

1 AUGUST 22, 2007

2

3 THE COURT: Mr. Wolson?

4 MR. MINUK: Your Honour, good morning.

5 THE COURT: Mr. Minuk, good morning.

6 MR. WOLSON: With me is Cathy Bueti, as you know.

7 THE COURT: Yes. Good morning, Ms. Bueti.

8 MR. WOLSON: And --

9 MS. BUETI: Good morning.

10 MR. WOLSON: -- and Mr. Derek Harvey-Zenk is  
11 seated at counsel table, if you will so allow --

12 THE COURT: Yes.

13 MR. WOLSON: -- for the submissions of sentence.  
14 You would have, Your Honour, the letters that I have filed  
15 by way of a delivery to your office on August the 7th of, of  
16 2007. There are two additional letters that I didn't have  
17 at that time and you now have them, and perhaps those  
18 documents could be marked, at some point in these  
19 proceedings, as an exhibit and, and all the letters can be  
20 marked as one exhibit depending on where we're at in terms  
21 of when I start my submission.

22 As well, there is a case book that has been  
23 provided to you. I had discussed the issue of the case book  
24 with Mr. Minuk and while he was preparing it I had asked him  
25 to include some additional cases which he's done, and I am  
26 grateful to him for doing that. The one case that I  
27 inadvertently forgot to ask him to include was the Burfoot  
28 decision of your brother, Judge Guy, of '06 and I have  
29 provided both Mr. Minuk and you with a copy, albeit this  
30 morning, and I'll refer to it during my submission. So I  
31 just wanted to advise you as to those inclusions.

32 THE COURT: And you are prepared to proceed, Mr.  
33 Wolson?

34 MR. WOLSON: Absolutely.

1 THE COURT: Mr. Minuk?

2 MR. MINUK: Yes.

3 THE COURT: At the outset, before you begin, I  
4 just -- if I can just apologize to the persons who have  
5 attended, arrangements were to have been made for a larger  
6 courtroom. Those who were present when the plea was entered  
7 will recall that I had indicated that we -- those  
8 arrangements would be made and, unfortunately, they were not  
9 made, although I had requested them. So I apologize to  
10 those of you who are inconvenienced at having to walk from  
11 one courtroom to another and, as a result then, starting  
12 late today and I apologize to, to counsel, as well, for the  
13 delay. It should have been done and it wasn't but we're  
14 here now.

15 In terms of the material that, that I have  
16 received, let me just for the record, confirm what I have  
17 received and then mark it, the material, as exhibits.

18 First of all, I received a letter under date  
19 August 17th of 2007 from you, Mr. Minuk. The letter was  
20 copied to Mr. Wolson and it contained six victim impact  
21 statements, as well as a book of authorities that's referred  
22 to by Mr. Wolson, gathered by both counsel, and I assume  
23 then submitted jointly by both counsel.

24 So with respect to the six victim impact  
25 statements what I intend to do, subject to any comment from  
26 counsel, is to mark all of those six, collectively, as  
27 Exhibit S1 in the sentencing and then to mark, as Exhibit S2  
28 in the sentencing, the covering letter that you have sent,  
29 along with the book of authorities.

30 Then I received a letter from Mr. Wolson, under  
31 date August 7th of 2007. That contained a medical report  
32 and letters of reference. You have referred to that, Mr.  
33 Wolson. I intend to mark that, the letter and the documents  
34 that are in -- that are bound together as, as Exhibit S3.

1           And then this morning, as counsel have indicated,  
2 I received the case of R. v. Burfoot. And although it has  
3 been suggested it be marked with the other book of  
4 authorities, in light of the fact that it's separate, and  
5 simply so that it doesn't get lost in the shuffle, I intend  
6 to mark that as Exhibit S4.

7           And finally, the other two letters of reference  
8 that were referred to by you, Mr. Wolson, from Kyla Vincent  
9 and family and G. Paul Isaac, again because they're separate  
10 from the bound volumes, I will mark those, collectively, as  
11 Exhibit S5.

12           And I think, if I am not mistaken, those were all  
13 of the documentations that were provided to me, that counsel  
14 wish to submit in evidence and as part of the sentencing in  
15 this matter. Is that correct?

16           MR. MINUK: Thank you, yes.

17           THE COURT: All right.

18           Then barring any further comments, I'll hear  
19 submissions from counsel. Mr. Minuk.

20

21                   **EXHIBIT S1: SIX VICTIM IMPACT**  
22                   **STATEMENTS**

23                   **EXHIBIT S2: COVERING LETTER AND**  
24                   **BOOK OF AUTHORITIES**

25                   **EXHIBIT S3: LETTER FROM MR. WOLSON**  
26                   **WITH MEDICAL REPORT AND LETTERS OF**  
27                   **REFERENCE**

28                   **EXHIBIT S4: COPY OF CASELAW R. V.**  
29                   **BURFOOT**

30                   **EXHIBIT S5: TWO LETTERS OF**  
31                   **REFERENCE**

32

33           MR. MINUK: Your Honour, I just want to say at the  
34 outset, so that, in part, the people who are behind me and

1 people looking at you, don't think it's unusual that there  
2 is one case book. As Your Lordship knows, although not  
3 necessarily in the Provincial Court, where there are a lot  
4 of directives on how to file material, as you know,  
5 appellate levels, courts, are always telling lawyers not to  
6 copy cases over and over again and submit three or four of  
7 the same ones where there are many parties. So with that,  
8 Mr. Wolson and I, as you have heard, conversed about what  
9 authorities we were going to file respectively and put them  
10 together as one booklet rather than submitting two, which  
11 would have invariably contained similar authorities.

12 THE COURT: Thank you.

13 MR. MINUK: With -- Your Honour's has done the  
14 housekeeping, if I might call it that, of the filing of the  
15 exhibits, which you have received, thank you very much, and  
16 this leaves one less chore, so to speak, for me to do this  
17 morning.

18 With that, what I intend to do is simply to give  
19 you a brief overview of how I believe the morning will  
20 unfold which is that I will be making a submission. I  
21 understand, at this point in the day, that those parties who  
22 have prepared victim impact statements would like to read  
23 them. I indicated to them that the logistics would likely  
24 be subject to what you have to say. It's simply that I  
25 would slide the podium to my right and that they could read  
26 their statements should they continue to have that desire,  
27 right from counsel table, and once that is completed, Mr.  
28 Wolson, I believe, will make his submission and we indicated  
29 to all of the parties, without knowing what it is that Your  
30 Honour might do, or might not do, that after submissions  
31 courts often adjourn with reasons to follow and that  
32 subject, of course, to Your Honour's view of the case and  
33 the submissions, you may or may not render a decision today,  
34 so that they won't be surprised to hear that if, at the end

1 of the day, Your Honour chooses to adjourn without rendering  
2 a decision today, they know that that's part of the  
3 procedure and are familiar, now, that it's not in every case  
4 that, after counsel's submissions, a decision is rendered by  
5 the court.

6 I trust that brief introduction and explanation to  
7 the victims essentially would conform with what it is that  
8 Your Honour might say, if you had the opportunity before me,  
9 as I did, to speak with them and with that I will move  
10 along.

11 THE COURT: Thank you. Yes.

12 MR. MINUK: Your Honour, the death of Mrs. Crystal  
13 Taman is a tragedy. The accused bears the responsibility  
14 for Mrs. Taman's untimely death, for this death a publicly  
15 accepted criminal responsibility, when he pleaded guilty to  
16 the offence of dangerous driving cause death, some weeks  
17 ago.

18 Mrs. Taman, wife, mother of three, daughter,  
19 sister and friend to many, was 40 years of age on February  
20 25th, 2005.

21 As the morning of February 25, 2005 dawned, Mrs.  
22 Taman, a dental assistant, would ready herself for work and  
23 prepare to set out from her home shortly before 7:00 a.m.,  
24 southbound on Highway 59, to her place of work, driving her  
25 1991 Chevrolet Sprint convertible. Sadly, she would not  
26 return home that day to her family, in fact, she would not  
27 even make it to work.

28 The morning was a typical morning for a Winnipeg  
29 winter. The temperature, minus 17 Celsius, winds from the  
30 north, overcast and visibility unrestricted.

31 Mrs. Taman died alone, without family and friends  
32 at her side, at the intersection of Highway 59 and Highway  
33 101. There she was stopped for a red light, waiting behind  
34 another vehicle, also waiting on the traffic light to change

1 from red to green.

2           The accused, then a member of the Winnipeg Police  
3 Service, completed a shift of work during the evening of  
4 February 24, 2005. Following work he met up with other  
5 members of the service who were gathered at a local  
6 restaurant and bar for food and drink. Much like any night  
7 out with friends and colleagues, no one paid attention to  
8 who ate what, who drank alcohol, who did not.

9           The accused remained at the work meeting or the  
10 after work meeting place with the group and at some point  
11 near closing time, he departed with others to the home of  
12 another workmate in the East St. Paul area.

13           When questioned about these activities of the  
14 accused that questioning was conducted by the Winnipeg  
15 Police Service Professional Standards Unit. No one recalled  
16 much of his activities that evening and expressed opinions  
17 that he likely would have had some alcohol but what and how  
18 much they did not know, and at no time did he appear to be  
19 affected by the alcohol that evening.

20           All of the people with whom the accused was with  
21 that evening were interviewed by Professional Standards.  
22 The homeowner related that the gathering came to an end at  
23 his residence when he began to clean up and retire for the  
24 evening or early morning near to or just after 4:00 a.m. on  
25 February 25. He told investigators that some of his  
26 colleagues remained at his home and when he woke, around  
27 6:30 a.m., those who had remained were readying to leave.  
28 One of those persons was the accused.

29           The accused then, on that date, 32 years of age,  
30 was driving a black 1995 Dodge pickup truck. The accused,  
31 like Mrs. Taman, was travelling southbound on Highway 59.  
32 The speed limit on this section of Highway 59 is 80  
33 kilometres per hour.

34           Approaching the intersection of Highway 59 and

1 101, like the accused and Mrs. Taman, was another driver.  
2 This driver was interviewed by both the investigating police  
3 agency, East St. Paul, and subsequently by the RCMP. He  
4 related that as he approached the intersection, he could  
5 see, he could see the traffic light ahead of him, that was  
6 red, and that he also observed two vehicles stopped at the  
7 intersection.

8 He stated as he began to slow he noticed the black  
9 pickup truck drive by him in the left or median lane, at  
10 what he believed to be the speed limit, colliding with the  
11 Taman vehicle, which was then pushed forward into the lead  
12 vehicle, crushing Mrs. Taman between the two vehicles.

13 The impact was so severe that the jaws of life  
14 were required to extricate Mrs. Taman from the vehicle. As  
15 I told you, East St. Paul police attended to the scene and  
16 also requested investigative assistance from both the RCMP  
17 and the Winnipeg Police Service.

18 The work of both the RCMP and the Winnipeg Police  
19 Service investigators in this matter has been most helpful.  
20 In particular, RCMP Constable Blandford, forensic traffic  
21 collision reconstructionist then of "D" Division, now in  
22 Alberta, attended to the scene and prepared a detailed  
23 report of his findings.

24 Leaving aside the mathematical computations and  
25 analysis, and electrical inquiries, the findings are as  
26 follows:

27 No braking evidence was identified to the vehicle  
28 being driven by Mr. Zenk. No skid marks from the Zenk  
29 vehicle, both of which indicate to the expert no attempt to  
30 avoid a collision.

31 The expert concluded that momentum analysis, for  
32 the lay person speed, momentum analysis could not be  
33 conducted because of the secondary impact. In short, what  
34 that means is because of the vehicle parked in front of Mrs.

1 Taman, there was no ability to accurately determine how fast  
2 the driver was going.

3 Mr. Blandford did find, though, through electrical  
4 equipment analysis, that both the vehicle of the deceased  
5 and that of the vehicle in front of it, had its brake lights  
6 on and in working order at the time of impact.

7 At a technical level, beyond that which you've  
8 heard already, the expert concluded that the accused, like  
9 other drivers on that road, would have had advanced warning  
10 of the red light. The reason for this is because, as you  
11 approach that intersection, overhead lights activate and  
12 remain on for a period of eight seconds prior to the light,  
13 a yellow light, being activated. So that as you approach  
14 the intersection on a green light, eight seconds before the  
15 yellow light comes on, an overhead sign activates, warning  
16 drivers that the lights are going to change.

17 THE COURT: And I assume stay on until the light  
18 turns green again?

19 MR. MINUK: After the yellow light is activated, a  
20 further four seconds passes before the red light activates.  
21 So in total then, there would be appropriately 12 seconds  
22 before the light would turn red. So as the accused was  
23 approaching the intersection, had he seen the overhead  
24 lights, he would have had 12 second to apply the brakes and  
25 slow down, and in this particular case, he would have had  
26 the additional visual in front of him, as did the witness,  
27 that one car was slowing down, two were already stopped at  
28 the red light.

29 In addition, as I told you, members of the  
30 Winnipeg Police Service Professional Standards Unit,  
31 conducted lengthy interviews of all people with whom the  
32 accused was working with that day and with whom he had spent  
33 time.

34 Through that investigation, anecdotal historical

1 evidence of alcohol consumption by the accused, some times  
2 prior to the collision, was identified. The investigation,  
3 however, did not permit conclusions to be drawn from this  
4 history. Proof of impairment, by reason of the  
5 investigation, would be difficult at best.

