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Sentencing Intimate Femicide: A Comment on R. v. Doyle

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Comments

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> [I]t would be very helpful to find out what is the extent of wife murders in the country. It is something that has got to be deterred, but is it something that is so obvious that the penalty is inadequate, and that the penalties should be raised. I have no indication of that. I don't know whether that is the situation or whether it isn't.[1]
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> In 1989, 119 women were murdered in Canada by current or former husbands or partners. Of all women murdered in Canada, 62% are killed by their partners. Trudy Don, the Executive Director of the Ontario Association of Interval and Transition Houses Against Abused Women reported that in the last four or five years there has been a marked increase in the number of women killed after they have, in effect followed all the expected stages involved in leaving a violent relationship. "They have gone though the transition house, through counselling, through the legal system and through the custody battles for the children, and she still gets killed."[2]

In August of 1989, Donald Michael Doyle murdered his wife of fifteen years by firing three shots into her chest while she slept. He was charged with first degree murder, and pleaded guilty to second degree murder. He was sentenced to life imprisonment without eligibility for parole until after the statutory minimum of ten years.[3] The Crown appealed the sentencing decision of the trial judge, and argued for a greater period of parole ineligibility. The Nova Scotia Court of Appeal allowed the appeal and raised the period of imprisonment without parole to seventeen years.[4]

The differences between the sentencing decisions of the trial judge and the Court of Appeal in this case reveal markedly different attitudes and approaches to intimate femicide. Intimate femicide is the killing of

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1. From the sentencing decision of Nunn J. in *R.* v. *Doyle*, unreported decision, Supreme Court of Nova Scotia, Trial Division, CR 11363, Nov. 1, 1990.

2. From *The War Against Women*, Report of the Standing Committee on Health and Welfare, Social Affairs, Seniors and the Status of Women, Barbara Greene, M.P., Chair, Sub-Committee on the Status of Women, June 1991, p. 7.

3. *R.* v. *Doyle*, Supreme Court of Nova Scotia, Trial Division. Unreported Decision, CR 11363, November 1, 1990 [hereafter Unreported Decision].

4. *R.* v. *Doyle* (1992), 108 N.S.R. (2d) 1; 294 A.P.R. 1, decided November 8, 1991 [hereafter N.S.R.].

women by their intimate male partners.[5] The very nature of the crime places specific demands on the exercise of judicial discretion in fixing a sentence. Failure to recognize these special demands can lead to an inappropriate assessment both of the serious nature of the crime to be deterred, and the danger represented to society by the offender.

I. *Facts*

Catherine Lee Doyle married Donald Michael Doyle when she was 17 and he was eighteen. They had three children together. In the period of time leading up to her murder, Catherine was unhappy in the marriage. Her husband was an alcoholic, and was extremely jealous. When jealous, he could be abusive. Although she had been a housewife for most of the marriage, Catherine found a job two years before her murder. Working outside the home gave her new self-confidence. She reportedly began to question the authority of her husband at home. She also insisted that he get treatment for his alcoholism. Most of the rest of Catherine's story is hearsay, and comes from the words of her murderer. According to interviews with the perpetrator, Catherine became interested in a man at her workplace, and eventually told her husband about this.[6] According to the murderer, Catherine said she was unsure of her feelings, and wanted to separate from her husband for a time in order to think things through. Following one late night discussion, Catherine allegedly became irritated with her husband's attitudes and got up to go to bed. He claimed that he asked her to kill him with scissors, and then suggested killing her with scissors. She gave little weight to what she must have interpreted as histrionics, and went to bed. Her husband sat up for three and a half hours longer, thinking about killing his wife. He eventually found and loaded his lever action rifle, went upstairs and executed Catherine as she slept. He then called the police and informed them of what he had done.

