



# The Struggle for Justice for Battered Women: Still a Colossal Work in Progress, as Exemplified by Helen Naslund's Case

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## Abstract

This article recounts the campaign for justice for Helen Naslund, a Canadian woman who lived in rural Alberta when she killed her abusive husband Miles in 2011 as he slept. Rather than go to trial on self-defence, on the advice of counsel Helen pled guilty to manslaughter. Then, consequent to a joint submission on sentencing made with the Crown, she was sentenced to 18 years in prison in 2020, the longest sentence on record for such a woman in Canada. The contributors to Helen's journey, including Helen herself, a Senator, an academic, an activist, a lawyer and a journalist, all describe the roles they played in supporting Helen's successful appeal against sentence in 2022 and her release from prison in 2023.

**Keywords:** Women who kill; abused women; self-defence; feminist campaigns.

## Introduction

This article recounts the campaign for justice for Helen Naslund, a Canadian woman who lived in rural Alberta when she killed her abusive husband, Miles, in 2011 as he slept. Her youngest son, Neil, helped hide the body on their farm, and Helen reported her husband missing to police. Six years later, her middle son, Darrell, informed police about the location of his father's body, possibly in exchange for dropped charges. When the body was recovered, Helen and Neil were charged with first degree murder, presumably on the basis that killing a sleeping man constituted planned and deliberate killing, and offering an indignity to human remains. Her oldest son, Wesley, was charged as an accessory after the murder, but these charges were soon dropped because it became clear he had not been present, let alone involved.



When a woman like Helen kills her abuser, many stars must align for her to have the opportunity to argue self-defence when on trial for murder. She requires the assistance of highly competent counsel with experience and understanding of the dynamics of men's violence against women. They must also believe deeply in their client's right to kill to survive and to live free of threat and violence. She must have sufficient support from others—whether family, friends, therapists, or her lawyer—to reject self-blame and articulate the story of her marriage, what she lived through, and how she survived. Activists are also important for public education, to generate broader support, and to facilitate connections and support for the woman to reintegrate her back into her community. She will need the testimony of expert witnesses to contextualize her experiences within a situation of endangerment, with limited options to escape and protect her children and other loved ones. And she will need to have confidence in her lawyer's trial strategy and muster the courage to testify in her own defence.

If these stars align and the accused is able to advance self-defence in a Canadian court of law, there is a good chance she will be acquitted (Sheehy 2014: 10–11). Canada's current law of self-defence (*Criminal Code of Canada*, s. 34), is one of the most generous statutory formulations on record, potentially enhancing access to acquittal for abused women on trial. The accused need only provide some evidence (an 'air of reality') to show that she faced actual or threatened force, that she acted with the motive of self-protection or protection of another, and that her use of force was 'reasonable'. Reasonableness is assessed from a non-exhaustive list of considerations, such as the imminence of the threatened harm, the history of violence, and the proportionality of her response. Canadian law, thus, imposes no strict imminence or proportionality requirement, no need for the accused to show she faced grievous bodily harm or death or that she lacked other options, and no duty to retreat. If she can provide sufficient evidence to create an 'air of reality' for the defence, then it will be up to the jury to determine whether the Crown has proven beyond a reasonable doubt that the woman did not act in self-defence.

However, in most cases, these stars do not align. Overwhelmingly, women in these circumstances in Canada plead guilty to manslaughter (Sheehy 2014: 10), accept a sentence that may include imprisonment, and abandon their right to argue self-defence. They often do so because they otherwise face the prospect of a mandatory life sentence (Sheehy 2001) with a 10–25-year period of parole ineligibility if self-defence fails and they are convicted of second degree murder (*Criminal Code of Canada*, s. 231(7), requiring proof of intent to kill) or first degree murder (*Criminal Code of Canada*, s. 231(2), requiring proof of planning and deliberation). They may also plead guilty because they cannot bear to leave their children motherless for such a potentially long period, and because they want to spare their children a trial. Usually, in exchange for the guilty plea to manslaughter, an abused woman will receive a compassionate sentence that recognizes the abuse she has suffered and imposes limited jail time. The average sentence for such women is less than two years imprisonment, but many women have received suspended sentences or 'conditional imprisonment', colloquially known as 'house arrest' (Sheehy 2014: 298).

Helen's stars did not align—far from it. Her first criminal defence lawyer, Kevin Lieslar, planned to argue self-defence at her trial and secured an expert report that described her as experiencing Battered Woman Syndrome. Kevin's ill-health forced him to excuse himself from the case and Darin Sprake became her counsel. He did not think Helen had been able to provide sufficient details of the abuse and the homicide to advance self-defence. Thus, with her agreement, he entered into plea negotiations with the Crown on her behalf, as did Neil's counsel. Neil's charges were dropped and he pled guilty to offering an indignity to human remains instead. He received a sentence of three years of incarceration. Helen pled guilty to manslaughter and, consequent to a joint submission on sentencing made by the Crown and Darin together, she was sentenced to 18 years in prison. This sentence was the longest on record for a woman who pled guilty to manslaughter.

In this reflection piece, Helen and some of the many people involved in the campaign for justice for Helen (Wakefield 2022) describe their role in her appeal of that crushing sentence and her eventual release from prison. They also provide their insights as to the benefits and limitations of any strategies undertaken. The authors of this article include myself, a law professor whose research over three decades has focused on self-defence for battered women who kill; Senator Kim Pate, a lawyer, former Executive Director of the Canadian Association of Elizabeth Fry Societies and long-time advocate for incarcerated women; Helen Naslund, a farmer, a mother and a horse racer; Matthew Behrens, an Ottawa activist and author who has spearheaded many campaigns for women over the years; Mona Duckett, KC, a senior partner in an Edmonton Alberta criminal law firm; and Jana Pruden, an award-winning journalist whose career commenced in news outlets in several cities and towns of the Canadian prairies.

