

1 **-- Upon the Court commencing:**

2 THE COURT: This is Mrs. Kalluk; is that
3 right?

4 MS. WHITE: Yes.

5 THE COURT: And it's moving towards
6 resolution.

7 MS. WHITE: Yes.

8 THE COURT: Okay.

9 Good afternoon, Ms. Kalluk.

10 THE ACCUSED: Good afternoon.

11 THE COURT: So we saw you yesterday, and we
12 put it over to today for next steps. And at this
13 point, I'll just ask your lawyer what's happening
14 with your charges.

15 MS. WHITE: So, Your Worship, I'm going to go
16 through the file in chronological order.

17 THE COURT: Sure.

18 MS. WHITE: Dealing with the first file in
19 time is court file ending in 184.

20 THE COURT: Yes, thank you.

21 MS. WHITE: And I believe the Crown has
22 already proceeded summarily on this file.

23 THE COURT: Yes, I have that election from
24 August 17th, 2017.

25 MS. WHITE: I have spoken with Melanie. I
26 have gone through the plea comprehension inquiry with
27 her. Ms. Kalluk wishes to enter a plea of guilt to

1 both charges on that Information, the assault on the
2 Ragilee Attagootak and the mischief.

3 THE COURT: Okay. So guilty pleas to these
4 two charges. It's on court file 184. Thank you.

5 MS. WHITE: And I believe the next file in
6 order is court file ending in 550. It's a two-count
7 Information. Crown's already proceeded summarily.
8 Ms. Kalluk wishes to enter a plea of guilt to Count 1
9 of that Information, that is, the fail to appear
10 charge.

11 THE COURT: From the 26th of July?

12 MS. WHITE: Yes.

13 THE COURT: Okay, thank you.

14 MS. WHITE: And the next court file in time
15 is court file ending in 841. It's a three-count
16 Information. Ms. Kalluk wishes to enter a plea of
17 guilt to Count 1, the fail to appear charge from
18 September 6th, and Count 3, the breach of her
19 undertaking by consuming alcohol.

20 THE COURT: From the 5th of December, okay.

21 MS. WHITE: Yes.

22 THE COURT: Thank you.

23 MS. WHITE: And finally, Your Worship, the
24 remaining court file ends in 879, I believe I need a
25 Crown election.

26 MR. WELCH: Summarily, please.

27 THE COURT: Thank you.

1 MS. WHITE: This is a two-count Information,
2 Your Worship. I've spoken with Ms. Kalluk. She will
3 be entering a guilty plea to Count 1. That's the
4 breach for consuming alcohol.

5 THE COURT: And so there are -- on all these
6 files, there are three outstanding charges then.
7 What's happening with those?

8 MR. WELCH: Well, once the sentence is
9 imposed, Your Worship, I'll be asking that they be
10 withdrawn.

11 THE COURT: Thank you. So Ms. Kalluk, I've
12 heard from your lawyer that you want to plead guilty
13 to certain charges. The first charge is assault on
14 Ragilee Attagootak from a year and a half ago here in
15 Iqaluit, May 18th, 2017. Is that right?

16 THE ACCUSED: That's right.

17 THE COURT: Okay. And also a charge of
18 mischief which is usually breaking something, and in
19 this case, it was damaging something that Nunastar
20 owns?

21 THE ACCUSED: Right.

22 THE COURT: Yeah? You want to plead guilty
23 to that as well?

24 THE ACCUSED: Mm-hm.

25 THE COURT: All right. You also have charges
26 from July of this year for failing to come to court
27 when you were required to come to court.

1 THE ACCUSED: Right.

2 THE COURT: You're pleading guilty to that as
3 well, is that right?

4 THE ACCUSED: Yeah.

5 THE COURT: Yeah? Okay. And then you have
6 another charge similar to that, that you were
7 required to come to court on September 6th of this
8 year and you didn't?

9 THE ACCUSED: Mm-hm.

10 THE COURT: You're pleading guilty to that as
11 well?

12 THE ACCUSED: Yeah.

13 THE COURT: Yes? And also you were on some
14 conditions to not drink.

15 THE ACCUSED: Right.

16 THE COURT: And it says here there's an
17 allegation that you did drink on that day. You're
18 pleading guilty to that as well? Yes?

19 THE ACCUSED: Yeah.

20 THE COURT: Okay. And then there is one more
21 charge here which is the same sort of charge but just
22 from a couple of days ago.

23 THE ACCUSED: Yeah.

24 THE COURT: So you're pleading guilty to that
25 charge as well?

26 THE ACCUSED: Yeah.

27 THE COURT: Yeah. Okay. So you understand

1 that pleading guilty means that you're -- you're
2 admitting that you did these things?

3 THE ACCUSED: Yeah.

4 THE COURT: You're -- you're also -- you
5 understand that you are not going to have any trial
6 on this. I know your lawyer has already spoken to
7 you about all this, but I also -- I just want to go
8 over it and have it recorded here in court.

9 THE ACCUSED: Mm-hm.

10 THE COURT: You understand that you're not
11 going to have any trial on this. Is that right?

12 THE ACCUSED: Right.

13 THE COURT: Okay, and it's your choice to
14 plead guilty? Yes? Is anyone forcing you to plead
15 guilty? No? I see. And you understand also that
16 what happens after you plead guilty is we hear the
17 story over here from this lawyer over here called a
18 Crown prosecutor, and then after I hear that, I'm
19 going to make a decision about whether I find you
20 guilty or not guilty. And if I find you guilty, I'll
21 pass sentence. That means I'll determine what the
22 sentence should be for these offences. You
23 understand that? Yes? And you understand also that,
24 even if the lawyers agree on what the sentence should
25 be, the final decision is my decision. You
26 understand that as well?

