

Court of Queen's Bench of Alberta

Citation: R. v. Hennessey, 2009 ABQB 60

Date: 20090130
Docket: 070845441Q1
Registry: Edmonton

Between:

Her Majesty the Queen

- and -

Shawn William Hennessey and Dennis Keegan Cheeseman

Accused

**Reasons for Judgment
of the
Honourable Mr. Justice Eric F. Macklin**

I. Introduction

[1] On March 3, 2005, near Mayerthorpe, Alberta, Royal Canadian Mounted Police Constables Anthony Fitzgerald Gordon, Peter Christopher Schiemann, Lionide Nicholas Johnston and Brock Warren Myrol were ambushed and murdered by James Michael Roszko who then killed himself. It was the worst loss of life suffered by the RCMP in a single incident in over 100 years.

[2] On January 19, 2009, Shawn William Hennessey and Dennis Keegan Cheeseman pled guilty to four counts each of manslaughter in relation to the deaths of the four RCMP Constables. In accordance with s. 606 of the *Criminal Code*, I satisfied myself that each of the two accused pled guilty voluntarily, understood that his plea was an admission of the essential elements of the offence, understood the nature and consequences of the plea and that it now fell

upon the Court to impose a punishment on them, and understood that I was not bound by any agreement made between either of the accused and the Crown. The guilty pleas were then accepted by the Court and convictions for manslaughter as parties to a murder were entered against each accused. It remains for the Court to determine appropriate sentences.

II. Facts

[3] The following facts are contained in the Agreed Statement of Facts entered by the parties as an exhibit. It is only these facts, and the inferences that can reasonably be drawn from them, that are properly before this Court for consideration in sentencing.

[4] On March 2, 2005 a bailiff, Rob Perry, set out to execute a warrant authorizing the seizure of a white 2005 Ford pickup truck. He brought along a partner, Mark Hnatiw. At around 3:00 p.m., Perry and Hnatiw arrived at property near Mayerthorpe, Alberta, on which Roszko occupied a mobile home. The bailiffs observed a man, probably Roszko, standing outside of the man-door of a Quonset hut located on the well-secured property, and a new white Ford truck that they suspected was the vehicle to be seized. When two large dogs ran toward them barking and growling, they decided to call the Mayerthorpe Detachment of the RCMP for assistance. Cpl. Jim Martin advised them not to enter the property until the RCMP arrived. Before the police arrived, Roszko drove the white pick up truck across the field and out of sight.

[5] Cpl. Martin and Cst. Schiemann arrived at the Roszko property at around 3:40 p.m. The dogs were contained and Perry and the RCMP officer entered the Quonset. They observed a number of vehicle parts, consistent with a “chop shop” or a place where stolen vehicles are altered, and a marijuana grow operation.

[6] At around 4:05 p.m., Cpl. Martin and Cst. Schiemann left to obtain a Search Warrant for the property, leaving Cst. Letal and Cst. Josok to secure the scene. Cst. Schiemann later returned to the Roszko property with Cst. Myrol. Cst. Josok departed. At around 6:30 p.m., bailiffs Perry and Hnatiw left and returned to Edmonton. At 7:55 p.m., Cpl. Martin was granted a Search Warrant for Roszko’s property. A search team comprised of Cpl. Martin, Cst. Letal, Cst. Starman, Cst. Sangster, Cst. Schiemann and Cst. Myrol was assembled.

[7] The search team arrived at the Roszko property and commenced the search at around 8:40 p.m. At 9:30 p.m., Cpl. Martin made contact with Cpl. Adamitz of the Edmonton RCMP Green Team, a specialized unit responsible for the investigation and processing of relatively large scale commercial drug operations. Cpl. Adamitz agreed to put together a team and attend immediately. A towing company attended and removed a number of stolen vehicles and other items. At 00:30 on March 3, 2005, the Green Team arrived and by 2:30 a.m. they had dismantled the grow operation and seized 280 marijuana plants along with other grow operation paraphernalia. At 3:00 a.m., the search was complete, except for the removal of some remaining items. Cst. Johnston and Cst. Gordon were called in to maintain security of the Roszko property until the arrival of members of the Edmonton RCMP Auto Theft Unit later that morning. At 9:30 a.m., Cst. Schiemann drove from Mayerthorpe to Roszko’s property to drop off Cst. Myrol who

was going to assist in the search effort that morning. At around 9:56 a.m. Cst. Hoogestraat and Cst. Vigor of the Edmonton RCMP Auto Theft Unit arrived at Roszko's property.

[8] After some initial contact with the RCMP officers on site, Cst. Vigor and Cst. Hoogestraat heard gunfire and called for back up. Roszko walked out of the Quonset carrying what appeared to be a hunting rifle, and a semiautomatic assault rifle and discharged two rounds at Cst. Vigor. Cst. Vigor returned fire, hitting Roszko in the hand and in the thigh. Roszko returned, out of sight, to the interior of the Quonset. Cst. Hoogestraat and Cst. Vigor awaited the arrival of the RCMP Emergency Response Team, which arrived on scene at around 12:05 p.m. A robot was transported to the scene at 12:20 p.m. and was deployed at approximately 1:40 p.m. No signs of life were detected. The ERT team entered the Quonset and it was determined that all four peace officers and Roszko were deceased. The officers died as a result of gunshot wounds. Roszko died as a result of a self-inflicted gunshot wound.

[9] The RCMP commenced an extensive investigation to try to determine, among other things, how Roszko returned to his farm to ambush and murder the four peace officers and whether or not he had received any assistance. Additionally, the police wanted to determine how Roszko had armed himself with a .300 Winchester which was legally registered to John Hennessey, the grandfather of Shawn Hennessey.

[10] A bed sheet and a pillow case containing a pair of work gloves along with a small water bottle and a can of "Bear Scare" pepper spray were noted in the Quonset. Subsequently, it was forensically determined that an area of the left glove between the index finger and middle finger contained DNA which was a DNA match to Shawn Hennessey.

[11] The police conducted numerous interviews of relatives of Roszko and executed search warrants with respect to Roszko's cell phone. Sometime between 2:00 p.m. and 3:30 p.m. on March 2, 2005, Roszko called his aunt, Ann Chayka, looking for his mother, Stephanie Fifield. Roszko called again about an hour later, sounding somewhat anxious and indicating that there was a situation occurring in his yard. Subsequent discussions occurred between Fifield and Chayka wherein Fifield sought permission on behalf of her son to park the white truck at Chayka's residence. Chayka didn't give her permission, however, when she awoke in the morning, she noted that the truck the police were seeking had in fact been parked in her yard overnight. Roszko was nowhere to be seen, however Chayka learned from her sister, Fifield, that there were helicopters, police cars and ambulances in Roszko's yard. The distance from the Chayka property to Roszko's property was later determined to be 38.5 km.