First, I (Elizabeth) introduce the legal context in which Helen's sentence was imposed. Second, Kim engages in a conversation with Helen, describing how Kim came to know Helen and the challenges they worked on together. These challenges included dealing with both Helen's lawyer at her sentencing and Corrections Canada. Through this process, Kim was able to gain Helen's trust, which was pivotal to allowing others of us be involved, to help pave the way for her eventual appeal. Third, I (Elizabeth) re-enter to lay out my contributions to Helen's support, including my media interventions and my affidavit for Helen's appeal. Fourth, Matthew discusses how he created a national and international campaign of support for

Helen, drawing on his long experience of launching similar campaigns for women who have experienced men's violence. He launched this campaign through his online publications, his connections, support for Helen and her family members, and an online petition. Fifth, Mona weighs in as Helen's counsel on appeal, describing the decisions facing her as counsel and the strategies she pursued on Helen's instructions. Sixth, Jana describes her relationship with Helen, the in-depth reporting she engaged in on Helen's case, and the reactions she received from members of the public in response to the injustice experienced by Helen.

We have chosen to present Helen's quest for justice through our multiple lenses because a singular perspective could not have done justice to the interconnected strategies. This multi-vocal account demonstrates the independent and varied fronts on which cases like Helen's must be fought, with media and public campaigns emerging as a crucial component for successful campaigns. We hope our experiences can hold value for others who believe women who have killed their abusers have already lived under conditions of entrapment and coercive control, and should not serve another day of captivity.

**Elizabeth Sheehy:** On January 12, 2022, the Alberta Court of Appeal took the monumental step of allowing an appeal against sentence by a woman who had, through a plea bargain on her guilty plea to manslaughter for the killing of her abusive husband, received a sentence of 18 years of incarceration (*R v Naslund and Naslund (2020)*). In *R v Naslund (2022)*, the appeals court reduced Helen Naslund's sentence to nine years because the judge had failed to mitigate the sentence in light of her reduced moral culpability, based on the years of violence and threat that the deceased, Miles Naslund, had imposed upon her and their three sons (*R v Naslund (2022)* paras 138–39, 147, 166).

It was an extraordinary decision, in part because the results of negotiated guilty pleas and sentences are rarely disturbed in order to preserve the integrity of plea bargaining in the criminal justice system. On appeal, Helen's lawyer had to surmount legal precedent to achieve this result and to persuade the court that allowing her appeal was necessary because the sentence would 'cause the reasonable observer to lose confidence in the justice system and be contrary to the public interest' (*R v Naslund (2022)* paras 168–73).

But the decision was also extraordinary because the Alberta Court of Appeal used it as an opportunity to reiterate and amplify the lessons for lawyers and judges that ought to have been learned from Canada's longstanding precedent for battered women on trial, *R v Lavallee (1990)*, decided by the Supreme Court of Canada more than 30 years ago. The Alberta court said that 'general deterrence,' the notion that the sentence must be severe enough to discourage others from committing a similar offence, is largely irrelevant for entrapped women (*R v Naslund (2022)* paras 119, 147). The court criticized the judge for wrongly aggravating the sentence because Helen killed her 'vulnerable' spouse, and for stating she had 'other options' (*R v Naslund (2022)* paras 141–43). These remarks, the court said, improperly invoked stereotypes that women who fail to leave their abusers either experienced negligible violence or enjoyed it.

The appeal court rejected the Crown's argument that the plea agreement benefited Naslund because she would necessarily have been convicted had she gone to trial for murder. The court emphasized that she may have been acquitted because our law has no 'imminence' requirement, making self-defence potentially available even when an abused woman kills a sleeping man (*R v Naslund (2022)* para 133). The reduced sentence substituted by the appeals court meant that Helen was eligible for day parole in March 2023. Her hearing for conditional release was held on December 21, 2022, at which point Helen was granted day parole by the Parole Board of Canada. She was released on day parole on March 20, 2023 (Wakefield 2023) and subsequently granted full parole on September 6, effective her full parole eligibility date, September 20, 2023.

Women on trial for killing their abusers often accept plea bargains, whereby a guilty plea to manslaughter is offered to avoid a murder trial and the mandatory life sentence that accompanies a murder conviction.<sup>1</sup> In exchange, they give up their legitimate claims to self-defence—a complete defence if successful. These plea deals are attractive for defence lawyers, including those unskilled in defending women who experience abuse and those who see women who acknowledge their role in the homicide as essentially 'guilty'. They are also irresistible to abused women who are desperate to avoid additional lengthy captivity beyond what they have already endured under the thumb of an abuser, to protect their children from a trial, and to shorten the time they will be separated from their children.

What went wrong in Helen's case, such that she received the longest sentence on record in Canada for an abused woman who pled guilty to manslaughter despite Supreme Court of Canada case precedent that ought to have assisted her? And how, against all odds, was this result reversed given that Helen's counsel at the time agreed to it? What can advocates do when these deals are rotten to the core, subjecting women to unconscionable sentences, papering over the criminal acts of others involved, and submerging those women's right to defend their lives?

**Kim Pate:** Like so many, I first heard about Helen Naslund via the media (Wakefield 2020a). I don't know if it even made local headlines prior to her sentencing on October 30, 2020, as I certainly didn't hear about it until after she was already sentenced to a whopping 18 years after pleading guilty to manslaughter. I was shocked at the length of sentence that her lawyer and the Crown—not to mention the judge—had agreed to.

I immediately reached out to people I knew and trusted throughout the country and internationally, and the strategizing commenced. One particularly poignant memory is of sitting at the top of the escarpment in the Gatineau Hills having a discussion with a retired judge, as my partner was photographing the spectacular ice formations on the little lake where we paused our hike to eat lunch. I was struck by the enormity of the tasks and challenges at hand and spent much of the rest of the hike creating the mental lists of next steps in my head.

Some Western Canada-based feminists, anti-violence advocates, and lawyers were already trying to contact Helen, but she had not agreed to meet or consider their offers to assist with an appeal.

**Helen Naslund:** When I started getting calls from people urging me to appeal, I immediately called Darin Sprake, the lawyer who negotiated the plea deal with the Crown. He assured me that the sentence was fair and that there was no chance of an appeal.

What's interesting though is that my first lawyer, Kevin, who had to stop representing me after he had a heart attack, had wanted to run a trial and argue self-defence based on the decades of abuse. Kevin had also convinced another criminal lawyer, Larry Fleming, to come out of retirement to represent my son, Neil. They planned to run a combined trial based on self-defence rather than running separate trials for Neil and I. Kevin and Larry had done many cases together in past years with great success. Another criminal lawyer, Greg, who was working to assist Kevin, also wanted to help us, but in the end he couldn't because he had a conflict of interest. He had represented my middle son, Darrell, on criminal matters in the past.