6 The tragic effects and devastating consequences of  
7 motor vehicle fatalities, Your Honour will hear in the  
8 voices of the victims who suffer personal loss. These cases  
9 present very difficult and complex issues for courts to  
10 deliberate upon. More often than not, we see in the case  
11 authorities that have been gathered, that accused persons  
12 plead guilty without trial and the focus of the court's  
13 activity is the determination of the appropriate sentence  
14 for a senseless death, in many cases, as in this case, a  
15 death caused by a person of otherwise good intent and  
16 background, who has made a grave and terrible mistake.

17 Sentencing in these cases is a very difficult  
18 task. At the same time the authorities recognize that the  
19 court proceedings bring some closure to the victim's  
20 nightmare but the loss will never be recovered.

21 Your Honour was provided with the case book which,  
22 in my respectful submission, have cases gathered from  
23 virtually every year, beginning in 1999. From the Manitoba  
24 Court of Appeal, the Ontario Court of Appeal, the Court of  
25 Queen's Bench of Manitoba, the Manitoba Provincial Court.

26 As recently as June of 2007 in the Perron case,  
27 the Manitoba Court of Appeal dealt with an issue of  
28 dangerous driving and the appropriate sentence.

29 All of the cases recognize that the sentencing  
30 process in criminal cases is about, in the larger sense,  
31 contributing to the respectful law and the maintenance of a  
32 safe community. In achieving that goal we are told, in  
33 these cases, that Your Honour's consideration should be  
34 protection of the public, denunciation of the unlawful

1 conduct, specific or individual deterrence, general  
2 deterrence, rehabilitation, reparation, which is very  
3 difficult in these kinds of cases. Promoting a sense of  
4 responsibility in the offender and acknowledgement of the  
5 harm done.

6           Retribution, a sentence that reflects the moral  
7 blameworthiness of the particular offender, which I would  
8 say to you is something much more different than vengeance  
9 but a sentence that reflects the moral blameworthiness of  
10 the particular offender.

11           In this particular case, Your Honour is left with  
12 a situation where the accused, travelling in the light of  
13 day, early in the morning when people would be travelling to  
14 work, at a speed deemed to be within the posted speed limit,  
15 albeit not slowing at the intersection, not coming to a  
16 stop. Without an observation of erratic driving and only  
17 anecdotal evidence of alcohol, not capable of proof of  
18 impairment. Those facts Your Honour will have to take into  
19 account in assessing the appropriate sentence in this  
20 matter.

21           Just for the record, so that Your Honour has it,  
22 even though you filed the case book, the list of the  
23 authorities, of which there are 11, commence with the  
24 MacDonald case, in 1999, the Manitoba Court of Appeal.  
25 Areco, the Ontario Court of Appeal, in 1999. The Higgins  
26 case, 2001, Manitoba Court of Appeal. Duchominsky, 2003,  
27 Manitoba Court of Appeal. Your Honour will recall that this  
28 was the City of Winnipeg employee who, while on the  
29 perimeter highway, passed another vehicle and went through,  
30 respectively, a red light in perhaps not too dissimilar  
31 circumstances from this case, where the issue, again, was  
32 what would be the appropriate sentence.

33           Shave, a decision of your colleague, Judge  
34 Giesbrecht. The MacKenzie case from the Provincial Court.

1 Bazlewski, from the Provincial Court, I believe those are  
2 from the Associate Chief Judge of the Provincial Court,  
3 Judge Harvie. Capuska, that is a case of 2005 Provincial  
4 Court, Judge Elliott. Eckert. I submitted to you the  
5 Eckert authority because the Eckert authority stands out  
6 amongst all of the other authorities in the research only  
7 because the sentence was imposed which was different than  
8 every one of these cases, and the reason that I thought that  
9 you should have it is that in exercising my responsibility  
10 to bring to the court's attention all of the leading cases  
11 from Manitoba, why in 10 of 11 cases sentences of two years  
12 less one day, to be served conditionally, were imposed by  
13 the court, upheld by the Court of Appeal, or in some cases  
14 the Provincial Court was reversed and the Court of Appeal  
15 substituted conditional sentences.

16 We see the Eckert case as the extreme example of  
17 why and when courts might deviate from that, where we have  
18 people with previous convictions, of a similar nature,  
19 alcohol -- that would be in their prior record  
20 alcohol-related driving offences, and other evidence which  
21 was different than that which we have in this case.

22 The Manty case and the Perron case, lastly, in  
23 2007, just as I have indicated, in June. And Your Honour  
24 will note, in your review of that case, that was handled  
25 internally by the Justice Department and the issue, in  
26 Perron, was simply whether or not the accused should be  
27 granted permission to drive and the Crown remained silent on  
28 the issue of the sentence, as a whole, and in fact, even on  
29 that particular issue. The sentence was, again, a two year  
30 less a day sentence, to be served conditionally.

31 With that, my assessment of the law is, in the  
32 authorities provided, that the appropriate penalty in this  
33 particular case is a jail term, a period of incarceration.  
34 The authorities tell us that the period of incarceration, in

1 similar circumstances, is one which can be served in a  
2 provincial institution, the full extent of that sentence,  
3 which would be two years less a day.

4 In some of the cases that Your Honour has -- have  
5 before you, some people have received 15 months, some people  
6 18 months. It's my respectful submission to you that, in  
7 the particular circumstances of this case, Your Honour  
8 should follow those cases where the period of imprisonment  
9 is two years less one day.

10 The focus then, of the case, is if Your Honour was  
11 satisfied that that is the appropriate term, where that  
12 sentence should be served. Should that sentence be served  
13 in the community, under strict conditions, or whether or not  
14 that sentence should be served in an, in an institution.

15 On review of these cases, I would say to you, with  
16 the greatest of respect, that the Court of Appeal is telling  
17 us that these types of cases, in the particular  
18 circumstances of this case, given the facts, the background  
19 of the accused, the absence of the record, that the goals of  
20 sentencing, which I have listed to you, commencing with  
21 protection of the public and running through the list,  
22 leading to retribution, can all be met by the terms of a  
23 conditional sentence.

24 In fact, a leading case on that point, the Proulx  
25 decision, which Your Honour does not have, is a case from  
26 Manitoba that went all the way to the Supreme Court of  
27 Canada, where the Supreme Court of Canada has told us that  
28 even -- that this is the consideration. Albeit Mr. Proulx  
29 did not receive a conditional sentence, clearly the Supreme  
30 Court of Canada has told us that conditional sentences for  
31 these kinds of cases are not inappropriate and the, the  
32 courts should be mindful of that and impose them in the  
33 right circumstances.

34 It's my submission to you that, based on my

1 reading of the caselaw, that the type of sentence that Your  
2 Honour should impose is a two year less a day jail term, to  
3 be served conditionally under certain conditions.

4 The conditions that I would ask Your Honour to  
5 impose and I do have a copy of them for you, but I will read  
6 them out for the record, but I did type them up in the event  
7 that Your Honour chose to adopt any or all of them, as  
8 follows.

9 In addition to the statutory conditions, to report  
10 to the conditional sentence supervisor within 48 hours and  
11 thereafter as required.

12 That the accused be bound by a curfew, from 8:00  
13 p.m. to 6:00 a.m., daily, for the first 15 months of the  
14 conditional sentence. The hours being put to you are after  
15 inquiries made by the Crown of Mr. Wolson as to what his  
16 client's work hours are. That's the reason that those hours  
17 have been put to you because during the other period of  
18 time, which would be 6:00 a.m. to 8:00 p.m. the accused  
19 would be working. Mr. Wolson will tell you about his  
20 employment.

21 So he's -- we're asking you to impose that curfew  
22 for the first 15 months, except for the following.  
23 Employment, travelling directly to and from. Community  
24 service work and travelling to and from community service  
25 work. Attendance at meetings with a sentence supervisor.  
26 Four hours per week, to be arranged in advance with the  
27 supervisor to attend to personal needs, including such  
28 appointments as medical and dental appointments.

29 Special circumstances, with written prior approval  
30 from the supervisor, such as funerals. And that, of course,  
31 the exception that the accused be allowed to attend for  
32 medical emergencies for himself or his family.

33 That he appear at the door of his residence and/or  
34 answer the telephone in regard to any curfew check conducted

1 by his supervisor or the RCMP. The reason I have asked that  
2 Your Honour impose the -- or note the RCMP is that I  
3 understand he does not live in the City of Winnipeg any  
4 longer. If Your Honour hears that he is living in Brandon,  
5 which I expect you might, I would ask you to add on to that  
6 list the supervisor, the RCMP and the Brandon Police  
7 Service.

8 That he not change his address without permission,  
9 in writing, from the sentence supervisor.

10 That he abstain, absolutely, from the consumption  
11 of alcohol, from the possession of alcohol, and the  
12 consumption and possession of non-prescription drugs and  
13 other intoxicants.

14 Based on the authority of the Duchominsky case,  
15 which I have alluded to, that the accused perform 180 hours  
16 of community service work, that work to be performed within  
17 the first 18 months of the conditional sentence.

18 The next condition. That he attend, participate  
19 and complete a substance abuse assessment and treatment, as  
20 directed by the supervisor. In both the Bazlewski case and  
21 Duchominsky case, where there was historical evidence,  
22 anecdotal as it was, of alcohol consumption prior to  
23 driving, but impairment could not be proven, the courts, in  
24 those cases, much like this, imposed the condition of  
25 substance abuse assessment and treatment which, of course,  
26 in the -- under that large umbrella of substance abuse,  
27 include alcohol.

28 That he keep a copy of the conditional sentence  
29 order with him when he is not in his residence and that he  
30 produce it to any peace officer upon their request.

31 In addition to that, that the court consider costs  
32 and a victim surcharge.

33 Now, I can tell you that I have provided a copy of  
34 this list to Mr. Wolson and with Your Honour's permission,

1 I'll provide it to the clerk, if Your Honour wishes to see  
2 it, but it's essentially as I have read it out.

3 With that, that's my submission, subject to any  
4 questions that you may have of me, and the plan would be for  
5 victim impact statements to be read at this point in time,  
6 but first I would be happy to entertain any questions that  
7 Your Honour might have about this matter.

8 THE COURT: I, I have some questions, Mr. Minuk.  
9 I may have some later so I will reserve that. I take it, in  
10 the course of your submission, you indicated, in passing, no  
11 record so are you confirming, for the record --

12 MR. MINUK: He has no record at all, no.

13 THE COURT: And that's criminal or driving record?

14 MR. MINUK: Correct, not that I have identified.  
15 I suspect, given his prior employment, that certainly the  
16 matter of a criminal record would have deterred him from  
17 getting that job and similarly, Highway Traffic.

18 THE COURT: And going back to the beginning of  
19 your submission, you indicated that the accused ended his  
20 work shift in the evening of February 24th. Do you know  
21 what time in the evening?

22 MR. MINUK: Approximately eleven o'clock, I  
23 believe.

24 THE COURT: And it was at that time, and correct  
25 me if I'm wrong, and I want to make sure I have the facts  
26 correct, that he met up with other colleagues for an evening  
27 of, as you quote -- said, food and drink; is that correct?

28 MR. MINUK: Correct.

29 THE COURT: And that's at a local restaurant and  
30 bar.

31 MR. MINUK: Yes.

32 THE COURT: And the colleagues would be other --

33 MR. MINUK: Other police officers.

34 THE COURT: -- other police officers. And you

1 indicated, and correct me if I'm wrong, that at the -- as a  
2 result of investigation by the Professional Standards  
3 Division of the City of Winnipeg Police Service, that having  
4 interviewed those persons no one -- what they collectively,  
5 basically said, was that no one paid attention to who ate  
6 what or who drank what at that particular location?

7 MR. MINUK: Correct. I expect or anticipate, or  
8 perhaps inferred from that, that as the court has noted in  
9 trial matters, in the normal human condition, when people  
10 are out for an evening, they are unlikely taking notes of  
11 what's going on, not likely paying attention. There was a  
12 large group there and certainly none are expecting to be  
13 interviewed the following morning or day, or days later,  
14 about an incident which -- or an evening which would be  
15 otherwise unremarkable.

16 THE COURT: It's not relevant, and I stress, not  
17 relevant to the sentencing of this matter, that might not be  
18 the observation one might make of police officers who are  
19 trained in the powers of observation and of recollection,  
20 however, I'll leave that at this point in time.

21 MR. MINUK: I understand that.

22 THE COURT: You then indicated, at the closing, so  
23 around two o'clock, I assume?

24 MR. MINUK: Yes.

25 THE COURT: They -- a number, not everyone, left  
26 to go to a home of another individual --

27 MR. MINUK: In East St. Paul.

28 THE COURT: -- in the East St. Paul area. Okay.  
29 The approximate location of this home from the --

30 MR. MINUK: Five minutes.

31 THE COURT: All right. So that it would be five  
32 minutes --

33 MR. MINUK: Yes.

34 THE COURT: -- north of the intersection --

1 MR. MINUK: Intersection, yes.

2 THE COURT: -- of, of the perimeter highway and  
3 Highway 59.

4 MR. MINUK: Correct.

5 THE COURT: And the gathering sort of came to an  
6 end, you said, at around four o'clock in the morning but  
7 some stayed is, is --

8 MR. MINUK: Yes. It's -- the owner of the home  
9 couldn't really identify who -- how many stayed, why they  
10 stayed. My understanding is that he had his home for the  
11 evening, so to speak, without other family members being  
12 there and others chose to stay or go, as they felt. They  
13 were not, sort of, obliged to leave.

