

R. v. Ipeelee  
Submissions by Mr. Drummond

5  
10  
15  
20  
25  
30

criteria which have to be significant, serious, and requiring the protection of the public. That in spite of that designation, he's breached a fundamental condition which directly relates back to the fundamental problems that society has with Mr. Ipeelee and which have been clearly identified by all the professional reports as being those things that lead him to commit the offences from which we're trying to protect the public.

And that in spite of his aboriginal heritage which may give us some explanation and understanding of why he's gotten to where it's gotten to him, it doesn't explain a way or erase the concerns the public must have for protecting itself from the potential violence that Mr. Ipeelee represents in circumstances when he has access to alcohol. And that that being the case, protection of the public is still paramount even when considering the Gladue considerations in this particular case.

And that takes us full circle right back to the beginning, which basically says you don't get here, you don't get on a long-term supervision order easily. There aren't very many of them out there. There aren't very many because it requires a special type of crime, a special type of problem to be designated. But once you're designated, when you're released on that order, you have to have a tight rein, because you are a

R. v. Ipeelee  
Submissions by Mr. Drummond

risk. You're a risk in the same order as a dangerous offender, who are kept in jail forever, possibly.

5  
10  
And we're taking, as my friend would suggest, a risk, a manageable risk by having him in the community. When he proves that the management level isn't sufficient to meet the risk and the risk surpasses the management, as it did in this case, then you have a need to protect the public. That's what Part XXIV is all about. Section 753 is part of Part XXIV.

15  
20  
Justice Hill said it as best as it could be said in Payne, and it's those circumstances which dictate that a penalty must be harsh and must strike home and send out a message for general and specific deterrence with respect to the compliance with the ever important conditions. And so, in that sense, sir, the Crown's position has been a three to five year sentence.

25  
30  
My friend also suggested the longest we'd gotten was ... I can't remember which case he cited ... but the longest sentence we've actually gotten in this region was Bourdon, which was at the Superior Court of Justice. Mr. O'Connor should draw to your attention that was a two for one credit situation by Mr. Justice Belch. And Mr. Justice Belch, for some reason, was not convinced, as many others have been, to alter his discretion. The one for one, two for one issue

is a discretionary matter obviously in Your Honour's hands using the principles that exist, but it's still a discretionary matter.

And Justice Belch, in that case, exercised it in favour of a two for one situation, but there was a four year sentence on that which was a breach by communicating with female persons and not reporting the communication to his parole officer.

Those would be the submissions of the Crown, sir.

\*\*\*\*\*

THE COURT: So, you are still seeking three to five years less appropriate credit for pre-sentence custody?

MR. DRUMMOND: That's correct, sir.

THE COURT: Yes, Mr. O'Connor.

MR. O'CONNOR: Yes, Your Honour. Not to counter-reply, and I think the perspectives are clear, but a couple of mathematical or statistical points that I feel I should make, hopefully for Your Honour's benefit.

My friend indicated in Nelson, which is at tab 16, that Mr. Justice Masse sentenced him to two years in addition to dead time, and at page 27 of that judgment you'll see, Your Honour, that the court imposed a global sentence of two years by giving him 470 days, being one year and 105 days

to add to the 261 days pre-trial custody. So he actually didn't give him two years plus dead time.

And as regards to the other case my friend referred to most recently, R. v. Bourdon. Mr. Justice Belch actually imposed a sentence of 172 days, which added to the 644 days of pre-trial custody, was a total of 816 days ... two years, one month, 15 days, albeit, the judge saw it as equivalent to four years. So that's why I said earlier it's important to look at the actual results towards the equivalency because they're kind of all over the map.

THE COURT: All right, thank you.

\*\*\*\*\*

THE COURT: Well, frankly, I have a pretty good idea where I am going with this, but I need time to sort out my thoughts and give them to you by way of reasons. I am not suggesting that it will be a formal written judgment, but certainly something pre-prepared that I will be reading at the appropriate time.

Now, my problem is, the way things stand on the present schedule, I do not have a chambers day out of court until a month from today, February 23<sup>rd</sup>. There is the Family Day holiday on the 16<sup>th</sup> of February and I suppose since that is not a

holiday I am very used to having up until this point, I could use that day.