27 THE ACCUSED: Yeah.

1 THE COURT: Yes? Okay.

2 MR. WELCH: Yes, I don't know if my friend
3 mentioned it; but there will be a joint position for
4 your Worship. I'll be recommending that you accept a
5 sentence of a suspended sentence and 12 months
6 probation. And --

7 THE COURT: Okay.

8 MR. WELCH: -- with some conditions.

9 THE COURT: Sure. So we will start with the
10 allegations on 184.

11 MR. WELCH: Correct.

12 THE COURT: May of 2017.

13 MR. WELCH: That was something that happened
14 on May the 18th, 2017, Your Worship, and it was at
15 approximately at 1445 hours that Melanie Kalluk broke
16 the window outside of house at 213 Creekside Village,
17 also known as White Row, in Iqaluit. She was
18 intoxicated at the time. The property was rented by
19 Ragilee Attagootak, but it's owned by Nunastar
20 Properties.

21 At approximately 3:25, or 15:25, Kalluk
22 assaulted Attagootak. She was seen grabbing her and
23 pulling her down to the ground near the medical
24 boarding home at 521A Iqaluit, Nunavut, and
25 apparently there had been a dispute between the two
26 women which ended up in this fight that a witness
27 observed and saw Ms. Kalluk initiate and get the best

1 of.

2 Those are the -- Ms. Kalluk was intoxicated
3 at the time, Your Worship, and she was lodged in the
4 cells and released on a promise to appear.

5 Subsequently, as you heard, she did not
6 appear, and that was on the 5th of July and the 6th
7 of September. And your Information should indicate
8 that she failed to appear on those dates and. . .

9 THE COURT: Yes, so as to the allegations of
10 the mischief and assault, Ms. White?

11 MS. WHITE: Those facts are admitted, Your
12 Worship.

13 THE COURT: Okay, thank you. So, Ms. Kalluk,
14 based on your admission through your lawyer of these
15 facts that you assaulted Ragilee Attagootak and that
16 you broke the window that Nunastar owns, I do find
17 you guilty of those two charges.

18 Now the fail to appear on July 26th, 2018,
19 I'm just going to look through the file here.

20 MR. WELCH: I have it that she failed to
21 appear on the 5th of July, Your Worship. Is that --

22 MS. WHITE: I think she failed to appear on
23 the 5th, but I think they worded the Information as
24 to the date they arrested her, so.

25 THE COURT: All right.

26 MS. WHITE: If my friend want to make an
27 application to amend.

1 MR. WELCH: Yes. I'm sorry, I did not check
2 that.

3 THE COURT: So that this is court file 550?

4 MS. WHITE: Yes, Your Worship, Count 1.

5 MR. WELCH: Yes.

6 THE COURT: Count 1 currently says 26th of
7 July. So you're asking to amend it to the 5th?

8 MR. WELCH: Yes, please.

9 THE COURT: Okay. I'm not sure about the
10 amending an Information a person's already pled
11 guilty to; but both parties are in agreement so I'll
12 allow the amendment.

13 And -- but essentially, Melanie, what --
14 what's happening is there was a typo on the -- on
15 the -- on the paper that charges you. The -- the
16 story is that you were supposed to come to court on
17 the 5th of July and that you didn't come on that
18 date.

19 THE ACCUSED: Can I say something, please?

20 (DISCUSSION OFF RECORD)

21 THE COURT: Okay.

22 Endorsements here indicate on the 5th of
23 July she was present.

24 MR. WELCH: Well, that's --

25 THE COURT: And that on the 26th of July,
26 which was the date on the Information, she was not
27 present at which time Justice of the Peace Sikma

1 issued an unendorsed bench warrant.

2 MR. WELCH: I apologize, Your Honour. I was
3 reading for the -- the synopsis. The synopsis is
4 apparently in error, and the Information is correct
5 then. That the synopsis that I had was that she was
6 given a promise to appear on June the 6th and that
7 she failed to respect that, but -- that her
8 appearance on the 5th of July, but --

9 THE COURT: Well, you have to go with the --

10 MR. WELCH: I'll go with the -- the
11 endorsement of Justice Sikma; and if we can un-amend
12 the count, that -- that would suit my -- my purposes,
13 Your Worship.

14 MS. WHITE: My notification indicates --
15 apologies, Your Worship -- that she appeared on July
16 5th. It was adjourned to July 20th. And on July the
17 20th, they issued the warrant. So her fail to appear
18 date should be July 20th.

19 THE COURT: Remember these files span about a
20 year and a half, and the -- the charge that's before
21 the court on court file 550 is the 26th of July,
22 2018. I don't know what happened in July of 2017. I
23 could figure it out if I look back far enough in
24 the -- the archeology of this file, but --

25 MR. WELCH: No, I have it as 2018 not in
26 2017. And my view is that the -- what I would rely
27 on to prove this charge if -- if we were going to

1 trial is your information and --

2 THE COURT: Yes.

3 MR. WELCH: -- for that reason, I would rely
4 on that.

5 THE COURT: Sure. We now have an application
6 to un-amend the amendment.

7 MS. WHITE: I have no issues with that, Your
8 Worship.

9 THE COURT: All right. So, Melanie, I just
10 told you about on the typo, there wasn't a mistake.
11 So we have uncorrected the -- we have fixed the thing
12 that we tried to fix, but we broke it by fixing it
13 and now it's properly fixed.

14 So --

15 MR. WELCH: I think they refer to the editing
16 business, Your Worship, as "stet".

17 THE COURT: All right. So, yes, I see from
18 the -- the file that she was not present on the 26th
19 of July.

20 MR. WELCH: And the 6th of September as well.

21 THE COURT: Yes. That an unendorsed bench
22 warrant was issued on that day. Essentially,
23 Ms. White, facts are admitted on that, and is any
24 lawful excuse offered?

