File Number: 42025

IN THE SUPREME COURT OF CANADA

(ON APPEAL FROM THE COURT OF APPEAL OF QUÉBEC)

BETWEEN:

HIS MAJESTY THE KING

Appellant
(Appellant)

- and –

KEVEN BOILY

Respondent
(Respondent)

- and -

THE ATTORNEY GENERAL OF ALBERTA
ATTORNEY GENERAL OF ONTARIO
ATTORNEY GENERAL OF MANITOBA
CRIMINAL LAWYERS' ASSOCIATION (ONTARIO)
ASSOCIATION QUÉBÉCOISE DES AVOCATS ET AVOCATES DE LA DÉFENSE
AKWESASNE JUSTICE DEPARTMENT AND MENTAL HEALTH LEGAL ADVOCACY COALITION

Interveners

FACTUM OF THE INTERVENER ATTORNEY GENERAL OF ALBERTA

RULES 37 AND 42 OF THE *RULES OF THE SUPREME COURT OF CANADA*

DANIELLE GREEN
Counsel for the Intervener, Attorney General of Alberta

Alberta Crown Prosecution Service
Appeals and Specialized Prosecutions Office
516, John E. Brownlee Building
10365 – 97 Street NW
Edmonton, Alberta T5J 3W7

Phone: (780) 422-5402
Fax: (780) 422-1106
Email: danielle.green@gov.ab.ca

LÉA DESJARDINS
Ottawa Agent for the Intervener, Attorney General of Alberta

Gowling WLG (Canada) LLP
2600, 160 Elgin Street
Ottawa, ON
K1P 1C3

Phone: (613) 786-0106
Fax: (613) 788-3509
Email: lea.desjardins@gowlingwlg.com

ORIGINAL TO: **THE REGISTRAR**
Supreme Court of Canada
301 Wellington Street
Ottawa, ON K1A 0J1

COPIES TO:

JOËLLE HUOT
SÉBASTIEN VALLÉE
Counsel for the Appellant

Director of Criminal and Penal Prosecutions
Louis-Philippe-Pigeon Building
1200 route de l'Église, Suite 210
Québec (Québec) G1V 4M1
Telephone : (418) 643-9059, Ext 21276
Fax : (418) 644-3428
joelle.huot@dpcp.gouv.qc.ca
sebastien.vallee@dpcp.gouv.qc.ca

ISABELLE BOUCHARD
Ottawa Agent for the Appellant

Director of Criminal and Penal Prosecutions
Gatineau Courthouse
17 Laurier Street, Suite 1.230
Gatineau, Québec J8X 4C1
Telephone: (819) 776-8111, Ext: 60442
Fax: (819) 772-3986
isabelle.bouchard@dpcp.gouv.qc.ca
appelgatineau@dpcp.gouv.qc.ca

SÉBASTIEN TALBOT
Counsel for the Respondent

OTL avocats inc.
773, boulevard Saint-Joseph, Suite 201
Roberval, Québec
G8H 2L4
Telephone: (418) 275-0011
Fax: (418) 275-5625
metalbot@otlavocats.ca

HEATHER FREGEAU
Counsel for the Intervenor, Attorney General of Ontario

Attorney General of Ontario
Crown Law Office - Criminal
720 Bay Street, 10th Floor
Toronto, Ontario
M7A 2S9
Telephone: (437) 929-2130
FAX: (416) 326-4656
Email: heather.fregeau@ontario.ca

REKHA MALAVIYA, KC
ASHLEIGH SMITH
Counsel for the Intervener, Attorney General of Manitoba

Manitoba Justice Prosecution Service
510-405 Broadway
Winnipeg, Manitoba R3C 3L6
Telephone: (204) 945-2852
FAX: (204) 945-1260
Email: Rekha.Malaviya@gov.mb.ca

JOLENE HANSELL
BRENDAN COFFEY
Counsel for the Intervener, Criminal Lawyers' Association (Ontario)

Russomanno Hyslop LLP
141 Laurier Avenue West, Suite 400
Ottawa, Ontario K1P 5J3
Telephone: (613) 232-8389
Email: jolene@rh-lawyers.ca

CYNTHIA LACOMBE
FERNANDO BELTON
Counsel for the Intervener, Association québécoise des avocats et avocates de la défense

BMD Avocats
2950, rue Lucien-L'Allier, Suite 220
Laval, Quebec H7P 0H8
Telephone: (514) 666-1111
FAX: (514) 221-2137
Email: clacombe@bmdavocats.com

NEHA CHUGH
ANITA S ZIGETI
KATHRYN M. CAMPBELL
UTTRA GAUTAM
Counsel for the Intervenor, Akwesasne Justice Department and Mental Health Legal Advocacy Coalition

