[7] Mr. Lesage was charged. The matter proceeded through the criminal justice system. A trial in this Court was eventually scheduled. A short time before the trial was scheduled to proceed, Mr. Lesage changed his plea to guilty.

## 2. The Sentencing Hearing

[8] At the sentencing hearing, the Court was presented with a joint submission that Mr. Lesage be sentenced to a jail sentence of two years less a day, and that he be permitted to serve that sentence in the community under the terms of a Conditional Sentence Order. This was to be followed by Probation for a period of 2 years.

[9] The Sentencing Judge found that there were a number of aggravating factors. She noted that A.G. and her partner were guests in Mr. Lesage's home and trusted that they could stay there without incident. She noted that A.G. was particularly vulnerable when she was assaulted because she was asleep. The Sentencing Judge also found it aggravating that Mr. Lesage attempted to blame someone else for his actions. She noted that but for forensic evidence, an innocent person could well have been arrested, even potentially convicted, for this crime. The Sentencing Judge also noted Mr. Lesage's extensive criminal record which includes convictions for crimes of violence and, notably, a 1995 conviction for break and enter and commit sexual assault. The Sentencing Judge underscored the need to denounce and deter sexual violence, given the prevalence of this type of crime in the Northwest Territories.

[10] The Sentencing Judge acknowledged that the guilty plea was a mitigating factor: although it came late in the proceedings, it avoided the need for A.G. to testify and it provided certainty of outcome. She also noted that Mr. Lesage is indigenous and that this triggers special obligations by the court to give effect to the principles discussed in *R v Gladue*, [1999] 1 S.C.R. 688, *R v Ipeelee*, 2012 SCC 13, and many others. She acknowledged that the Pre-Sentence Report revealed that Mr. Lesage had a tragic and traumatic background. He was exposed to alcoholism, family violence, and abuse in his childhood. The dysfunction in the home culminated in his father's death at the hands of his mother during a party at their family home, an event that he witnessed.

[11] Although the Sentencing Judge ultimately imposed the sentence jointly submitted by counsel, she did not agree with it. After having noted the extremely limited discretion of a sentencing judge to depart from a joint submission, she said:

I have reviewed the joint submission. It is not a sentence that I feel is an appropriate sentence for this type of offence. It is at the low end of the range of appropriate sentences for this type of offence.

The joint submission, however, is not one that meets the high standard which was set out by the Supreme Court of Canada in [*R v Anthony Cook*, 2016 SCC 43] for rejecting joint submissions, and as such, I will impose the joint submission.

[12] The joint submission included a number of agreed upon conditions to be included in the Conditional Sentence Order. Among others, there was a house arrest condition for the first 16 months of the sentence, subject to certain specified exceptions. There was also a condition requiring Mr. Lesage to abstain from alcohol, drugs, and other intoxicating substances.

### 3. The Breach and the Breach Hearing

[13] The circumstances of the breach were outlined in the report filed by Tina Gargan, Mr. Lesage's Conditional Sentence Supervisor. At the hearing, counsel provided additional information about the circumstances that led to these events. Those additional facts are not disputed.

[14] The breach was discovered on October 12, 2025, after the R.C.M.P. received a call reporting that Mr. Lesage was passed out at a residence in the community. Members of the Fort Providence detachment attended the residence and found Mr. Lesage asleep in a chair at that residence. None of the house arrest exceptions applied. Mr. Lesage was placed under arrest and taken into custody.

[15] The additional facts provided by counsel were that Mr. Lesage had learned that day that his mother-in-law was terminally ill and that there was no treatment that could assist her. My understanding is that she had been out of the jurisdiction and was being sent back to the community so she could spend her final days there. She passed away while Mr. Lesage was in custody following his arrest on the breach. Her funeral was to take place on October 25, the day after the breach hearing.

[16] Mr. Lesage was very close to his mother-in-law. He was 19 when he began his relationship with her daughter. Her family took him in as a member of the family and his mother-in-law became like a mother to him. Given his tragic background, being integrated in his spouse's family was very significant for him.

[17] Upon learning the news about his mother-in-law's medical situation, Mr. Lesage broke his house arrest condition. He left his house and went to the residence where he was ultimately arrested. The people who live in that home are related to his mother-in-law. My understanding is that he went there essentially to seek comfort and be with family members. He acknowledges that he should have contacted his Conditional Sentence Supervisor to get permission to leave his house. He also acknowledges that unfortunately, he succumbed to the temptation to turn to alcohol to cope with his emotions.

[18] Ms. Gargan's report outlines how Mr. Lesage has done under the terms of the Conditional Sentence Order since it was imposed. By and large, he has done well. He has attended counselling and complied with his conditions. There have been some issues along the way, which is not surprising when dealing with an offender battling an addiction and who is carrying the level of trauma that he has.

[19] Ms. Gargan explains that she initially directed him to report once a week. Mr. Lesage did very well. She reduced his reporting requirements to once every two weeks.

[20] However, on May 28, 2025, Ms. Gargan received information that Mr. Lesage had breached his conditions by attending a house party where alcohol was consumed. He was with his wife. Ms. Gargan immediately had a meeting with him and confronted him with this information. Mr. Lesage acknowledged what he did. Ms. Gargan decided not to file a breach report given his good performance up to that point. She instead gave him a warning about the consequences of any further breaches and increased the frequency of his reporting requirements back to what it had been initially.

[21] Mr. Lesage seemed to be back on track and doing well. As a result, in July, Ms. Gargan reduced the frequency of his reporting requirement back to reporting every two weeks.