[12] The search of the Telus cell phone records relating to Roszko's cellular phone indicated that between 3:34 p.m. and 4:37 p.m. on March 2, 2005, Roszko placed one phone call to Kal Tire in Barrhead and numerous calls were made between Roszko and a "bag phone" then utilized by Shawn Hennessey, by virtue of his employment with Kal Tire. Additionally, numerous calls were made to Hennessey's residence. The last call made by the bag phone was to Hennessey's residence at 5:24 p.m. The bag phone was not used again until March 4, 2005.

[13] Roszko asked Hennessey if he could hide his truck at the Hennessey residence, however Hennessey steadfastly refused. At one point, Hennessey was aware that Roszko was at his residence by reason of a phone call received from his wife, Christine Hennessey. Hennessey also spoke to Roszko at that time on the telephone.

[14] Hennessey stopped briefly at Jessie Zasedko's house during the evening of March 2, 2005. Hennessey was seeking his brother-in-law, Dennis Cheeseman. Hennessey was apparently aware that Cheeseman was helping Jessie Zasedko move. Hennessey asked Cheeseman to speak to him alone, and indicated that he needed Cheeseman's help because there were RCMP officers at Roszko's farm, and Hennessey was involved in the marijuana grow operation located on Roszko's property. He further asked Cheeseman to get home as soon as he could. Cheeseman knew Roszko as he, like Hennessey, had done odd jobs from time to time for Roszko on Roszko's property. These jobs involved menial labor such as the digging of holes for the planting of trees. Cheeseman, unlike Hennessey, had no involvement with respect to any of the illegal operations on the Roszko property.

[15] When Cheeseman returned home to the rural residence he shared with his sister Christine and his brother-in-law, Hennessey, in the later evening hours of March 2, 2005, he found Roszko and Hennessey sitting at the kitchen table. It was evident to Cheeseman that Christine and her children were home, however, were avoiding Roszko.

[16] Roszko had arrived at the residence with a Luger handgun in the waistband of his pants, and was seeking the rifle that Hennessey had been given by his grandfather, John Hennessey, a few years prior. Hennessey wiped the .300 Winchester Magnum rifle down; he provided it to Roszko as well as a box of ammunition intended for use in that rifle.

[17] When Cheeseman viewed that situation, he took it upon himself to go downstairs and retrieve a white pillow case and some gloves. Cheeseman then put on the gloves and stuck the Hennessey rifle in the pillow case.

[18] It was clear to all present that Roszko was enraged at the police, and Roszko made comments to the effect that he intended to return to his property and burn down the Quonset that contained the illegal marijuana grow op and chop shop operation. Both Hennessey and Cheeseman knew that armed confrontation with the police was a real possibility and that the situation was clearly trouble.

[19] Roszko decided that he would hide the sought after truck at Chayka's residence, and the two offenders agreed to follow him there in order to give him a ride back to his residence.

[20] Hennessey asked Cheeseman to accompany him for support and comfort. Both men were intimidated and fearful of Roszko. They followed Roszko to Chayka's residence in Hennessey's Dodge Neon. During that trip of approximately a half an hour, the two offenders were relatively quiet. When they arrived at the Chayka residence, they pulled over and waited near the highway while Roszko drove the white truck and parked it down the Chayka driveway. During this time period, the two offenders discussed leaving Roszko there, however, decided not

to act upon that plan. Roszko ultimately reappeared on foot carrying the Hennessey rifle, with the handgun still tucked into the waistband of his pants. Cheeseman exited from the front passenger seat, vacating that seat for Roszko. Roszko slid the rifle with the pillow case into the back seat next to Cheeseman.

[21] During the trip from Chayka's, Cheeseman and Hennessey did not converse with Roszko, but Roszko ranted and complained about the RCMP, and threatened to get even with them. He indicated that he was going to burn down the Quonset. Cheeseman described his rantings as "devil talk".

[22] Roszko directed Hennessey to drive past the range road on which he lived, and to proceed to the next range road where his mother lived. He directed Hennessey to drive past his mother's residence and to stop across the field from where the police were located. The two offenders could see the lights from the police cars that early morning of March 3, 2005, and Roszko paused to pull socks over the outside of the boots he was then wearing. Roszko grabbed the Hennessey rifle from the back seat and proceeded off in the direction of the police, sometime in the early morning hours of March 3, 2005, and most likely between 1 a.m. and 3 a.m.

[23] Hennessey and Cheeseman departed and drove directly home. Cheeseman suggested that they should call the police and warn them about Roszko, however Hennessey discouraged that idea, and felt that Roszko would come after them should he evade police. Neither offender made such a phone call to the police.

[24] Later the same morning, Hennessey departed his residence for a Kal Tire meeting at the Mayfield Inn in Edmonton that commenced at 7:00 a.m. or 8:00 a.m. Hennessey remained at that meeting for the majority of that day and did not learn what had transpired at the Roszko farm until he heard it on the radio on his way home to his Barrhead area residence. Hennessey indicated that he would have arrived home between 4:00 p.m. and 5:30 p.m.

[25] Similarly, Cheeseman went to work at Sepallo Foods at 7:00 a.m. that same morning and left work at 1:30 p.m. claiming a family emergency, when he heard about the murder of the four peace officers on the Roszko farm.

[26] Hennessey was aware that the rifle he had provided to Roszko was in fact registered to his grandfather, John Hennessey. The senior Hennessey had provided the rifle to Shawn Hennessey when he believed the Government planned upon eliminating the gun registry requirements. John Hennessey believed that he gave the rifle to Hennessey in early 2003 or late 2002.

[27] Hennessey and his mother, Sandy Hennessey, discussed the fact that the rifle was registered to John Hennessey and that the RCMP would undoubtedly follow up on that aspect of the investigation by questioning John Hennessey. As a result, contact was made with the senior Hennessey, and Shawn Hennessey told John Hennessey that Roszko had the .300 Winchester Magnum. John Hennessey indicated that he was quite sure that it was his own suggestion that

they all “story” to the police the notion that the rifle had been stolen from the back of John Hennessey’s welding truck.

[28] Following an extensive RCMP investigation, Cheeseman was arrested on July 7, 2007, and Hennessey was arrested on July 8, 2007.

III. Analysis

A. General Comments

[29] The Crown seeks a sentence of between 10 years and 15 years imprisonment for each offender with credit given for time served. Mr. Hennessey and Mr. Cheeseman seek a sentence in the range of 5 years and 4 years imprisonment respectively, with credit given for time served and the fact that each pled guilty.

[30] It is not uncommon to see a great disparity in cases of sentencing for manslaughter as there is a wide range of conduct that may fall within the definition of manslaughter and consequently significant variance in terms of the moral culpability of the offender.

[31] The purpose and principles of sentencing are set out in ss. 718, 718.1 and 718.2 of the *Criminal Code of Canada*. The fundamental purpose of sentencing is to have respect for the law and the maintenance of a just, peaceful and safe society. When imposing sanctions, the Court should strive to achieve the objectives of denouncing unlawful conduct, deterring the offender and other persons from committing offences; separating offenders from society where necessary, assisting in rehabilitating offenders; providing reparations for harm done to victims or to the community and promoting a sense of responsibility in offenders and acknowledgement of the harm done to victims and to the community.