25 MS. WHITE: The facts are admitted. There's
26 no lawful excuse to offer.

27 THE COURT: Thank you very much. So,

1 Ms. Kalluk, based on your admission through your
2 lawyer, I do find you guilty of those two charges of
3 failing to come to court when you were required to
4 come to court.

5 So just a moment, I'm correcting the file
6 here. Maybe -- maybe I shouldn't touch the jurat.

7 Okay.

8 MR. WELCH: After failing to appear on the
9 6th of September, Your Worship, Ms. Kalluk was
10 arrested on the 5th of December for failing to attend
11 court. And it was at that point she was clearly
12 intoxicated, too intoxicated to receive her caution
13 and Charter rights. And for that reason she was
14 breaching her -- her release conditions on that day.
15 And that is on court file -- the second charge on
16 court file 841.

17 THE COURT: Thank you. So I note that there
18 is a recognizance entered into on December 11th,
19 2018. It's just about a week ago, and that includes
20 a -- the third condition to abstain from alcohol.

21 MS. WHITE: The breach of December the 5th is
22 from a previous release.

23 MR. WELCH: Correct.

24 THE COURT: Oh, I was just noting -- oh, it's
25 from a previous release, not --

26 MR. WELCH: Yes.

27 THE COURT: Well, this one that -- that --

1 oh, we are still on the 5th. Right. Okay. I see.

2 MR. WELCH: I can identify the -- the
3 actual --

4 THE COURT: I see a recognizance entered into
5 on the 29th of July, 2018, which includes the third
6 condition to abstain from alcohol.

7 MR. WELCH: Correct. That was the one that
8 was entered into after her first fail to appear.

9 THE COURT: I see. Okay. So that's the
10 third count on court file 841.

11 MS. WHITE: Those facts are admitted, Your
12 Worship.

13 THE COURT: Okay. So, Melanie, based on your
14 admission, I do find you guilty of the offence for
15 not following the conditions that you were supposed
16 to follow; that is, staying away from the bottle.
17 All right?

18 MR. WELCH: All right, and the last events,
19 Your Honour, took place on the -- the 18th of
20 December, so just -- today was the 19th or the 20th.

21 THE COURT: So it was yesterday.

22 MR. WELCH: So it would have been yesterday.
23 And this involves somebody else who is we may be
24 speaking to today; but Melanie's sister, Macey,
25 called the RCMP saying that Melanie was being
26 assaulted by Levi Apak. And they were at House 554.
27 They attended. Melanie presented herself at the

1 front door with a fat bloody lip and bloody nose, and
2 she was intoxicated, clearly intoxicated. I don't
3 believe those facts are -- are contested. Kalluk
4 also ran away.

5 THE COURT: Where -- where did -- where did
6 she attend?

7 MR. WELCH: She was at House No. 554.

8 THE COURT: Okay.

9 MR. WELCH: She also ran away. The police
10 ran after Levi Apak who ran out the back; and in the
11 interim, Melanie ran away. And she was also charged
12 with obstruct for that as well. My friend has
13 explained to me that Melanie was rather running away
14 from the situation with Levi than the police. And so
15 for that reason, I've -- I have agreed that a plea
16 would not necessary to the 129; but she was again
17 breaching her conditions because she was visibly
18 intoxicated here.

19 THE COURT: I'm sorry, how -- how -- how was
20 the police attention drawn to this situation?

21 MR. WELCH: She was called -- or the police
22 were called by Macey Kalluk, who is Melanie Kalluk's
23 sister, that Melanie Kalluk was the subject of an
24 assault yesterday. Melanie Kalluk ran away. They
25 ran after her.

26 THE COURT: Yes.

27 MR. WELCH: Ultimately caught her, charged

1 her with obstruct and failing to abide by her
2 conditions, because she was, again, intoxicated here.

3 THE COURT: Okay, and -- and you're asking me
4 to find her guilty of the offence of failing to
5 follow her conditions? I understand -- I understand
6 she was on -- on bail conditions not to drink, but
7 you're asking me to find a woman guilty of an offence
8 where the police are called to respond to a situation
9 where she is being beaten up.

10 MR. WELCH: No, respectfully, Your Worship,
11 she was intoxicated. She was in breach of her
12 conditions. You will need to decide whether there is
13 evidence that she was intoxicated. I believe those
14 facts are admitted.

15 THE COURT: There is clearly evidence of
16 that.

17 MR. WELCH: But whether or not she should
18 plead guilty to that offence is -- is something for
19 her and her lawyer. Yeah.

20 THE COURT: I have a lot of trouble -- I mean
21 sure, I -- I can convict, and -- and it's -- it's an
22 easy decision to make to convict her for this. But I
23 have a lot of trouble doing it, and it -- it -- it's
24 not a conviction that -- that I want to have to make
25 where a woman who is being beaten up is then charged
26 criminally for -- for failing to comply with a bail
27 condition.

1 MR. WELCH: Well, I think she attracted the
2 attention of the officers because she -- she
3 attempted flight. And I would suggest to you that --

4 THE COURT: She attempted flight, as you put
5 it, to get away from the assault.

6 MR. WELCH: Well, that's what I'm told. So
7 I -- I don't know if that's true or not, but I'm --
8 I'm willing to go with a -- a plea, as I was asked,
9 to the plea to being intoxicated that she clearly
10 was. And I am going to suggest to you that the --
11 the resolution that's proposed, which is a suspended
12 sentence, 12 months probation, and a restitution
13 order for the broken window, with not communicating
14 with the victim of the assault, no alcohol, and
15 attend counselling as directed, is an appropriate
16 resolution in the circumstances. And it's
17 appropriate that she -- obviously she has an alcohol
18 problem, and that's the subject of the charge that
19 we're discussing.