Chugh Law Professional Corporation
28 First Street West
Cornwall, Ontario K6J 1B9
Telephone: (613) 938-0000
FAX: (613) 938-8556
Email: neha@chughlaw.ca

LÉA DESJARDINS
Agent for the Intervener, Attorney General of Manitoba

Gowling WLG (Canada) LLP
160 Elgin Street, Suite 2600
Ottawa, Ontario K1P 1C3
Telephone: (613) 786-8695
FAX: (613) 788-3509
Email: lea.desjardins@gowlingwlg.com

MARIE-FRANCE MAJOR
Ottawa Agent for the Intervener, Criminal Lawyers' Association (Ontario)

Supreme Advocacy LLP
340 Gilmour Street, Suite 100
Ottawa, Ontario K2P 0R3
Telephone: (613) 695-8855 Ext: 102
FAX: (613) 695-8580
Email: mfmajor@supremeadvocacy.ca

TABLE OF CONTENTS

Page No.

PART I – OVERVIEW AND FACTS..... 1

PART II – ISSUES..... 1

Intervener's Position regarding Question in Issues 1 and 3..... 2
Intervener's Position regarding Question in Issue 2..... 2

PART III – STATEMENT OF ARGUMENT..... 2

Proportionality Requires Emphasis on Denunciation and Deterrence for IPV Offences..... 2
Conditional Discharges are Exceptional Remedies for IPV Offences..... 5
Guidance from this Court on the Impact of s 267(c) on Sentencing is Needed..... 8

PART VI – TABLE OF AUTHORITIES..... 11

Authorities..... 11

FACTUM OF THE INTERVENER

PART I – OVERVIEW AND FACTS

1. This appeal focuses on sentencing for intimate partner violence ("IPV"), the prioritization of applicable statutory sentencing principles and objectives, and the impact of the offence of assault by strangulation on sentence, particularly in the IPV context. Recent *Criminal Code* amendments and judicial pronouncements confirm the gravity of IPV and denote an enhanced awareness of the extensive harm this form of violence causes to victims and communities. Significantly, this Court's decision in *Ahluwalia v Ahluwalia,* and repeated recognition of the scourge of IPV by our courts reinforce the importance of judicial guidance to help address this social crisis.

2. The Attorney General of Alberta ("Alberta") intervenes in this appeal and makes three submissions. **First**, both Parliament and the judiciary have affirmed the need to add further protection in the law for victims of IPV. Emphasis on the paramountcy of denunciation and general deterrence in sentencing is necessary to achieve this goal. This results in less weight being afforded to other objectives, such as rehabilitation. **Second**, flowing from the first submission is a recognition that the imposition of a discharge in IPV cases should be rare because it will most often be contrary to the public interest. **Third**, the offence of assault by strangulation is frequently perpetrated in the IPV context. Guidance from this Court is required to confirm both the seriousness and dangerousness of this offence, and its impact on sentencing.

3. Alberta takes no position on the facts of this case.

PART II – ISSUES

4. Alberta intervenes with respect to the three issues stated by the Appellant:

> **Question in Issue 1**: The Court of Appeal erred in concluding the sentencing judge gave sufficient weight to the objectives of denunciation and deterrence, as well as to the statutory aggravating factors in ss 718.04, 718.2(a), and 718.201 *CC*;
>
> **Question in Issue 2**: The Court of Appeal erred in concluding the sentencing judge properly considered the seriousness of assault by strangulation per s 267(c) *CC*; and,

Question in Issue 3: The Court of Appeal erred in refusing to recognize that the sentencing judge's errors led him to conclude the granting of a discharge would not be contrary to the public interest, thereby imposing a disproportionate sentence.

Intervener's Position regarding Question in Issues 1 and 3

5. Denunciation and general deterrence are the primary sentencing objectives for IPV crimes. Sentencing judges must prioritize them above all others. The result is not to disregard other principles and objectives, but to give them less weight in determining a proportionate sentence. Within the IPV context, the paramountcy of denunciation and deterrence, along with the multitude of statutory aggravating factors require the imposition of a sentence that properly reflects society's repudiation of this type of violence and the need to deter others. Thus, sentences - like discharges - that were created to embody the objectives of restraint and rehabilitation[1] should be granted only in the most exceptional circumstances for IPV offences.

Intervener's Position regarding Question in Issue 2

6. The extreme seriousness of assault by strangulation must be considered to craft a fit sentence. Section 267(c) *CC* was enacted mainly to address the frequency and dangerousness of strangulation perpetrated in the IPV context. Since its enactment, there has been little appellate direction to assist sentencing judges on how to address both the gravity of the offence and the offender's degree of responsibility. Guidance from this Court is needed to ensure proportionality.