[32] With respect to the offence of manslaughter, the *Criminal Code* provides in s. 236:

236. Every person who commits manslaughter is guilty of an indictable offence and liable

(a) where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

(b) in any other case, to imprisonment for life.

[33] The Alberta Court of Appeal highlighted the wide range of cases encompassed by the offence of unlawful act manslaughter in *R. v. Laberge* (1995), 165 A.R. 375. The Court stated at para. 6:

6 All unlawful act manslaughter cases have two common requirements: conduct which has caused the death of another; and fault short of intention to kill. However, despite these common elements, the offence of unlawful act manslaughter covers a wide range of cases extending from those which may be classified as near accident at the one extreme and near murder at the other... Different degrees of moral culpability attach to each along a continuum within that spectrum. It is precisely because a sentence for manslaughter can range from a suspended sentence up to life imprisonment that the court must determine for sentencing purposes what rung on the moral culpability ladder the offender reached when he committed the prohibited act. The purpose of this exercise is to ensure that the sentence imposed fits the degree of moral fault of the offender for the harm done.

[34] The Court in *Laberge* emphasized the need to distinguish between fault determined by the offender's *mens rea* and fault in terms of his overall moral blameworthiness for the crime. The sentencing court is not limited to considering the offender's blameworthiness in terms of his mental state. It must consider other factors such as the "nature and quality of the unlawful act itself, the method by which it was committed and the manner in which it was committed in terms of the degree of planning and deliberation . . ." (at paras. 7 and 8).

[35] The Court in *Laberge* (at para. 9) divided unlawful acts into three broad groups: those which are likely to put the victim at risk of, or cause, bodily injury; those which are likely to put the victim at risk of, or cause, serious bodily injury; and those which are likely to put the victim at risk of, or cause, life threatening injuries. The overall moral blameworthiness of the offender is greater where the offender knew or was wilfully blind to the fact that his conduct would put the victim at risk of serious harm.

[36] In addition to considering the moral blameworthiness of Mr. Hennessey and Mr. Cheeseman in the deaths of the four RCMP Constables, the Court must also consider any mitigating and aggravating factors applicable to the circumstances of the killings and to the individual offenders themselves. It is also necessary to bear in mind the fundamental principle of proportionality mandated by s. 718.1 of the *Criminal Code*. The sentences imposed on the two offenders must be proportionate to the gravity of the offences and their respective degrees of responsibility. The sentences must be within the range imposed for similar offences. While tragic consequences must be considered in the context of the nature of the offence, those consequences cannot unduly distort determination of the appropriate penalty (see *R. v. Mellstrom* (1975), 22 C.C.C. (2nd) 472 (Alta. S.C.A.D.)).

B. Authorities

[37] As stated above, s. 236 prescribes a four year minimum term of imprisonment for manslaughter where a firearm is used in the commission of the offence. Therefore, the potential sentences in this case range from four years to life in prison. It is the Court's task to determine where along that wide spectrum the proper sentences fall for these two individuals, as sentencing

is ultimately a highly individualized process. In reaching a decision, the Court is guided by decisions in other cases where the offenders had similar moral culpability.

[38] The parties each submitted cases relating to sentencing for manslaughter where the offender did not directly kill the victim, but where the activities of the offender amounted to entering into a common unlawful purpose or aiding or abetting the actual killer. I will not review all of the cases referred to, but in my view the following manslaughter cases provide some guidance:

(1) *R. v. Bell*, 2003 CarswellMan 594, leave denied 2006 CarswellMan 42, 2006 MBCA 19: An RCMP officer was shot following a violent crime spree, while Bell and two others, heavily armed, were resisting arrest and fleeing in a stolen truck. Bell was not the driver, nor did she fire the gun, but was convicted of manslaughter and sentenced to 10 years imprisonment. There was no guilty plea, and she expressed animosity toward the police. There was no duress. With credit for time served, her sentence was reduced to 7 years.

(2) *R. v. McLeod*, 2006 ABQB 217, aff'd 2008 ABCA 31: McLeod was hired by Chung to conduct an assault on a suspected police informant, which turned into a shooting by a third person that neither intended. McLeod was present at the time of the killing and was convicted of manslaughter. McLeod and Chung were young and were subject to firearms prohibitions at the time. Slatter J. sentenced McLeod to 9 years and Chung to 11 years imprisonment. With credit for time served, McLeod's net sentence was 3 years and 8 months and Chung's net sentence was 8 years and 4 months.

(3) *R. v. McWhirter*, 2005 NBPC 6: McWhirter and a friend decided to rob a taxi driver as his friend needed money to pay off a drug debt. McWhirter did not want to participate in the robbery but agreed to be a lookout. He gave his friend a gun he had stolen from his parents' home. His friend pulled the gun on a driver, and killed the victim. McWhirter helped dispose of the body. He had no previous record, strong family and community support, was remorseful, and had not used the firearm. He was sentenced to 7 years, after credit was given for time served.

(4) *R. v. Cooney* (1995), 80 O.A.C. 89: Cooney had participated in luring the victim for the purpose of robbery, and benefitted from property stolen. However, it was not clear that he was the perpetrator of the killing or was present when it was committed. Cooney was young with a minimal record. The Court of Appeal reduced the sentence from 12 years to an effective sentence of 10 years and 9 months, after credit for pre-trial custody.

(5) *R. v. Phillips*, 2008 ONCA 688: Phillips was jealous of his girlfriend's relationship with Wilman. Phillips loaded a gun owned by Wilman. His girlfriend took the gun and shot Wilman while he sat in his truck. Phillips and his girlfriend disposed of the body, stole Wilman's car and hid for a few weeks, and later

returned to live in Wilman's home. Phillips denied any role in planning the shooting. The dangerous and reckless conduct of Phillips in loading the gun, his knowledge of his girlfriend's unstable temperament, Wilman's vulnerable position and kind treatment of Phillips and his girlfriend, the disrespectful manner in which Wilman's body was treated, the couple's flight from the jurisdiction, and Phillip's feigned surprise at the discovery of Wilman's death and his role in it were all aggravating factors. The Court of Appeal reduced the sentence to 9 years less credit of almost 4 years for time served, citing Phillips' lack of a significant criminal record and his lack of participation in the actual killing.

(6) **R. v. Dhak**, 2003 BCSC 595: Dhak was the driver of a vehicle involved in a drive-by shooting after a dispute at a nightclub, repositioning the vehicle to give the shooter a better advantage, but possibly only intending that the gun be used to threaten the individuals who were banging on the vehicle or to scare them away by firing the weapon. He had a record and was on probation at the time. He was sentenced to 7½ years less credit for time served for a net sentence of 1 year and 4 months.