14 THE COURT: And the owner of the home is another  
15 police officer?

16 MR. MINUK: Yes, another police officer, yeah.

17 THE COURT: So I take it -- and I am having  
18 trouble with it coming to an end when people are still there  
19 at 6:30 in the morning so I --

20 MR. MINUK: I think that what -- I'm not sure that  
21 it came to an end. What the fellow told me was that there  
22 was some food put out, some beverages and he cleaned up his  
23 home, if you could call it that, put things away and retired  
24 for the evening.

25 THE COURT: And then he got up around 6:30 and --

26 MR. MINUK: 6:30 in the morning because he had to  
27 go in -- come downtown and -- again, and go to some type of  
28 event.

29 THE COURT: All right. And he found some  
30 individuals had still stayed, at that point in time,  
31 including Mr. Harveymordenzenk?

32 MR. MINUK: Correct.

33 THE COURT: All right. And then I take it did he  
34 -- was he present when the accused left then, in his --

1 MR. MINUK: Absolutely, yes.

2 THE COURT: All right. So I would assume that,  
3 that the accused left some time, just a few minutes before  
4 seven o'clock?

5 MR. MINUK: Yes. Because the accident -- police  
6 arrived on the scene at 7:10 so some time between 6:50 and  
7 7:10.

8 THE COURT: And you made the -- I think the phrase  
9 was that there was anecdotal historical evidence of the  
10 consumption of alcohol by the accused was then -- was  
11 identified; is that right?

12 MR. MINUK: Yes. I read -- essentially what  
13 happened is, as Your Honour may know, East St. Paul is a  
14 small police force, they divided up the work, and all of the  
15 Winnipeg Police officers were interviewed by the  
16 Professional Standards Unit and it's from those statements,  
17 where it's gleaned that evidence is gleaned.

18 THE COURT: So, in essence, people said he had  
19 something to drink but we don't know how much.

20 MR. MINUK: They weren't watching --

21 THE COURT: Or what.

22 MR. MINUK: -- or didn't pay attention and, in  
23 fact, some of them even went as -- so far to say that  
24 because of his rank, not to be disrespectful to anyone who  
25 is a member of the police service but because of his rank,  
26 many of these were senior officers, they barely paid  
27 attention to him because he was simply on a shift but wasn't  
28 truly friendly, so to speak, with these other officers.

29 THE COURT: So is it fair to say that, in essence,  
30 the factual circumstances surrounding the Crown's acceptance  
31 of the plea to dangerous operation of a motor vehicle  
32 causing the death of Mrs. Taman was a combination between  
33 the evidence of consumption of some alcohol along with an  
34 accident that appears to be unexplained where speed was --

1 doesn't appear to -- there doesn't appear to be any evidence  
2 of excessive speed but, but a --

3 MR. MINUK: Well, that and --

4 THE COURT: -- but an accident where -- that  
5 occurred without braking at a red light?

6 MR. MINUK: Absolutely, yes. That there was an  
7 accumulation of what would be otherwise Highway Traffic  
8 violations which would set this apart from --

9 THE COURT: And that's the marked departure, the  
10 combination of those factors is the marked departure?

11 MR. MINUK: Correct, yes. Yes. That -- this is  
12 not just a pure accident. Having been involved in similar  
13 prosecutions where people are blinded, if I might call it  
14 that, by a frame of a vehicle, and dart out into an  
15 intersection when they shouldn't have, even though they've  
16 taken steps to stop and do the checks, this is not that type  
17 of case.

18 THE COURT: And, as I said, I may reserve the  
19 right for some questions later but noticeable by your  
20 silence was any issue with respect to the driving privileges  
21 of Mr. Harvey Mordenzenk, the --

22 MR. MINUK: I appreciate that, the, the --

23 THE COURT: -- Criminal Code does not provide --

24 MR. MINUK: -- the difficulty --

25 THE COURT: -- does not provide for -- hang on.

26 MR. MINUK: -- with that point is --

27 THE COURT: Hang on. The Criminal Code, as I read  
28 it, does not provide for an automatic prohibition, unlike  
29 other sections.

30 MR. MINUK: Discretionary.

31 THE COURT: Discretionary.

32 MR. MINUK: And the, the balance of these kinds of  
33 cases needs to be considered when -- if the law is to be  
34 applied, as I understand it to be, and one of the -- on the

1 basis of the authorities that we have, the sentence imposed,  
2 which would accord with similar cases, we're in a situation  
3 oftentimes where an accused has a job, needs to support his  
4 family and, of course, that would be one of the focuses of  
5 conditional sentences, and in this particular case, having  
6 made some inquiries with -- of the accused through his  
7 counsel, it would be evident to me, and I'm sure it will be  
8 to Your Honour, that a prohibition in that nature would  
9 effectively terminate his employment again.

10 So having lost one form of employment by reason of  
11 this particular incident, he would then lose another and  
12 then create an additional set back. So on the balance, it  
13 may be that the problem is not with the notion but with the,  
14 the section in that unless the condition of the order only  
15 permits him to drive during the course of his work hours,  
16 and it's amended in that form, that would address the issue  
17 which, in the Crown's view is important, which is that the  
18 accused be able to maintain his employment during the day.

19 THE COURT: But that's not something that you're  
20 jointly recommending?

21 MR. MINUK: No.

22 THE COURT: Thank you. The Criminal Code provides  
23 that for the presentation of victim impact statements, those  
24 victim impact statements can be both in writing, or  
25 verbally, or both. I have been provided with a number of  
26 victim impact statements through the Crown attorney and I  
27 understand from the correspondence and what Mr. Minuk has  
28 indicated today, that those who have authored the victim  
29 impact statements would like the opportunity to read those  
30 victim impact statements in court. That's something that's  
31 in the discretion of the presiding judge but having regard  
32 to the nature of the circumstances and what I have already  
33 read in the victim impact reports, I don't have any  
34 difficulty with those who have authored them to, if they

1 wish, to read the victim impact reports, as well. If people  
2 choose not to read them it -- I should say that it has no  
3 less of an effect, they are still filed as evidence in the  
4 court, in other words, I have read them, they are part of  
5 the sentencing process but I recognize that some people may  
6 also wish to read them and I would invite those who may wish  
7 to, to do so, and I'll leave that to you, Mr. Minuk, to --

8 MR. MINUK: I'll make another inquiry.

9 THE COURT: Because you're, you're aware of the,  
10 of the individuals and who may wish to, and to perhaps have  
11 them come up.

12 MR. MINUK: I know who they are, they're nearby so  
13 I'll ask again.

14 THE COURT: Yeah.

15 MR. MINUK: They have chosen to read their  
16 statements.

17 THE COURT: All right. What I am going to do is I  
18 am actually going to have them come over to the witness box  
19 from the point of view of, of reading them. I think it's,  
20 it's a little easier, it's easier for me to, to hear them.

21 MR. MINUK: I asked them about that and I was sort  
22 of mindful of the dynamic of having to face not just Your  
23 Honour but the court and I think that they might be --

24 THE COURT: More comfortable there?

25 MR. MINUK: -- more comfortable looking --

26 THE COURT: Madam Clerk, is that going to --

27 MR. MINUK: But whatever they want the --

28 THE COURT: Madam Clerk, is that going to cause a  
29 problem?

30 THE CLERK: As long as they come over close to the  
31 microphone --

32 THE COURT: Okay.

33 THE CLERK: -- I have no problem.

34 THE COURT: All right. So, so I'm going to ask

1 you, as you come up individually, if you could come to the  
2 microphone that's -- where Mr. Minuk was speaking and that's  
3 particularly because the recording equipment needs to pick  
4 up your voice so you'll need to be close to it, and without  
5 getting too technical, unless we have it clearly enunciated  
6 there, we will have some difficulties in the transcript and  
7 the transcription of it.

8 All right, so -- and I'm wondering if, as you come  
9 up, you could identify yourself for the record, just tell me  
10 who you are and -- all right? Thank you.

11 MR. MINUK: I have all the originals here, Your  
12 Honour, so if you would like, my hope would be, at the end  
13 of this, to file the original.

14 THE COURT: Yeah. Yeah, the originals should be  
15 filed.

16 MR. MINUK: This is Mr. Robert Taman, Your Honour,  
17 and the husband of the deceased.

18 THE COURT: Good morning, Mr. Taman.

19 MR. TAMAN: Good morning, Your Honour.

20 THE COURT: Yes.

21 Mr. Taman, you can certainly take your time. I  
22 understand this is a difficult time and if you need a glass  
23 of water, we can arrange for that, as well.

24 MR. TAMAN: I still don't sleep. I need  
25 prescription medication to help make up for the weeks that I  
26 go averaging a few hours sleep at night. It just replays  
27 every night in my head.

28 It will never go away. I received the call just  
29 after 7:00 that morning, a call from my girls, panic, fear,  
30 crying. Mom has been in an accident. It's bad, dad. It's  
31 really bad.

32 They told me where to go and I ran out of the  
33 house and I found my kids at that horrible intersection. I  
34 didn't look to see the car, I could only see the mess of

1 auto parts laying all over the highway. I found my girls  
2 with a police officer. He told me that Crystal had been  
3 taken to Concordia Hospital. Life stopped.

4 Crystal, my wife and mother of Tara, Kristin and  
5 Jordan, was taken from us, in a blink of an eye her life was  
6 over. In that same blink our lives as we knew it were over  
7 as well. It's never been the same since Mr. Harvey Zenk  
8 drove his vehicle into Crystal's car.

9 There was no place to find comfort that day,  
10 family and friends did whatever they could but the reality  
11 plus the fact that I was living the worst nightmare I could  
12 ever imagine, my wife of nearly 23 years was killed. My  
13 children and I could not go home, home was part of our  
14 nightmare now. Instead, we moved into the basement of my  
15 parents' house, we set up an area to sleep where we could  
16 see, talk and reach over to hug one another. I believe we  
17 spent eight weeks in that basement.

18 When we finally reached the moment to go back  
19 home, that nightmare started all over again. It was then  
20 that I realized that this was going to be the way we had to  
21 live now, daily crying sessions combined with anger,  
22 confusion, and a type of sadness that cannot be described,  
23 the worst part of all, looking into the eyes of my children.  
24 See as a parent you can feel all your kids' emotions by  
25 looking into their eyes. All three kids had that same look  
26 and it's still there, two and a half years later. A piece  
27 of their life was taken and it shows in their eyes. My  
28 heart breaks when I feel their pain and I feel their pain  
29 daily.

30 There is no way I can describe the emotional  
31 downward spiral that occurred during those few months. I  
32 found out that when something this tragic happens in your  
33 life your mind takes you to depths that are almost  
34 impossible to reach back out. This is the first few months.

1 It has already been two and a half years, life didn't get  
2 any easier as time went by.

3 I still deal with my emotions daily, as well as  
4 all the kids. I talk to each of them every day and ask how  
5 they're doing and I can tell by the tone in their voice  
6 whether they're having another nightmare day, reliving the  
7 tragic day they lost their mother.

8 In order to describe the emotional impact that  
9 happens during a tragedy as this, I have a couple of  
10 examples. Imagine, if you will, that you're associated --  
11 that the people you're associated in life, be it family,  
12 friends, co-workers, all at the same moment, stop talking to  
13 you. I'm not saying that this happened in this exact way  
14 but all of these people in my life stopped talking to me,  
15 Robert, son, brother, friend, and instead, start talking to  
16 Robert, husband of Crystal, who was killed that terrible  
17 morning.

18 Some stopped talking to me altogether, some only  
19 talk about that day, but the majority of these people still  
20 cannot look me in the eye when they speak. I understand  
21 well -- why but me understanding doesn't make it easy. It  
22 just makes it bearable. They all feel pain, everyone feels  
23 the sadness.

24 One of the first things I had to do after the  
25 memorial service was cancel a vacation that Crystal and I  
26 had booked. We were going to Mexico the following week.  
27 Our first vacation in the 23 years we were married. Right  
28 after taking care of that I went and cancelled Crystal's  
29 passport. It was being prepared, ready for pickup that  
30 following week.

31 This may not seem like much to anyone here but to  
32 me it was gut wrenching. When you cancel things like this  
33 they require an explanation so I would have to tell them  
34 that my wife passed away.

1           In the weeks to follow, I talked to hundreds of  
2 friends and family, acquaintances. I felt the same emotion  
3 talking with each of them. I tell you this, to lead up to  
4 the most difficult trauma of all, that's being a father.

5           I spent two and a half years trying to find a way  
6 to get my kids' lives back. I'm so concerned with their  
7 pursuit of happiness that it has caused strain between all  
8 three of them and myself. I've tried to be loving,  
9 comforting, a friend, a confident, anything they may need on  
10 any given day. This is what their mother was to them and  
11 now it's upon me to be there. I try so hard to do it for  
12 them but I have realized that no matter what, I can't be  
13 their mother, I can't fix things like she could.

14           Excuse me, I'm sorry.

15           This being read on this day, agreed to by the  
16 Crown and the defence, August 22nd, we would have been  
17 celebrating Crystal's 43rd birthday. You took a special  
18 person out of our life. You took my wife of 23 years. You  
19 took the mother of my children. You took Crystal's life and  
20 with that scarred mine to a degree that this statement can  
21 never describe. I will live the rest of my years with this  
22 nightmare, I will live the rest of my years with my  
23 children's nightmare.