20 If Your Honour's concern is that there
21 might be some disincentive for -- for women to -- to
22 call in, I -- I don't see that.

23 THE COURT: Why not?

24 MR. WELCH: Well, I think that the -- the
25 fact is that the disincentive that we're looking for
26 is not to violate your -- your conditions, right?
27 That's the -- that's the nub of the charge,

1 regardless of the circumstances of it.

2 THE COURT: And how is that not a
3 disincentive for women who are being beaten to
4 approach the police and -- and report that sort of
5 violence?

6 MR. WELCH: I think it happens on a regular
7 basis, Your Worship, that these -- these things are
8 not necessarily black and white. All right? There
9 is an alcohol-fueled dispute that descends into
10 physical violence that nine times out of ten, the man
11 has the upper hand; but there is fault on both sides,
12 right? And the fault is that you are on conditions
13 not to drink alcohol, and you did that.

14 And -- and I think I'm going to leave it
15 there. I'll -- I guess I'll let Ms. White respond to
16 your concerns, but I think that in the global context
17 of the resolution that we are providing, it's in the
18 public interest that we do this. Yeah? And that's
19 my submission to you.

20 THE COURT: Thank you. I still haven't made
21 the determination of guilt on the last charge.

22 You've heard my concerns. What do you have
23 to provide to the court?

24 MS. WHITE: Your Worship, in terms of the --
25 I think generally speaking the facts are admitted
26 that she was consuming alcohol in contravention of an
27 order, and the joint position and resolution was

1 certainly discussed together as a way to resolve all
2 matters. And this is what we determined was the
3 appropriate route for this situation.

4 I understand Your Honour's concerns about
5 the context. I'm actually uncertain of what else to
6 add on the issue. Certainly it wasn't -- and my
7 friend and I have discussed this as a joint position,
8 so certainly I don't think it would be appropriate
9 for me to scale back that at this point. I would
10 just suggest we leave it in Your Honour's hands the
11 correct way to deal with that; either a judicial stay
12 or imposing an absolute discharge or following it as
13 part of the joint position.

14 THE COURT: Mm-hm.

15 MR. WELCH: Yes, we come to you with this on
16 sentence if you do have concerns about it.

17 THE COURT: I'm not sure I have the
18 jurisdiction to -- to -- to make a judicial stay of
19 proceedings. I think that's on application under --
20 I think it's under Section 7, which I don't have
21 jurisdiction for, so I can't stay a charge from here.

22 And the facts are admitted, that she was
23 intoxicated. She was on bail conditions to not
24 drink.

25 MS. WHITE: Yes, Your Worship.

26 THE COURT: Yeah, okay. All right.

27 Melanie, the reason I'm -- I'm saying all

1 of this is because I'm having a lot of trouble with
2 the idea that if you're -- if you're being beaten up,
3 you shouldn't -- you shouldn't have any fear of
4 calling the police.

5 THE ACCUSED: Sorry, (INDISCERNIBLE).

6 THE COURT: And when -- and if you're ever in
7 any sort of trouble or danger, you should never
8 hesitate to call the RCMP.

9 THE ACCUSED: (INDISCERNIBLE).

10 THE COURT: Because that's what they are
11 there. They are there to come and help you --

12 THE ACCUSED: Right.

13 THE COURT: -- and protect you and to provide
14 you with that kind of -- of support and -- and
15 service.

16 What I am concerned about is if I find you
17 guilty of -- of -- of being drunk contrary to your
18 conditions, and the story is that you were drinking
19 but you were being beaten up and you called the
20 police, I'm concerned that if I find you guilty of
21 that, it's going to maybe make you think twice about
22 calling the RCMP again in the future. I know your
23 sister called the RCMP here, but you should never
24 think twice about calling the RCMP. And you should
25 expect and have every confidence that if you're in
26 trouble, they're there to help you.

27 THE ACCUSED: Right.

1 THE COURT: Don't hesitate to call them up.

2 THE ACCUSED: Okay.

3 THE COURT: I've said all that to you and I
4 have explained to you why I have difficulty doing
5 what I'm about to do, but -- but I do find you guilty
6 of that charge.

7 THE ACCUSED: All right.

8 THE COURT: The facts are clear. I find you
9 guilty.

10 Now I understand that there is a joint
11 position on sentence, and that this is for a
12 suspended sentence with some probation. You've heard
13 my concerns with the finding guilt and you've also
14 heard perhaps when I was talking about the powers
15 that I have and don't have, is that I don't have the
16 power to -- to direct a judicial stay of proceedings.
17 I do have discretion in sentencing to -- to do
18 certain things.

19 And as I said to Ms. Kalluk, even if the
20 lawyers agree, the final determination on sentence is
21 my decision even if the lawyers agree. So I've
22 heard -- I've heard the joint position. I'll now
23 hear submissions on why this sentence is appropriate
24 in these circumstances.

25 MR. WELCH: Your Worship, Ms. Kalluk for the
26 original charges, was originally slated to be
27 diverted. But she -- she failed to -- to attend the

1 diversion meetings and -- and then subsequently
2 indicated her wish note -- to no longer participate
3 in diversion. So we would -- that's what we were
4 looking at at the beginning.

5 Subsequently, as you've heard, she -- she's
6 made it clear that she has issues attending court
7 and -- on numerous occasions and also with substance
8 abuse, notably alcohol. Obviously there is an issue
9 there, but we think that that -- those facts and
10 the -- the number of charges over the last two years,
11 she's still -- she has no criminal record otherwise,
12 but she's still a young woman. But the number of the
13 charges over the -- takes her out of the discharge
14 range and into the suspended sentence range. That's
15 my view of it. And I had those discussions with my
16 friend yesterday, and we agreed.