[22] Mr. Lesage has acted as a medical escort for his wife on a number of occasions, and there has never been any indication of problems.

[23] Crown counsel advised that she spoke with at length with Ms. Gargan, who confirmed that despite challenges and some setbacks, Mr. Lesage has done well. He has been cooperative, responsive to her, proactive and honest about his struggles in more difficult times.

### III) ANALYSIS

[24] There can be no question that, notwithstanding that Mr. Lesage has, for the most part, done well under the terms of his Conditional Sentence Order, the joint suggestion that there be no further consequences for his breach of these two key conditions of the Order is extremely lenient.

[25] A Conditional Sentence is rarely appropriate in cases involving serious sexual assaults. *R v R.S.*, 2023 ONCA 608, para.4; *R v Henry*, 2024 BCCA 132, paras 32-34; *R v Maslehati*, 2024 BCCA 207 (leave to appeal to SCC dismissed [2024] S.C.C.A. No.342; *R v Walker*, 2025 ABCA 29; *R v Wedzin*, 2025 NWTSC 17.

[26] The sexual assault that Mr. Lesage was sentenced for was a serious one. Aside from its inherent seriousness, as noted by the Sentencing Judge, there were several aggravating factors.

[27] The Conditional Sentence was imposed as a result of a joint submission which the Sentencing Judge clearly did not agree with. She felt obliged to follow it, given the state of the law that governs joint submissions, but she did not think it was an appropriate sentence under the circumstances.

[28] Mr. Lesage was at the sentencing hearing. He heard what the Sentencing Judge said when she imposed the sentence. He was aware, or should have been, that not being sentenced to actual incarceration was a huge break.

[29] Even taking into account his guilty plea, his tragic circumstances and applying the principles that govern the sentencing of indigenous offenders, the sentence he received was outside the range of what is ordinarily imposed by this Court for this type of crime.

[30] Sadly, the reality is that many offenders who appear in this Court to be sentenced for serious crimes, including serious sexual assaults, have extremely tragic backgrounds. Many struggle with addictions and other issues. Many have been abused themselves. Sentencing courts constantly struggle with balancing this with the harm these offenders inflict on others and the threat they present to the safety of their communities. Dealing specifically with serious sexual assault, courts must balance factors that reduce offenders' blameworthiness with the immeasurable harm that sexual assaults cause to victims, and the profoundly disturbing prevalence of this crime in this jurisdiction. It must be remembered that the victims of these crimes have often themselves been exposed to trauma and hardships, which is further aggravated by having their physical and sexual integrity violated. This is why no matter how sympathetic an offender's background may be, serious sexual offences are met with a stern response by this Court.

[31] In the rare occasions where a Conditional Sentence is imposed in this Court for a serious sexual assault such as the one committed by Mr. Lesage, offenders should expect that failure to comply with the conditions will generally result in actual incarceration for the balance of the sentence, or a significant portion of it. This is especially so where, as here, the person has already been given a chance and a warning following compliance issues. In her report, Ms. Gargan, despite being supportive of Mr. Lesage and his efforts towards rehabilitation, recommended that he be ordered to serve a term of custody and later be allowed to resume serving his sentence in the community under the scope of the Conditional Sentence Order. That recommendation was reasonable and, in fact, quite restrained given his earlier compliance issue in May.

[32] The Court understands and recognizes that conditions to abstain from alcohol and other intoxicants are very challenging for people who suffer from addictions. Addictions are a factor in many offenders' criminality and they are extremely difficult to overcome. Contrary to what we sometimes hear, responding sternly to a breach of a court ordered no-alcohol condition is not about punishing a person for their addiction. It is a matter of the Court taking its responsibilities in situations where it has been established that the offender's addiction, when not successfully addressed, translates into a serious risk of harm to other members of the community. In such cases the Court has a responsibility to respond, with the limited tools it has, to protect the public.

[33] Meaningful consequences to breaches are also essential to ensure the effectiveness of this sentencing tool. To be effective in achieving the objectives of sentencing, these orders must have "teeth", must be closely supervised, and the offender must understand the consequences of not adhering strictly to what has been ordered. This is also essential to preserve the confidence of the public.

[34] All that being said, the response to a breach must reflect the specific circumstances of each case, and just like sentencing itself, remains a highly individualized and discretionary decision.

[35] In agreeing with counsel's joint position that no further action should be taken in this case, I took into consideration the thorough and thoughtful submissions of both counsel, the very specific circumstances that led to this breach, and the fact that it has already resulted in Mr. Lesage spending some time in custody. I also took into account that Mr. Lesage's unfortunate choice resulted in him not being able to be with his mother-in-law and family during her final days and in the days following her passing. This constitutes punishment in and of itself. Finally, I took into account that the funeral was to take place on October 25. Directing that Mr. Lesage be incarcerated for a portion of the remainder of his sentence, probably preventing him from attending his mother-in-law's funeral, would, in my view, have been disproportionate and cruel.

#### IV) CONCLUSION

[36] These were my reasons for making the Order I did on October 24th, 2025. As will be clear from these brief Reasons, this is a highly exceptional outcome in a situation like this, which was driven by exceptional circumstances. As I told Mr. Lesage at the conclusion of the hearing, he must understand that any further issues with compliance with the conditions of the Conditional Sentence Order are very likely to result in his incarceration.

L.A. Charbonneau  
J.S.C.

Dated in Yellowknife, NT this  
4<sup>th</sup> day of November, 2025

Counsel for the Crown: Angie Paquin

Counsel for the Defence: Peter Adourian

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