24           Some friends and family have recently told me, as  
25 difficult as it may be, life has to go on. It will go on,  
26 but only part of it. You took part of my life away, my life  
27 stopped on February 25th, 2005.

28           MR. MINUK: This is Tara Taman, Your Honour.

29           THE COURT: Tara.

30           MS. T. TAMAN: I am Crystal's oldest child. To  
31 start off I would like to say that to write an impact  
32 statement right now is very difficult. Myself, I can  
33 honestly say that with losing my mother at such a young age  
34 the impact will continue on for a very long time.

1           When I get married my mother will not be there.  
2 When I have children my mother will not be there. This  
3 woman, my mother, was, without a doubt, one in a million.  
4 She was the strongest person, the person that anyone could  
5 talk to, no matter what and just all around the most caring,  
6 loving person. All of this has been taken from us.

7           The past two and a half years have been the most  
8 difficult time of my life. You feel, you feel like one day  
9 everything is great and normal, then you wake up the next  
10 morning and you are missing the most incredible person in  
11 your life. You are so hurt and lost. You feel like there  
12 is no way to continue on when mom was the person that seemed  
13 to make everything make sense. Now I can honestly say that  
14 nothing does.

15           Let's face it, when everyone gets into their 20s  
16 they think they have life and everything about life figured  
17 out. Let me tell you I was like that but I learned really  
18 quick that I knew nothing. Something like this happening is  
19 such a reality check for everyone. Growing up where I did  
20 you would see so many accidents and you would just drive by  
21 them, knowing that you didn't know the person in it. Well,  
22 that sure changed that day.

23           Driving up to the accident, right after it  
24 happens, and seeing your mother's car is in the accident is  
25 the most horrifying experience. My sister and I drove up to  
26 the accident just a few minutes after it happened. No child  
27 should ever have to see that. Then having to sit in the  
28 back of the police car, not knowing anything, that seemed  
29 like the longest half hour of my life. And why? Only  
30 because of someone's choice on how to drive that day.

31           The scene of the accident replays through my head  
32 every single day. All I see is us pulling up and seeing her  
33 car and not being able to get to her. Every time I think of  
34 that day I say to myself what if my mom was hugging and

1 kissing us goodbye that morning we had just kept her five  
2 minutes longer, she would still be here.

3 I can tell you that I am now terrified to drive.  
4 I still have family that live outside the city and I am  
5 terrified to drive on the highways now. I grew up only  
6 driving on the highways but I can't do that any longer.  
7 Every time I drive through that intersection my heart is  
8 racing. I will not stop at that light in that lane and my  
9 eyes are not even on the light when I am stopped. It is  
10 only on my rear view mirror. Traumatized, yes, I am very  
11 traumatized.

12 All in all I can go on for hours about everything  
13 I have lost or endured in this last two and a half years but  
14 the reality is, my mother is the victim here. Somebody else  
15 chose her fate that day and she didn't have a fighting  
16 chance. Derek Harvey-Zenk killed my mother that day. He  
17 has taken everything my mother lived for. She lived to see  
18 her children grow up into the adults that she raised. She  
19 could not wait to have grandchildren, and will never meet  
20 them. She had also lived for my father, her only love.  
21 They would have celebrated their 25th wedding anniversary  
22 this year. Everything gone because of him.

23 I have to say that in this time I have had a lot  
24 of emotions. The most common one that comes up is anger. I  
25 can honestly say that through anger I have said I wish him  
26 nothing but the worst in his life. I hope terrible things  
27 happen to him, look what he has done to my whole family and  
28 he deserves everything that he gets. But when the anger  
29 goes away a little bit I think no, you know what, I don't  
30 wish him all of that. I hope that he lives a very, very  
31 long life of completely sane mind. I hope that every day,  
32 from February 25th, 2005 on he has to think about this.  
33 Every day before he goes to sleep he replays everything in  
34 his head and he knows, every day, how many lives he has

1 completely destroyed.

2           So today the court is giving me a chance to say  
3 how it has impacted me. Here it is. I am so hurt and it  
4 will never go away. I am so incredibly lost I have no idea  
5 where to go. I am so confused, how could somebody do this,  
6 and I just miss my mom any -- more than anything in the  
7 world. I would give anything just to have her back with us.

8           So the last thing that I have to say is Derek  
9 Harvey-Zenk, when you are sitting here watching me cry  
10 because of the pain that you have caused, just run this  
11 through your head. Three of us are now without a mother  
12 with no thanks to you. I hope your children never have to  
13 experience what we have experienced because nobody should  
14 have to.

15           MR. MINUK: This is Kristin Taman, Your Honour.

16           THE COURT: This is Kristin.

17           MS. K. TAMAN: I am Kristin. I am Crystal's  
18 middle child.

19           How do you describe the feeling of having your  
20 mother taken from you? I am going to try but unless you  
21 have gone through this you will not fully understand the  
22 tragedy.

23           My mother was the pillar of our family, the one  
24 who kept us all together. February 25th, 2005 everything  
25 was taken from us. That morning mom said goodbye as she  
26 left for work and my sister and I left shortly after her.  
27 We took a detour to avoid the emergency vehicles that were  
28 further ahead. I said to my sister, call mom. There was no  
29 answer.

30           We turned the car around and went back. When we  
31 drove up to the accident we saw what we didn't want to  
32 believe. It was mom's car. We went running over, as a  
33 police officer stopped us. When we told him that it was mom  
34 we were locked in the back of a police car. My sister

1 called dad to tell him what had happened.

2 We kept asking, asking the police officers: Is  
3 our mom okay, is she breathing? And they said: Yes, she's  
4 breathing.

5 When dad got there we had to go with him to  
6 Concordia Hospital, we called my brother and others to meet  
7 us at the hospital. All I remember the doctor saying is  
8 Crystal didn't make it.

9 We went in to see mom. This was the hardest thing  
10 I have ever had to do in my life. I was so scared to go in  
11 that room. I didn't want to believe that my mom wasn't  
12 okay.

13 I held her hand and said to myself, mom, just wake  
14 up, please. But she didn't. I still didn't believe it,  
15 even when we were in the room. I felt for a pulse but there  
16 wasn't one. It seemed like we were there for hours, I just  
17 couldn't leave.

18 When dad said we are going back to grandma's, I  
19 turned to him and said: Dad, we can't leave mom here. At  
20 this point I didn't have a choice, it was already done, my  
21 mom wasn't coming home.

22 That day and every day that goes by is extremely  
23 hard, hard to get out of bed, hard to get the energy to do  
24 anything because all you think is what's the point? All  
25 that's ahead is more crying and more questions. Why did  
26 this have to happen? Why didn't we stop mom from leaving?  
27 Why couldn't it have been me instead of her?

28 I remember staying at my grandparents' after the  
29 accident because we didn't want to go home. I would be  
30 waiting for mom to walk through the door at any minute but  
31 it never happened. Every time that we would go into that  
32 house it reminded us that someone was missing. The spot on  
33 the couch my mom would sit, the front step where we would  
34 sit and talk and mom's room.

1           Every time that we would go home we ended up  
2 leaving again. It got to the point where we didn't even  
3 want to go home to sleep. We sold the house to try to cope  
4 with what had happened.

5           When I was able to go back to work nothing was the  
6 same. I would go in for an hour and then have to leave for  
7 a bit, then go back and do the same thing all day. I could  
8 not make it through a full work day for months.

9           I was also in university at the time. I wasn't  
10 able to go back to school for weeks. I tried to go but  
11 every time I would get into my car and drive there -- to  
12 drive there I would turn around and go back home. By the  
13 time I was able to go back it was already too late, I had  
14 missed so much time, then it was time for final exams. I  
15 failed almost every exam because I couldn't concentrate  
16 enough to study. My GPA dropped dramatically.

17           I graduated from university in 2006 one year too  
18 late for mom to see me get my diploma. I miss the way mom  
19 would smile, that she would ask how my day went, that she  
20 would listen when I needed her to and give advice when it  
21 was needed. I miss her weird sense of humour, she could  
22 make anybody laugh with her funny comments and her whacky  
23 faces that she would make. We would know when mom was in  
24 her one of her whacky moods, when she would get that look on  
25 her face.

26           I miss her braiding my hair at night, I miss  
27 watching our favourite t.v. shows together. I miss our spur  
28 of the moment shopping sprees. She was the only one that I  
29 could say let's go shopping and she would say give me five  
30 minutes and we'll go even when I can tell she didn't want  
31 to. When I had a headache mom would always tell me to come  
32 and lay down and she would rub my head until I felt better.

33           I miss that when we went out every new person that  
34 she met she would hug them. It didn't matter who they were,

1 they were getting a hug.

2 I miss my mom calling me her little shmooie  
3 (phonetic). Every holiday, every birthday, every major  
4 event I think I wish my mom was here. I learned a lesson on  
5 February 25th, 2005. Life is not fair. My mother, a  
6 loving, kind, compassionate, understanding person, was  
7 killed and Derek Harvey-Zenk is still here.

8 MR. MINUK: This is Jordan Taman, Your Honour.

9 THE COURT: Okay.

10 MR. J. TAMAN: My name is Jordan Taman, I'm the  
11 youngest of Crystal's three children. It's, it's extremely  
12 hard to put into words what I feel today and how I have felt  
13 over the last two and a half years. On February 25th, 2005  
14 Mr. Harvey-Zenk took the life of my mother, sitting at a red  
15 light on her way to work. That day she didn't even have a  
16 chance. That day you didn't just take my mom, you took away  
17 one of my best friends and my confident.

18 My mom was one of the only people I was able to go  
19 to when I had problems. She was always there to give me  
20 advice and if I just needed to talk she would always be  
21 there to listen. My mom was an extremely caring, funny and  
22 selfless person. She was definitely one of a kind.

23 She was always able to keep a smile on my face.  
24 Our parents raised us like a team and on February 25th, 2005  
25 Mr. Harvey-Zenk, you took the captain of our team away. My  
26 mom was the glue that held our family together. Our lives  
27 will never be the same because we wake up each day, hoping  
28 it was all just a bad dream but it's not. My mom, my mom's  
29 death has affected our family in all different ways. None  
30 of us are able to drive without constantly looking in our  
31 rear view mirrors, expecting the worst.

32 You see accidents all the time but you never think  
33 it can happen to you. That day you chose my mom's fate and  
34 you, you chose that it was her turn to die. My mom died on

1 February 25th, 2005, my birthday is on February 26th, the  
2 day after. She didn't even get to wish me a happy 20th  
3 birthday. Two birthdays have passed, each, each year I feel  
4 the same way. I feel so guilty and so selfish that I can't,  
5 I can't celebrate because my mom is not here to celebrate  
6 with me.

7 Because of what you did my mom will never get the  
8 chance to see her children get married, she will never get  
9 to see her first grandchild be born, and she will never get  
10 to watch her children accomplish the goals in life that she  
11 helped us strive towards.

12 So I have been allowed to describe how I felt and  
13 how I have been affected. I am extremely angry, sad and  
14 confused. One thing I know is that my mom will never walk  
15 through the door again and I will never hear my mom's voice  
16 again.

17 I used to wish very bad things would happen to you  
18 but now we're -- now we leave everything in the hands of the  
19 justice system. I really hope that you are not able to  
20 sleep at night, and that you have nightmares from the guilt  
21 of killing my mom. I also hope that this happens for the  
22 rest of your life.

23 She was the victim here and you took everything  
24 away from her and away from our family. I stand up here  
25 reading this and remembering each detail of what happened  
26 and I am physically sick to my stomach knowing that  
27 something so horrible can happen to someone so perfect.

28 THE COURT: Thank you.

29 MR. MINUK: The next group, that of Mrs. Victoria  
30 Sveinson, who is writing on behalf of herself and her  
31 husband and their other daughter and while they're coming  
32 forward, I have the four originals of the Taman family and  
33 perhaps I can --

34 THE COURT: Yes, and those are part of Exhibit S,

1 S1, I believe.

2 MR. MINUK: Yes.

3 THE COURT: Thank you. I don't need -- I have the  
4 copies.

5 All right. And you're Corinna?

6 MS. ENCONTRE: Yes.

7 My name is Corinna or Cory Encontre and I'm, I'm  
8 the only sister of Crystal Ann Taman. I am writing this to  
9 give a brief glimpse of the horrifying effects that the  
10 crime that took her life have had on myself and my family.

11 Crystal and I were extremely close all of our  
12 lives, not just as children. We were only one year and two  
13 weeks apart in age. We did everything together. We both  
14 got married quite young and had our families right away.  
15 She moved to Ile de Chenes, where I lived with my husband  
16 when I was pregnant with my daughters and went through it  
17 all with me.

18 We saw each other or spoke to each other every  
19 day. It was the kind of relationship that was truly an  
20 unspoken bond. It didn't matter what I said to her, she  
21 never judged it, she just understood. She always totally  
22 understood everything. I always knew that she was there for  
23 me and I was there for her.

24 Getting that phone call from my niece, on February  
25 25th, 2005, was the worst nightmare of my life. My poor  
26 nieces actually arrived at the scene of the accident before  
27 their mother was removed from her car. I can still hear the  
28 terror in my niece's voice from that phone call. I knew  
29 that it wasn't going to be okay, I just knew. All the way  
30 to the hospital my husband kept saying I'm sure that she  
31 will be okay but I knew. I kept thinking, all the way  
32 there, I can't bury my sister, God. (Inaudible.)