17 And what I want most of all is for the
18 probation to be imposed and that, you know, it needs
19 to be made clear here that things are going to get
20 worse from here on in if she continues to -- to drink
21 alcohol beyond being sensible and obviously to
22 associate with -- with people who are doing the same.
23 Yeah? And that is -- that is why the alcohol
24 condition would be in a probation order and why she
25 would be directed to counselling as recommended by
26 the probation officer for issues she may have with --
27 with alcohol.

1 Those are my submissions.

2 MS. WHITE: Yes, Your Worship. My friend is
3 correct in his characterization. This was a joint
4 position that we had to discuss. In terms of the
5 conditions we're in agreement, although I would
6 submit that the abstain condition can be left up to
7 Your Honour in terms of how to accurately craft that.

8 Certainly Ms. Kalluk advises me that she is
9 capable of staying away from alcohol, but many times
10 we hear that in this court and it's frankly not true.
11 Ms. Kalluk is a young woman. She is 27 year old.
12 She is from the community of Arctic Bay, and she
13 moved to Iqaluit several years ago when her father
14 had passed away. And at that point in time, her
15 stepmother had asked her to leave the home. So she
16 moved here to Iqaluit to reside with an aunt here in
17 town.

18 Ms. Kalluk had a difficult childhood. She
19 was often the victim of assault, and as you see
20 before you today, she is still actively the victim of
21 assault.

22 Ms. Kalluk has three children. Her oldest
23 child is nine, her middle child is five, and her
24 youngest child is nine months. The father of these
25 children is not involved. He is currently
26 incarcerated in a southern facility. The three
27 children are currently residents of the foster care

1 system. She does have visitation and is working with
2 Social Services towards a reunification plan for her
3 and her children. And her last update is that they
4 were hopeful that January might be a time that they
5 would start reintegrating the children back to her
6 home.

7 She does have her own home. She did get
8 housing last year through Iqaluit Housing. She tells
9 me that she does often, though, stay with her
10 biological mother a lot because with the kids not in
11 the home she -- she prefers not to be alone.

12 She is a cashier at Arctic Ventures. She
13 has been doing this position on and off since 2014,
14 and she will continue doing this position once she is
15 released from custody. Ms. Kalluk has struggles with
16 alcohol, as I've stated. She has advised me that
17 she -- she's advised me that she's capable of staying
18 away and she says particularly when things pertaining
19 to her children are on the line or when her children
20 are back in the house, she says that it is always
21 easier, for lack of a better word, when her kids are
22 with her for her not to drink because they are her
23 constant motivation not to do that.

24 And she wants to stay away from alcohol.
25 She wants to recommit to a sober life. I think the
26 counselling as proposed in the probation order can be
27 helpful for her in that endeavour. She understands

1 what being on probation, if that's what Your Worship
2 imposes, will mean for her in terms of reporting and
3 possibly partaking in counselling and programming
4 that might be of assistance.

5 In terms of my friend and I have come to
6 this joint position, certainly the -- some of the
7 files have been dragging on. And there's been
8 several avenues taken where Ms. Kalluk had several
9 times repeatedly disengaged from the system, and we
10 are in agreement that a suspended for the amount of
11 charges was appropriate in the circumstances.

12 So subject to anything Your Worship might
13 have, those are my submissions.

14 THE COURT: I asked about a lawful excuse for
15 not attending, but is -- is there an excuse that's
16 perhaps not a lawful one that gives some context as
17 to why she was not attending court.

18 MS. WHITE: She advises me that on one
19 occasion --

20 THE COURT: But repeatedly this is something
21 that's been going on for a long time.

22 MS. WHITE: She advises me that on one
23 occasion that actually somebody had told her that
24 that she shouldn't go to court basically. That they
25 had told her that she should not do that. And she
26 listened to that advice. Other than that, it seems
27 to be more of a -- sometimes participating and then

1 disengaging completely and kind of ignoring that
2 obligation. And certainly she has a lot going on in
3 her life in terms of the children. And I think the
4 alcohol struggle certainly factor into why her
5 nonattendance has been fairly frequent.

6 THE COURT: When were the children
7 apprehended?

8 MS. WHITE: The children were apprehended in
9 August.

10 THE COURT: Of this year?

11 MS. WHITE: Yes.

12 THE COURT: Mm-hm. The Supreme Court's
13 guidance in *Anthony Cook* is quite clear on the
14 procedure to follow when considering not following a
15 joint submission and gives sentencing judges, and
16 justices of the peace in this case, very strong
17 language to consider in terms of the value that joint
18 positions bring to the justice system for all justice
19 system participants. And it is only when a
20 decision -- when a -- when a joint position is so
21 unhinged I think -- I think that's the language they
22 use in -- in *Anthony Cook*, so unhinged that a
23 reasonable person would see it as a complete
24 breakdown in the administration of criminal justice
25 system. Language along those lines in any case.

26 No criminal record was submitted. This is
27 a -- what I take it to be a first time offender

1 before the courts. I note that Ms. Kalluk is an Inuk
2 and as such is to be considered under the provens of
3 718.2(e) in the *Gladue* and *Ipeeelie* decisions.

4 And, Melanie, I'm saying all kinds of
5 things weird stuff right now, but I'm going to
6 explain a little bit about what that means shortly,
7 okay? But I just need to say some things because we
8 are recording this and it goes into our archives.
9 And if this decision is ever taken anywhere else,
10 they need to be able to hear what I was saying. And
11 some of that stuff that I'm saying needs to be in
12 this sort of weird language that we use in court.
13 All right? But I'll explain to you what I'm talking
14 about shortly.

15 And so *Anthony Cook* tells us that I can
16 only depart from joint submissions when a reasonable
17 person would view this position as a breakdown in the
18 functioning of -- of the court system. It's a very
19 high standard and it's a very high standard for --
20 for good reasons as the court goes on in *Anthony Cook*
21 to explain.

