

Family**Battered woman syndrome: Correcting the stereotype**By **Barb Cotton and Christine Silverberg**

Barb Cotton



Christine Silverberg

(January 18, 2022, 1:59 PM EST) --

The Alberta Court of Appeal recently considered an appeal of an 18-year sentence of a woman who “having endured a physically abusive 27-year marriage, killed her husband, rather than continuing to risk being killed herself” (para. 6). In *R v. Naslund* 2022 ABCA 6, the majority of the appellate court per Justice Sheila Greckol and Justice Kevin Feehan strongly affirm “battered woman syndrome” as a mitigating principle in sentencing women who kill their abusive partners.

The court further affirms that the underlying principle in sentencing in a battered woman case is proportionality, and not deterrence, as found by the lower court sentencing judge. In the court’s view, the central error of the sentencing judge was failing to recognize the significant mitigation of Helen

Doris Naslund’s moral blameworthiness in view of the many years of violence she endured and the resulting effects of “battered woman syndrome” (para. 147).

In short, Naslund suffered physical and emotional abuse throughout her 27-year marriage, including her husband’s controlling behaviour, and she feared for her safety as a result of her husband’s “gun play.” He would handle firearms around their home while heavily intoxicated and threaten his wife and children.

The husband and wife were a farm family, Naslund having married at 19, soon after having three children. As a result of the physical and emotional abuse throughout her marriage, Naslund developed depression and increasingly consumed alcohol.

She made several attempts to take her own life, nearly succeeding in the spring of 2003. Although she was unhappy in her marriage, she did not leave, due to the history of abuse, concern for her children, depression and learned helplessness (para. 14). (The majority of the appellate court finds that “learned helplessness” “is not a sympathetic phrase [but] a term of art central to the concept of ‘battered woman syndrome’ (para. 104), preventing victims “from taking effective action against their abusers” (para. 105).)

On the weekend in question, Naslund’s husband, became highly intoxicated and ordered her and their son, Neil, to do the necessary farm work, while he engaged in gun play. The tractor broke down and her husband became so angry he threw wrenches at her during an angry tirade, stating that she would “pay dearly” for damaging the tractor. Naslund prepared dinner, and when it was ready, he violently swept the meal off the table, stating that it was not fit for a dog. He then passed out from intoxication. That night, while he was sleeping in bed, Naslund shot her husband twice in the head and killed him.

Naslund’s youngest son, Neil, helped her dispose of the body by placing it in a large metal toolbox, welding it shut and dumping the toolbox in a nearby dugout of water. They then threw the gun that had killed him and his own gun in another dugout filled with water. Naslund also buried her husband’s truck in the yard. She then called the RCMP to report him missing, implying that he had committed suicide and later castigated the RCMP for their lack of diligence in their search. Only years later, after another son told friends that he knew the true story of the disappearance of his father, were Naslund and Neil found out.

Naslund was charged with first-degree murder and indecently offering an indignity to human remains, contrary to the *Criminal Code*, and her son was charged with the latter offence. Naslund was represented by experienced defence counsel and entered into a plea agreement with the Crown to plead guilty to the lesser offence of manslaughter. Defence counsel agreed with the Crown to an 18-year prison

sentence for Naslund. It was further agreed that her son would serve a three-year sentence.

On appeal of her 18-year sentence, Naslund was represented by a different, experienced, legal counsel, Mona Duckett, who asserted that the 18-year sentence should be reduced on the basis that it “would bring the administration of justice into disrepute or would be contrary to the public interest.” Moreover, counsel argued that the sentence was illustrative of the “gendered lens through which the justice system continues to evaluate the conduct of battered women who kill to survive” (para. 47).

This is the first of a two-part series.

Barb Cotton is the principal of Bottom Line Research and assists solo, small and specialized lawyers with their research and writing needs. She can be reached at (403) 240-3142, cell (403) 852-3462 or e-mail barbc@bottomlineresearch.ca. Christine Silverberg is a Calgary-based lawyer with a diverse advocacy, regulatory and litigation practice. She can be reached at (403) 648-3011, christine@silverberglegal.com or through www.christinesilverberg.com.

Photo credit / Anna Kondratenko ISTOCKPHOTO.COM

Interested in writing for us? To learn more about how you can add your voice to The Lawyer's Daily, contact Analysis Editor Richard Skinulis at Richard.Skinulis@lexisnexis.ca or call 437- 828-6772.