Bottom line? Darin didn't agree that there was an argument for self-defence. I wonder now if he maybe didn't believe or understand just how bad things were for us.

**Kim Pate:** Having known far too many women in her situation, I was pretty sure that: a) Helen might not have fully appreciated what her legal options were throughout her case, b) she likely felt she had no choice but to trust her lawyer and take his advice, c) the primary witnesses to the abuse were likely her children and she would undoubtedly do anything in her power to protect them, and d) she had likely internalized societal attitudes around women's responsibility to protect themselves and their children, as well as the shame and self-blame regarding the abuse she and her children had endured.

When I first reached out to Helen, I was clear that I was intent on urging her to appeal her case. I also offered to assist with other matters. I think Helen started to trust at least a bit of what I was saying due to my ability to address some of the early intake, assessment, classification, and family contact issues in prison, and my willingness to discuss and disagree with her lawyer, Darin.

I explained to her that, as part of my work in the Senate, I continued work commenced during my tenure as an adjunct law professor at the University of Ottawa Faculty of Common Law and Executive Director of the Canadian Association of Elizabeth Fry Societies. In these respective roles, I advocated for the government's *Self-defence review* (1997), conducted by Justice Lynn Ratushny in 1996–1997, and co-developed with Professor Emerita Elizabeth Sheehy an upper year criminal law course entitled, *Defending battered women on trial*. My work experience seemed to resonate with Helen as she had received and read an op-ed authored by Elizabeth Sheehy and Lynn Ratushny (Sheehy and Ratushny 2020).

I didn't expect Helen to trust anyone—let alone me—easily. Many times, she asked me why I was so interested in her. So, we chatted about the fact that I had been going in and out of prisons for over 40 years and that, for more than 30 years, I had been involved in assessing cases and training lawyers, judges, medical professionals, psychologists, social workers, and policing authorities. I discussed my myriad public and professional education activities with respect to violence against women, the failure of the state to protect battered women, and the treatment by families, communities, and the criminal legal system of women who are essentially deputized to protect themselves and those in their care from abusers.

Some of the issues Helen eventually allowed me to work with her on led to me having discussions with other members of Helen's family. In fact, the prison Case Management Team (CMT) of her co-accused son, Neil, suggested he also seek my advice and assistance with matters related to his sentence management and conditional release.

It really felt like an eternity before Helen, still very reluctantly, agreed to consider an appeal. I then arranged for her to meet with two lawyers who had been recommended by various individuals and groups, and who had agreed to consider running the appeal. That's how I found, and ultimately encouraged Helen to meet and consider working with, Mona Duckett, KC. Mona came highly recommended by all the lawyers I consulted. She was a well-known and respected criminal defence lawyer who had assumed leadership positions within the legal profession in Alberta. I am certain that if Mona had been representing Helen from the beginning, the results would have been very different. Maybe the charges would have been withdrawn by the Crown or, at the very least, the charge may have been dropped from first degree murder to manslaughter<sup>2</sup> and a successful case for self-defence might have been advanced at trial.

**Helen Naslund:** I didn't know what to think. Darin and the Crown and the Judge seemed so clear that the sentence was fair, but once it hit the media, so many people seemed to disagree (Wakefield 2022). Then people I didn't know, including a Senator, started calling and telling me stuff. I didn't know anything and was terrified, so I kept checking in with Darin and he kept telling me they were all wrong. The first deal Darin brought to me was to plead guilty to second degree murder and 18 years jail time without any limits on my ability to apply for parole. He told me I was lucky when he later negotiated the manslaughter plea and 18-year sentence. I didn't think it was much of a deal at all, but what could I say? I was also worried that anything I did might hurt my son, Neil.

Why did I finally agree to consider an appeal and let Kim organize meetings with the two lawyers? The first lawyer who called me when I was in jail offered to represent me for free. I was confused and didn't understand what she meant, so I called Darin. He was very negative and told me it was a bad idea and that it could negatively impact Neil as well.

Why did I choose Mona? The other lawyer Kim introduced me to didn't seem as clear or confident, and Mona seemed more positive. I got good vibes from her, and I think Kim did too, even though Mona kept reminding us that there was no guarantee of the outcome. We were out of time to appeal, as the 30-day period in which an appeal must be filed had long passed, and it was a plea deal agreed to by my lawyer on my behalf, making it difficult to re-open.

**Kim Pate:** After many calls with Darin and Helen, not to mention messages from other lawyers who knew Darin, it was clear to me that this was yet another case where the context of what had actually happened had not been fully explored. I have dealt with far too many lawyers and judges—especially men—who are good lawyers and judges but don't understand the context of battering or abuse. Darin denied this possibility and first implied there were details about the case that I did not know. When he subsequently provided his opinion on the merits of an appeal to Legal Aid Alberta, Darin essentially blamed Helen. He claimed he could not go to trial and argue self-defence or use Battered Woman Syndrome in mitigation of sentence because Helen had failed to provide details of the abuse and did not want to testify.

What should a lawyer do in such circumstances? First of all, successful self-defence cases can be run in Canada without the accused herself testifying. Notable examples have included Angelique Lyn Lavallee and Donelda Kay—an Indigenous woman defended by an Indigenous lawyer<sup>3</sup>—neither of whom testified in their own defence at their murder trials, but both were acquitted. In certain circumstances this may be the best, or only, option to secure a fair outcome for the woman. Granted, sophisticated lawyering, extensive preparation, and multiple, well-prepared expert witnesses are required (Sheehy 2014: 163–82), but women charged with murder of their abusers deserve no less.

Second, defence lawyers must identify what they do and do not have expertise in, and how to work with women who have been traumatized by abuse. Given the overwhelming prevalence of histories of abuse among women—especially Indigenous women (Heidinger 2022)—the possibility of abuse must always be investigated. In Helen's case, the need for legal expertise in the area of men's violence against women was acute because there was no doubt she experienced severe abuse: her first lawyer (Kevin) had already secured an expert report that concluded she experienced Battered Woman Syndrome and had planned a self-defence trial strategy.