MR. DRUMMOND: Just so long as Your Honour isn't suggesting we come back on that day, sir.

THE COURT: No, no. No, I figure it is going to take me a whole day to sort through this. Well, I hope I can get it done, but I am prepared to shoot for the 17<sup>th</sup> of February for decision.

MR. O'CONNOR: I'm not available that day, Your Honour. I'm in trial in Napanee that whole week.

THE COURT: Well then, I might as well go to the 24<sup>th</sup>, the day after my next chambers day.

MR. O'CONNOR: That's fine, Your Honour.

MR. DRUMMOND: Thank you, sir.

THE COURT: That will be 10:00 a.m.

MR. DRUMMOND: I believe, sir, that concludes the matters for this court.

THE COURT: All right, then.

\*\*\*\*\*

FORM 2

CERTIFICATE OF TRANSCRIPT (SUBSECTION 5(2))

*Evidence Act*

I, Pamela Juneau certify that this document is a true and accurate transcript of the recording of:

R. v. Ipeelee

In the Ontario Court of Justice, held at 279 Wellington Street, Kingston, Ontario, taken from Recording No. 0911-1/014/2009, which has been certified in Form 1.

Date: July 5, 2009

Signature: Pamela Juneau



Court File No. C50429

COURT OF APPEAL FOR ONTARIO

BETWEEN:

HER MAJESTY THE QUEEN

Respondent

and

MANASIE IPELEE

Appellant

---

**APPELLANT'S SCHEDULE OF  
SENTENCE PRECEDENTS**

---

Fergus J. (Chip) O'Connor  
Barrister & Solicitor  
104 Johnson Street  
P.O. Box 1959  
Kingston, ON  
K7L 5J7

T: (613) 546-5581  
F: (613) 546-5540  
oconnor@kos.net

Solicitor for the Appellant

TO: Attorney General of Ontario

AND TO: This Honourable Court

**APPELLANT'S SCHEDULE OF SENTENCES**  
*(Cases listed in same order as in Respondent's Schedule A)*

<b>Case</b>	<b>Crown Characterization</b>	<b>Actual Sentence Imposed</b>	<b>Sentence + Dead Time</b>
<i>R v. Gracie</i> , [2009] B.C.J. No. 2049 (Prov. Ct.)  August 25 <sup>th</sup> , 2009  M.J. Brecknell J.	20 months	14 months	17 months
<i>R v. Barnhardt</i> (unreported decision of Ontario Court of Justice, Hamilton)  July 31 <sup>st</sup> , 2009  P.H.M. Agro J.	18 months	14 months	18 months
<i>R v. Goodwin</i> , [2009] O.J. No. 3237 (C.J.)  July 29 <sup>th</sup> , 2009  K.J. Caldwell J.	18 months	10 months	18 months
<i>R v. J.A.H.</i> (2009), 286 Nfld. & P.E.I.R. 305 (N.L. S.C.)  March 5 <sup>th</sup> , 2009  G.D. Butler J.	2½ - 3 years	24 months	30½ months
<i>R v. Murdock</i> (2009), 237 Man. R. (2d) 162 (Prov. Ct.)  February 19 <sup>th</sup> , 2009  B.M. Corrin J.	2 years	17 months	24 months
<i>R v. Oswald</i> (unreported decision of Ontario Superior Court of Justice, Toronto)  February 5 <sup>th</sup> , 2009  Nordheimer J.	2 years	8 months	24 months