PART III – STATEMENT OF ARGUMENT

Proportionality Requires Emphasis on Denunciation and Deterrence for IPV Offences

7. More than three decades ago in *R v Lavallee*, this Court observed:

> … the tragedy of domestic violence can hardly be overstated. Greater media attention to this phenomenon in recent years has revealed both its prevalence and its horrific impact on women from all walks of life… Fortunately, there has been a growing awareness in recent years that no man has a right to abuse any woman under any circumstances…."[2]

8. As noted by the Appellant, Parliament has since deemed it necessary to enact multiple *Criminal Code* amendments adding new offences, as well as bail and sentencing provisions,

---

[1] *R v Turner*, 2022 ABCA 11, para 34 and *R v Reid*, 2015 ABCA 334, para 17.
[2] *R v Lavallee*, 1990 CanLII 95 (SCC), [1990] 1 SCR 852, pp 872-873; *R v Brown*, 1992 ABCA 132, para 18.

related to IPV.[3] And in the civil context, this Court has created a new tort of IPV to provide redress to victims, recognizing that IPV is not confined to conduct that causes only physical or psychological injury, but also includes all abusive conduct where one partner uses coercive control against the other.[4] In *Ahluwalia v Ahluwalia*, this Court identified that past efforts to prevent and decrease IPV have been largely unsuccessful:

> Canadian law has recognized the threat of intimate partner violence, and crafted novel responses to address this insidious form of abuse. Our criminal and family law have evolved to recognize this unique form of violence both in statutory amendments and in our jurisprudence. Despite these legal reforms and other societal shifts to respond to the crisis in recent years, intimate partner violence remains at epidemic levels, including severe and disproportionate physical, psychological, and economic harm on women and girls.[5]

9. IPV is a societal epidemic that cannot be solved *solely* by judicial pronouncements or legislative reforms.[6] However, as noted by the Alberta Court of Appeal ("ABCA") in *R v Ollenberger*, courts must send a clear message to the public that IPV is a serious crime, it will not be tolerated, and "[w]e are prepared to do everything within our power to help society deal with this social problem" through the imposition of denunciatory and deterrent sentences.[7]

10. To enforce this message, the ABCA in *R v Brown* provided guidance to sentencing judges. First, the sentencing judge should consider what sentence would be fit for a stranger assault, considering the aggravating and mitigating factors. Second, they should examine the circumstances specific to the intimate partner relationship, with an emphasis on denunciation and deterrence.[8] Analysis through this lens is required given the unique nature of intimate partner relationships and the devastating harm caused by the perpetrators of IPV.[9]

---

[3] Appellant's Factum, para 49; Sections 267(c), 235(5.1), 236(2)(a), 263.1, and 264.01 *CC* (new offences); Sections 515(3)(a), 515(6)(a)(ix), 515(6)(b.1) *CC* (bail provisions); Sections 718.201, 718.04, 718.2(a)(ii), (ii.2), (iii), (iii.1), and 726.21 *CC* (sentencing provisions).
[4] *Ahluwalia v Ahluwalia*, 2026 SCC 16, para 120.
[5] *Ahluwalia v Ahluwalia*, 2026 SCC 16, para 251 (Karakatsanis J., concurring in the result).
[6] *R v Brown*, 1992 ABCA 132, para 19.
[7] *R v Ollenberger*, 1994 ABCA 72, para 33; *R v Brown*, 1992 ABCA 132, para 19; *R v AD*, 2024 ABCA 178, para 57; *R v Adul Jabar*, 2023 QCCQ 405, paras 21-26; Appellant's Factum, para 60.
[8] *R v Brown*, 1992 ABCA 132, paras 20-22; *R v MH*, 2024 ABCA 407, para 23.
[9] *Ibid*., para 21*;* See also *Ahluwalia v Ahluwalia*, 2026 SCC 16, paras 97 and 178 (majority) and 251 (Karakatsanis J., concurring in the result).