22 And I've -- I've inquired about the
23 circumstances of the plea agreement and I've heard
24 submissions on that. Is there anything counsel wish
25 to further add to that?

26 MR. WELCH: I neglected to mention that in
27 terms of the Probation Order that the -- that there

1 be a condition that she not communicate with Ragilee
2 Attagootak.

3 THE COURT: Mm-hm.

4 MS. WHITE: That was a condition that I've
5 discussed with her. We have no issues with that.

6 I don't have anything to add.

7 THE COURT: I've heard that this is an
8 initial charge that was going to be diverted, and
9 Ms. Kalluk disengaged from that process. Not only
10 disengaged from that process, but disengaged from the
11 whole court process and -- which is sadly not
12 uncommon. It's important that when people have
13 conditions such as attending court, that they
14 actually do that. But the suggestion that the
15 underlying charge that kind of got the snowball
16 rolling here was of such a nature that it might be
17 diverted and then it turns into a situation where
18 Kalluk ends up not coming to the court, and she has a
19 lot going on in her life over the last few years
20 including circumstances that would lead up to the
21 apprehension of her children while her partner is in
22 custody in a federal institution in the south,
23 signaling to me that that's a fairly serious offence
24 that he is -- that he's been convicted for.

25 That all of this started from an incident
26 that could have been diverted and turned into
27 something that is now in front of me for my

1 consideration to impose a sentence that would cause
2 Ms. Kalluk to have a criminal record, an indigenous
3 woman, who comes to court -- and, Melanie, I'm going
4 to say something now that -- again, this is all being
5 recorded, and because it's being recorded, all it is
6 doing is it's hearing the words that we are saying.
7 When this is going to be looked at in the future, if
8 anyone ever looks at this in the future, what they
9 are not going to be able to do is to see what --
10 what's going on in here. And one of the things
11 that's going on in here is that you're sitting here
12 with your face black and blue, beaten. And I'm sorry
13 that I have to say that, but I see that. And I have
14 to say that, because this is being recorded and I
15 want whoever hears this in the future to be able to
16 see in their minds what I see from this seat.

17 I am not satisfied that the position
18 presented to me today is an appropriate disposition,
19 and I am satisfied that a reasonable person sitting
20 in court today looking at all the circumstances of
21 this offence, these offences, and this offender would
22 find that the position presented before me today
23 is -- would bring the administration of justice into
24 disrepute.

25 The reasonable person would be aware of
26 certain things like the principles of sentencing
27 including the principles of restraint, the principle

1 of proportionality, the principle of sentence -- the
2 principles surrounding the sentencing of first-time
3 offenders, the principles of sentencing indigenous
4 offenders. Those are some of the principles that the
5 reasonable person would be aware of.

6 The reasonable person would also be aware
7 of the objectives of sentencing under 718 including
8 denunciation and deterrence and rehabilitation,
9 separation of offenders from society when required,
10 an acknowledgment of the harm done to society. This
11 is an offence -- the underlying offence is an offence
12 that would -- that was going to be diverted.

13 So I believe I've given counsel the
14 opportunity to explain to me and to be provide me the
15 circumstances that led up to this plea agreement.
16 I've given you the opportunity to provide me with
17 your submissions on that. The next step is to I
18 believe invite the defence to consider options on the
19 withdrawal of the plea, probably not something that
20 the defence in this circumstance would want to offer
21 to the person.

22 MS. WHITE: Your Worship, in light of Your
23 Worship's comments and the circumstances, I -- I
24 don't expect that we will be making any application
25 to withdraw the pleas.

26 THE COURT: Thank you.

27 MR. WELCH: Your Worship, I -- I hear what

1 you're saying, and respectfully I disagree otherwise
2 I would not have put this matter before you. It's
3 true that Ms. Kalluk was -- was charged with -- with
4 an offence that we considered diverting. It was not
5 the system's fault that she chose not to respect her
6 conditions, not to appear for court.

7 I understand your issues with the last
8 charge, and people make their lives worse all the
9 time. All right? And you can't save them from that.
10 All right? With respect to the last charge, if Your
11 Worship would consider a -- respecting the joint
12 position with respect to the three counts and to
13 grant an absolute discharge with respect to the last
14 count, I understand Your Worship has some -- some
15 issues with that. But frankly to categorize this
16 position as something which is unhinged, and those
17 are your words, is -- is incomprehensible to me.

18 THE COURT: It has to be considered in the
19 context of the reasonable person who is aware of the
20 principles of sentencing and the circumstances of
21 this offence and this offender. It is in that
22 context that -- and "unhinged" is the language in
23 *Anthony Cook*. It boils down the reasonable person
24 being aware of the circumstances of -- of this
25 offence and this offender.

26 And I think in 718.1 that requires
27 proportionality.

1 And what it comes down to here is the
2 imposition of a criminal record in the context of a
3 first-time indigenous offender, who is -- whose
4 children were apprehended in August of this year,
5 and -- and, of course, the time leading up to this,
6 for example, July 26th of 2018, which is the charge
7 for fail to appear, July 26th. That's shortly before
8 August of 2018. And then September the 6th, 2018,
9 fail to appear. Well, no wonder there is a failure
10 to appear.

11 And you're right, Mr. Welch, people's lives
12 are difficult, and the court cannot save them. And I
13 have -- I'm under no illusion that what I'm doing
14 here in this seat saves -- saves people from --
15 from -- from circumstances beyond the control of the
16 court; but one thing that is within the control of
17 the court is something like the type of sentence that
18 is going to be imposed for this type of offence and
19 this offender in these circumstances.

20 And -- and -- and the court has a role to
21 play in ensuring fairness, proportionality, and
22 recognizing the moral blameworthiness of offenders
23 who come before the court and exercising restraint in
24 passing sentence.