(7) **R. v. Espadilla**, 2005 BCSC 358: Two groups became involved in an altercation at a nightclub. Espadilla knew one member of his own group (the killer) to be violent and to carry a firearm at times. Espadilla had recognized the vehicle driven by the victim as belonging to a person who lived in the adjoining apartment complex, and he guided the killer to the parking lot where he knew the victim parked his car. Espadilla was not present at the time of the killing but cleaned up the scene and stole items from the victim's apartment. He was young and had a minor unrelated criminal record. The court reluctantly accepted a joint submission amounting to what was effectively a 6 year sentence less credit for time served for a net sentence of 2½ years.

(8) **R. v. Uppal**, 2004 BCSC 414: Uppal was a bright promising young man who involved himself in the drug trade. The victim was his friend who trusted him. Uppal was told to make sure that his friend was in his apartment at the time appointed for the murder and that there were no other people there who might interfere or subsequently be witnesses. Uppal went along with this scheme because he was afraid of the principal and believed that if he did not comply he would himself be in danger. He attempted in the very last moments to prevent his friend's death. He was sentenced to 7 years, less credit for time served for a net sentence of 5 years.

(9) **R. v. Walcot**, 2001 BCCA 342: Walcot and Gamblin had been out shooting with a prohibited firearm. Walcot knew that Gamblin intended to "settle a score" and Walcot drove the car to the scene of the crime in order to enable Gamblin to carry out that purpose. Walcot gave the keys to Gamblin to unlock the trunk in order that Gamblin could obtain the rifle to carry out his purpose. Walcot was present when his friend walked into the home of the victims and shot them in the

head. When the shots were fired Walcot was standing in the door of the house. Walcot turned himself in to the RCMP and assisted in the investigation. He pled guilty to two counts of manslaughter. He was minimally involved in the offence, had no prior record, and received the minimum sentence of 4 years.

(10) *R. v. Almarales*, 2008 ONCA 692: Prieto accused his girlfriend of having an affair with one of the deceased, and asked Almarales to drive him to his old apartment to retrieve some items. Prieto threatened Almarales with a gun prior to entering the apartment and took his car keys. Almarales was present when his friend Prieto shot three men in the apartment. Prieto later killed himself. Prieto was a very difficult, dangerous and unpredictable man. Almarales was a drug user and trafficker, and an alcoholic, rarely held lawful employment, and had a long record including crimes of violence, drug offences and failures to appear or to attend court. On appeal, a net sentence of 12 years for manslaughter was imposed (Almarales having served 21 months pre-trial custody), recognizing Almarales' secondary participation in the killings.

(11) *R. v. Mackhan*, [2005] O.J. No. 5959 (Sup.Ct.Just.): Mackhan was 18 years old when he participated in a near murder for which he was convicted of manslaughter. Watt J. noted that general deterrence, although significant in cases of fatal violence, does not trump every other sentencing principle and justify the imposition of artificially lengthy penitentiary terms for each and every youthful first offender. Watt J. stated that 15 to 18 years is a range of sentence available but infrequently imposed in manslaughter cases, especially on a plea of guilty of a youthful first offender, with no history of violent disposition and reasonable prospects for rehabilitation, who was a principal but not the prime mover in the offence. An effective sentence of between 10 and 11 years was imposed less credit of 4 years and 2 months for pre-trial custody.

C. Aggravating and Mitigating Factors

1. Moral Blameworthiness of Mr. Hennessey and Mr. Cheeseman

[39] It is now my duty to analyse and determine the overall moral blameworthiness of Mr. Hennessey and Mr. Cheeseman for the deaths of the four RCMP Constables so as to determine which rung of the moral culpability ladder each stands on. In doing so, it is necessary to examine the circumstances surrounding the involvement of the two offenders in the events of March 3, 2005.

[40] Mr. Hennessey and Mr. Cheeseman were parties to Roszko's murders. They did not fire a gun. Nor were they present when Roszko killed the officers. There is no evidence before the Court that they participated in the initial formulation of Roszko's plan to return and burn down the Quonset or in any plan of his, whenever formulated, to kill RCMP officers.

[41] Both Mr. Hennessey and Mr. Cheeseman say they were fearful of and intimidated by Roszko, who was known to be volatile. However, there is no evidence of any overt threats to either of them. Further, I note that Mr. Hennessey succeeded in refusing to allow Roszko to leave his truck on Mr. Hennessey's property, from which I infer that he had some negotiating power. Regarding Mr. Cheeseman, it is unclear what demands, if any, were ever placed on him by Roszko. He did not own or possess a rifle demanded by Roszko, nor was he the owner of the car Roszko presumably demanded be used to transport him to his property. In other words, Mr. Cheeseman seems to have become a party to the events of March 3, 2005 largely out of his desire to help his brother-in-law assist in the destruction of the Quonset by Roszko, and possibly out of concern for the welfare of Mr. Hennessey and his family.

[42] Although both offenders had worked for Roszko, Mr. Hennessey was also involved in a criminal enterprise with him. Mr. Hennessey told Mr. Cheeseman that he needed Mr. Cheeseman's help because there were RCMP officers at Roszko's farm and Mr. Hennessey was involved in the marijuana grow operation located on that property. Mr. Hennessey knew that Roszko intended to burn down the Quonset. This act by Roszko would have benefitted Mr. Hennessey. It would have destroyed evidence of Mr. Hennessey and Roszko's criminal grow operation, effectively obstructing the investigation and the enforcement of the law. The burning of the Quonset while police officers were involved in an active investigation of it could, in itself, have put the officers at risk of life threatening injuries.

[43] I infer from the facts that Mr. Hennessey had control over the rifle which his grandfather had given him. Before giving it to Roszko, he wiped it down, presumably to remove his own fingerprints.

[44] There was clearly an element of self-interest in Mr. Hennessey's actions, which were all directed at distancing himself from anything that could link him to Roszko and the marijuana grow op. There was some discussion during the sentencing hearing as to the extent of the offenders' involvement in the drug trade. Defence counsel acknowledges that Mr. Hennessey sold small quantities of marijuana to family and friends, but argues that there is no clear evidence that destroying evidence of the grow operation was a motive in their involvement.

[45] Several questions are left unanswered by the Agreed Facts. One such question is why the rifle was a necessary component of the plan to burn down the Quonset. Roszko did not ask for gasoline or a match. If a firearm was a necessary part of that plan, why were two firearms required? Whatever the answers to these questions, Mr. Hennessey had to know that Roszko, in his enraged and heavily armed state, was a serious danger to the police officers who were already on his property.

[46] Mr. Hennessey persuaded the younger Mr. Cheeseman to come home to help him deal with Roszko and his concern over the grow op. He also persuaded Mr. Cheeseman to accompany him and Roszko in his car. Mr. Hennessey involved Mr. Cheeseman out of his own self-interest.

[47] It was Mr. Hennessey who drove the vehicle. After dropping off Roszko at his property, Mr. Cheeseman suggested calling the police. Mr. Hennessey discouraged that idea, apparently on

the basis that Roszko would then come after them. Again, Mr. Hennessey acted in his own self-interest. At that point, when it was evident the police were already on the property, there was no likelihood Mr. Hennessey would have been blamed by Roszko for instigating an investigation. The investigation was in progress. There was no good reason not to alert the police to the danger.