Case	Crown Characterization	Actual Sentence Imposed	Sentence + Dead Time
<p><i>R v. Archer</i> (unreported decision of the Ontario Superior Court of Justice, Woodstock)</p> <p>January 29<sup>th</sup>, 2009</p> <p>Haines J.</p>	4 years	33 months	40½ months
<p><i>R c. Myrthil</i>, [2008] J.Q. no 10412 (Cour de Quebec)</p> <p>Manon Ouimet J.C.Q.</p>	21 months	12 months	9 months
<p><i>R v. Bourdon</i>, [2008] O.J. No. 5034 (C.J.)</p> <p>July 2<sup>nd</sup>, 2009</p> <p>D.M. Belch J.</p>	4 years	172 days (6½ months)	27 months
<p><i>R v. Priaulx</i> (2008), Sask. R. 313 (Prov Ct.)</p> <p>January 11<sup>th</sup>, 2008</p> <p>M.J. Hinds J.</p>	22 months	1 month	11½ months
<p><i>R v. Barnhardt</i>, [2008] O.J. No. 4226 (C.J.)</p> <p>August 8<sup>th</sup>, 2008</p>	22 months	4 months	13 months
<p><i>R v. L.I.</i>, [2008] O.J. No. 1307 (C.J.)</p> <p>April 3<sup>rd</sup>, 2008</p> <p>D.M. Nicholas, J.</p>	16 months	12 months	16 months
<p><i>R v. Matte</i>, [2007] O.J. No. 5588 (C.J.)</p> <p>November 27<sup>th</sup>, 2007</p> <p>R.G. Masse J.</p>	30 months	24 months	27 months

Case	Crown Characterization	Actual Sentence Imposed	Sentence + Dead Time
<i>R v. McGarroch</i> , [2007] O.J. No. 5587 (C.J.)  November 8 <sup>th</sup> , 2007  R.G. Masse J.	34 months	22 months	31 months
<i>R v. Nelson</i> , 2007 CarswellOnt 9456 (Ont. C.J.) October 18 <sup>th</sup> , 2007  R.G. Masse J.	24 months	15½ months	24 months
<i>R v. Barnhardt</i> , [2007] O.J. No. 2872 (C.J.)  July 20 <sup>th</sup> , 2007  H. Borenstein J.	12 months	3 months	9½ months
<i>R v. Kozovski</i> , [2007] O.J. No. 3610 (C.J.)  July 27 <sup>th</sup> , 2007  R.G. Masse J.	3 years 11 months	3 years	3 years 11 months
<i>R v. Browne</i> , [2007] O.J. No. 3955 (C.J.)  April 5 <sup>th</sup> , 2007  B.A. Brown J.	3 years	18 months	29 months
<i>R v. J.A.R.M.</i> , [2007] B.C.J. No. 237 (Prov. Ct.)  January 16 <sup>th</sup> , 2007  R.R. Smith J.	15 months	7 months	11 months
<i>R v. Fox</i> , 2007 CarswellOnt 9455 (Ont. C.J.)  April 30 <sup>th</sup> , 2007  R.G. Masse J.	20½ months	12 months	20½ months

Case	Crown Characterization	Actual Sentence Imposed	Sentence + Dead Time
<i>R v. Sam</i> , [2007] Y.J. No. 68 (Terr. Ct.)  August 31 <sup>st</sup> , 2007  J. Faulkner C.J	18 months	14 months	16 months
<i>R v. Sam</i> , [2006] Y.J. No. 31 (Terr. Ct.)  February 10 <sup>th</sup> , 2006  J. Faulkner C.J.	24 months	9 months	16½ months
<i>R v. Weasel</i> , [2006] S.J. No. 813 (Prov. Ct.)  March 23 <sup>rd</sup> , 2006  Deshaye J.	2 years 2 months	2 years	2 years 2 months
<i>R v. Nikolovski</i> , [2006] O.J. No. 5749 (C.J.)  July 19 <sup>th</sup> , 2006  R. Schneider J.	2 years	10 months	17 months
<i>R v. S.J.D. (sub nom. R v. Deacon)</i> (2004), 182 C.C.C. (3d) 257 (B.C.C.A.)  February 19 <sup>th</sup> , 2004  Finch C.J.B.C., Hall and Smith J.J.A.	45 months	2 years	38 months
<i>R v. Anderson</i> (2004), Nfld. & P.E.I.R. 330 (N.L.P.C.)  July 8 <sup>th</sup> , 2004  Orr, J.	24 months	24 months	24 months
<i>R v. Maynard</i> (2003), 222 Nfld. & P.E.I.R. 205 (N.L.P.C.)  January 24 <sup>th</sup> , 2003  Hyslop, J.	4 (+2) months	4 months	6 months