When I am asked to assist with a case, I first arrange a meeting with the individual in order to explore their history of abuse. I usually ask her to explain what happened that resulted in her being in the situation—facing murder charges, a life sentence, et cetera. I also explain that, if I am to be the best help possible, I need to know all of the details—the good and the bad. But, more importantly, I need to know the ugly—the worst things that happened, who else might know about the incidents or issues, and what they think others may say about them and why. To a woman, this open approach has always resulted in more information than is ever contained in the official files. The information I receive includes both positive information and less helpful information that is nonetheless necessary in order to mount a successful argument—whether for a trial, sentencing, appeal, or conditional release.

It may take time and extraordinary commitment from a defence lawyer to gain the trust of an abused woman such that she is able to share her experiences of abuse. If a lawyer is unable to establish this trust, they must seek the advice of others with more relevant expertise. Such individuals may include other lawyers, retired judges, academics, and professionals with expertise in the area of violence against women. Working in conjunction with anti-violence advocates and those trained in journalistic investigative techniques can also be of significant assistance to help identify and develop plans to address all legal and practical issues.

As happened here, as well as in other cases involving women in Canada and around the world,<sup>4</sup> too often, the first time a more complete portrait of the woman and the circumstances of her life are made public is thanks to the work of investigative journalists. The public was rightly outraged by the sentence Helen received, and the calls for justice mounted with every new report in the media. A significant contribution was made by Jana Pruden's careful and sensitive work with Helen, which culminated in a front-page national news article (2022) and a podcast (2023). Although her first lawyer, Kevin, and Mona sought out much of the same information, Jana was able to assist Helen to reveal details that few of us knew—details that some of us had been requested be kept confidential.

While it was extremely heartening to see the many expressions of support from family, community, and members of the public throughout Canada and internationally, Helen is a very private person. The public attention occasioned by the inadequate defence and subsequent successful appeal of her sentence has caused her some discomfort. Yet this attention has also provided vital validation of the context that gave rise to her involvement in, and acceptance of responsibility for, the death of her abusive husband. Predictably, now, as the reality of her life, the law, and the inadequacies and injustices of our legal system sink in, Helen also wishes she had pushed for more...

**Helen Naslund:** Only now is it starting to set in that I was failed by so many, all my life. I am grateful to be out of prison, but I am still not free.

As Kim successfully argued to the parole board in December of 2022, the Correctional Service of Canada's initial assessments of me appeared to be significantly influenced by the later discredited opinions of the sentencing judge. Eventually, my parole officer, psychologist and others involved in the correctional management of my case expressed support and admiration for the efforts and progress I made engaging in programs, seeking out support, and addressing past trauma.

And, despite my CMT having last minute cold feet about supporting my release, Kim urged that I still proceed with my application for day parole to the home of my sister, Sharon Heslop. I was so anxious, and I was very worried about proceeding, but I did my best by drawing on the support in the local community and across the country.

At the hearing, Kim highlighted that I had complied with my correctional plan and had completed all programs suggested by my CMT. She testified that my CMT, the police, as well as countless members of my family, friends, and potential employers, saw me as no risk to public safety. She also pointed out that before sentencing I was out on bail for over three years without issue. The police recognized my lack of risk to public safety by requiring, other than monthly check-ins, virtually no supervision for approximately half of the time I was subject to bail conditions.

Kim also discussed the reality that my sister Sharon, who was offering to provide me a place to live on day parole, had also been a victim of spousal abuse. Sharon is intimately familiar with my traumatic life experiences, my conviction with respect to the death of my abusive husband, Miles, as well as my subsequent participation in attempts to conceal the crime. Unlike me, however, with the assistance of her friends, Sharon was able to escape her relationship. And, despite having to completely uproot her family and spend a significant amount of time in hiding, Sharon and her daughters were able to successfully rebuild their lives, and were generously offering to assist me to similarly rebuild my life in the community.

**Kim Pate:** Thanks Helen. We also made sure the parole board was reminded that assessments by the two psychologists, Dr. Shelly Bernard and Dr. Pugh, confirmed that at the time of the index offence, for some 27 plus years, you had been subjected to physical, sexual, and mental abuse. You were a battered woman who, after attempting to escape your husband by fleeing, were subsequently imprisoned by him in your home for more than a week and only released to resume work because you were the primary economic provider for your family. Although you did several times attempt suicide, you never again attempted to leave, as Miles had convinced you that should you ever try again, he would hunt you down and kill you, your sons, and other family members.

As Ms. Bernard concluded in her June 24, 2022, Psychological/Psychiatric Assessment Report, although you are now aware of other strategies and supports available in the community, at the time and in retrospect, you understood that your situation was one of ‘kill or be killed’. At the time, you could see no other means of defending yourself or your sons.

As a result of the isolation to which she was subjected for the better part of three decades, Helen had very little intimate contact with family or friends. She was only permitted by Miles to be outside of the home for work and such absences were obsessively monitored and controlled by him. Helen has since reconnected with many previous acquaintances and has made new friends. She also enjoys the support of her family who are eager to assist her process of community integration.

I have had the privilege of meeting many members of Helen’s family, her employer, clients, and community of supports. Considering my knowledge of the details of Helen’s case and current circumstances, my 40 plus years of working in and around the criminal legal and penal systems, and my expertise with respect to these matters, it is without hesitation that I continue to support the exoneration of Helen Naslund.

**Helen Naslund:** I am now on full parole, living on my own, working more than full time, reconnected with family and friends, and I have my kitties, Star and Jewel, and now my horse, Candy. I did my first barrel race yesterday (December 30, 2023) since getting out and us two nags did okay. I was worried I would make a fool of myself, but we did alright. Other than health issues and another almost six years on parole, things are good.

**Kim Pate:** The next step? A conviction review for Helen!

**Elizabeth Sheehy:** My role in Helen’s struggle for justice is small compared to the other participants, but I am so very grateful to have had the opportunity to support Helen’s case in any way I could. I first heard about her on November 4, 2020 when Jonny Wakefield, a journalist for an Alberta paper, the *Edmonton Journal*, contacted me for comment on Helen’s sentence. He was the first to report on Helen’s case, and remained the main media voice informing the public about her case from her bail hearing through to her release on parole. It was easy for me to confidently state for Wakefield’s article (2020b) that her 18-year sentence was extraordinarily punitive, especially for an abused woman, in comparison with those received by other abused women who plead guilty to manslaughter. My comment was based on my study of 91 cases where abused women killed their male partners in the period 1990–2005 across Canada (Sheehy 2014). Among them, 49 women pled guilty to manslaughter: their average sentence was just under two years of incarceration, with 18 women receiving no jail time at all, rather suspended sentences or ‘house arrest’ (Sheehy 2014: 298). The longest sentence I found was 10 years, meted out to one woman, making Helen’s sentence an outlier by a very large margin. Even in comparison to sentences received by violent men who kill their female partners,<sup>5</sup> Helen’s sentence was shocking.