[48] Mr. Cheeseman's involvement in the matter was quite different. He came home at Mr. Hennessey's request to support him in the situation with Roszko and the marijuana grow op. There is no suggestion in the Agreed Facts that he played any part in the decision to provide the rifle to Roszko. He took it upon himself to retrieve a pillow case in which he put the rifle. He accompanied Mr. Hennessey and Roszko, at Mr. Hennessey's request, in Mr. Hennessey's car. He suggested they warn the police after they dropped off Roszko.

[49] Apart from providing the pillow case, the Agreed Facts suggest that Mr. Cheeseman was little more than a bystander with knowledge of the danger to the police posed by Roszko. He apparently had no involvement in the grow operation. His involvement appears to have stemmed from a fear of Roszko combined with a willingness to support his brother-in-law. While there is little to suggest any self-interest in his involvement, it appears that he initially agreed to participate, and then continued his involvement, to help Mr. Hennessey do whatever Mr. Hennessey felt necessary to aid Roszko in burning down the Quonset. That is, he agreed to participate in the unlawful act of burning down the Quonset to help protect Mr. Hennessey.

[50] Defence counsel emphasized that these two offenders are convicted only on the basis of being parties who ought to have foreseen the possible consequences of the events. Counsel urged the Court to carefully consider *Laberge* and the two forms of *mens rea*, subjective and objective, arguing that there was no subjective intention on the part of these offenders to inflict harm upon the officers.

[51] The *Laberge* analysis addresses both subjective and objective *mens rea* at paras. 13 and 14:

13 Even though only objective *mens rea* need be proven, subjective intent may also have been established in a given case. Where subjective intent has been established, that might well be braided together with objective intent at a different culpability level. Perfect symmetry between the two may not exist. Nor need it.

14 Despite the fact that the Crown need not prove that an offender knew or intended that his conduct would put his victim at risk of injury in order to ground a conviction for manslaughter, whether this additional level of subjective intent has been established is important in assessing the offender's blameworthiness for sentencing purposes. That is because our criminal justice system is based on the premise that, all other things being equal, the more an offender's "intention" or "awareness" approaches the point that he knew or was wilfully blind to the fact that his unlawful act was not only likely to put the victim at risk of death, but indeed to cause death, the more culpable he is. Similarly, even absent proof of subjective *mens rea*, the more that the offender's conduct, on an objective basis,

approaches the point where it can be said that he ought to have known, had he proceeded reasonably, that his unlawful act would be likely to cause life-threatening injuries as opposed to simply putting the victim at risk of bodily injury, the more culpable he is. In other words, the offender's moral blameworthiness and in turn the gravity of the offence are functions of the degree of fault.

[52] Both Mr. Hennessey and Mr. Cheeseman knew that armed confrontation with the police was a real possibility and that the situation was clearly trouble. On the ride to Roszko's property, he "ranted and complained about the RCMP, and threatened to get even with them." He said he was going to burn down the Quonset. Mr. Cheeseman described his rantings as "devil talk". Importantly, Mr. Cheeseman and Mr. Hennessey could see the lights from the police cars when they dropped off Roszko. They witnessed Roszko pull socks over the outside of the boots he was wearing, grab the Winchester rifle from the back seat and proceed off in the direction of the police.

[53] Mr. Hennessey's moral culpability does not reach the highest rung on the moral culpability ladder. He was neither present when the officers were killed nor did he fire a gun. He also did not concoct the original plan to burn down the Quonset and while the plan he did agree to and participate in was dangerous, it did not expressly involve the intentional infliction of harm. Defence counsel argued that there was no clear evidence that destroying the marijuana grow op was a motive for Hennessey, but I believe that to be a logical inference to be drawn from the facts agreed upon. It is my view that Mr. Hennessey reaches the highest rung possible for a party to murder who did not participate in formulating a plan to murder, was not present and was not the shooter. While Mr. Hennessey may have been under some duress in his dealings with Roszko that night, he had another reason for assisting Roszko and his actions in doing so placed four RCMP officers at risk of life threatening injuries.

[54] Mr. Hennessey may not have subjectively intended for officers to be injured or killed, but he either knew or was wilfully blind to the fact that his actions rendered this a real possibility. On an objective analysis, any reasonable person would have known that Roszko's return to his farm with weapons and ammunition in his agitated state created an extreme danger for the officers: a danger of receiving life threatening injuries; a danger that was ultimately and tragically realized. Mr. Hennessey appears to have been motivated exclusively by self-interest. The fact that he was fearful of Roszko reinforces the conclusion that he either knew or was wilfully blind to the threat Roszko posed to the officers.

[55] As for Mr. Cheeseman, I find his moral culpability to be lower than that of Mr. Hennessey. As stated above, his actions put him in a position more similar to that of a bystander. However, at a minimum he involved himself in activities intended to lead to the burning of the Quonset. While acting in what he may have believed to be a noble cause of assisting his friend and brother-in-law avoid possible criminal prosecution, his actions were clearly intended to obstruct a legitimate RCMP investigation and subvert justice. He further knew or ought to have known that any assistance in furthering Roszko's plan to burn down the Quonset would

contribute to creating a grave danger to the officers. His awareness of the danger is manifestly evidenced by his suggestion that they call the police.

[56] Having considered the circumstances of their involvement in the events of March 3, 2005, I conclude that the actions of Mr. Hennessey and Mr. Cheeseman were particularly aggravating. The only factor that may be considered as mitigating the seriousness of their actions is the duress or fear they experienced in dealing with Roszko.

2. The Killing of Police Officers

[57] The discussion of the sentencing principles applicable to this case would not be complete without consideration of the fact that the victims in this case were RCMP officers.

[58] The case law is replete with statements regarding the very serious impact of violence against police officers on our society. As a free and democratic country, we require certain individuals to take positions as police officers to help maintain a just, peaceful and safe society. By doing so, they accept the inherent risks and dangers. Police officers have a duty to protect members of the public. Their occupations are extremely dangerous, having regard to the persons with whom they are in frequent contact. Members of the public may flee trouble, but police officers must face it for it is their duty to enforce the law and to maintain law and order, often at great risk to their own lives or personal safety. Due to their willingness to face danger for the public good, police officers are entitled to protection and to know that society demands that they be protected.

[59] The public relies on police officers to provide safety and security. An attack on a police officer is an attack on society itself, and when a police officer is killed in the execution of duty, the community is understandably outraged. Members of the public must know that police officers acting in the course of duty are to be obeyed and respected, failing which heavy penalties will follow. It is impossible for police officers to maintain law and order unless they enjoy the support of the public and unless they are seen to have the solid backing of the courts when they are entitled to it. It is absolutely essential that all members of the public understand that violence against police officers in the course of their duties will be severely sanctioned. For law-abiding citizens, this knowledge enables them to conduct their affairs with confidence and assurance. For those who find themselves on the wrong side of the law, it is hoped that the severe consequences of engaging in violent acts against police officers will act as a deterrent.