Family members and friends described Donald Michael Doyle as a jealous and possessive husband. They suspected that Doyle physically abused his wife. Doyle was purportedly undergoing treatment for alcoholism at the time of the murder. He was described as a man who hid his feelings and who would not share his inner thoughts. Several witnesses

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5. A study of intimate femicide in Ontario draws "a connection between intimate femicide and other violence against women by their male partners; all such violence is shaped and made possible by the social construction of both intimate sexual relationships and gender relations." (Maria Crawford and Rosemary Gartner, *Woman Killing: Intimate Femicide in Ontario 1974-1990*, Report prepared for the Woman We Honour Action Committee, April 1992, p. 28.)

6. Chipman J.A. noted that the evidence in the case "fell far short" of establishing that Catherine had had an affair (N.S.R., p. 2).

observed that Doyle was bothered by the decision of his wife to work outside the home, and found her new independence difficult to accept. In his statement to the police two hours after the murder he complained that his wife never knew him, and said that he had also thought of killing his children, his next door neighbour and "a whole bunch of people".

II. *Issues*

Two issues arising from the sentencing decision were before the Court of Appeal of Nova Scotia. Both issues relate to the interpretation of sections 742(b) and 744 of the *Criminal Code*. Section 742(b) provides:

> 742. The sentence to be pronounced against a person who is to be sentenced to imprisonment for life shall be,
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> ...
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> (b) in respect of a person who has been convicted of second degree murder, that he be sentenced to imprisonment for life without eligibility for parole until he has served at least ten years of his sentence or such greater number of years, not being more than twenty-five years, as has been substituted therefor pursuant to section 744;

Section 744 sets forth the guidelines relating to sentencing under 742(b):

> 744. At the time of the sentencing under paragraph 742(b) of an offender who is convicted of second degree murder, the judge who presided at the trial of the offender or, if that judge is unable to do so, any judge of the same court may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, and to the recommendation, if any, made pursuant to section 743, by order, substitute for ten years a number of years of imprisonment (being more than ten but not more than twenty-five), without eligibility for parole, as he deems fit in the circumstances.

The first issue was whether the ten year period without parole stipulated in 742(b) is a *prima facie* sentence, or whether it is a simple minimum. In other words, does the burden rest on the Crown to show that the period of parole ineligibility should be raised beyond the ten year minimum?

The second issue, and the one which will receive lengthier consideration here, was what criteria should be used to set an appropriate sentence in a case like this. In other words, how should the courts assess the murder of women by their intimate partners? The decisions of the trial court and the Court of Appeal lie towards different ends of a spectrum of judicial attitudes and provide a useful illustration of profoundly different views of an all too common crime.

1. *The Extent of Discretion in Sentencing under s. 744*

The trial judge sentenced Doyle to life imprisonment without possibility of parole until after the statutory minimum of ten years had elapsed. Nunn J. interpreted the discretion granted to him by ss. 742(b) and 744 as limited in nature. It was his view that, if the penalty for the crime of second degree murder had been set by Parliament to be life imprisonment without eligibility for parole until after ten years, it would follow that "there has to be something else which would warrant the extension of the ten years to some time between ten and twenty-five."[7] He placed the burden on the Crown to establish a need to raise the period of parole ineligibility, and maintained that "while the Court has a discretion, its exercise really calls for further facts in addition to the simple fact of the killing."[8] In other words, Nunn J. maintained that discretion should not be exercised in every case, but rather its exercise would only be triggered by exceptional circumstances.

Nunn J. maintained that case law indicated that the discretion allowed by s. 744 should only be exercised in "unusual circumstances".[9] These, according to Nunn J.:

> are circumstances of brutality; of torture; of circumstances where the very nature of the offence themselves and the conduct of the accused and the type of person that the accused is whether a long record or what have you, cries out for, and the imprisonment for a longer period of time.[10]

In his opinion no such circumstances existed in the present case. As a result, the ten year minimum was imposed as if by default.