Soon after, I conferred with my colleague and friend, Kim Pate, then worked with former judge, Lynn Ratushny, to write an opinion piece (Sheehy and Ratushny 2020), hoping to gain a broader audience and to push Alberta’s Attorney General to act. From this piece, I received emails from many people, including several strangers, expressing their shock and dismay over Helen’s sentence. Matthew Behrens, an activist who spearheaded a massive public campaign for Helen, used this piece as the basis for his international petition, signed by 22,000 people by the date of the appeal (*R v Naslund (2022)* fn 73). Thereafter, I did many interviews in the period 2021–2023, commenting on Helen’s case and, I hoped, raising public awareness about the injustice Helen experienced as a battered woman. I spoke with Wakefield again several times, as well as journalists from three different national news outlets. I did lengthy interviews for a detailed piece in *Chatelaine* (Frangou 2022), a Canadian women’s magazine, and for Jana Pruden’s award-winning<sup>6</sup> piece for national news in *The Globe and Mail* (Pruden 2022). I also participated in national radio (Galloway 2022) and, much later, in Jana’s podcast on Helen’s case, which was Apple’s top podcast for an extended period in both true crime and general categories and was named one of Amazon Canada’s best podcasts of 2023 (Amazon n.d.).

When Kim arranged for Helen to meet Mona, and Mona took on the case, Mona asked me to provide an affidavit regarding my views about Helen’s sentence, my research regarding sentencing norms for battered women who kill (2014), and the reaction among the Canadian public to Helen’s sentence. This affidavit was submitted in support of Mona’s argument that the lengthy sentence shocked the conscience of many Canadians, and arguably caused a loss of confidence in the justice system (*R v Naslund (2022)* fn 67). There is no trace in the decision of any impact this affidavit may have had. In fact, the dissenting judgment asserted that it was an irrelevant ‘personal opinion’ whereas the court had to determine the objective issue of whether the sentence brought the administration of justice into disrepute or was contrary to the public interest (*R v Naslund (2022)* para 247)—but of course Mona left no stone unturned.

I began corresponding with Helen, sending her newspaper articles about her case, as did Matthew and people from across Canada and around the world, buoying her spirits (we hoped) and reminding her that her incarceration was unjust from the standpoint of many Canadians. All in all, I think Helen's sentence reduction and early release would not have been possible without this extended, extensive post-conviction campaign. Media, and social media, spear-headed by Matthew, played a huge role in generating public and individual support for justice for Helen, and none of it could have succeeded without Kim's expertise and advocacy within Edmonton's prison and parole system, without Mona's brilliant appellate intervention, and without Helen's courage and capacity for hope.

Yet it is incredibly daunting, when considering the enormity of the effort required to change one woman's outcome, to imagine how we can possibly respond to or—better yet—prevent other abused women from experiencing this injustice. We need a systemic response that can be activated before trial as well as post-conviction. Perhaps Canada needs a National Clearinghouse for the Defence of Battered Women, modelled on the US example, as a way to collect and share resources, educate defence lawyers, and provide support for individual women.

**Matthew Behrens:** I first heard about Helen through the serendipity of a Google news algorithm that plopped the story of her 2017 arrest into my news feed (CBC News 2017). Hidden behind the boilerplate language that disappears and exceptionalizes the epidemic of male violence against women—for example 'we're by and large a very peaceful community,' 'it comes as a shock' (CBC News 2017)—were the unspoken words of Helen and her son, Neil. As a community advocate whose work includes coordination of a loose-knit network that supports women criminalized and punished when they defend themselves, I sensed there was something more to this story than the sparse but salacious 'true crime' details about to emerge.

I tracked down Helen's then lawyer seeking further information and, if Helen felt it warranted, offering personal and community support. Sadly, I received no response, and later learned that Helen never knew about the note. In my experience, when trauma-informed lawyers work with community groups and advocates in sync with a legal strategy, it can benefit the individual in jeopardy. Indeed, accompanying someone who is often incredibly vulnerable and inexperienced in dealing with the legal system provides them with a sounding board, another set of eyes and ears to assist them in understanding what is happening in lawyer-client discussions. In the lead-up to the joint sentencing, it appears that Helen had neither.

It was not until I read the 2020 news of Helen's outrageous 18-year sentence (Wakefield 2020a) that I tried again, reaching out to counsel (who did not return multiple emails or phone calls) and to Helen's Facebook page in the hope whoever might be monitoring it would respond.

At the time, the best public source of information about the sentencing was provided by the *Edmonton Journal's* Jonny Wakefield (2020a), whose follow-up story (Wakefield 2020b) featuring the powerful voice of Helen's eldest son, Wes, described the war zone that was their home. I asked Wakefield to pass along a note to Wes, letting Helen's son know that I admired his courage in speaking up about something so painful and personal. I shared my belief that Helen and Neil were unjustly sent to prison with disproportionate sentences when all of the case law (as so meticulously documented by Elizabeth Sheehy in *Defending battered women on trial* [2014]) pointed to far less severe outcomes, if not outright acquittals, based on self-defence.

I also reached out to women on the front lines of the Violence Against Women sector (including Sheehy) for their insights and advice on how best to approach a public campaign demanding an appeal of the sentence. A core concern was not having been able to speak with Helen about how she'd feel about such an effort. I learned there were discussions among a variety of advocates about next steps and, while I awaited their outcome, I produced a column on Helen's case for the popular progressive news site, *rabble.ca* (Behrens 2020). The story was widely shared and I received significant feedback, including questions about whether there was a petition seeking justice for Helen. I was ready to start one, but still felt uneasy because I had yet to speak with Helen or her sons. That conundrum was solved thanks to the publication of Sheehy and Lynn Ratushny's opinion piece (2020), which situated compelling questions raised by Helen's plight in the context of what was in the public interest and on the public record. I received permission to utilize their piece as the basis for a petition and started sharing. As signatures and supportive comments began to grow, I took a chance and wrote to the only women's institution where I thought Helen might be held, and sent letters to Neil care of all Alberta penitentiaries, hoping one of them would get to him. I also received a welcome call from Kim Pate, whom I'd never met, but whose work I had admired for years.