33 The horror of walking into that hospital and being  
34 sent into the special family room to wait for the doctor to

1 come and tell us the devastating news that she was gone, you  
2 see the scene in the movies where people just fall down and  
3 scream and fall apart, and you don't relate but that's  
4 exactly how it happens.

5 I sat there thinking that it couldn't be true, not  
6 knowing what to do. Then comes the time to go into the room  
7 and see her. Things that you wouldn't think of stick in  
8 your memory like the little pool of blood in her ear, and  
9 the neck brace that was obviously hiding her broken and  
10 shattered chin.

11 Her tiny little hands. She was barely five feet  
12 tall, with her perfectly manicured fingernails, curiously  
13 without even a scratch. I stood there staring at her face,  
14 whispering no, no. This just couldn't be real. I tried to  
15 be of some comfort to my nieces and nephew who were going  
16 through every emotion, knowing that I probably was no help  
17 at all.

18 Then came the time to somehow tell our parents  
19 that Crystal was gone. How could I do that? I knew that I  
20 could never say the words. My poor husband had to go to  
21 their house and find the phone number where they were and  
22 break this horrible news. I can never even imagine how he  
23 got the courage to say the words. He loved Crystal like she  
24 was his own sister for over 20 years, too.

25 Our, our families were so close and Crystal was  
26 looking forward to my daughter Holly's grad, coming up in  
27 June. Holly couldn't even imagine it without her Auntie  
28 Crystal. Holly would go over to Crystal's house to get her  
29 nails done and sit and talk for hours. She was like a  
30 second mom to my girls.

31 Crystal was passionate about all of her family.  
32 She had 10 uncles and five aunts and dozens of cousins. She  
33 loved them all dearly and made sure they all got a special  
34 hug and a kiss and she told them she loved them. Growing

1 up, just the two of us girls, made us as close as twins. We  
2 even had to have the same surgery within months of each  
3 other.

4           Just to illustrate how much we leaned on each  
5 other, when Crystal would have a bad day she would call my  
6 house, knowing I wasn't there, and the message she would  
7 leave on my answering machine would be: Hi, Cor, it's  
8 Chris. I was just having a bad day and I knew you weren't  
9 home but I just needed to hear your voice. I love you.

10           I would give anything to hear that message now.

11           My last words to my sister were that I thought she  
12 was the strongest person I knew and I was so proud of her.  
13 We ended our conversation with I love you and I love you,  
14 too. Thank God I told her that.

15           She never got to go on her dream trip to Mexico,  
16 which was scheduled for less than two weeks after her death.  
17 She won't get to see her daughters walk down the aisle. I  
18 can't even imagine the sadness and emptiness that the girls  
19 will feel on that day that should be so full of joy. I  
20 think Crystal was the proudest mother I have ever known and  
21 she has been robbed of all the simple joys that a mother  
22 should have, after spending over 20 years raising her  
23 children. Her children are forced to live their lives  
24 without this amazing beautiful woman.

25           I watch our parents live a life that feels half  
26 empty, with no relief in sight. Every positive emotion  
27 appears deliberate and forced. We look at our parents as a  
28 strong and guiding force in our lives and to watch these two  
29 people, who were the most amazing loving parents in the  
30 world, literally fall apart before my eyes, is another  
31 devastation beyond belief. It goes on and on.

32           I don't think there could be anything worse than  
33 losing a child, no matter what their age, it's such an  
34 unnatural thing. Knowing how awful this has been, I don't

1 think that I would survive it.

2 I was scheduled to enrol at Red River College in  
3 the fall, to start taking the dental assisting course with  
4 my daughter, Brittney. I was so excited to be entering the  
5 same career as my sister and yet, again, the disappointment  
6 set in. It meant so much before and yet now not so much.  
7 All throughout the year I kept thinking Crystal would have  
8 loved to help me study this, then came the graduation,  
9 another empty event.

10 My second daughter, Holly, has since gone into the  
11 dental assisting profession, like her Auntie Crystal, as  
12 well.

13 One thing after another in our lives have lost the  
14 joy that was once there when they were shared with my  
15 sister, Crystal. She brought the joy to our family that lit  
16 up a whole room. She was truly the heart of our family and  
17 there is no healing in sight for any of us. She brought and  
18 held all of us together, even more than any of us ever knew.

19 Our family has honestly been torn apart and  
20 shattered by this crime that caused Crystal's death. I know  
21 that we will never be the same.

22 MS. SVEINSON: My name is Victoria Sveinson, my  
23 husband Swammy (phonetic). We are the parents of Crystal  
24 Taman.

25 I would like to thank the court for allowing me to  
26 express myself here today. This is the most difficult thing  
27 I have ever had to do but I feel that I must give a voice to  
28 the tragic experiences and consequences that have resulted  
29 because of this crime.

30 Devastating grief in the aftermath of this crime  
31 have completely destroyed our lives as they existed before.  
32 Imagine hearing the most terrible, dreadful news you could  
33 ever hear, horrifying news that would permanently ravage and  
34 devastate your life. That is the news we received on the

1 morning of February 25th, 2005.

2           We were visiting with some dear old friends on  
3 Vancouver Island. Our friend walked into the bedroom with  
4 the phone and handed it to my husband. Still half asleep I  
5 remember him glancing at the clock, it was 7:25 a.m.  
6 Suddenly I felt tense. Who would be calling us at this time  
7 in the morning? I could only hear my husband's side of the  
8 conversation and I heard him, say, oh, my God, is she alive?  
9 I remember praying silently, dear God, please let him be  
10 talking about some distant old aunt. Then he said we'll  
11 start for home right away and hung up.

12           Our friend was still standing there because he, he  
13 could tell that something was very, very wrong and as long  
14 as I live I will never forget the next horrifying words my  
15 husband spoke. He said our little girl, Chrissy, was killed  
16 in a car accident.

17           Our friend (inaudible) and left the room. We sat  
18 there stunned for some time, I can't remember how long.  
19 Those horrible words still echo and re-echo in my head,  
20 every single day. Our little girl, Chrissy, was killed in a  
21 car accident. Our little girl, Chrissy, was killed in a car  
22 accident. Our little girl, Chrissy, was killed all right,  
23 but in an accident?

24           My mind was totally boggled. It seemed impossible  
25 to comprehend how such a horrifying accident could occur  
26 there, at 7:00 a.m. in the morning. Most drivers have  
27 already slowed down in that area as there is another red  
28 light only a few kilometres ahead, at Garvin Road. Then  
29 several huge curves in the highway, passing over the  
30 floodway, and by the town of Birds Hill, where traffic is  
31 leaving and entering the road. A drop in the speed limit  
32 just before the weigh scales. The weigh scales, themselves,  
33 and then amber blinking lights that warn of the upcoming red  
34 light, as well as our daughter's bright yellow car stopped

1 at that red light.

2 It is a well known fact that yellow is the most  
3 visible colour for motor vehicles. Our daughter Crystal's  
4 own words come back to haunt us. She said, in reference to  
5 her bright yellow car, don't worry mom and dad, no one would  
6 ever run into me, they can see me a mile away. That would  
7 be the obvious common sense conclusion but she was rammed  
8 into from behind, as she sat waiting at that red light at  
9 7:00 a.m. in the morning.

10 Every single day I see visions of that horrific  
11 scene running through my mind like a terrible horror movie.  
12 I see the panic in my daughter's eyes, as she watches  
13 through her rear view mirror, what must have appeared like a  
14 maniac bearing down on her from behind.

15 I see -- I feel the panic she must have felt,  
16 unable to move out of his way because she was stopped behind  
17 another car. I see an irresponsible dangerous driver,  
18 recklessly wielding several tons of metal like a lethal  
19 weapon, straight at my daughter's head. I hear the horrific  
20 crash as his three ton vehicle ploughs headlong into my  
21 daughter's car, splitting her head open and breaking her  
22 small frail body.

23 I see things flying in all directions as the force  
24 of that impact demolishes her small car and stuffs out her  
25 exuberant vital life. I can only pray that she was killed  
26 instantly. Imagine her lying there in excruciating pain,  
27 for who knows how long, is more than I can bear.

28 Any information explaining how this so-called  
29 accident could have occurred seemed absolutely astounding.  
30 And then we got word that impaired driving charges were  
31 being laid and the situation began to make a little more  
32 sense.

33 Imagine yourself making dozens of frantic phone  
34 calls in an effort to get to see your deceased child as she

1 has been moved, awaiting an autopsy. No one appears to have  
2 the time of day to accommodate you. Finally, after much  
3 pleading, frustration, and even threats, arrangements were  
4 made so we could see her. Imagine yourself walking into a  
5 cold sterile room at the hospital morgue to see your baby  
6 lying on a cold steel gurney. Imagine touching her cold  
7 lifeless face and saying your goodbyes because you know that  
8 this will be the last time you will ever see her.

9           To say that my life has been totally consumed by  
10 this tragedy would not be an exaggeration. Imagine the  
11 panic and devastation you felt when you had a genuine fear  
12 that some tragedy may have befallen one of your children.  
13 To those who are only imaging it, that feeling is quick and  
14 fleeting because it's usually proven wrong. To us, for whom  
15 it is not imagination, that feeling inflates by 100 percent.  
16 It is a nightmare, and a horror, and remains forever. Every  
17 single day we wake up to this cruel reality that has no hope  
18 of any relief, a true nightmare, one that we can never wake  
19 up from.

20           We can never feel that relief one feels upon  
21 awakening from a terrible nightmare, realizing that it was  
22 just a bad dream. It is not a dream, it is real,  
23 horrifically real. Our dear daughter, Crystal, has been  
24 stolen from us, permanently.

25           I have visions of this horrific accident every day  
26 of my life, it is a terrible reality not to be able to  
27 remember your beautiful warm and loving daughter without  
28 also remembering the horribly violent and tragic incident  
29 that took her life so suddenly.

30           I feel anguish and grief for the sad loss of my  
31 daughter, deep sorrow for my grandchildren who, as very  
32 young and impressionable adults have lost their mother under  
33 the most horrific circumstances possible. Two of them  
34 arrived on the tragic scene before their mother was removed

1 from her car.

2 I feel grief for my grandson, whose 20th birthday  
3 was the very next day after his mother's tragic death. I  
4 feel grief for my other daughter, who has lost her only  
5 sister, a sister who was as close as a twin to her, and  
6 grief for her children and my other grandchildren, who have  
7 lost the most warm, loving aunt and friend anyone could have  
8 and with who they, too, were very close.

9 We also feel extreme emotional anguish for  
10 additional losses and grievous mental suffering we have had  
11 -- we have been forced to endure as a result of this crime  
12 that tragically took our daughter's life. Our daughter's  
13 children, and our grandchildren, who wrote her obituary,  
14 recognized their mother's outstandingly warm and loving  
15 qualities. They wrote, and I quote: If you met her, she  
16 loved you. She could always look deep inside a person and  
17 find goodness in one and all. Those who are reading this  
18 more than likely received one of her special hugs, she had  
19 one for everyone.

20 Well, everyone who knew Crystal recognized that  
21 exceptionally kind and loving nature of hers. She was a  
22 warm and loving daughter. She and her family lived next  
23 door to us for over 10 years. She would often just walk  
24 across the way to visit and have a cup of tea. She was with  
25 us the entire evening on the night immediately prior to our  
26 leaving for the trip we were on when she was killed. All of  
27 Crystal's family was very important to her, she was the glue  
28 that held her family together.

29 Even though our grandchildren were 20 years old,  
30 Crystal always made sure that they were involved with family  
31 gatherings with their grandparents and with other extended,  
32 extended family members. This is something we no longer  
33 have. Every time I look across the way toward her house, I  
34 cry because she is no longer there. I can still see her

1 sometimes, walking across her garden toward me but then  
2 reality hits home once more.

3 In addition, our grandchildren have moved away,  
4 completely alienating themselves from us, as well as from  
5 their only maternal aunt and cousins and essentially from  
6 all of their mother's biological relatives. We were even  
7 excluded from the burial of our daughter's ashes. A parent  
8 was never meant to bury a child but yet, being denied that  
9 most powerful grieving tool is very, very devastating.

10 We have had no contact with our deceased  
11 daughter's children for over two years now. Instead of the  
12 warmth and love and -- that were pervasive of every facet of  
13 our daughter's life, this crime has evoked anger, bitterness  
14 and hatred. Sadly our daughter Crystal's beautiful legacy  
15 of love was destroyed, along with her life.

16 This situation can well be compared to losing one  
17 of your limbs. Imagine such a loss. You can never simply  
18 get over it. Each and every day you would be reminded that  
19 you have lost this most important part of yourself even if  
20 artificial limbs were employed. Often there is severe  
21 phantom pain that continues indefinitely. Then the domino  
22 effect of extraordinary circumstances, along with the  
23 uncontrollable actions of others continue to occur. It is  
24 like the gangrene that spreads from one of your limbs to  
25 your other limbs.

26 Now, imagine having lost not just one of your  
27 limbs but four of your limbs, and that is our situation. We  
28 have lost a daughter, along with her three children. So, in  
29 fact, we have lost not just one person but four people as a  
30 result of this crime. This tragic criminal act has caused  
31 insurmountable grief and anguish to a countless number of  
32 victims, all helpless to avoid the disastrous consequences  
33 that have snowballed as, as result.