In reaching his decision the trial judge obviously interpreted section 742 as fixing the sentence for the crime of second degree murder. Indeed, the wording of that section is imperative: "The sentence to be pronounced against a person who is sentenced to imprisonment for life *shall be* ...". Nevertheless, it is clear from the wording of 742(b) that the sentence to be imposed is necessarily subject to discretion, requiring "at least ten years" of parole ineligibility, but no more than twenty-five. Section 744 sets the discretionary guidelines by which a judge is to determine the precise point on that scale at which parole ineligibility will be set. Section 742 does not impose a basic sentence which can then be modified, rather, it requires the discretionary fixing of an appropriate sentence within a certain range.

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7. Unreported decision, p. 4.
8. Unreported decision, p. 9.
9. Unreported decision, p. 9.
10. Unreported decision, p. 5.

The Court of Appeal affirmed the view that the ten year period of parole ineligibility was a mere minimum and did not constitute a *prima facie* sentence which could only be modified under exceptional circumstances. Chipman J.A. noted that:

> Unusual circumstances are not the prerequisite for moving away from the ten year minimum, although as the cases illustrate they certainly play a role in the proper exercise of the judicial discretion. Nor are brutality and torture or the perpetrator's lengthy criminal record the only circumstances that call for a higher sentence under the guidelines.[11]

Further, the Court of Appeal rejected the view that the burden should be on the Crown to establish that the case was one in which discretion in sentencing should be exercised.

The Court of Appeal considered the particular nature of the discretion under s. 744, relying upon a previous decision of the Nova Scotia Court of Appeal. Chipman J.A. cited from the decision of Hart J.A. in *R.* v. *Mitchell*,[12] to the effect that the sentencing guidelines of s. 744 differed somewhat from the usual factors affecting judicial discretion in sentencing. In particular, rehabilitation of the accused is less of a concern. In *Mitchell,* Hart J.A. stressed that the primary factor was one of deterrence:

> The judge must be the representative of the public in expressing the view that people who commit horrendous crimes not be permitted back into society for a prolonged period of time. It is hoped that this type of decision will deter others from committing similar acts and ultimately result in a greater protection of the public. Thus deterrence of the type of crime committed must be the main emphasis of the sentence.[13]

The emphasis on deterrence adds an extra element to the sentencing discretion, especially since it would allow the judge to consider the nature of the crime in a broader context. Thus the focus would not need to be exclusively on the gory minutiae of a particular murder, but could rather look at the social context of the crime. In the case of intimate femicide, both the disturbing number of such killings, and the brutal link between intimacy and murder, could trigger the deterrence element of the discretion.

2. *The Exercise of Discretion in Sentencing*

Nunn J. viewed the s. 744 criteria as the means by which his discretion to impose a higher sentence would be triggered. While erroneous, this misapprehension primarily had the effect of placing an onus of proof on

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11. N.S.R., p. 5.
12. (1988), 81 N.S.R.(2d) 57; 203 A.P.R. 57 (N.S.C.A.).
13. *Mitchell*, N.S.R., p. 81, cited with approval by the Court of Appeal in *Doyle*, at p. 4.

the Crown. It did not affect the fact that Nunn J. would evaluate those criteria in light of the facts presented to him. Thus, the erroneous interpretation by Nunn J. was not the determining factor in his decision not to raise the period of parole ineligibility beyond ten years. The trial judge ruled that he had no discretion to impose a sentence above the minimum unless circumstances revealed a crime of exceptional brutality. He found no such circumstances. The Court of Appeal corrected the misapprehension of the trial judge as to the terms of his discretion, and revised the sentence. Examining the same facts as the trial judge they found a "repugnant and indefensible crime, committed in cold blood by an offender from whom society deserves protection."[14] The striking difference in the two assessments is directly related to the relative perceptions of the particular nature of intimate femicide.