My letters explained why I was interested in accompanying them on the next stages of what I hoped would be a journey for justice. I had spent five years in the 1990s as the co-organizer of Men Walking Against Male Violence. Formed after the worst domestic terrorism incident in contemporary Canadian history—the Montreal massacre of 14 women engineering students by a misogynist who declared he was 'fighting feminists'—we spent each year walking from town to town across Ontario, speaking



in schools and churches, holding public events, and educating and challenging fellow men to end male violence against women while raising funds for local shelters and survivor support services. During those years, I was particularly struck by the remoteness and limited resources in the kinds of rural communities that Helen had known her whole life.

My subsequent years leading social justice retreats and developing theatrical works with a focus on ending male violence led to the founding of Women Who Choose to Live, which has worked with women in Canada and the US. The campaigns have included advocacy for Marissa Alexander (Behrens 2013) and Ashley White (whose case was heard by Justice Lynn Ratushny) (Behrens 2013), Kelly Savage (Law 2014), KT and MM<sup>7</sup> (women sought for extradition after fleeing with their kids from abusive spouses) (Behrens 2018), and Indigenous writer and activist, Dawn Walker (Free wrongfully jailed Indigenous writer). The first time Helen called, she was understandably distant and cautious. As an intensely private person, she was uncomfortable with being in any spotlight but figured she had nothing to lose if people were saying there was a chance to turn things around. She'd heard about my letter to Neil and that I had also spoken with Wes. I said we would never do anything without her consent and discussed how we could build support through outreach and public statements. I also asked if she had any pictures we could share since the only public image of her to date was a blurry shot of her barrel racing. It later struck me, after being in touch with Helen's sisters, how few family pictures (which normally chronicle happy moments of togetherness) existed. Thankfully, there was a fairly recent shot of Helen cradling one of her grandkids that showed in her face the love and compassion that are Helen's solid core.

We maintained an almost weekly phone connection discussing challenges she was facing behind bars, how her family was coping, Neil's pending parole board hearing, and how the campaign was progressing (Neil also called weekly, and funds were sent to both mother and son for phone cards and canteen expenses). While we shared a common love of country music (Helen was thrilled to hear that we got Alberta's own country music sensation, Paul Brandt, to retweet her petition), I also learned a lot about Alberta farming culture, such that my Google search history now includes 'mutton busting'.

Knowing how isolating prison life can be, I asked if Helen would be alright with receiving letters. She was, and a massive pen pal exchange began, with scores of people across the country striking up a meaningful correspondence with someone they'd never met but whose circumstances were sadly all too relatable in many of their own lives. Helen was overwhelmed with the support—she did not think anyone would care about her, especially after reading the newspaper reports on her sentencing—but what she had endured struck a national nerve. I heard weekly from correspondents thrilled that they'd received an eight-page letter from Helen, who explained to me that she was raised such that, if someone was going to write her a lengthy letter, then she damn well owed them a similarly detailed response. Writing letters was a morale booster that kept her going through some very long nights, and her letters often provided solace and comfort to correspondents dealing with their own difficulties. 'I feel like I've found a true friend,' one 80-year-old wrote to me after opening one of Helen's letters.

Many of those letter writers wrote to support Helen in advance of her Parole Board of Canada hearing, and dozens attended the Court of Appeal and Parole Board hearings too. As organizational letters began to come in from women's support organizations across Canada, the Gender Equality Research Organization in Afghanistan wrote one too, acknowledging Canadians' concerns about the rights of women in their country while expressing shock at Helen's sentence. They added, with no small sense of irony, 'We are more than happy to offer a helping hand to you when an injustice has happened in your country'. A leader of that group, Farzana Adell, would eventually have to go underground in a third country after the fall of Kabul (Laucius 2022). But in a beautiful show of international solidarity, as she hid out from the Taliban, Farzana often asked after Helen, much as Helen sought updates about Farzana. Farzana is still hoping to come to Canada as we seek other pathways to save her from certain death in Afghanistan.

While such letters were appreciated—and went into the application for Helen's appeal—I confess to being disappointed that numerous organizations never responded to requests for support statements that we even offered to draft on their behalf. In addition, letters and phone calls to self-described progressive and/or feminist politicians, including in the Alberta NDP, went unanswered. It was a sobering reminder of the sometimes fearful state of an always fragile women's sector, so heavily reliant on fickle government funding and fundraising support from relatively conservative community groups that might find Helen's case too 'difficult' for their liking.

Meanwhile, solidarity events like a Mother's Day for Helen campaign (Behrens 2021)—which combined posting Selfies of Support and sending cards to Helen and letters to the Alberta Attorney General in support of an appeal—helped raise awareness of the injustice Helen and her loved ones were enduring. They also helped reclaim for Helen certain holidays associated with bad memories because they had never been celebrated in the house of horrors.

Meanwhile, as Mona worked on the appeal and public awareness continued to grow, journalists like Christina Frangou (2022) and Jana Pruden (2022) produced superb award-winning stories about Helen that highlighted her case within a broader context of the sharp increases in male violence against women during the pandemic.

Despite all these signs of progress—including Neil’s release on parole—Helen remained anxious, always asking what would happen if things did not go her way at court. Helen also continued to worry that, with each burst of public exposure, people would attack her. I reassured her that in all my years of campaigning, she was the first person whose case had never drawn a single negative response.

A highlight for so many of us was watching Mona brilliantly argue the appeal via Zoom. Group chat comments ranged from enthusiastic (‘Finally, the lawyer Helen should have had all along’) to shock at the appalling ignorance of the two male judges on the panel. Mona’s responses to them were superb, and we were left feeling strongly that the one woman judge was on side and it came down to whether one of the men would show a bit of courage and legal acumen.