Case	Crown Characterization	Actual Sentence Imposed	Sentence + Dead Time
<i>R v. H.P.W.</i> (2003), 175 C.C.C. (3d) 56 (Alta. C.A.); rev'g <i>R v.</i> <i>Whitstone</i> , [2002] A.J. No. 1418 (Alta Prov Ct.)  April 23 <sup>rd</sup> , 2003  Ritter J.A. and Marshall and Kenny JJ. (ad hoc)	1 year	1 year	1 year

Summary of 28 Cases in Canada of Sentencing for Long Term Offender Breach

	Average	Manasie Ipelee	Ipelee Compared to Average
<b>Crown Characterization (Effective Sentence)</b>	24.88 months	36 months	1.45 x average
<b>Actual Sentence Imposed</b>	13.33 months	30 months	2.25 x average
<b>Sentence + Dead Time</b>	21.56 months	36 months	1.67 x average

The result is that Mr. Ipelee's sentence is, compared to the effective sentences as characterized by Crown, 45% higher than average; compared to sentences actually imposed, 125% higher than average; and compared to actual total of sentence imposed plus dead time, 67% higher than average.

*(Note: In terms of proportion of actual sentence to be served, those sentenced to under 2 years will serve 2/3 and be released on statutory remission for the balance; whereas Mr. Ipelee, once subject to a detention order, will serve the entire 30 months. Detention orders are only available for sentences of 2 years or more by reason of the Corrections and Conditional Release Act, section 129.)*



— Research Report —

**Circles of Support & Accountability:  
An Evaluation of the Pilot Project in  
South-Central Ontario**

This report is also available in French. Ce rapport est également disponible en français. Veuillez vous adresser à la Direction de la recherche, Service correctionnel du Canada, 340, avenue Laurier ouest, Ottawa (Ontario) K1A 0P9. Should additional copies be required they can be obtained from the Research Branch, Correctional Service of Canada, 340 Laurier Ave., West, Ottawa, Ontario, K1A 0P9.

2005 N<sup>o</sup> R-168

**Circles of Support & Accountability:  
An Evaluation of the Pilot Project in South-Central Ontario**

**Robin J. Wilson,  
Janice E. Picheca  
&  
Michelle Prinzo**

**Correctional Service of Canada**

**May, 2005**

## EXECUTIVE SUMMARY

The latter part of the 20<sup>th</sup> Century was witness to considerable renewed interest in restorative approaches to crime and offender management. Ironically, professional interest in restoration increased as the public's cries for more punitive measures rang out loud and clear. Politically, such measures as detention, specialized peace bonds, registries, and long term supervision orders were instituted as a means to demonstrate that the system was serious about "getting tough on crime". Meanwhile, meta-analytic reviews of the effects of incarceration and rehabilitative programming continued to suggest that longer, harsher sentences were not likely to achieve the sort of value-added that either the public wanted or the government hoped to achieve. No offender population has been more affected by these perspectives than sexual offenders.

Understandably, the public has rather strong views about sexual offender risk management, and this has been reflected to a degree in policy and practice. However, one simple truth remains: the vast majority of sexual offenders receives determinate sentences and, as such, will return to the community. Experiences in the past 10 years have clearly demonstrated the need for a coordinated approach to sexual offender reintegration, but serious shortfalls in both service provision and offender accountability have remained.

The Circles of Support & Accountability initiative began, quite simply, as an innovative response to a single set of circumstances: a high risk, repeat, child sexual abuser was released to the community from a federal penitentiary. The response of the community was swift - picketing, angry calls for political intervention, heightened media attention, and 24-hour police surveillance. In response to the offender's pleas for assistance, a Mennonite pastor agreed to gather a group of congregants around him, to offer both humane support and a realistic accountability framework. Following a similar intervention with another offender a few months later, the Mennonite Central Committee of Ontario (MCCO) agreed to sponsor a pilot project called the Community Reintegration Project, and the Circles of Support & Accountability (COSA) movement was born.