According to the terms of s. 744, three elements must be taken into account in the exercise of discretion to sentence. These elements are: "the character of the offender, the nature of the offence and the circumstances surrounding its commission." Following the reasoning of both the trial judge and the Court of Appeal, I will consider these elements under two headings.

a. *Character of Offender*

In his evaluation of the character of the offender Nunn J. sought some sort of exceptional brutality or perversity in order to trigger his discretion under s. 744. This high threshold approach, found to be inappropriate by the Court of Appeal, is partly responsible for the refusal of Nunn J. to exercise his sentencing discretion in this case. Nevertheless, Nunn J.'s evaluation of the character of Doyle suggests that even a lower threshold would not have been met. He describes Doyle in the following terms:

> ... he is thirty-five years of age; that he has grade twelve; that he was the youngest child, the youngest child of six; that his parents say that he was a quiet and easy going person as do the rest of his family; he was an avid reader; he was a very deep person; private; hid his feeling; and as a younger person if he was upset he would be cranky and wouldn't talk. He married early in life; couldn't go to college ... whether he wanted to or not is another matter, but he did at least make an application.

This initial picture is sympathetic. Doyle sounds like an unexceptional child with unexceptional moods. Significantly, his marriage appears in this account as something which stunted his potential–he gave up the hope of college for his wife.

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14. N.S.R., p. 11.

After describing this unexceptional person, the trial judge goes on to explore the personality of the adult Doyle:

> ... he was a jealous person; a possible wife abuser; very depressed. On the other side of the coin he was a good worker; his educational history was good; he was a good student, didn't cause any problems; he didn't cause any problems at home with his parents; he began drinking; became an alcoholic; acknowledged himself to be an alcoholic certainly by the time of this incident and was making an effort to do something about it in that a month or so before he recognized his problem and sought medical attention and was receiving certain drugs for his alcohol abuse and also at that time indicated he was suffering from chronic anxiety syndrome and received apparently medication for that.

This odd description wanders between Doyle as the good son and good youth, and Doyle, the married man, inexplicably embittered, drinking, depressed and perhaps on occasion beating his wife. Again, the suggestion lurks beneath the text that an unsatisfactory and unhappy marriage precipitated the deterioration of the once mild-mannered, diligent boy. Nunn J. makes much of the fact that Doyle recognized and sought help for his problems, but does not indicate for how many years Doyle was an alcoholic, or whether he was driven to seek help by the urgings of friends and family, or by an ultimatum from an abused and frustrated wife.[15]

Nunn J. dismisses as unsubstantiated testimony by Doyle's mother to the effect that she believed her son abused his wife.[16] By contrast, Nunn J. makes much of Doyle's own statement that "he loved his wife and that they had a reasonable marriage relationship." The relevance or credibility of such a statement in a case where a man has killed his wife is difficult to understand. The evaluation by Nunn J. of the character of Doyle is clearly sympathetic. This sympathy is perhaps influenced by the context of the murder within the family. For Nunn J., Doyle is not the unpredictable random murderer who stalks the popular imagination. He is an ordinary guy whose desire to kill is safely contained within the insulated

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15. The psychiatrist's evaluation stated that, according to Doyle's brother, "Cathy disliked the fact that Donald drank and would become upset when he would return home drunk. Donald gave up drinking approximately two months before the alleged incident at Cathy's insistence." N.S.R., p. 7.

16. Nunn J. explained the dismissal of the evidence in this way:

> "There is no positive evidence in which the Court can latch onto and say: 'yes, the evidence is clear. This was an abuser.' I suppose one can draw an inference that in the circumstance of alcoholism that a husband coming home under the influence of alcohol, or drinking at home or wherever that there are bound to be disputes and there are bound to be arguments and there is always a likelihood that there may be some abuse, but it has to be proven and a court cannot act on inferences or surmises and there is not sufficient proof of that." (Unreported decision, p. 7).

walls of the family home. He is a husband and father, and the killing of his wife is an ironic reinforcement of that mythical identity.

Nunn J. reinforces his positive assessment of Doyle with an illustration of the kind of offender who would trigger the exercise of judicial discretion. He uses the example of a man who brutalized a child for a long period of time before killing him. The character of offender and the nature of the offence begin to look the same: discretion is triggered by a drawn-out, tortured killing, or by an offender who has committed a drawn-out, tortured killing. Discretion, in the view of Nunn J., is triggered by sick murders committed by sick individuals.