The memories of working with Helen and her remarkable support community will always have a special place in my heart. Such strong bonds have been created that there’s an informal ‘Helen’s News’ network, where someone will write excitedly with the news that, for example, Helen was finally able to get a horse (something denied to her over three decades of domestic captivity). Equally important is the lesson and critical example that, together, we can challenge systems of oppression against seemingly impossible odds and free someone from the patriarchy’s iron bars and concrete walls while producing a path-breaking legal precedent too.

Since I’ve known Helen, her voice has grown fuller as the weights upon her have lifted. The day she got out, she called from her sister’s car on the way to a celebratory dinner. She sounded like the Helen she had always longed to be and could now embrace. She was finally free.

**Mona Duckett:** Before I was contacted by Senator Kim Pate inquiring about my willingness to provide legal advice to Helen Naslund, I knew about her case only through media coverage. There are limitations to what the media knows, or can report, so I never judge the fairness of a court outcome from media coverage alone. But it was clear from what little I read that the case had attracted broad public concern. Shortly after Ms. Naslund’s 18-year sentence for her guilty plea to manslaughter for killing her abusive husband, community advocate Matthew Behrens started an online petition calling on Alberta’s Justice Minister to initiate an appeal of her plea and sentence.

When Senator Pate called, Ms. Naslund needed independent legal advice about any possible remedies available to her. Prisoner access to lawyers was challenging at the time amid early 2021 COVID lockdowns at jails. Ms. Naslund needed advice from someone other than her trial lawyer who was conflicted, having negotiated the ‘sentencing bargain’ on her behalf.

The role of a lawyer is not just to provide a client with the legal knowledge and forensic skills a case requires, but also independent and objective advice, uninfluenced by emotion, outrage, or any other conflicting interests. The advice should consider the client’s best interests, and the risks and benefits of legal steps that might be taken. Ms. Naslund’s case was complete at the trial court level, so any next steps by her would have to be proactive, not reactive, placing an onus on her to establish a legal wrong warranting a remedy.

One of the possible legal routes on which Ms. Naslund needed advice was an appeal of the trial level outcome—her guilty plea or her sentence. Taking such steps involved possible risks and benefits to her and her son, Neil, who had been co-accused with her at the trial level. She needed to weigh those risks based on legal advice, not public opinion. Many people who commented in the online petition expressed outrage that she was even charged with killing her abuser.

Ms. Naslund instructed us to seek permission to file a late appeal from her sentence and, in that context, I became her counsel. She was appealing from a sentence imposed by the Judge, which the defence and prosecution lawyers had jointly agreed was the appropriate one.

Canadian lawyers know that joint submissions are usually accepted by judges. Many cases in the criminal justice system are resolved in this way because the lawyers have full knowledge of case facts, challenges in proof, and risks of taking cases to trial. Lawyers are trusted to know all the facts and the law, and to negotiate a proposed outcome that is in the best interests of each of their clients. A judge should not reject the lawyers’ joint submission unless it is contrary to the public interest or brings the administration of justice into disrepute. But how could that be established in any given case? How could it ever be shown that faith in the administration of justice might suffer because of a case outcome?

Helen Naslund's case had unique features which most 'joint submission' cases don't have. She was clearly a battered woman, even though self-defence was not advanced to justify her killing. Battered women who face the prospect of a life sentence for murder encounter many pressures to avoid the gamble of such a sentence in favour of the certainty of a fixed term sentence on a guilty plea to a lesser charge. Taking a murder case to trial involves risks. It also means having to testify publicly about the treatment experienced at the hands of the abuser and be challenged by the prosecutor about the truth of that story. Jurors and judges may not understand why she remained in the relationship, or acted as she did in her defence. And before summoning the courage to speak publicly at the trial, she must trust her lawyer and perhaps a psychologist, and fully describe for them the environment in which she lived and why. To do that, she must first accept that her lived experience is in fact relevant, that there are no other confidences to be protected, and that she is not deserving of any of the abuse she suffered.

In Ms. Naslund's case, the stringent legal test for a successful attack on the joint submission aligned somewhat with the public campaign and petition. Responses to the petition came from across the globe. People expressed outrage at the way in which Ms. Naslund was treated by the justice system, including the sentence she received. We hoped the petition response might help a court to find that the case outcome was contrary to the public interest, or that it brought the administration of justice into disrepute.

Public interest and the public's faith in the justice system cannot be accurately gauged by the responses to an advocacy petition. In the right case, a litigant may have the resources to engage an expert to conduct a statistically valid public survey where the participants are fully informed of the relevant facts. But I know of no case in which a litigant has successfully obtained or adduced such evidence. Nonetheless, in Ms. Naslund's case, we attempted to introduce the petition started by Matthew Behrens as new evidence on the sentence appeal.

We as counsel could never have started or encouraged such a petition to advance her appeal, but we attempted to use the work begun by others. Lawyers are discouraged from making or encouraging public comments about cases that are still to be decided by a court. The *sub judice* rule, literally 'under a judge,' reminds lawyers that cases before a court are to be decided in the courtroom, based on admissible evidence, not based on public opinion or extra-judicial information. The intent of the rule is to ensure trial fairness, so no jury or judge is influenced by extraneous information when deciding the case.

Lawyers also have other considerations when it comes to public comments about cases. Information a lawyer receives about a client and her case is confidential. Speaking publicly risks the release of confidential information. The lawyer is also required to act on client instructions and act in the client's best interest. Public comment may require client authorization, and the consequences of speaking publicly cannot be easily predicted.

In Ms. Naslund's case, we tendered an affidavit from Matthew Behrens attaching the petition comments as new evidence. But the majority of the Court of Appeal found no need to deal with its admissibility. Ms. Naslund's appeal was allowed because the sentencing Judge applied the wrong test in assessing the propriety of the joint submission put before him. The Appellate Court found that the 18-year sentence accepted by the Judge did not adequately account for Ms. Naslund's experience as a battered woman, which reduced her moral blameworthiness in killing her abuser. As stated at the beginning of this piece, the sentence was reduced to nine years' imprisonment.

I can draw no conclusions as I reflect on the impact that the public campaign begun by others may have had on our success in Court. Judges live in the real world and would likely be aware when there is intense public interest in a case, whether or not it was tendered as possible new evidence. Judges should always be concerned about the public's faith in the system by delivering reasons that are clear, comprehensive, and fair. But there may be additional considerations informing the judge's work when a case involves important but misunderstood issues, such as intimate partner violence and coercive control.