25 The Nunavut Agreement Article 23 requires
26 that the Government of Nunavut employ a workforce
27 that is representative of the territory it serves.

1 We often hear the 85 percent number thrown out in
2 that context, 85 percent being the proportion of
3 Inuit there are in the territory. But the 85 percent
4 number is not actually in Article 23.

5 A criminal record is a significant obstacle
6 to employment with the Government of Nunavut, and a
7 criminal record is a significant employment --
8 obstacle to other types of employment that requires
9 security clearance and so on. I've heard that
10 Ms. Kalluk works at Arctic Ventures and will continue
11 to do so after she's released today. And so she has
12 prospects of continuing her work and continuing her
13 work, maybe not only at Ventures but in other avenues
14 as well. To keep -- to close that option off is a
15 significant obstacle for an Inuk in the territory.

16 The purpose of 718.2(e) as -- is canvassed
17 in the *Gladue* decision; and in the *Gladue* decision,
18 the court looks at the Hansard from I believe it's
19 1996 when the Justice Minister Allan Rock was
20 proposing amendments to the *Criminal Code* that would
21 address the issue of the overrepresentation of
22 indigenous offenders in custody.

23 The purpose as seen from the Hansard in
24 1996 was to ameliorate that situation, not to make
25 things worse. And I understand that, indeed, passing
26 sentence -- suspending sentence and issuing probation
27 does not bring a person into custody, although

1 Melanie has been in jail for a few days. And I take
2 that into account as well when I make my decision.

3 Still, the issue is -- is -- doesn't simply
4 go away because we are not putting Melanie in jail.
5 In my view, the *Gladue* decision elaborates on, not
6 only the problem of indigenous offenders in custody,
7 but also indigenous offenders with criminal records.
8 The *Ipeeelie* decision, 12 years later, observed -- the
9 Supreme Court also observed that, although those
10 amendments had come into force in 1996 and the *Gladue*
11 decision in 1999 was written elaborating on the
12 purpose of -- of the section with the intention of
13 ameliorating the issue of the overrepresentation of
14 indigenous offenders in custody, those -- those --
15 the legislature and the courts had done their parts.
16 The situation had only become worse in that the
17 numbers of indigenous offenders in custody was
18 increasing, notwithstanding Section 718.2(e) and the
19 guidance that we received from the Supreme Court in
20 *Gladue*.

21 So the reasonable person would know all
22 that.

23 MR. WELCH: I would suggest to you the
24 reasonable person would also know that the resolution
25 that's proposed to you is squarely in the range for
26 this offence and for this offender, and for you to
27 depart from it based on *Cook* I think is -- is a

1 mistake.

2 THE COURT: The reasonable person would also
3 know about the work of the national inquiry into
4 missing -- missing and murdered indigenous women and
5 girls. The reasonable person would also take into
6 consideration the issues that that inquiry has been
7 looking at. And the reasonable person might look
8 forward to April when their final report is
9 ordered -- issued, sorry, and look with some care
10 into the relationship between the indigenous women in
11 Canada and the RCMP, and some of the reasons why
12 indigenous women might hesitate to call the RCMP when
13 they have been the victims of violence.

14 The reasonable person knows a lot of these
15 things.

16 MR. WELCH: I have addressed that point, Your
17 Worship, and I don't mean to protract these
18 proceedings, but -- but I would suggest to you
19 that -- I understand your point with respect to that
20 last offence, and I've addressed that in terms of how
21 the sentence might be adjusted from the -- the joint
22 position that was put before you. But -- and these
23 are things that we can only speculate about, but I
24 think that --

25 THE COURT: Can we?

26 MR. WELCH: -- a woman who --

27 THE COURT: The Supreme Court in *Ipeeelie* --

1 MR. WELCH: Let me finish, please, sir.

2 THE COURT: -- the -- the Supreme Court in
3 *Ipeelie* directs courts, sentencing judges, to take
4 judicial notice of the history of colonization and
5 subsequent outcomes from that including things like
6 low employment rates, poverty, substance abuse, and
7 violence.

8 MR. WELCH: You reply to a point I'm not
9 making. The point that I'm making is that it's
10 speculative to suggest that a woman who is being
11 beaten would be disincentive -- would -- would not
12 call the RCMP because she would be afraid to -- that
13 they would come and arrest her for violating her
14 conditions. I think a woman who -- who calls the
15 RCMP; and while they're running out the back after
16 the offender also runs away, could attract that kind
17 of attention from the RCMP. And that's what happened
18 here.

19 THE COURT: So, Melanie, like I said, there's
20 all kinds of stuff that we talk about in court and a
21 lot of it has to do with some complicated things that
22 we deal with in law. And what I try to do from this
23 seat is to explain to people all that complicated
24 stuff in language that's easier to understand.
25 Because really, it's fairly simple if you think about
26 it in a certain way, and it's this: I -- I get it
27 that you assaulted Ragilee. I understand that you

1 broke the window. And I understand that you didn't
2 show up to court and then you were drunk the other
3 day when you were not supposed to be. You agreed to
4 that. I found you guilty of those things.

5 What happens after that is the lawyers tell
6 me what they think is the appropriate sentence.
7 Sentence is what happens after a person is found
8 guilty. Some people might call it punishment.

9 So what's the appropriate punishment or
10 sentence for the things that you did? I have to
11 think about a bunch of different things when I'm
12 making my decision, and there's all sorts of
13 different things that I have to think about, and
14 that's why I've been talking about this this way for
15 this long.

16 When lawyers tell me the same thing from
17 both sides, I have to take that very, very seriously.
18 Of course, I have to take anything that the lawyers
19 say in court very seriously, but when -- when the
20 lawyers are telling me that the sentence should be
21 something like what they are telling me today and
22 both lawyers agree, there's very good reasons why I
23 should follow the lawyers.