Examining the same facts as the trial judge, the Court of Appeal arrived at a different evaluation of the offender. While the Court of Appeal also noted Doyle's "generally good" upbringing, and his stated affection for his wife, they paid closer attention to his problems of violence and alcoholism. In the words of Chipman J.A.:

> The respondent's mother referred to him as having had a bad temper, although he did not show it often. He is described by his mother as being a very jealous individual about his wife. She suspected he had been physically abusive of her but this was not proved.[17]

Chipman J.A. also noted that Doyle's alcohol use began at age fifteen, and escalated over the years, to the concern of family members. They cited the pre-sentence report which stated that "this man had a reputation for being abusive of his wife".[18]

Chipman J.A. also made note of the fact that Doyle was considered by his co-workers to be a "good worker". He went further than Nunn J., however, and observed that Doyle's co-workers also knew of his problems with alcohol, and had noted that he had "feelings of jealousy towards his wife." Chipman J.A. observed that this jealousy was referred to by a number of people, including Doyle's mother, his co-workers, his brother, a close friend of Doyle's and the victim's sister.

The most significant aspect of the evaluation of the character of the offender by the Court of Appeal is the emphasis placed by Chipman J.A. on "the relative lack of remorse shown by him having regard to the magnitude of his crime."[19] According to the report of the psychiatrist, Doyle "seemed to have recovered fairly quickly from the emotional shock and is now looking forward to getting on with his life."[20] Chipman J.A. summed up the evaluation of Doyle's character in this manner:

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17. N.S.R., p. 5.
18. N.S.R., p. 6.
19. N.S.R., p. 6.
20. N.S.R., p. 8.

> With respect to the character of the offender, there are many aspects of it which are disturbing. His relative lack of remorse, the absence of provocation or any plausible motive, the deliberateness of his action and the thoughts of killing other people, are all elements which characterize him as a danger to society. In fixing the period of ineligibility for parole, the protection of society and the dangerous nature of this offender are aspects which warrant moving away from the minimum period of ineligibility for parole.[21]

The Court of Appeal thus linked the consideration of the character of the accused to an evaluation of his ongoing danger to society given a series of factors. The elements ultimately considered by the Court of Appeal in evaluating the character of the accused are of far greater weight and import than the kinds of detail considered by Nunn J. As a man who has killed, Doyle's actions must be evaluated in the context of that killing. To paraphrase the Court of Appeal, it matters little that he can hold down a job, or that he did well in school. What is more relevant is the ease with which he killed, the appalling triviality of the things which motivated him to kill, the way in which he used the ultimate force to resolve a personal crisis, and a lack of remorse indicating the ease with which he was able to rationalize and justify his actions.

b. *Nature of Offence and Circumstances Surrounding its Commission*

In evaluating the nature of the offence and the circumstances surrounding its commission, the trial judge again searched for macabre detail to justify an exercise of discretion. He looked for horror and brutality in the manner of killing, and did not find it in the gunshot slaying of a sleeping woman. Where he did not look for horror was into the mind of someone who could violate the ultimate trust and slay his partner as she slept.

The evaluation of the nature and circumstances of the offence by Nunn J. focused on the manner of commission of the offence: "Not all murders are the same; not all murders are committed under the same circumstances and not all murders are committed in the same manner. How do you get out of the usual?" For Nunn J, the answer to this question lies in the manner of slaying:

> It would be easy to say if there was a slow torturous killing of a person, but the torture continued over some period of time so that it was a slow, brutal and terrible death then that would indicate that some discretion should be exercised. A shooting on its own is not that kind of death. It is abhorrent; it is one that society cannot condone but it is a shooting and it does not have

21. N.S.R., p. 8.

> any elements of terror or it does not have any element of brutality other than the shooting itself, so as to create in the nature of the offence something which would be shocking, shocking to the degree that any one would say, this is not enough.[22]

The extent to which Nunn J. relies on the actual method of murder is intriguing. While the way in which death occurs is undoubtedly a factor important to the exercise of discretion, reducing the nature and circumstances of the killing to a consideration of method would deprive those terms of discretion of their obvious breadth.