Ten years after the initiation of the first Circle, similar projects have been seeded in all Canadian provinces, several jurisdictions in the United States of America, each of the member countries of the United Kingdom, and interest has been indicated by such countries as the Netherlands, South Africa, and Bermuda. These projects have come about as a result of positive outcome data originating from the MCCO pilot project. This report represents a formal review of this project.

To examine the impact of the MCCO project, two studies were conducted. The first study consisted of a survey that examined the experiences of the various members of COSA: Core Members (the offenders); Circle Volunteers, and Professionals and Agencies affiliated with the project. In addition, members of the community-at-large were surveyed to determine their views regarding COSA, and its existence in their community.

The results from that first study show that the COSA initiative has had a profound effect on all stakeholders: offenders, community volunteers, affiliated professionals, and the community-at-large. Core Members generally reported that while they initially felt mixed emotions about COSA, over time, they felt thankful for having its help. In addition, 90% of Core Members reported that in the absence of COSA, they would have had difficulties adjusting to the

community, and two-third felt they likely would have returned to crime without the help from COSA.

Circle Volunteers reported that they felt the community experienced an increase in community safety as a result of COSA and the Core Member would have reoffended had he not been involved in COSA. The majority of Volunteers also reported that they felt supported by the COSA organization and its associated professionals.

Professionals and Agencies surrounding COSA included police officers, social services professionals, and administrators and other similar professions. A majority of these professionals had been involved with COSA for at least 3 years. The Professionals/Agencies respondents indicated that what they liked the most about COSA was that it increased offender responsibility and accountability, and that community safety and support are the focus of the project. In addition, while a third of them, however, reported that they would somewhat change the guidelines governing COSA to add more structure and boundaries between Core Members and Volunteers, three quarters felt that the project should be expanded.

Finally, results from the survey of the community-at-large showed that 68% of respondents from the public reported they would feel safer if they found out that a high risk sexual offender in their community belonged to a Circle. They felt that an offender who participates in a Circle would be receiving additional support and supervision. They also felt that his involvement would indicate that he was motivated not to re-offend.

Study 2 consisted of an examination of the impact of COSA on recidivism. A group of 60 high risk sexual offenders involved in COSA after having been released at the end of their sentence were matched to a group of 60 high risk sexual offenders who had been released at the end of their sentence, but who did not become involved in COSA. Offenders were matched on risk; length of time in the community; and prior involvement in sexual offender specific treatment. The average follow-up time was 4.5 years. For the purpose of the study, recidivism was defined as having a new sexual offense, or for having breached a condition imposed by the Court. Only official documentation was utilized and, in most cases, this information came in the form of CPIC (Canadian Police Information Check, a national database of offense histories) records indicating that a charge had been laid or a conviction registered.

Results show that the offenders who participated in COSA had significantly lower rates of any type of reoffending than did the offenders who did not participate in COSA. Specifically, offenders who participated in COSA had a 70% reduction in sexual recidivism in contrast to the matched comparison group (5% vs. 16.7%), a 57% reduction in all types of violent recidivism (including sexual - 15% vs. 35%), and an overall reduction of 35% in all types of recidivism (including violent and sexual - 28.3% vs. 43.4%).

Further, a considerable harm reduction function has been noted in the COSA sample, in that sexual reoffenses in this group were categorically less severe than prior offenses by the same individual. This function was not observed in the matched comparison group. Overall, COSA participants have been responsible for considerably less sexual, violent, and general offending in comparison to their matched compatriots, ultimately contributing to savings both financially and, more importantly, in regard to human suffering.

My  
Working Copy

————— **Research Report** —————

**Circles of Support & Accountability:  
A National Replication of Outcome Findings**

This report is also available in French. Ce rapport est également disponible en français. Veuillez vous adresser à la Direction de la recherche, Service correctionnel du Canada, 340, avenue Laurier ouest, Ottawa (Ontario) K1A 0P9. Should additional copies be required they can be obtained from the Research Branch, Correctional Service of Canada, 340 Laurier Ave., West, Ottawa, Ontario, K1A 0P9.

2007 N<sup>o</sup> R-185

Service hereof admitted this

15th day of April 2010

C. Kaugus Burke-Robertson

Ottawa Agents for

Respondent.