34 All other activities in my life have had to be

1 deliberately forced to try and distract a mind that has been  
2 completely deprived of joy. It is like having a dark cloud  
3 hanging over us permanently, never allowing the bright  
4 sunlight to shine through. I feel like I have been living  
5 only half a life because such a huge and important part of  
6 me has been torn away. A mother losing her child is truly  
7 like having half of one's heart ripped out.

8           After the severe initial shock wears out -- or  
9 wear off, a sick and nauseating pain settles in your  
10 stomach, stomach and remains there forever as a reality of  
11 these catastrophic events hit home. Each and every day we  
12 fell the painful void left by her absence and the horrific  
13 memories of the way in which we have lost this warm, loving  
14 and beautiful daughter, who had been a substantial part of  
15 our lives for 40 years.

16           In addition, we have lost three grandchildren, who  
17 have also been a part of our lives for over 20 years. This  
18 crime was the catalyst that has completely destroyed our  
19 family. A warm and loving family pulling together in an  
20 effort to support one another is the only thing that can  
21 bring any little comfort under such horrifically tragic  
22 circumstances.

23           Only the love of our other daughter's family,  
24 other family members, along with the warmth and comfort  
25 provided by our large and loving spiritual family has  
26 enabled us to endure or even to survive the devastating  
27 consequences that have resulted from this crime which  
28 permanently destroyed our lives as we knew it previously.

29           I so often feel like I cannot overcome this  
30 horrific and tragic reality. Only just legal consequences  
31 can trigger initiation of the healing process.

32           THE COURT: Thank you.

33           Mr. Minuk, one last thing before you conclude.  
34 The letter that you sent to me also referred to some

1 photographs that -- was it your intention to file those as  
2 exhibits?

3 MR. MINUK: No.

4 THE COURT: Thank you. Anything further?

5 MR. MINUK: Nothing.

6 THE COURT: Okay. Mr. Wolson, do you --

7 MR. WOLSON: Your Honour, I --

8 THE COURT: -- are you ready to proceed or do you  
9 wish a few minutes?

10 MR. WOLSON: -- I think it would be appropriate to  
11 take perhaps five or 10 minutes as the morning break and  
12 then I'll make my submission to you. What I plan to do, so  
13 that you know, is I'll make some comments and remarks on  
14 issues of sentencing. I plan to review with you, unless you  
15 tell me otherwise, just summarily, the letters of material  
16 that I have filed because you have had them now for some  
17 time and by that I am referring to S3 and 5, on sentencing.  
18 And I plan to review, again briefly, some of the case  
19 authorities which you've had, as well, for some time and at  
20 the conclusion of my submission, Derek would like to address  
21 the court. So that's what I intend to do. And I am hoping,  
22 I know my friend has announced to the court that you may  
23 well wish to reserve your decision. My thought is that it  
24 would benefit everybody if a decision could be rendered  
25 sooner than later, having regard to the emotion that's very  
26 extreme.

27 THE COURT: I appreciate that. Mr. Wolson, I'll  
28 wait to hear what you have to say, and let me say this, that  
29 for the record, as you can appreciate, I have read all of  
30 the material, including all of the letters and the caselaw,  
31 but feel free, please, not to restrict yourself, in any way,  
32 in reference to any of those letters. I don't have any  
33 difficulty with you doing so.

34 MR. WOLSON: Well, for me to read them all would

1 take as much time as it did for you so.

2 THE COURT: No, no but you, you indicated that you  
3 wish to refer to some passages, that's perfectly fine with  
4 me.

5 MR. WOLSON: Thank you.

6 THE COURT: What we'll do is -- now five, six  
7 minutes after 11:00, we'll reconvene at 20 after 11:00  
8 then --

9 MR. WOLSON: Thank you.

10 THE COURT: -- a break of about 13 or 14 minutes.

11 THE CLERK: Order all rise. This court will take  
12 a brief recess.

13

14 (BRIEF RECESS)

15

16 THE CLERK: Court is now reopened, you may be  
17 seated.

18 MR. MINUK: Your Honour, before Mr. Wolson begins,  
19 I just wanted to pass up this note that I have made for you,  
20 that reviewed the conditions I was looking for the court to  
21 consider. Mr. Wolson received a copy of them.

22 THE COURT: All right. If you could leave that  
23 with the clerk. Thank you.

24 Yes, Mr. Wolson.

25 MR. WOLSON: May it please Your Honour, this case  
26 represents a tragedy of the greatest nature. A wonderful  
27 woman, by all accounts, Crystal Taman, has died and Derek is  
28 responsible for her death and no one knows that more than he  
29 does.

30 The impact that this death has had on the Taman  
31 family is gut wrenching, our hearts go out to her family. I  
32 have to say that the tremendous courage and bravery that it  
33 must have taken to stand up in this courtroom and read out  
34 their tribute, their dedication to Crystal's memory, was so

1 important and so impressive and an important part of this  
2 sentencing.

3 I received the victim impact statements just the  
4 other day and I met with Derek and his wife, Karleigh, and  
5 provided the statements to them. They read them and I could  
6 see how moved they were.

7 When the statements were being read, there are a  
8 number of people, as you know, in this courtroom. Crystal's  
9 family and friends, Derek's family and friends and  
10 supporters, and he has many, and when I looked back everyone  
11 was tearful. This can only be described as a, as a terrible  
12 tragedy.

13 Before I received the victim impact statements, I  
14 received and I had asked Derek to provide me with some  
15 letters of reference and background so that this court could  
16 get to know the gentleman before the court who is being  
17 sentenced today. And I didn't want to get reports from his  
18 mother or step-mom or dad, or step-dad or other close family  
19 members but I did receive a fax from Pam Zenk, Derek's mom.  
20 And this is before the victim impact statements were made  
21 available to me and before I knew what the children had to  
22 say and family had to say, and Mr. Taman had to say.

23 This is what Pam Zenk sent to me.

24

25 He told me that the first  
26 thought --

27

28 Talking now of Derek.

29

30 He told me that the first thought  
31 that enters his mind every morning  
32 is that he is responsible for the  
33 death of another human being, and  
34 the last thought he has at night,

1                   before he falls asleep, that he is  
2                   responsible for the death of  
3                   another human being. He saw her  
4                   die and that image has stayed with  
5                   him and will for his lifetime. He  
6                   has stated that he hates himself  
7                   and believes he needs to, (in  
8                   honour to) -- or in order to honour  
9                   Crystal Taman. As his mother, this  
10                  breaks my heart but I am very  
11                  cognizant of another mother who has  
12                  a broken heart. She will never see  
13                  her daughter again. I am lucky, I  
14                  have my son.

15  
16                  She writes that she hopes that Derek can, with the  
17                  passage of time, learn to deal with this tragedy.

18                  I have been doing these types of cases, in courts  
19                  in this country, for many years. I have never seen a man  
20                  like Derek Harvey-Zenk and his family, so devastated by his  
21                  actions. When he -- and people write on his behalf the  
22                  effect that it's had on him, there is no question but it is  
23                  absolutely genuine.

24                  You know, I have met with Derek and his wife, and  
25                  at times the whole family comes in to see me, I might have  
26                  15 people in my office from time to time, and I see the  
27                  devastation that this has caused in his family and, and  
28                  Derek and Karleigh.

29                  Never once, never once, has Derek ever offered, to  
30                  me, any concern for himself. He has never tried to make  
31                  excuses, he has been forthright in what he can remember, he  
32                  received what they believe is a concussion at the time of  
33                  this incident, but he has always thought only of the family  
34                  of Crystal Taman. He wanted to contact them a long time

1 ago, I suggested that he leaves that until after the  
2 sentencing process.

3 In my view, he has jailed himself in sincere  
4 remorse and guilt and he has been in that state since the  
5 date of this accident. He is consistently totally racked  
6 with guilt, remorse and devastation for what he has caused  
7 to others.

8 This is so different from the young man who  
9 started his life out in Morden, and then moved, at a young  
10 age, with his family to Brandon and was so active in the  
11 community. You have seen, from the letters of reference,  
12 that people who have known him from a very young age, have  
13 talked so positively about him, about the kind of person  
14 that he is, about his dreams and aspirations of becoming a  
15 police officer and realizing those.

16 He is 33 years of age now, he lives in [REDACTED] at  
17 [REDACTED]. He lives there with his wife, [REDACTED]  
18 and their 22 month old child. [REDACTED] is a teacher in  
19 [REDACTED], Derek, as you know from the material that I have  
20 filed, is a manager of North Hill Services.

21 He started his career in Corrections in 1997 as a  
22 correctional officer, until 2000 when he became a police  
23 officer. He has resigned from the police service since this  
24 incident has occurred.

25 You have had the letters that I have filed for  
26 some time now. I want to, as I indicated before, just  
27 highlight some of them. The medical report of Dr. Bill  
28 Davis. Now, Dr. Davis, as you know, is a very prominent and  
29 respected psychologist. He set out, in his report, the  
30 history and background that he learned of this matter.  
31 Derek, you will know from the report, started working at the  
32 age of 15 and eventually graduated from university, here in  
33 Winnipeg, and went on to the career that I have noted a  
34 short time ago.

1           At page 3 of the report, Dr. Davis notes the kind  
2 of support that Derek has from his family, strong and  
3 continuous emotional support from his wife, Karleigh, from  
4 his immediate and extended family on both his and his wife's  
5 side. Their relationship has been under significant  
6 emotional distress, Mr. Zenk reports that they both  
7 recognize the magnitude of this tragedy.

8           As to the mental status examination conducted by  
9 Dr. Davis, at page 3, he notes the following:

10  
11                   He displayed a limited range of  
12 effect, confined primarily to the  
13 expression of sorrow, regret and  
14 sadness, resulting from this  
15 painful pervasive awareness, the  
16 responsibility he feels in another  
17 person being dead.

18  
19           He went on to note that, page 4 of the report:

20  
21                   Derek expressed, repeatedly, a  
22 sense of shame and self-distain,  
23 expressing the opinion that this is  
24 his burden to bear.

25  
26           You know the concern that the doctor had that he  
27 may hurt himself noted in the report and the diagnosis of  
28 severe -- or of depression and the recommendation by Dr.  
29 Davis, at page 5, that Derek seek professional help and  
30 assistance to help him attempt to overcome the guilt and  
31 depression that he feels.

32           Now, I asked Dr. Davis to amplify on one of the  
33 sentences that I read because I was unsure what he meant by  
34 it and you will see that at the letter dated the 19th of

1 July of '07 where he amplifies, on this statement:

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11 And this is what Dr. Davis has written.

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He has available to him, in Brandon where he lives, a psychologist, Dr. Richard, who hasn't been able to see him over the last few weeks but can see him and they have a meeting set, if he were able to attend, for the 29th

1 of this month.

2 Now, the letters of reference that you have I  
3 think generally speak to areas that this court ought to be  
4 concerned about. Background of somebody who was otherwise a  
5 decent, kind, caring and compassionate individual all his  
6 life, a man who has achieved his goals and his goals in life  
7 were to help other people.

8 I think if you look at the first letter from the  
9 Brandon Fire Chief and his partner, Nancy Dane, who is a  
10 principal in the Brandon School Division, it tells you a  
11 little bit about Derek, at page 1 of that letter, that  
12 Derek, throughout his years, found time to volunteer for  
13 village clinic fundraising efforts, assisting in  
14 correctional officers Care for Kids Camp, volunteer for the  
15 Winnipeg Police Community Services Centre, helping young,  
16 young children in elementary classrooms. So I think in this  
17 letter and others that follow, you would have a sense of the  
18 kind of man that Derek Harvey-Zenk is. A man who has never  
19 been in any kind of trouble in his life but who made an  
20 extremely tragic mistake on the night in question and that  
21 mistake has had horrific consequences.

22 And courts are always placed in a difficult  
23 position when you have a man who comes before the court  
24 never having been in any kind of difficulty before but, to  
25 the contrary, being a solid citizen in every respect, a  
26 contributing member of society all his life, a man that has  
27 volunteered, helped children, helped the communities in  
28 which he lives. And all of the letters speak to that, they  
29 all speak of the genuine remorse, the change that's occurred  
30 in Derek's life since this accident. He is a different  
31 person than he was, the sadness that's been a very prominent  
32 issue in his life and in the life of his family.

33 And what I have found rather unique in dealing  
34 with Derek, and I have seen him so many times over the last

1 two and a half years, is he never complains about his  
2 plight, never, it's always the concern for others.

3           You have a position that my friend and I have --  
4 are advancing to you jointly, and one of the issues is that  
5 of his -- a driver's licence. You have a letter from his  
6 employer, Chris O'Rourke, who is the president of North Hill  
7 Service who outlines the responsibilities that Derek has  
8 with this company. He indicates that the privilege of being  
9 able to drive is required to maintain and complete the  
10 responsibilities within his job description.

11           Now, on that issue, you would know that as a  
12 result of these allegations Derek lost his licence for six  
13 months. That, in order to have his licence reinstated, he  
14 had to go to the Addictions Foundation for an interview and  
15 counselling. That irrespective of whatever you do today,  
16 the Motor Vehicle Branch will suspend his licence for five  
17 years, the difference between a suspension and a court  
18 ordered prohibition, as Your Honour well knows, is that an  
19 appeal can be taken from a suspension to three members of  
20 the Licence Appeal Board, to see whether or not they would,  
21 in the circumstances, see fit to reinstate his licence for  
22 purposes only of being able to work. A prohibition by a  
23 court would disenable him to do that.