The Court of Appeal takes a broader perspective than does Nunn J. in evaluating the nature and circumstances of the crime. Rather than focusing on the actual means of execution and the speediness of death, the Court of Appeal considered a wider range of factors. Chipman J.A. begins by noting the degree of premeditation involved: "This was not a spur of the moment murder. The respondent told the police that nothing happened that night that caused him to do it."[23] Chipman J.A. notes that the murder by Doyle of his wife "was a deliberate calculated crime, coldly executed. He appointed himself to be his wife's prosecutor, judge, jury and executioner."[24] The deliberateness of the murder, and the dispassionate way in which it was carried out easily lend to the crime the horror which the trial judge could not find in three simple gunshots.

Where a man kills a woman with whom he shares an intimate relationship, it would seem evident that this relationship with the victim is a crucial element of the murder. The intimacy of victim and perpetrator is a context in which the victim trusts or has trusted the perpetrator to the extent that she is vulnerable to attack. Yet Nunn J. does not place the murder of Catherine Doyle in such a context. In fact, he discounts the relevance of relationship as a factor in the exercise of discretion:

> Can we say that any time a wife is shot and killed that the penalty should be extended so the eligibility for parole is longer? The answer has to be no, not because wives don't have a special position in society and not because wives are not protected, but because if that were the law, then Parliament would have said so and not created the section that they did.[25]

Nunn J. is correct in observing that Parliament has not created a specific crime of wife-killing, or a specific sentence for the killing of a spouse. Nevertheless, this does not mean that the relationship of the victim to the killer is not a relevant factor to be taken into account in setting the

22. Unreported decision, p. 5.
23. N.S.R., p. 9.
24. N.S.R., p. 9.
25. Unreported decision, p. 5.

appropriate sentence. The element of relationship could be considered in a number of different crimes, such as the killing of parents, siblings, children or other relatives without need for the creation of specific crimes and specific sentences to deal with these circumstances. The discretion provided in s. 744 is flexible enough, so long as it is not arbitrarily limited by assumptions that if Parliament had wanted relationship to be a factor it would have legislated it as such.

Judicial ambivalence towards intimate relationships as an aggravating factor in the sentencing of violent crimes has been noted in the context of sentencing decisions in sexual assault cases.[26] One study found that judges often either do not acknowledge the relevance of intimacy as a factor in sentencing[27], or they do not give it appropriate weight.[28] In the sentencing decision in *Doyle*, far from not acknowledging the intimacy of the relationship between victim and perpetrator as an aggravating factor, Nunn J. appears to treat it as a mitigating factor. For example, the fact that Doyle "loved his wife" is considered as a positive element in the assessment of the character of the accused.

The Court of Appeal differs significantly with the trial judge as to the relevance of the relationship of the accused to the victim:

> Although Parliament has not singled out wives for special protection, sentencing jurisprudence recognizes that courts attach significance to the relationship between the perpetrator of an offence and the victim, with special emphasis on crimes involving victims in positions of vulnerability and to whom the perpetrator is in a position of trust. With respect, it is wrong to say that one cannot consider as an aggravating factor the spousal nature of this murder simply because Parliament did not specifically say it should be done. The husband/wife relationship in this case is of great importance and is a factor to be taken into account in moving towards the upper end of the range of parole ineligibility.[29]

In spite of the difficulties in their relationship, Catherine Doyle trusted her husband to such an extent that she was slain in her sleep in the bed that she had shared with her him for fifteen years. In the words of Chipman J.A. "the murder of a wife while she is sleeping in the family home is an aggravating factor of the highest degree and one which was given no

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26. Ontario Women's Directorate, *Breach of Trust in Sexual Assault: Statement of the Problem–Part One: Review of Canadian Sentencing Decisions*, (Toronto: Ontario Women's Directorate, 1992).