11. The approach articulated by the ABCA in *Brown* recognizes the vulnerability of IPV victims and the offender's breach of trust, and incorporates the relevant sentencing objectives and factors, including ss 718.201, 718.04, 718.2(a)(ii), (iii), and (iii.1) *CC*.[10] It also confirms the paramountcy of denunciation and general deterrence over other sentencing objectives, whether the violence occurs as an isolated attack or as repeated abuse.[11] The analysis in *Brown* does not render nugatory other applicable sentencing objectives, nor does it remove all discretion from sentencing judges.[12] Rather, those objectives, while relevant, are secondary factors and must, therefore, be afforded less weight in creating a proportionate sentence.[13]

12. The prioritization of denunciation and general deterrence for IPV offences has been endorsed by appellate courts across Canada,[14] and codified in ss 718.04 and 718.201 *CC*.[15] Particularly in cases where the offending in question is prolonged, comprising multiple acts of violence, threats, or the exercise of coercive control, the imposition of a sentence that appropriately reflects these two paramount objectives is even more pronounced. To give effect to the relevant statutory provisions, courts must "give primacy to denunciation and deterrence while showing as much restraint as is 'reasonable in the circumstances and consistent with the harm done to victims or to the community'…"[16] As noted by Ruel J., dissenting in the present case, the objectives of denunciation and deterrence are *predominant*, not just important, and the sentence imposed must *actually* reflect Parliament's intent to be proportionate.[17]

---

[10] *R v Brown*, 1992 ABCA 132, paras 20-21.
[11] *R v Ollenberger*, 1994 ABCA 72, para 31.
[12] *Ibid*., para 22; Respondent's Factum, para 6.
[13] *R v Brown*, 1992 ABCA 132, para *; R v AD*, 2024 ABCA 178, para; *R v Kaviok*, 2024 NUCA 13, paras 31-32.
[14] *R v OCFG (No 2)*, 2026 MBCA 12; para 9; *R v Bear*, 2022 SKCA 7, paras 22-23; *R v Cunningham*, 2023 ONCA 36, paras 49-52; *R c Davidson*, 2021 QCCA 545, paras 31-32. Additionally, other appellate courts have adopted the ABCA's conclusions in *R v Brown, supra,* that (1) IPV is a serious crime, and (2) denunciation and deterrence are paramount: *R v Ochushayoo*, 2004 SKCA 16, paras 9-10; *R v Timmons*, 2003 NSCA 108, paras 6-7; *R v Pitkeathyly*, 1994 CanLII 222 (ONCA).
[15] *Criminal Code*, RSC 1985, c. C-46, ss 718.04 and 718.201.
[16] *R v AD*, 2024 ABCA 178, para 62; *R v Penney*, 2015 CanLII 36137 (NL PC), paras 4, 61-63.
[17] *R c Boily*, 2025 QCCA 841, para 52 (Ruel J., in dissent).

13. Most recently in *Ahluwalia*, this Court stated:

> Canada continues to face a crisis of intimate partner violence. This violence inflicts significant physical, sexual, and psychological harm on its victims – harm that is qualitatively different from violence inflicted outside an intimate relationship. The harms of intimate partner violence are far-reaching, with effects on the victims' children, their families, and Canadian society more broadly.[18]

Affirmation by this Court that proportionate sentences for IPV are achieved through the prioritization of denunciation and deterrence, consideration of the relevant statutory aggravating factors, and a balancing of all other applicable factors and objectives, is necessary to ensure that sentencing judges give *actual* effect to Parliamentary intention and impose sentences that reflect the severity of IPV crimes, protect vulnerable victims, and maintain public confidence in the administration of justice.

Conditional Discharges are Exceptional Remedies for IPV Offences

14. Alberta submits that discharges should be granted sparingly for IPV offences.[19] In *R v Turner*, the ABCA affirmed the extraordinary nature of discharges for IPV crimes, and the limited class of offenders for whom this form of sanction was designed to assist.[20] While acknowledging that a discharge is available for any offence,[21] the ABCA in *R v Reid* confirmed:

> The discharge provisions were enacted by Parliament to recognize human frailty and to allow a measure of social condonation. Parliament has recognized that in exceptional cases the full impact of the criminal law does not necessarily serve its objectives. A discharge is an unusual disposition that must be used sparingly for it to remain effective. Were it used regularly it would sacrifice all other principles of sentencing to the consideration of the offender, thereby undermining the reputation of the justice system.[22]

---

[18] *Ahluwalia v Ahluwalia*, 2026 SCC 16, para 250 (Karakatsanis J., concurring in the result).

[19] Notably, the recently enacted Bill C-225 adds s 263.1 to the *Criminal Code*. This section stipulates that where the Crown proceeds by indictment in relation to an offence involving violence against an intimate partner where the maximum penalty is 10 years or more but less than 14, for example any of the offences under s 267 *CC*, the new maximum penalty is now 14 years, which statutorily precludes the imposition of a discharge.

[20] *R v Turner*, 2022 ABCA 11, paras 33-34, leave to appeal dismissed at 2022 CanLII 113175 (SCC).

[21] Where the statutory pre-requisites are met.

[22] *R v Reid*, 2015 ABCA 334, para 17; *R v MacFarlane*, 1976 Alta SCAD 6, para 13; *R v Hans*, 2019 ABCA 253, paras 8-11.