24           My friend, Mr. Minuk, had one -- at one point said  
25 to you that you could consider, if you were to consider the  
26 recommendation of counsel, that you could consider some kind  
27 of restricted licence. I can tell you that in the Burfoot  
28 case, that Judge Guy did that and the Motor Vehicle Branch  
29 found that they had no authority, once a prohibition had  
30 been ordered by a judge, to consider a reinstatement of  
31 driving privileges. So in the Burfoot case, the Crown, Mr.  
32 Vanderhooft, agreed to an appeal on that limited issue and  
33 we had spoken to Judge Guy about it, it was never his  
34 intention to prohibit and that's what a, that's what an

1 order like the one that Mr. Minuk suggested, would cause --  
2 it would cause the Licence Appeal Board to be unable to  
3 consider the matter any further.

4           The letter by Judi Peterson, which is the third  
5 letter in the group of letters, talks about the kind of  
6 person that Derek Harvey-Zenk is. She talks about character  
7 and five pillars of character, honesty, trustworthiness,  
8 care and responsibility and citizenship and finds that Derek  
9 embodies all of those.

10           And I think if you would consider the letters as a  
11 whole, you would find that these letters speak volumes for  
12 Derek Harvey-Zenk, volumes for the kind of person that he  
13 is, the fact that there is genuine and absolute remorse, the  
14 fact that this has caused him to incarcerate himself in  
15 feelings of guilt and shame and subject to whatever comments  
16 you have, if you would like me to address any particular  
17 letter, you have read them all, I think my characterization  
18 of the letters is a fair one, and I don't see a need to  
19 review each letter with you, they're very well written and  
20 very articulate from each of those that provided a letter.

21           Some of those people are here today, some of those  
22 people are not available, they were out of town or they live  
23 in the United States.

24           Now, on the issue of penalty, I say to you that  
25 Derek has imposed his own penalty. But in the formal sense  
26 you would have to consider what penalty the court will  
27 impose on Derek Harvey-Zenk. Mr. Minuk, who as involved in  
28 this case as independent counsel, because Derek was a peace  
29 officer at the time, the policy of the Justice Department is  
30 to have independent counsel become involved so as not to  
31 cause any concern that a Crown prosecutor would have any  
32 association with the police from other cases, so the right  
33 thing to do was to hire independent counsel as Mr. Minuk is.

34           And I can tell you, in dealing with him, over

1 many, many months, that Mr. Minuk caused an independent  
2 investigation to occur. As a matter of fact, the case at  
3 one point was set for court hearing and Mr. Minuk asked me  
4 if I would agree to adjourn the matter on Mr. Zenk's behalf  
5 because he wanted to have an independent investigation and  
6 further investigation done and, of course, we agreed.

7           Mr. Minuk has not only canvassed the legal  
8 authorities and as one knows, this law that we practise is  
9 about precedent and what's happened in other cases that are  
10 similar, so that there is some consistency in sentencing.  
11 And what Mr. Minuk has done is he has gathered all of the  
12 case authorities and not just these cases that are before  
13 you but you will find that many of these cases deal with a  
14 series of other cases canvassing the Canadian judicial front  
15 on the issue of penalty on a dangerous driving causing death  
16 or an impaired driving causing death, so that you have  
17 before you a cross-section, not only in this province but in  
18 other provinces, of how the courts have consistently dealt  
19 with cases like the one before the court today.

20           And in the materials you have from our Court of  
21 Appeal three decisions, from this court decisions of your  
22 brother and sister judges, Judge Elliot, Judge Giesbrecht,  
23 Associate Chief Judge Harvie, Judge Guy and a cross-section  
24 of this court. Those judges have written very lengthy  
25 decisions that you have before you, as has our Court of  
26 Appeal and decisions in other provinces.

27           In the case at tab 5, the Bazylewski case, your  
28 sister, the Associate Chief Judge, canvassed the courts in  
29 Manitoba -- and this can be found at page 7, paragraph 29 of  
30 tab 5 -- she canvassed the courts on impaired causing death  
31 cases in Manitoba, Ontario, Nova Scotia, British Columbia.

32           Judge Giesbrecht, at tab 7, your sister Judge  
33 Giesbrecht, made a thorough review, as she always does, of  
34 the cases and at paragraph 142, will tell you how thorough

1 the case was, but at paragraph 142 she canvassed cases,  
2 unlike the case at bar, where even if there had been an  
3 impaired driving and even if there had been a very high  
4 blood alcohol, which there is not before you, that there can  
5 be and she cited examples of it, where blood alcohols were  
6 in the 180 to 200 range, she cited examples in Manitoba, in  
7 MacKenzie, in the Court of Appeal, and in the Provincial  
8 Court in Manitoba, and in Ontario, and the Court of Appeal  
9 for Ontario, where, even in those cases, conditional  
10 sentences have been imposed.

11 So the issue that you have to resolve, in this  
12 case, Your Honour, is whether or not a sentence, as  
13 recommended by the Crown, of two years less one day is  
14 appropriate and I say, with respect, that one would be hard  
15 pressed to find precedent for a sentence, in this case, that  
16 would exceed that.

17 My friend has canvassed all of the decisions from  
18 '99 to the present of cases of similar circumstances, where  
19 sentences range from a year, to 15 months, to 18 months, to  
20 two years less a day. If you were of the view that that  
21 range of sentence, as jointly recommended by Crown and  
22 defence, is an appropriate range then, of course, you would  
23 turn your attention to whether or not a conditional sentence  
24 would be appropriate, as my friend has recommended and I  
25 join him in that recommendation. You would have to  
26 determine whether or not Derek Harvey-Zenk poses a threat to  
27 the community. Is there a risk and would a sentence, in  
28 this case, be within the range of two years less a day or  
29 less.

30 Of all the cases that my friend has referred you  
31 to, the courts in the province and canvassed in other  
32 province have all resolved that two years less a day would  
33 be appropriate and that a conditional sentence could be  
34 imposed. The only case to the contrary is that of Eckert,

1 which is found at tab 3 that my friend referred you to.

2 Eckert contained the most egregious facts you  
3 would find in a case of this kind, speeds of 200 kilometres  
4 an hour, an accident that occurred at a hundred kilometres  
5 an hour, with inside the city limits. Two near --

6 THE COURT: A record prior and subsequent to the  
7 allegations.

8 MR. WOLSON: Yes. And two near misses prior to  
9 the collision that caused the death of a lady pedestrian,  
10 two near misses of other pedestrians, 11 prior convictions,  
11 including Criminal Code convictions, and as Your Honour has  
12 noted, one that occurred subsequent to the allegation of the  
13 matter before the court, dangerous driving causing death  
14 which caused, without question, the Court of Appeal to say,  
15 well, hold on here, there is risk to the community because,  
16 if this man hasn't learned from his incident of killing  
17 somebody and then is out on the street committing further  
18 offences, we can't say that he's not a risk to the community  
19 so we have to incarcerate him in a, in a jail. Even in that  
20 case the sentence was two years less a day but it was inside  
21 a jail.

22 And I can say that the accused in that case, as  
23 you will know from reading the case because it was a Crown  
24 appeal, consented to the Crown appeal on the day of the  
25 appeal.

26 But every other case before you, where there is  
27 either alcohol involved, to an extent of readings of over  
28 .08, to where no alcohol is involved, to where, like in this  
29 case, there is mention of it by the Crown but no proof of  
30 it, in all the cases, in cases that the facts were more  
31 egregious than the one before you, in the MacKenzie case,  
32 for instance, at tab 6, blood alcohol in the range of a  
33 hundred milligrams percent and the evidence of the author of  
34 a pre-sentence report, noted that the accused was a medium

1 risk to re-offend, even in those circumstances, with an  
2 accused with a limited prior record, the imposition of a  
3 conditional sentence was imposed.

4 Judge Giesbrecht's case, at tab 7, a blood alcohol  
5 of 90, and when you extrapolated that you would have come to  
6 200, two years less a day conditional sentence. So I don't  
7 think that I need to review the cases, one-by-one, but I am  
8 certainly pleased to respond to any concerns you have about  
9 the cases set out in the case book because I think that,  
10 taken as a whole, they support, very strongly, the position  
11 that's advanced by the Crown and the defence and come within  
12 the circumstances of this case.

13 Now, the law, as you know, on recommendations by  
14 counsel, is quite clear. If you have experienced counsel  
15 and between Mr. Minuk and myself we probably have close to  
16 65 years or 60 years at the bar -- I don't want to age him  
17 but I think we're probably at that vintage -- what we've  
18 done, as counsel, is attempted to put before you relevant  
19 facts, aggravating facts, facts which tend to support the  
20 position that we're advancing, and you would find the  
21 following, I submit. Derek, who has no prior record, no  
22 prior Highway Traffic record. He has very solid family  
23 support. He is gainfully employed, both prior and  
24 subsequent. That his licence has already been suspended for  
25 a six month period and as you know, will be irrespective of  
26 what you do for five years by the Motor Vehicle Branch.

27 While there has been considerable delay, I think  
28 Mr. Minuk will tell you that it has not been because of the  
29 accused, it's because of investigations and a  
30 re-investigation.

31 You would have before you a joint recommendation,  
32 in my view, that's supported by the case authorities, no  
33 post-offence conduct that you would find to be aggravating,  
34 but to the contrary, post-offence conduct that, in my view,

1 supports the position that we ask, a positive psychological  
2 report and letters of reference.

3           So, in my view, the courts have said, on joint  
4 recommendations articulated by experienced counsel, that if  
5 the sentence recommended is well within the range of the  
6 accepted standard, and this is, that courts ought to give  
7 considerable attention to the recommendation of the lawyers  
8 and if there were issues of concern that courts ought to  
9 express those issues and give counsel an opportunity to  
10 address issues that a court may have.

11           The only addition that I have, by way of request,  
12 of the document that my friend has given you regarding the  
13 conditional sentence, is Derek has asked me if you were to  
14 accept the recommendation and those set out in the materials  
15 by Mr. Minuk, that he be allowed, on his way to work, to  
16 drop his daughter off at daycare. His wife is a teacher and  
17 Derek has the responsibility of doing that.

18           Mr. Minuk has advised me that he takes no  
19 opposition to that and that's not in the material that you  
20 have, so I ask you to consider that.

21           Subject to any questions you have, Your Honour, I  
22 know this has been a very difficult morning, I hope that you  
23 can, in post-sentence, soon having regard to the emotions of  
24 everyone involved and you would then have my submission,  
25 subject to any questions that you have.

26           THE COURT: I'll hear from the accused in a few  
27 moments but I do have some questions then I'll direct them  
28 to, to both counsel. These are in addition to the questions  
29 that I have already directed to Mr. Minuk.

30           One of the factors that hasn't been touched on by  
31 either counsel in a direct way, with respect to the, the  
32 aspect of sentence, is the employment that Mr. Zenk had at  
33 the time that the incident occurred, that is he was, as I  
34 understand, employed as a police officer with the City of

1 Winnipeg. And I ask counsel to address the issue of that  
2 fact in relation to the sentencing process and the  
3 recommendation that's given. There is much caselaw that I  
4 think the courts have accepted and I think you gentlemen  
5 would not take issue with, that there is a higher standard  
6 of conduct that's expected of those involved in the justice  
7 system, not only counsel and judges but police officers, and  
8 recognizing that the accused was not on duty, nonetheless at  
9 the time of the offence he was a police officer and I, I  
10 want both counsel, and if you need some time to, to gather  
11 your thoughts fair enough, but I think it's something that  
12 is sort of, by my, my opinion, sort of noticeable by its  
13 absence in relation to the, the recommendation that both of  
14 you have given.

15 MR. WOLSON: Well, let me start by saying -- and  
16 if you want us to provide some authorities we can try to do  
17 that -- in our deliberations and our discussions that's been  
18 taken into account in the submission that we have jointly  
19 recommended to you.

20 First of all, Derek has -- I won't say that he has  
21 lost his job but he was immediately suspended from the  
22 service and has withdrawn from the police service. There is  
23 penalty involved in that.

24 Secondly, in my view his prior conduct, his prior  
25 good conduct and subsequent good conduct, should cause you  
26 to resolve that he has been punished for, at least by the  
27 loss of his employment, for his actions. There is other  
28 punishment that's accrued, as well, and in my view, if he  
29 were a citizen, an ordinary citizen, and not a member of the  
30 service, that additional punishment would not have existed.

31 So I say, with respect, that the loss of his dream  
32 of being able to pursue a career in policing is a factor  
33 that both my friend and I have taken into account in  
34 articulating the joint submission to you and, in my view, we

1 still, in our view, fall within the case authorities of what  
2 an appropriate sentence would be in these circumstances  
3 particularly when, in this case, the nature of the accident,  
4 itself, is not one that was brought on by an impairment  
5 because that isn't the position articulated by the Crown,  
6 that Derek was impaired at the time, but through  
7 inadvertence and -- which, in my view, falls into the area  
8 of dangerous driving but it would be hard and wrong to  
9 penalize somebody for inadvertence because they happen to be  
10 a judge, or a lawyer, or a police officer, at the time at  
11 least, and I think you have to look at those facts when you  
12 consider whether or not an increased responsibility is  
13 required. This was, in my view, a tragic accident, with  
14 criminal ramifications.