[60] It is for these reasons that denunciation and deterrence are primary considerations in sentencing an offender in relation to the killing of a police officer. The killing of a person whose obligation it is to maintain law and order carries with it added moral culpability and requires a heavier deterrent to protect the public interest.

[61] With the exception of *Bell*, the sentencing cases cited earlier in which the offender did not directly kill the victim do not involve the killing of a police officer. In considering appropriate sentences in this case, I am guided by the range reflected in the case law, but must give consideration to the fact that the victims were police officers who were in the course of their

duties at the time. These offenders knew or were wilfully blind to the fact that unknowing and unsuspecting police officers, engaged in a lawful investigation, were at risk of life threatening injuries at the hands of a heavily armed, volatile and dangerous individual.

[62] Mr. Hennessey and Mr. Cheeseman failed to show respect for the law and for those who enforce it. Through their actions in furtherance of Roszko's plan, they let down themselves and their own families. They let down four RCMP Constables who put their lives at risk while acting in the course of their duties as peace officers to serve and protect all, including Mr. Hennessey and Mr. Cheeseman. They let down the families of Constable Anthony Gordon, Constable Peter Schiemann, Constable Lionide Johnston and Constable Brock Myrol. They let down the communities where the officers lived, worked and served. They let down the country the officers unselfishly agreed to serve and where the offenders are privileged to live under the rule of law.

[63] In imposing sentence, it is appropriate to reflect society's revulsion for this aspect of the offence.

3. Guilty Pleas

[64] The guilty pleas in this case must be given considerable weight. The guilty pleas by Mr. Hennessey and Mr. Cheeseman were not entered at the eleventh hour in the face of overwhelming Crown evidence as to inevitable guilt. In my view, the pleas were entered as early as it was reasonable to do so given the complexities of the case and the length of the investigation. In order to fully and properly consider the risks involved in proceeding to trial, it was essential for the accused and their counsel to obtain and review full disclosure from the Crown. It was also necessary for them to attend a preliminary inquiry to gain a full understanding of the nature of the Crown's case and some idea of the manner in which it would be presented. Indeed, it was also necessary for the Crown to conduct a preliminary inquiry so as to be in a position to assess the nature and quality of its evidence as well as its effect.

[65] The pleas were entered months before a scheduled 10 week trial. By pleading guilty, Mr. Hennessey and Mr. Cheeseman have saved the victims' families, the communities involved, the RCMP and the entire country from reliving a tragedy in microscopic and excruciating detail. The early resolution to this matter has also freed up resources in terms of the officers who would have been witnesses and the various other players in the administration of justice.

[66] Finally, the guilty pleas evidence a clear acknowledgement of responsibility and remorse on the part of both offenders. The pleas are an essential step on the road to rehabilitation.

[67] The mitigating effects and the resulting value of early guilty pleas in these criminal proceedings cannot be overemphasized.

4. Circumstances of the Offenders

Shawn Hennessey

[68] Shawn Hennessey is 29 years old. He was 26 years old at the time of the offences. He moved from Nova Scotia to Barrhead in 1994. He has two siblings: a sister in Barrhead and a brother in British Columbia. He graduated from High School in 1997 and has been steadily employed since then on oil rigs, then at Fountain Tire and Kal-Tire where he rose to the position of assistant manager, a position he held at the time of his arrest in 2007. On being released on bail in 2008, he found work with a construction company.

[69] Mr. Hennessey is married to Christine, and has two children, 8 and 5 years old. They own their own home south of Barrhead. Mr. Hennessey has enjoyed a great deal of family and community support throughout the proceedings. Over 100 letters were presented to the Court at the time of bail in support of his character. He is reportedly generous, helpful, a loving husband, father, brother, son, and friend. He is devoted to his family. He is a trustworthy, reliable, decent, hardworking employee.

Dennis Cheeseman

[70] Mr. Cheeseman was 21 years old at the time of the crime. He has one sister, Mr. Hennessey's wife, Christine. His father died when he was two years old. He survived a serious car accident when he was four years old. His mother remarried when he was five years old. His step-father was in his life for five years, but was a heavy drinker and abusive. There was not much money in his home for extra-curricular activities. He was shy and quiet, and did not have many friends during his school years. He dropped out of school at the age of 16. His mother sold the farmland around the house. His sister started dating Mr. Hennessey. His mother left when he was 16 and Mr. Hennessey moved in. He has had contact with his mother only four or five times in the last nine years.

[71] Mr. Cheeseman became very close to his sister and eventually with Mr. Hennessey. He was happy when they got married and had children. He looked up to Mr. Hennessey. He would babysit for Mr. Hennessey and Christine. He was happy living there.

[72] Mr. Cheeseman became a full-time janitor at the age of 16 and then worked at a hardware store in Barrhead for two years. He then began working for Sepallo Foods where he remained until his arrest. Since his release he has worked with a door installer. He has completed a number of courses throughout his work history. He has worked hard at staying employed and trying to better himself. He got along well with his fellow employees and employer. He had no previous dealings with the police. He too has community support.

[73] To summarize, both Mr. Hennessey and Mr. Cheeseman have been productive, contributing members of society who have enjoyed the support of those around them. Neither has a criminal record. The time each spent on bail under reasonably onerous conditions was unmarred by any violation. With respect to Mr. Hennessey, however, all of those mitigating

factors stand in stark contrast to his partnership with Roszko in a marijuana grow operation and his participation in trafficking activities.

IV. The Victim Impact Statements

[74] Section 722 of the *Criminal Code* provides that for the purpose of determining the sentence to be imposed on an offender, the court shall consider victim impact statements describing the harm done to, or loss suffered by, the victim or victims of the offence. Thirteen such statements were read in open court during the sentencing hearing. The Court acknowledges the courage exhibited by those family members who spoke so candidly of the pain they have suffered at the loss of their loved ones, the four officers who prematurely lost their lives while courageously serving their country.

A. Constable Anthony Fitzgerald Gordon

[75] Constable Gordon was 28 years old in March 2005. His mother (Doreen Jewell-Duffy), step-father (John Duffy) and wife (Kimberley Gordon) all speak of the void and the physical, mental and emotional pain left by the loss of Anthony Gordon. Kimberley was pregnant with their second child at the time of Anthony's death. She grieves the loss of her husband and her children's father. She attests to the fact that despite tremendous support of family and friends, deep feelings of loneliness remain.

B. Constable Peter Christopher Schiemann

[76] Constable Schiemann was 25 years old at the time he was killed. His father (Donald), mother (Beth), brother (Mike), and sister (Julia Loughlin) provided statements. Their statements attest to the love and respect they and others held for Peter, and the devastating loss they have felt as a result of his death. Donald Schiemann states that the events of March 3, 2005 ripped the family's lives apart, inflicting a pain beyond words. His mother Beth writes of how difficult it is to experience family celebrations without Peter. Mike and Julia speak of the gaping hole left by the loss of a loved sibling.