15. Within the IPV context, Canadian appellate courts are largely *ad idem* that where the offence involves abuse of an intimate partner, denunciation and deterrence along with the other relevant sentencing considerations militate against the imposition of a discharge.[23] For example, in *R v Ganesan*, the Nunavut Court of Appeal ("NUCA") confirmed that conditional discharges in the IPV context should only be granted in rare cases because "such offences generally require a sentence of general deterrence that is inconsistent with granting a discharge."[24]

16. Where Parliament has prescribed that denunciation and deterrence must be given "primary consideration", as is the case with IPV offences, it is "no longer open to the judge to elevate other sentencing objectives to an equal or higher priority…"[25] As was recently confirmed by this Court in *Quebec (Attorney General) v Denis*, this directive applies even in the case of youthful first offenders.[26] In *Turner*, the ABCA held that the "[p]romotion of the community's interests requires that there be a public record of those who commit crimes and a formal state denunciation of criminal conduct…"[27] With this guidance in mind, Alberta respectfully submits that contrary to the Respondent's position and the majority of the QCCA,[28] conditional discharges should be granted only in the most exceptional circumstances for IPV offences.

17. Section 730(1) *CC* specifies that a court may grant a discharge where (1) it is in the best interests of the accused and (2) it is not contrary to the public interest.[29] Where specific deterrence and rehabilitation do not require a period of incarceration, "in almost every case a

---

[23] For example: *R v Gardiner*, 2017 MBCA 57, paras 6-8; *R c Laurendeau*, 2007 QCCA 1593, para 18.
[24] *R v Ganesan*, 2017 NUCA 7, paras 17 and 24; See also *R v Gardiner*, 2017 MBCA 57, paras 7-8, citing *R v Foianesi*, 2011 MBCA 33, para 10.
[25] *R v Friesen*, 2020 SCC 9, para 104; *R v AD*, 2024 ABCA 178, para 30.
[26] *Quebec (Attorney General) v Denis*, 2026 SCC 25, paras 86-87; *R v Hernandez*, 2014 ABCA 311, paras 14-17.
[27] *R v Turner*, 2022 ABCA 11, para 34, citing *Criminal Code*, RSC 1985, c. C-46, s 718(a).
[28] Respondent's Factum, paras 21, 105-107; *R c Boily*, 2025 QCCA 841, paras 21, 24, and 28.
[29] *Criminal Code*, RSC 1985, c. C-46, s 730(1). Additionally, there can be no minimum penalty and the maximum penalty must be less than 14 years.

[d]ischarge would certainly be in the interests of the Accused."[30] As to whether a discharge would be contrary to the public interest, the ABCA in *MacFarlane* outlined several factors for sentencing judges to consider in determining the appropriateness of a discharge, including (1) the nature of the offence, noting that it would be rare for crimes of violence, (2) the prevalence of the offence in the community, (3) whether the offence was impulsive or calculated, and (4) whether the circumstances of the offence should become a matter of public record.[31] Alberta submits that none of these factors supports the imposition of a discharge in the IPV context.[32]

18. Historically, IPV was considered a "private" matter that did not warrant state intervention.[33] More recently, legislators and the courts have engaged in efforts to educate themselves and the public on the nature and prevalence of IPV.[34] Put another way, IPV is no longer a crime that should be kept secret behind closed doors. As noted by the NUCA in *Ganesan*:

> In my view, the ordinary, reasonable, fair-minded member of Canadian society, informed about the circumstances of the case and relevant principles of sentencing, would believe that the recording of a conviction is necessary to maintain public confidence in the administration of justice.[35]

Accordingly, except in the rarest of cases, convictions for IPV offences should be a matter of public record.[36]

19. Alberta acknowledges that individualization in sentencing is central to the proportionality assessment, and that in every case, the sentencing judge is required to sentence "[f]or this

---

[30] *R v MacFarlane*, 1976 Alta SCAD 6, para 11; *R v Fallofield*, 1973 CanLII 1412 (BCCA), [1973], 13 CCC (2d) 450, pp 454-455.

[31] *R v MacFarlane*, 1976 Alta SCAD 6, paras 11-20. The factors listed above do not include all the factors listed in *MacFarlane*, just the ones that would be most applicable in IPV cases.

[32] *R v Stairs*, 2022 SCC 11 – prevalence para. 92, *Ahluwalia v Ahluwalia*, 2026 SCC 16.