27. "In over 40% of trust relationship cases, the presence of the relationship and the breach of trust through sexual assault are mentioned neither in the judge's general comments nor in the discussion of aggravating factors." (*Ibid.*, Part One, pp. 3 and 11 to 15).

28. *Ibid.*, Part One, p. 4.

29. N.S.R., p. 10.

weight by the trial judge."[30] The position of the Court of Appeal gives significance to intimacy as a factor triggering discretion in sentencing in intimate femicide.

III. *Conclusion*

The decision of the Court of Appeal in *R.* v. *Doyle* is an important statement of the principles which should be involved in decisions regarding the sentencing of men charged with second degree murder for the killing of their wives or girlfriends. First, the Court requires a weighing of the discretionary factors in every case. The factors to be considered are the character of the offender and the nature and circumstances of the offence. The evaluation of the character of the accused must be more than an account of his childhood and his relationship with friends and co-workers. Crucial to the evaluation of the character of the accused are his ability to feel remorse, the factors motivating his decision to commit murder, the way in which he thought out and committed the murder. While these factors are important in any case, their importance cannot be overemphasized in cases of intimate femicide. All too often such crimes are seen as regrettable one-victim incidents in which the offender is characterized as a victim of his own confused emotions.

Perhaps the most important aspect of the Court of Appeal decision is the content given by the Court to an evaluation of the nature and circumstances of an offence. The Court of Appeal makes the point that an intimate relationship is highly relevant in exercising sentencing discretion. Further, the Court bases this position on the degree of trust which exists in intimate relationships. The violation of such trust is stated by the Court to be an aggravating factor in murder, as well as in other crimes where the trust engendered by an intimate relationship provided the offender with the opportunity to commit the crime.[31]

In addition to the important sentencing guidelines established by the Court of Appeal regarding violence in intimate relationships, the Court took judicial notice of the serious problem of family violence and spousal abuse, and indicated that courts should play an active role in addressing these issues: "Family and spousal violence are all to prevalent, and if courts have not sufficiently shown their stern disapproval of such conduct

30. N.S.R., p. 10.

31. Chipman J.A. notes two other decisions of the Nova Scotia Court of Appeal in which the violation of trust inherent to an intimate relationship was a factor in the sentencing decision: *R.* v. *Publicover* (1986), 74 N.S.R.(2d) 23; 180 A.P.R. 23 (C.A.) (wife beating); and *R.* v. *Works* (1991), 100 N.S.R.(2d) 334; 272 A.P.R. 334 (C.A.) (sexual assault).

the time has now come to do so."[32] Chipman J.A. quoted from an earlier decision of the Nova Scotia Court of Appeal to the effect that: "the Courts have an obligation to show society's denunciation of such conduct [wife beating] by the imposition of sentences that primarily emphasize the element of deterrence."[33]

The approach set out by the Court of Appeal is an important step in changing the way in which the judges address all forms of domestic violence.[34] By stressing the relevance of intimacy as a factor in increasing the minimum sentence, the Court of Appeal has moved away from past attitudes which view intimacy as a mitigating, rather than aggravating, factor in cases of family violence. The recognition of the horrific brutality implicit in the killing of someone in a relationship of trust to the murder is a significant step both in understanding and addressing crimes of violence against women.

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32. N.S.R., p. 10.

33. N.S.R., p. 10, quoting from the decision of the Court of Appeal in *R.* v. *Publicover*, *supra*, note 32 at p. 24.

34. Six weeks after rendering judgment in *R.* v. *Doyle*, the Nova Scotia Court of Appeal handed down another decision on sentencing in a case of intimate femicide (*R.* v. *Baillie*, (1991) 107 N.S.R. (2d) 256; 290 A.P.R. 256). In *Baillie*, the trial judge had sentenced the accused to life imprisonment without eligibility for parole for thirteen years. Citing *Doyle*, the Court of Appeal, sitting in review of the sentencing decision, raised the period of parole ineligibility to seventeen years. The two cases in combination suggest that the Nova Scotia Court of Appeal is setting a clear trend for tougher sentencing in cases of intimate femicide.