C. Constable Lionide Nicholas Johnston

[77] Constable Johnston was 32 years old in March of 2005. His wife (Kelly) speaks to the great pain and loss in her life, the loss of dreams and plans she and her husband had formed together as a couple. His mother (Grace) speaks of the horror and devastation which the crime brought to herself and the extended family, including Constable Johnston's nieces and nephews.

D. Constable Brock Warren Myrol

[78] Constable Myrol was 29 years of age in March 2005. His father (Keith), mother (Colleen), sister (Kalhanie Stillings) and fiancée (Anjila Steeves Myrol) provided victim impact statements. They outline the toll which this crime has taken on those nearest to Brock. Keith states that it is like being given a life sentence of loneliness and suffering. He speaks of a hurt so deep words cannot tell. Colleen speaks of the emotional and physical toll on the family. Kalhanie speaks of the impact on her, but also on her children. Anjila speaks of the loss of the dream of a life and future together.

[79] It is clear that the RCMP officers who were victims in this case were loved dearly by their families, and that they provided inspiration through their desire to serve and protect others by becoming RCMP officers. The fact that their promising lives were cut short has been devastating. Their families have experienced horrendous loss, the effects of which are strongly felt even after four years.

[80] On March 3, 2005, these four RCMP officers were acting in the course and scope of their duties to protect and serve the communities in which they lived and worked. They died in the course of those duties. These four men were Canadian heroes and will forever be remembered as such.

V. Calculation of Sentence

[81] This brings me to the determination of the appropriate sentences in this case.

A. The Starting Point

[82] The Crown submits that a sentence in the upper end of the range of 10 to 15 years, before considering credit for time served, is an appropriate starting point for determining the overall sentence for each offender. Counsel for Mr. Hennessey submits that an appropriate starting point for his sentence should be 5 years, less credit for his guilty pleas and for time served. Counsel for Mr. Cheeseman argues that his client is less culpable than Mr. Hennessey and suggests a starting point of 4 years imprisonment, less credit for his guilty pleas and for time served.

[83] As indicated earlier, I consider the moral culpability of Mr. Hennessey to be as high as it can be for an individual who did not pre-meditate a murder, was not at the scene of the murders and did not fire a gun. While I accept that he was under some duress in facing Roszko, I believe he was principally motivated by a desire to have the evidence of his partnership with Roszko in an illegal marijuana grow operation destroyed by Roszko. When he solicited the assistance of Mr. Cheeseman, he told him of the presence of the RCMP at Roszko's farm and his own involvement in the grow operation.

[84] While Mr. Hennessey's stated understanding was that Roszko simply intended to destroy evidence by burning down the Quonset, he provided Roszko with a .300 Winchester rifle

knowing that Roszko was already in possession of a Luger handgun. Though he may not have known that Roszko owned an assault rifle, he knew that the weapons already in Roszko's possession could cause life threatening injuries. Further, while Roszko never used the Winchester rifle, he obviously felt it was needed for him to accomplish whatever he intended to accomplish. Mr. Hennessey also prompted the involvement of Mr. Cheeseman to aid him in furthering Roszko's plans to destroy evidence.

[85] Mr. Hennessey rejected Mr. Cheeseman's suggestion after dropping off Roszko that the police be called and warned. He says that he was afraid that if Roszko evaded the police, he would then come after them. The difficulty I have with that suggestion is that these men knew that the police were already on Roszko's property. A phone call warning police that Roszko was on the property and armed would simply have allowed the police to properly meet the situation. Indeed, armed with that knowledge, the RCMP officers would undoubtedly have taken a different approach to securing the Quonset and their own safety. It is difficult to understand precisely what deduction Mr. Hennessey was fearful Roszko would make from the fact that the police who were already present on the property happened to be properly prepared for an armed confrontation.

[86] It is also important that the tragic consequences of Roszko's actions and Mr. Hennessey's assistance not be forgotten: four young RCMP Constables were murdered. These offenders pled guilty to four separate acts of manslaughter arising out of one series of actions. That series of actions put a number of police officers at risk of life threatening injuries. While the tragic consequences cannot unduly distort determination of the appropriate penalty, they must still be taken into account in considering the proportionality of the sentence and the need for denunciation and deterrence.

[87] In my view a fit and proper sentence to impose upon Mr. Hennessey, before considering the mitigating effect of the guilty pleas and credit for pre-sentencing custody, is 15 years imprisonment.

[88] I consider the moral culpability of Mr. Cheeseman to be lower than that of Mr. Hennessey. While Mr. Cheeseman also suggests that he was under some duress as a result of the fear and intimidation by Roszko, there does not appear from any of the agreed facts that Mr. Roszko made any demands of Mr. Cheeseman nor threatened him in any way. Again, it appears that Mr. Cheeseman was acting on a request by Mr. Hennessey to help Roszko obstruct justice. Seemingly without prompting, he provided Roszko with a pillowcase to hide the rifle given to him by Mr. Hennessey, though the benefit of this to Roszko is unclear. He also willingly participated in the transportation of Roszko to his property whereupon the danger to the RCMP officers present was obvious. While his suggestion of contacting the police after dropping off Roszko may appear commendable, his acquiescence to the refusal by Mr. Hennessey is not. Finally, and as in the case of Mr. Hennessey, the horrific consequences of Roszko's actions and Mr. Cheeseman's assistance cannot be ignored, though neither can they unduly distort consideration of the appropriate sentence.

[89] In my view, a fit and proper sentence to impose upon Mr. Cheeseman, before considering the mitigating effect of the guilty pleas and credit for pre-sentencing custody, is 12 years imprisonment.

B. The Effect of the Guilty Pleas

[90] Mr. Hennessey and Mr. Cheeseman gave up their constitutional right to a fair trial. As indicated earlier, the positive impact of those guilty pleas on the families of the victims, the communities involved and the administration of justice must be recognized. In my view, Mr. Hennessey and Mr. Cheeseman are each entitled to a reduction of 3 years in their sentence to recognize the significance of their guilty pleas, their acceptance of responsibility and the evidence of remorse. This effectively reduces Mr. Hennessey's sentence to a further period of incarceration of 12 years, and Mr. Cheeseman's sentence to a further period of incarceration of 9 years.

[91] While I recognize that giving each the same credit for the guilty pleas gives a greater proportionate benefit to Mr. Cheeseman as his starting point is lower than that of Mr. Hennessey, I feel it to be appropriate as a further recognition of the different levels of moral culpability of the two offenders in the events of March 3, 2005.

C. Credit for Time Served

[92] The Crown and Defence have agreed that Mr. Hennessey and Mr. Cheeseman should each receive credit for the time they have served on a 2 for 1 basis. As of today, Mr. Hennessey has spent about 9 months and 3 weeks in remand, while Mr. Cheeseman has spent about 10 months and 3 weeks in remand.

[93] The *Criminal Code* provides in s. 719(3):

719(3) In determining the sentence to be imposed on a person convicted of an offence, a Court may take into account any time spent in custody by the person as a result of the offence.