[33] *R v Stairs*, 2022 SCC 11, para 92; See also *R v Brown*, 1992 ABCA 132, para 24, citing *R v Montgrand*, 1988 ABCA 239, para 4; See also *R v Godoy*, 1999 CanLII 709 (SCC), para 21; *Ahluwalia v Ahluwalia*, 2026 SCC 16, para 20, citing *Barendregt v Grebliunas*, 2022 SCC 22, para 144.

[34] *R v Stairs*, 2022 SCC 11, para 92, citing *R v* Godoy, 1999 CanLII 709 (SCC), para 21.

[35] *R v Ganesan*, 2017 NUCA 7, paras 24-25.

[36] It is notable that following the enactment of Bill C-16, s 726.21 *CC* requires a court who finds an offender guilty of a violent offence against their intimate partner to endorse that fact on the information or indictment.

offence, committed by this offender, harming this victim, in this community."[37] However, what is made clear from the statistics, the continuing need for legislative reforms, and repeated judicial direction reinforcing the need to deter and denounce IPV and to protect victims, is that more is required. Although initially articulated by this Court in a different context, the words of Moldaver J. in *R v Barton* are also applicable to the role of the courts in properly addressing IPV crimes through the imposition of proportionate sentences: "Put simply, we can – and *must* – do better."[38] Clear pronouncements from this Court are necessary to achieve this goal.

Guidance from this Court on the Impact of s 267(c) on Sentencing is Needed

20. Parliament's intent in enacting s 267(c) *CC* was to create a more serious form of assault, one often perpetrated in the IPV context.[39] Despite coming into force in 2019, there is a dearth of appellate guidance on sentencing for this offence. While this Court and others have addressed the seriousness of strangulation in the context of other offences,[40] guidance from this Court as to the gravity of this offence and the degree of moral blameworthiness of offenders who commit it, particularly in IPV cases, is required to ensure the imposition of proportionate sentences.

21. Before s 267(c) came into force and effect, the act of strangulation perpetrated during an assault was captured by laying a charge of common assault (s 266), assault causing bodily harm (s 267(b)), or aggravated assault (s 268).[41] Parliamentary debates leading up to the enactment of s 267(c) demonstrate the legislators' concerns and dissatisfaction with this procedure:

> Unfortunately, under existing law, courts do not always recognize the seriousness of [assault by strangulation], which often occur[s] in the context of [IPV]. These aggressive acts cannot be underappreciated or dismissed as simply reflecting a perpetrator's anger management problem. Strangulation and choking pose a much higher risk to safety than other forms of assault, because they deprive a person of oxygen, with potentially fatal

---

[37] *R v Parranto*, 2021 SCC 46, para 36, citing *R v Gladue*, 1999 CanLII 679 (SCC), [1999] 1 SCR 688, para 80 [emphasis in original]; *R v Parranto, supra,* para 12, citing *R v Friesen*, 2020 SCC 9, para 58.

[38] *R v Barton*, 2019 SCC 33, para 1 [emphasis in original].

[39] *Hansard Debates* 1615 Hon Judy A Sgro (Humber River – Black Creek, Lib), 42nd Parliament, 1st Session Edited Hansard Number 354, contents November 20, 2018, Volume 148; See also *R v McDonald*, 2021 ABCA 262, para 28; See also *R c Zerouil*, 2026 QCCS 2472, paras 71-76.

[40] For example: Section 246 *CC* – choking to overcome resistance; Section 268 *CC* – aggravated assault by endangering the life; Section 235 *CC* – murder.

[41] *R v Zerouil*, 2026 QCCS 2472, para 72.

> consequences, despite the fact that the person may not have any visible injuries. *The proposed amendment would better reflect the gravity of the harm inflicted.*[42]

22. In *R v Lemmon*, the ABCA addressed the dangerousness of strangulation in the context of s 246 *CC* (choking to overcome resistance):

> … Rendering a person unconscious, whether by choking, strangulation or suffocation, is an inherently dangerous act that is easily capable of causing death, or brain injury with devastating lifelong consequences… The difference in the outcome, between unconsciousness, brain damage and death, may be only a matter of a few additional seconds of pressure. In the final analysis, this is an act of cruel domination met by sheer horror and often accompanied by serious physical and psychological harm.[43]

Even where loss of consciousness does not occur, the gravity of strangulation remains high.[44]

23. In *R v McDonald*, the ABCA focused on the gravity of s 267(c) *CC*. In determining what would be a fit sentence, the Court held that, "[t]he serious nature of these offences, particularly the choking, *must be considered* to arrive at a proportionate, fit sentence…" The Court further observed that by adding this new offence as an elevated form of assault, Parliament signaled its intention "to enhance victim safety and toughen criminal law response to intimate partner violence…[45]

24. And, in *R v Penney*, a sentencing judge highlighted the high level of moral blameworthiness for offenders who strangle their intimate partners:

> The choking of females by their male partners is not a rare occurrence… and it is an extremely dangerous act. *It is designed to humiliate, dominate and control the victim.* The seriousness of this type of assaultive behaviour was referred to by the Law Commission of New Zealand in *Strangulation: the case for a new offence* (R 138, March, 2016, at paragraph 1.2): "…The psychological impact on victims can be devastating. *It is often said that, while the abuser may not be intending to kill, he is demonstrating that he can kill. It is unsurprising that strangulation is a uniquely effective form of intimidation, coercion and control.*"[46]

---

[42] *Hansard Debates* 1615 Hon Judy A Sgro (Humber River – Black Creek, Lib), 42nd Parliament, 1st Session Edited Hansard Number 354, contents November 20, 2018, Volume 148 [emphasis added].

[43] *R v Lemmon*, 2012 ABCA 103, paras 27-29; *R v Prevost*, 2019 ABCA 398, paras 11-13.

[44] *R v McDonald*, 2021 ABCA 262, para 26.

[45] *R v McDonald*, 2021 ABCA 262, paras 26 and 28.

[46] *R v Penney*, 2025 CanLII 36137 (NL PC), para 95 [emphasis added]; See also *R v Stacey*, 2023 CanLII 33462 (NL PC), paras 32-41, citing among other cases *R v Lemmon*, 2012 ABCA 103, para 28; See also *R c TL*, 2024 QCCQ 3592, para 47.

25. Even outside the IPV context, the significant gravity and high degree of moral blameworthiness for this offence demands a substantial sanction.[47] Following the reasoning in *Brown*, once a sentencing judge has determined what a fit sentence for this offence would be in the context of a stranger assault, including the aggravating and mitigating factors, the unique circumstances of the intimate partner relationship must be considered, with emphasis on denunciation and deterrence.[48] Balancing all relevant principles and objectives, a proportionate sentence for this elevated form of assault must appropriately reflect its seriousness and dangerousness. Given the frequency with which this offence is committed in the IPV context,[49] this Court's assistance in establishing appellate sentencing guidance for this offence is required.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at Edmonton, Alberta, this 18th day of August, 2026.

DANIELLE GREEN
COUNSEL FOR THE INTERVENER
ATTORNEY GENERAL OF ALBERTA

[47] *R v Robinson*, 1993 ABCA 91, para 8 and *R v Lemmon*, 2012 ABCA 103, paras 24-32 (both cases involve sentencing for s 246 *CC* offences); *R v Prevost*, 2019 ABCA 398, paras 11-15; *R v R c TL*, 2024 QCCQ 3592, para 50.

[48] *R v Brown*, 1992 ABCA 132.

[49] *Hansard Debates* 1615 Hon Judy A Sgro (Humber River – Black Creek, Lib), 42nd Parliament, 1st Session Edited Hansard Number 354, contents November 20, 2018, Volume 148.

PART VI – TABLE OF AUTHORITIES

Authorities	**Cited at Paragraph No.**
R v Adul Jabar, 2023 QCCQ 405	9
R v AD, 2024 ABCA 178	9, 11, 12, 16
Ahluwalia v Ahluwalia, 2026 SCC 16	1, 8, 10, 13, 17, 18
Barendregt v Grebliunas, 2022 SCC 22	18
R v Barton, 2019 SCC 33	19
R v Bear, 2022 SKCA 7	12
R c Boily, 2025 QCCA 841	12, 16
R v Brown, 1992 ABCA 132	7, 9, 10, 11, 18, 25
R v Cunningham, 2023 ONCA 36	12
R c Davidson, 2021 QCCA 545	12
R v Fallofield, 1973 CanLII 1412 (BCCA), [1973], 13 CCC (2d) 450	17
R v Foianesi, 2011 MBCA 33	15
R v Friesen, 2020 SCC 9	16, 19
R v Ganesan, 2017 NUCA 7	15, 18
R v Gardiner, 2017 MBCA 57	15
R v Gladue, 1999 CanLII 679 (SCC), [1999] 1 SCR 688	19
R v Godoy, 1999 CanLII 709 (SCC)	18
R v Hans, 2019 ABCA 253	14
R v Hernandez, 2014 ABCA 311	16
R v Kaviok, 2024 NUCA 13	11