15 I don't know whether you want to hear further from  
16 me on it but I --

17 THE COURT: Not at this time.

18 MR. WOLSON: Okay.

19 THE COURT: Unless you have anything further. I  
20 don't know if Mr. Minuk has anything to say on this  
21 question.

22 MR. MINUK: On a jurisprudential, theoretical and  
23 philosophical basis, we have to approach the position that  
24 you have put to us to consider and from a perspective of  
25 prosecutions and law, generally, we treat people who are  
26 generally thought to be officers of the court, as Your  
27 Honour has noted, with that view that -- of a higher  
28 standard of conduct.

29 The question becomes, though, where do we draw the  
30 line between ordinary citizenship and one's professional  
31 occupation and we certainly know that in the execution of  
32 one's professional duties there is recognized that a higher  
33 standard will always be considered by courts. In that  
34 context we might consider the lawyer acting as counsel,

1 abusing his or her authority as a lawyer. The penalty that  
2 they might receive from a theft from a trust account might  
3 well be different from someone who, in similar  
4 circumstances, by occupation steals a chocolate bar from  
5 7-Eleven or steals food from Safeway or gas from a service  
6 station when they are not acting in the capacity of a  
7 lawyer, committing perhaps an assault.

8           So the question becomes, do they always carry with  
9 them this professional accreditation such that before the  
10 courts they will always be treated differently, no matter  
11 what the circumstances may be, and perhaps with that stripe  
12 on them, face sentences which will be different than  
13 ordinary citizens in similar circumstances. And it's a very  
14 difficult line to differentiate but certainly, in this  
15 particular case, the conduct was viewed or considered in the  
16 individual's personal capacity, not acting as a police  
17 officer, and the overall consequences to him,  
18 professionally, which may well be different than that might  
19 be for other persons.

20           It may not be the case that for lawyers, for  
21 example, or doctors, that an impaired driving charge or a  
22 charge of this sort may cause them to lose their occupation.  
23 In the case of Mr. Zenk that did occur, that -- he lost his  
24 job as a result of being charged with the offence.

25           So in trying to balance the issue of where this  
26 all lies, in my view we need to be mindful of their  
27 occupation, but at the same time balance that with the  
28 overall purpose of the justice system which, as we know from  
29 the figure attached to this building is blind, that people  
30 in similar circumstances need to be treated in a similar  
31 fashion and the question of where we draw the line and make  
32 exceptions and where we discriminate one person as to  
33 another because of their profession, their occupation, their  
34 employment, must be done carefully in the context of the

1 case which is before the court, and not simply done just  
2 because an individual is of a certain occupation or a  
3 certain profession and that would be my submission to you.

4 THE COURT: Mr. Wolson, I asked this question of,  
5 of Mr. Minuk, but I take it that you concur when I asked him  
6 that the time of driving, from the time of leaving the house  
7 party to the time of the accident was about five minutes?

8 MR. WOLSON: Yes.

9 THE COURT: All right. And I take it that you're  
10 not -- both of you are not saying that he necessarily fell  
11 asleep in that time or that it was inadvertence. I'm a bit,  
12 I'm a bit confused as to what, what I am being told in terms  
13 of the, the explanation for the accident or the -- you know,  
14 the lack of stopping, seeing the vehicle.

15 MR. WOLSON: I think, quite frankly, that may well  
16 have happened but I don't know that and Derek doesn't know  
17 that because of the head trauma that he suffered. So I  
18 can't tell you that but I think that may have happened. And  
19 of some benefit to you in that regard may be the Burfoot  
20 case, which you have marked as S4, because when you look at  
21 Burfoot, Burfoot was a school teacher who was on his way to  
22 -- driving to a location. He chose to pass a vehicle and  
23 was in the wrong lane when he came into collision with a  
24 young lady who was driving the other direction, causing her  
25 death and a dangerous driving causing death.

26 We think he fell asleep at the wheel but we don't  
27 know. But I think what's important in these circumstances  
28 is that in the circumstances of Derek Harvey-Zenk's case, is  
29 impairment is not a position of the Crown and, and it's not  
30 an issue that, in my view, relates to the, to the accident.  
31 So that's the position that I take.

32 I don't know exactly what happened but I expect  
33 that that could have happened.

34 THE COURT: The -- can you tell me how many hours

1 your client had been awake prior to the --

2 MR. WOLSON: Well, he had been awake since -- he  
3 had worked a shift of about eight hours, those eight hours  
4 and then the hours from eleven o'clock until seven o'clock  
5 in the morning.

6 THE COURT: So at least 16 hours then?

7 MR. WOLSON: Yes.

8 THE COURT: Another question that I have from both  
9 of you is, is to me, at least, an obvious one. There was  
10 reference in the victim impact report from Victoria Sveinson  
11 about impaired driving, there is no impaired driving. I  
12 accept that the Crown doesn't allege that, it's not a  
13 factor, although the Crown relies on some evidence of  
14 historical drinking as part of the, as part of the facts  
15 supporting the plea.

16 However, I am aware, of course, from the previous  
17 appearance, as a matter of public record, that there was a  
18 request for a breathalyser, as I recall, was there not?

19 MR. WOLSON: Yes.

20 THE COURT: All right. And I'm taking this from  
21 the fact -- is that -- is there anything in relation to that  
22 that's a factor that the Crown relies on in relation to the,  
23 to the facts supporting this or that either counsel do?

24 MR. WOLSON: The charges have been stayed. You  
25 ought not to take that into account at all, in my view.

26 THE COURT: I, I didn't say I was taking it into  
27 account, I asked whether or not there was any factor in that  
28 that was being relied on. Clearly, I can't take into a fact  
29 -- into account the stay charge, I never would. I take it  
30 from your silence that the answer would be no, Mr. Minuk?

31 MR. MINUK: No comment to make.

32 THE COURT: Okay. Thank you. Sir, I understand  
33 that, through your counsel, that you wish to make a  
34 statement to the court. The court always welcomes comments

1 from an accused person prior to sentencing. I am sure Mr.  
2 Wolson has told you there is no legal obligation on you to,  
3 to say anything but if you do have anything to say I am  
4 prepared to receive that. And if you could then, attend to  
5 the microphone.

6 THE ACCUSED: Excuse me, Your Honour.

7 I find it difficult to put into words what I am  
8 feeling. I don't know what to say to someone, when you have  
9 taken away his or hers most precious gift. I feel I need to  
10 apologize to so many people, and most importantly, I feel I  
11 need to apologize to the Taman family.

12 I know that I have caused a great deal of pain and  
13 sorrow to a lot of people. Mere words will never be enough  
14 to fill the emptiness and loss that everyone must feel. I  
15 hope that everyone can hear the sincerity in what I am  
16 saying.

17 I have taken away someone so loved and cherished  
18 and for this I am deeply and profoundly sorry. Every day I  
19 am sorry. I am sorry that your precious wife, mother,  
20 daughter, sister and friend was taken from you all. I pray  
21 for that -- I pray that Ms. Taman, and everyone that I have  
22 hurt, can find peace.

23 I know that I have hurt you all so deeply and I  
24 wish I could take away that pain. I don't think that I will  
25 be -- ever be able to apologize enough to everyone and I  
26 would like everyone to know that every day I take a loss of  
27 a life with me. Ms. Taman is always in the forefront of my  
28 thoughts. I am so deeply sorry.

29 Thank you, Your Honour.

30 THE COURT: I recognize that this is a joint  
31 recommendation by counsel, I am quite aware of the comments  
32 from the Court of Appeal with respect to the joint  
33 recommendations of counsel and how they are to be taken, and  
34 that -- and I also recognize the emotion of the, of the day.

1 I recognize the fact that this matter has been ongoing for  
2 quite some period of time and, in fact, made even worse by  
3 the fact that today would have been the deceased's birthday,  
4 as I understand it. And I recognize that the people in the  
5 courtroom have come here, not only today but on prior  
6 occasions and I recognize what you indicated, Mr. Wolson,  
7 that I think, and you have said this candidly and sincerely,  
8 not only on behalf of your client but I think on behalf of  
9 everyone that was present, that closure to the extent that  
10 the court could give it, in rendering its decision, would be  
11 something that people would seek and you hoped would come  
12 sooner rather than later.

13           However, recognizing all of that, and given the  
14 length of the evidence and the emotion of the evidence, I  
15 feel that I need to reflect on the submissions given. I  
16 recognize that that may have the effect, both for the  
17 accused and for family and friends of Ms. Taman and Mr. Zenk  
18 that that may prolong some agony and torture but  
19 nonetheless, in order to render a fair and judicial  
20 decision, I believe that I need to reflect on it. And  
21 certainly -- and I'm not saying that -- I'm not saying by  
22 any comment that I would not accept the joint recommendation  
23 but if, of course, upon my reflection I had some concerns or  
24 questions about it, or any part of it, I am required,  
25 clearly, to bring counsel back before me and to express,  
26 specifically, what any concerns might be and to give you the  
27 opportunity to address them.

28           So given all of that, I am going to take whatever  
29 time I feel is necessary to, to reflect on today's evidence  
30 and, and call counsel back and I'll give you lots of notice  
31 so that you can inform the people that are here.

32           I will promise this, that I will try to do this as  
33 quickly as I can, bearing in mind that I intend to take the  
34 time necessary to feel comfortable and confident in the

1 reasons that, that I have come to, or if I don't, to then  
2 express that to counsel.

3           So on -- I apologize to all present that I don't  
4 intend to sentence the accused at this point in time but  
5 that's, clearly, how I feel.

6           MR. WOLSON: I was going to add, Your Honour, that  
7 I will be out of the jurisdiction for quite a period of time  
8 in just a little past mid-September.

9           THE COURT: All right. So, in any event then,  
10 before that time would be clearly ideal and certainly  
11 necessary if there are any questions that I have of you;  
12 correct? That's what you're indicating to Mr. Wolson;  
13 correct?

14           MR. WOLSON: Thank you. Yes.

15           MR. MINUK: Well, then --

16           THE COURT: And --

17           MR. MINUK: -- what I will propose, subject to  
18 Your Honour's perhaps better wisdom on the point, is that we  
19 just adjourn the matter to courtroom 119 rather than clog up  
20 a docket with the matter because there really is no  
21 efficient means of putting it on a docket, it would have to  
22 go to 302 and --

23           THE COURT: That's perfectly fine, we can put it  
24 on 119.

25           MR. MINUK: That's an administrative court  
26 and --

27           THE COURT: Well, actually we can --

28           MR. MINUK: -- it sits daily.

29           THE COURT: Yeah.

30           MR. MINUK: My first proposal would be two weeks  
31 from today and then we can monitor it thereafter and if Your  
32 Honour's office --

33           THE COURT: I'm mindful of the, of the timeframe  
34 that Mr. Wolson has indicated, as well, so two weeks from

1 today would be, I think, what is it, September the ...

2 THE CLERK: Fifth.

3 THE COURT: September 5th. That's Wednesday,  
4 September 5th.

5 MR. WOLSON: I'm assuming one doesn't -- or you  
6 don't require either appearance by the accused or counsel on  
7 that day?

8 THE COURT: No, as long as, as long as Mr. Minuk,  
9 as Crown counsel, will just make arrangements if a further  
10 adjournment --

11 MR. MINUK: No, I don't want -- I don't think  
12 that's necessary for either Mr. Wolson or his client to --

13 THE COURT: No. No, as along as you're monitoring  
14 and make the arrangements for an adjournment.

15 MR. MINUK: Oh, I'll --

16 THE COURT: Yeah.

17 MR. MINUK: -- look after all of that and if Your  
18 Honour's assistant contacts my office directly, for the  
19 purpose of any further adjournment beyond the 5th of  
20 September, I'll facilitate that and make the attendance and  
21 deal with it.

22 THE COURT: And alternatively, if we need to bring  
23 the matter forward, as we will to some date, obviously there  
24 will have to be communication with both of you and in a  
25 fashion that gives you opportunity then, to inform people  
26 that are here and who wish to attend at that time of the, of  
27 the timing of it.

28 MR. MINUK: Yes.

29 THE COURT: Are there any questions arising out  
30 those?

31 MR. WOLSON: No, sir.

32 THE COURT: That being the case then, the court is  
33 adjourned for today, until two weeks from today, and we'll  
34 reconvene at some point shortly, I hope, in the

1 future.

2 THE CLERK: Order all rise.

3

4 (PROCEEDINGS ADJOURNED SINE DIE)

CERTIFICATE OF TRANSCRIPT

I hereby certify that the foregoing pages of printed matter, numbered 1 to 67, are a true and accurate transcript of the proceedings, transcribed by me to the best of my skill and ability.

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PAMELA S. PESCIPELLI  
COURT TRANSCRIBER

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THE PROVINCIAL COURT OF MANITOBA

BETWEEN:

HER MAJESTY THE QUEEN

- and -

DEREK GRANT HARVEYMORDENZENK  
also known as DEREK GRANT HARVEY-ZENK,

Accused.

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TRANSCRIPT OF PROCEEDINGS before The Honourable  
Chief Judge Wyant, held at the Law Courts Complex, 408 York  
Avenue, in the City of Winnipeg, Province of Manitoba, on  
the 22nd day of August, 2007.

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APPEARANCES:

MR. M. MINUK, for the Crown

MR. R. WOLSON, for the accused