The author of the court's majority opinion, Justice Sheila Greckol, spoke eloquently in the decision about the need to view cases of battered women who kill their abusers in their broader context—the reality of domestic violence. Citing horrendous Canadian femicide statistics, Justice Greckol urged sentencing judges to consider the existential risks women face because of domestic violence (*R v Naslund (2022)* paras 116-18). That reality impacts a woman's moral blameworthiness when they kill to survive.

The willingness of community advocates and legal scholars to speak out after the Naslund sentencing encouraged members of the public to express their views and offer support to and for Ms. Naslund. That in turn seemingly encouraged Ms. Naslund to share her personal experience more publicly. That story, as shared with journalist, Jana Pruden, combined with the court's observations about the reality of intimate partner violence, seem to have increased local attention to this serious social issue. I remain optimistic that, as a result, more than one abused person now has been better informed to find resources and support,

more than one layperson who may be called to jury duty will be open to understanding a case of self-defence, more than one judge assessing guilt or sentence in a battered woman's case will consider the legal impact of that reality, and lawyers dealing with battered women caught up in the justice system will be more aware of the significance of a client's experience of domestic violence.

**Jana Pruden:** I first reached out to Helen Naslund by letter after hearing about her sentencing in the news in the fall of 2020. In my 25 years as a reporter, I had covered far too many domestic homicides to count, nearly all of which had involved women and children as victims of male perpetrators. Like many people around the country, I was immediately shocked at the length of Helen's sentence, and I knew there must be much more to her story than was put on the record in court, and in the initial news reports.

Writing to Helen in prison, I told her that I believed her family's experience could help other women and families, and even lead to changes that may affect how other cases are treated by the courts in the future. I asked if she would consider letting me tell her story in a more in-depth way.

After her sentence appeal, and another letter or two from me, Helen eventually reached out through her lawyer, Mona Duckett, and agreed to do an interview. The three of us sat down together at the Edmonton Institution for Women in April 2022, after the period to appeal her reduced sentence had passed.

Telling your story to a reporter is a very courageous act, and it requires a huge amount of patience and trust. Though it was clearly very difficult and uncomfortable for Helen to be in the position of being interviewed, it was equally clear that she was determined to share her own experience if it could do some good for others.

After a series of long and intense interviews with Helen, and other interviews with relatives, friends, and experts (including the co-authors of this paper), I produced a longform written feature about Helen that ran in *The Globe and Mail* in December 2022 under the headline, 'In her defence' (Pruden 2022). In the fall of 2023, we launched an eight-part podcast series of the same name (The Globe and Mail 2023), which gave us the time and space to look more in-depth into the legal aspects of Helen's case, including the history of the use of Battered Woman Syndrome in support of self-defence in Canada.

The response to these projects has been overwhelming, both in terms of numbers of readers and listeners, and in their deep, emotional responses to Helen's story. I think this shows both how profoundly Helen's individual story connects with people, and also how many people have suffered—or are still suffering—the effects of intimate partner violence in their own lives.

I have received countless letters from survivors of domestic violence who said they felt seen and understood by Helen's experience in both the written and podcast versions of *In her defence*. As one woman wrote, 'It's like you've written some of my family's story.' Another wrote:

Though the topic and story hits me hard each week, I am also anxiously awaiting every episode. I'm a social worker and my passion lies with advocating for women and femme persons and children who are living in the context of IPV and/or GBV. It also hits close to home as I'm navigating post-separation violence myself, and am trying to stay safe.

I also heard from lawyers who said Helen's story has changed their practice, and from professors who said *In her defence* would become part of their curriculum. I heard from experts and advocates who work with survivors about the importance of Helen's story, and I heard from many everyday people who said they now understand more about the complex dynamics of domestic violence, and the way police and legal systems can fail survivors:

I was shocked to learn of the prevalence of domestic abuse especially in rural Alberta - where I have lived most of my life. This has taught me to be ever vigilant to those women around me and to look for signs of their nightmare that they might be living so I can help. Hearing Helen and Wes tell their story made me realize my own immense privilege of growing up in a safe, loving home. It is heart wrenching that so many people are not guaranteed that in life.

I have always believed Helen's case provides important insight into the impossible situation facing many women living with intimate partner violence, and illustrates how police and court systems can be stacked against them.

But I also think her story shows the power of what individual people can do when systems fail. In Helen's case, those individuals included experts, lawyers, activists, and people who signed petitions or became her pen pals and friends, each moved to action by what they saw to be an injustice, and doing their part to help make it better.

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<sup>1</sup> For a full discussion of the power imbalance that can render these ‘agreements’ coercive, see Her Honour Judge Lynn Ratushny, *Self-defence review final report* (Ratushny 1997: 160-63). See also *R v Naslund* (2022) at paras 126-29.

<sup>2</sup> First degree murder is the most serious form of murder under Canadian law. It requires proof of planning and deliberation and results in a mandatory life sentence of imprisonment if a conviction ensues, with no possibility of parole for at least 25 years. In contrast, manslaughter carries no mandatory minimum sentence unless it is committed with a firearm, in which case there is a four-year minimum sentence.

<sup>3</sup> *R v Kay*, Transcript of Proceedings at Trial, QBC No 8 of 1994, Queen’s Bench of Saskatchewan, Regina, discussed in Sheehy 2014: Chapter 5.

<sup>4</sup> *R v Kina*, Qld CA No 221, 1993. For a discussion of how the exculpatory evidence was submerged by Robyn Kina’s lawyers, and how the wrong was eventually righted, see Ford and Auty (2004).

<sup>5</sup> Two examples specific to Alberta are 10-year sentences to a man who, like Helen, concealed the body of his wife after killing her (The Canadian Press 2019) and a batterer who killed his partner through 141 stab wounds (Grant 2024).

<sup>6</sup> Pruden’s piece was recognized by the Canadian Association of Journalists as best long feature: <https://caj.ca/congratulations-to-the-caj-2022-awards-recipients/> and was a finalist for the same award by the National Newspaper Awards <https://nna-ccj.ca/2022-nominees/>.

<sup>7</sup> In a horrific outcome, MM took her life after authorities apprehended and jailed her in Quebec (Behrens 2019).

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