[94] Sentencing Judges ordinarily exercise the discretion provided in s. 719 by giving credit to a convicted person for pre-trial and pre-sentencing custody. A judge should not deny credit without good reason, since the incarceration of an individual for any period of time prior to trial is a denial of that person's liberty before any final determination is made as to his guilt [**R. v. Rezaie** (1996), 112 C.C.C. (3d) 97 (Ont. C.A.)].

[95] In Alberta, credit is usually given on a 2 for 1 basis for that period of time spent by an accused incarcerated at a Remand Centre pending trial or sentencing. This is because the time spent in remand is commonly considered "dead time": first, the time spent in pre-trial or pre-sentencing custody is not considered in the legislative provisions for parole eligibility and statutory release; second, the Remand Centre does not provide those educational, retraining or rehabilitation programs available to an individual in the prison system. (**R. v. Rezaie, supra**, and

R. v. Wust [2000] 1 S.C.R. 455). The conditions in the Remand Centre are harsh and are not suited to long term detention.

[96] I find that there is no good reason in this case to deny credit to each of the offenders on a 2 for 1 basis for the time they have spent in custody prior to sentencing. Accordingly, Mr. Hennessey shall receive credit on a 2 for 1 basis for a total credit of 19 ½ months. Mr. Cheeseman shall also receive credit on a 2 for 1 basis for a total credit of 21 ½ months.

D. Credit for Time on Bail

[97] Mr. Hennessey was on bail for approximately 9 months, and Mr. Cheeseman was on bail for approximately 8 months before they pled guilty. They each want full credit (that is, credit on a one for one basis) for the time spent on bail as they were under onerous conditions, essentially amounting to a form of house arrest. While both were entitled to work while on release, that was the only time they were allowed out of their homes and in their community unless in the company of a surety. They were allowed no contact with each other and no contact with any person named as a potential witness in the case.

[98] The Crown opposes the suggestion that they should receive any credit for the time spent on bail as they had the clear benefit of being out of the Remand Centre and with family.

[99] Mr. Hennessey and Mr. Cheeseman rely on the decisions of the Alberta Court of Appeal in *R. v. Lau*, 2004 ABCA 408, 193 C.C.C. (3d) 51 and *R. v. Hilderman*, 2005 ABCA 249, 199 C.C.C. (3d) 561. In *Lau*, the Court noted that the sentencing judge may take into account strict bail conditions and treat them as akin to custody. Whether or not to give credit, and how much, is a matter within the judge's discretion having regard to factors such as the intrusiveness of the bail terms (*Lau* at paras. 15 and 16; *Hilderman* at para. 18).

[100] In my view, pre-trial interim release without any house arrest type provisions would not justify any credit being given. On the other hand, bail conditions amounting to a full house arrest of an accused might well justify a 1 for 1 credit as such a condition would essentially fully deprive an accused of his liberty.

[101] Where an accused is under a partial house arrest in the sense that he is allowed out of the house for only a limited time (to work for example) and his liberty is severely restricted, consideration may be given to some credit between the two extremes. For example, where an accused is only allowed out of his home to work and is otherwise confined to his house at all other times, a court might well consider some compromise, such as credit on a 1 for 2 basis, that is, credit amounting to one half of the time on release.

[102] The offenders in this case were released on reasonably onerous conditions. They had strict reporting conditions and were subject to a curfew. However, they were both allowed to work. They were both allowed out of the house when accompanied by a surety. Obviously, their release conditions were markedly better than the conditions in the Remand Centre.

[103] The onus is on an offender to provide sufficient information for the Court to properly assess the impact of the pre-trial release conditions so as to consider their mitigating effect (*R. v. Downes*, 208 O.A.C. 324). While these offenders suggested that their release conditions were onerous, no evidence was provided to the Court as to the adverse impact on them personally beyond the apparent inconvenience of having a surety accompany them outside of their homes and some restrictions on their communications with potential witnesses.

[104] I have considered the time spent on judicial interim release and the conditions of the release order as mitigating factors in determining the appropriate starting points for the offenders and am not prepared to consider granting the offenders any further credit.

E. Eligibility for Parole

[105] The *Criminal Code* provides in s. 743.6 that the Court may order that the portion of a sentence that must be served before the offender is eligible for parole be one-half of the sentence or 10 years, whichever is less. The Crown has indicated that it is not seeking such an order from this Court.

[106] Section 743.6(2) provides that the paramount principles which are to guide the Court considering an order to delay parole are denunciation and specific or general deterrence, with rehabilitation of the offender being subordinate to those principles.

[107] The two offenders were on Judicial Interim Release and working in the community for a period of time before sentencing. It has not been suggested that they acted in any way contrary to the terms of release and even the Crown has suggested that an order to delay parole eligibility cannot be justified on the basis that it will be necessary as part of the rehabilitation of either of the offenders. I agree.

[108] Further, I am satisfied that the sentence I have imposed herein, with a starting point of 15 years for Mr. Hennessey and 12 years for Mr. Cheeseman adequately recognizes and emphasizes the principles of denunciation and specific and general deterrence. The fact that they will each serve less than the time I have determined to be fit sentences for each merely reflects the appropriate credit each is to receive.

[109] Accordingly, there will be no order under s. 743.6(2).

VI. Conclusion

[110] Please stand Mr. Hennessey:

Mr. Hennessey I have determined that a fit and proper sentence to impose upon you for having committed four acts of manslaughter in relation to the deaths of four RCMP Constables is 15 years imprisonment. I have also determined that it is appropriate for you to receive 3 years credit for having entered guilty pleas to the charges and 19 ½ months

credit for pre-sentencing time spent in custody. The balance of your sentence is 10 years plus 4 ½ months in jail.

[111] Please stand Mr. Cheeseman:

I have determined that a fit and proper sentence to impose upon you for having committed four acts of manslaughter in relation to the deaths of four RCMP Constables is 12 years imprisonment. I have also determined that it is appropriate for you to receive 3 years credit for having entered guilty pleas to the charges and 21 ½ months credit for pre-sentencing time spent in custody. The balance of your sentence is 7 years plus 2 ½ months in jail.

[112] Pursuant to s. 109 of the *Criminal Code*, Mr. Hennessey and Mr. Cheeseman are each prohibited for life from possessing any firearm, including a prohibited firearm or restricted firearm, crossbow, restricted weapon, ammunition and explosive substances.

[113] Pursuant to, and in accordance with s. 487.051 of the *Criminal Code*, Mr. Hennessey and Mr. Cheeseman will each provide samples of bodily substances reasonably required for the purposes of forensic DNA analysis.

[114] Victim fine surcharges are waived.

Heard on the 19th day of January, 2009.

Dated at the City of Edmonton, Alberta this 30th day of January, 2009.

Eric F. Macklin
J.C.Q.B.A.

Appearances:

David A. Labrenz, Alberta Justice
for the Crown

D'Arcy Depoe - Fleming Depoe Banks Gubbins
Edmond Joseph O'Neill - Beresh Cunningham
for Shawn Hennessey

Peter Northcott and Bradley Thomlinson
Peter G. Northcott Professional Corporation
for Dennis Cheeseman