24 And only when what they are saying I find
25 to be unreasonable, only when I find that, can I say,
26 no, I don't agree with you lawyers. I'm going to
27 make my own decision.

1 And that's what I told you before. Before
2 we got to this point, I asked you you understand that
3 the sentence that's imposed is my -- my decision; and
4 you said yes, you understand. And the lawyers here
5 understand that as well.

6 But it's only with really good reasons that
7 I can make that sort of decision. And I have to do
8 certain things. If I -- if I'm leaning towards
9 making that sort of decision, I have to do certain
10 things like give the lawyers an opportunity to -- to
11 tell me why what they propose is appropriate. I have
12 done that, and the lawyers have told me why. And so
13 that's more or less what I was just talking about in
14 all those complicated words.

15 Does that make sense you?

16 Yeah, okay.

17 The reasonable person would expect leniency
18 with a woman who had trouble staying in touch with
19 the Justice Committee and disengaging, as the lawyers
20 put it; would expect leniency on an underlying charge
21 of assault and mischief; and the reasonable person
22 would also expect me to exercise restraint.

23 The reasonable person might also consider
24 that Melanie has spent several days in jail and been
25 apprehended by the police a couple of times to come
26 to court, reminded over and over again; you got to
27 come to court, you got to come to court, you got to

1 come court. And then -- was it one night you spent
2 in jail? Last night?

3 THE ACCUSED: Mm-hm.

4 THE COURT: Okay. So you were picked up.
5 What time was it yesterday you were picked up?

6 THE ACCUSED: (INDISCERNIBLE).

7 MS. WHITE: I believe -- Ms. Kalluk is saying
8 it's in the afternoon. I received word yesterday
9 morning, however, that she had been added to the list
10 for yesterday afternoon.

11 THE COURT: I remember seeing her here
12 yesterday afternoon.

13 So you spent one night in jail.

14 When you were picked up on other -- on
15 other times for not coming to court and the police
16 arrested you, did you spend nights in jail then, too?

17 THE ACCUSED: Yeah.

18 THE COURT: Yeah?

19 THE ACCUSED: I did, yeah.

20 THE COURT: How many nights?

21 THE ACCUSED: One -- two nights.

22 THE COURT: Two nights total in jail?

23 THE ACCUSED: Yeah, two nights. And probably
24 four altogether at the woman correction.

25 THE COURT: Sorry, what was that?

26 THE ACCUSED: What day, because. . . Yeah.

27 MS. WHITE: She says that she spent five

1 nights at the woman's jail I believe perhaps last
2 week or shortly before when she was waiting for her
3 previous bail hearing I believe?

4 THE COURT: Oh, five nights in jail.

5 THE ACCUSED: Yeah. (INDISCERNIBLE).

6 THE COURT: So a reasonable person might also
7 consider that, that there is almost a week in jail
8 for -- for these -- these charges. And, yes, I
9 understand that there's a process by which a person
10 has to apply for bail, and primary grounds
11 considerations are certainly a concern at those
12 hearings. But, of course, one of the principles of
13 sentencing is also the principle of totality, and the
14 reasonable person also knows about that principle.

15 So the reasonable person, looking at all of
16 the circumstances, including that this woman has been
17 in jail for what seems to me at least six nights and
18 possibly seven nights including a five-day stint at
19 the women's jail down the street, still would need to
20 have a criminal record for this? The reasonable
21 person would not agree.

22 Absolute discharge. It's over.

23 Melanie, this finishes it. And I'm sorry,
24 I didn't give you an opportunity to say anything.
25 You do have the opportunity to -- to speak if you
26 wish to speak. Is there any -- I already asked you
27 some questions, but is there anything else you want

1 to tell the court today? You don't have to. It's
2 your choice.

3 THE ACCUSED: I'm sorry for wasting your time
4 for this and that this is my first time going through
5 court. I don't really understand what this and court
6 and missed shift and all that stuff. I'm so sorry
7 about it. You know, I learned my lesson from over
8 when I was in a woman jail. No, I learned more about
9 that and be more aware of that. And I'm sorry for
10 wasting all of your times going through this. I
11 learned my lesson from that.

12 THE COURT: Thank you, Melanie. You didn't
13 waste my time, all right? That's what court is for.
14 It's to come to court and talk about these things.
15 And each file is different and each person is
16 different and each one who comes in front of me
17 deserves the particular attention to their
18 circumstances. And that's why I took this time to
19 think about these things as I made my decision.

20 I'm happy to hear that you feel sorry for
21 this. That tells me that you're -- you're sorry
22 about these things. You're -- you also said that
23 you've learned some lessons from this. I know from
24 sitting here and seeing lots of people come through
25 this door and sit in that seat that you're sitting
26 in, lots others do this, too. I know that it's
27 really hard to deal with some of the things that

1 see that. And I know that your kids are in the
2 custody -- in the custody of the director of Child
3 and Family Services. I know that's not easy. And I
4 know that it -- it really hurts to have your kids
5 taken away, and it might make you want to go back to
6 drinking to stop thinking about that. But the thing
7 is if you go back to that, it's only going to make
8 things worse.

9 THE ACCUSED: Right.

10 THE COURT: So try as hard as you can to stay
11 away from that, because if you manage to kick the
12 bottle, the more likely you'll get your kids back.

13 THE ACCUSED: Right.

14 THE COURT: Good luck.

15 -----
16 PROCEEDINGS CONCLUDED
17 -----

18 This is to certify that the foregoing
19 is a true and accurate transcript of my
20 shorthand notes and/or recordings to the
21 best of my skill and ability.

22
23
24 *Linda Kimball*

25 Linda Kimball, CSR(A)
26 Official Court Reporter
27 January 20, 2019