R c Laurendeau, 2007 QCCA 1593	15
R v Lavallee, 1990 CanLII 95 (SCC), [1990] 1 SCR 852	7
R v Lemmon, 2012 ABCA 103	22, 24, 25
R v MacFarlane, 1976 Alta SCAD 6	14, 17
R v McDonald, 2021 ABCA 262	20, 23
R v MH, 2024 ABCA 407	10
R v Montgrand, 1988 ABCA 239	18
R v OCFG (No 2), 2026 MBCA 12	12
R v Ochushayoo, 2004 SKCA 16	12
R v Ollenberger, 1994 ABCA 72	9, 11
R v Parranto, 2021 SCC 46	19
R v Penney, 2025 CanLII 36137 (NL PC)	24
R v Pitkeathyly, 1994 CanLII 222 (ONCA)	12
R v Prevost, 2019 ABCA 398	22, 25
Quebec (Attorney General) v Denis, 2026 SCC 25	16
R v Reid, 2015 ABCA 334	5, 14
R v Robinson, 1993 ABCA 91	25
R v Stacey, 2023 CanLII 33462 (NL PC)	24, 25
R v Stairs, 2022 SCC 11	17, 18, 19
R v Timmons, 2003 NSCA 108	12
R c TL, 2024 QCCQ 3592	24, 25

R v Turner, 2022 ABCA 11; leave to appeal dismissed at 2022 CanLII 113175 (SCC)	5, 14, 16
R c Zerouil, 2026 QCCS 2472	21, 22
Legislation	**Cited at Paragraph No.**
Criminal Code, RSC 1985, c. C-46, s. 235 *Code criminel, LRC 1985,* c. C-46, art. 235	20
Criminal Code, RSC 1985, c. C-46, s. 235(5.1) *Code criminel, LRC 1985,* c. C-46, art. 235(5.1)	8
Criminal Code, RSC 1985, c. C-46, s. 236(2)(a) *Code criminel, LRC 1985,* c. C-46, art. 236(2)(a)	8
Criminal Code, RSC 1985, c. C-46, s. 246 *Code criminel,* LRC 1985, c. C-46, art. 246	20, 22, 25
Criminal Code, RSC 1985, c. C-46, s. 263.1 *Code criminel, LRC 1985,* c. C-46, art. 263.1	8, 14
Criminal Code, RSC 1985, c. C-46, s. 264.01 (not yet in force and effect) *Code criminel, LRC 1985,* c. C-46, art. 264.01 (not yet in force and effect)	8
Criminal Code, RSC 1985, c. C-46, s. 266 *Code criminel,* LRC 1985, c. C-46, art. 266	21
Criminal Code, RSC 1985, c. C-46, s. 267(b) *Code criminel, LRC 1985,* c. C-46, art. 267(b)	21
Criminal Code, RSC 1985, c. C-46, s. 267(c) *Code criminel,* LRC 1985, c. C-46, art. 267(c)	6, 8, 20, 21, 23
Criminal Code, RSC 1985, c. C-46, s. 268 *Code criminel,* LRC 1985, c. C-46, art. 268	21
Criminal Code, RSC 1985, c. C-46, s. 515(3)(a) *Code criminel, LRC 1985,* c. C-46, art. 515(3)(a)	8
Criminal Code, RSC 1985, c. C-46, s. 515(6)(a)(ix) *Code criminel, LRC 1985,* c. C-46, art. 515(6)(a)(ix)	8
Criminal Code, RSC 1985, c. C-46, s. 515(6)(b.1) *Code criminel, LRC 1985,* c. C-46, art. 515(6)(b.1)	8

Criminal Code, RSC 1985, c. C-46, s. 718(a) *Code criminel,* LRC 1985, c. C-46, art. 718(a)	16
Criminal Code, RSC 1985, c. C-46, s. 718.04 *Code criminel,* LRC 1985, c. C-46, art. 718.04	4, 8, 11, 12
Criminal Code, RSC 1985, c. C-46, s. 718.2(a) *Code criminel,* LRC 1985, c. C-46, art. 718.2(a)	4
Criminal Code, RSC 1985, c. C-46, s. 718.2(a)(ii), (iii), and (iii.2) *Code criminel,* LRC 1985, c. C-46, art. 718.2(a)(ii), (iii), and (iii.2)	8, 11
Criminal Code, RSC 1985, c. C-46, s. 718.201 *Code criminel,* LRC 1985, c. C-46, art. 718.201	4, 8, 11, 12
Criminal Code, RSC 1985, c. C-46, s. 726.21 *Code criminel, LRC 1985,* c. C-46, art. 726.21	18
Criminal Code, RSC 1985, c. C-46, s. 730(1) *Code criminel,* LRC 1985, c. C-46, art. 730(1)	17
Secondary Sources	**Cited at Paragraph No.**
Hansard Debates 1615 Hon Judy A Sgro (Humber River – Black Creek, Lib), 42nd Parliament, 1st Session Edited Hansard Number 354, contents November 20, 2018, Volume 148	20, 21, 25