Personal Background

1. Mr. Karbovanec was born in Winnipeg August 2, 1981. He is currently 27 years old. Since he was a very young child he has moved around the Lower Mainland.

2. At the age of two, his parents separated. His mother has been in a relationship with his step-father since shortly after the separation.

3. Mr. Karbovanec has since has had little contact with his natural father, last seeing him when he was 15 years old for an afternoon.

4. Mr. Karbovanec was never very close with his mother and step-father and was never made to feel like he was a part of their family.

5. At the age of 15, he left his mother's home and moved in with his maternal grandparents.

6. Mr. Karbovanec has one sister, age 23, with whom he has a stable relationship.

7. Mr. Karbovanec spent the later part of his teenage years in Abbotsford where he graduated from high school in 1999. He was an average student.

8. After graduating from high school, Mr. Karbovanec worked in retail for a short period of time before joining an apprentice plumber program at the age of 19.

9. Unfortunately, as the result of a car accident and serious back injury he was not able to complete the apprentice program and left it when he was about 21 years old.

10. Since this time, Mr. Karbovanec has supported himself through the drug trade.

Mr. Karbovanec Motivation in Pleading Guilty

52. When Mr. Karbovanec was approached by the R.C.M.P. he was not under any obligation to enter into any arrangement and nor was he convinced that the Crown had sufficient evidence that would implicate him in this matter.

54. He was also motivated by a need to do whatever he could to try to set things right and what he has done to date reflects this motivation. He has a strong desire to come clean about his involvement in this tragic matter and by owning up to the part he played he hopes to offer whatever closure he can to the victims left behind.

Joint Submission as to Sentence

55. Mr. Karbovanec has pleaded guilty to 3 counts of second degree murder and one count of conspiracy to commit murder. Crown and Defence counsel have agreed to put forward a joint submission as to sentence of life with 15 years before parole eligibility.

58. Specifically in relation to this case and subsequent to Mr. Karbovanec's guilty pleas, R.C.M.P. Assistant Commissioner Peter German publically commented, at a news conference held on April 4, 2009, about the difficulty of investigating gang related cases:

> The cards are stacked against investigators and prosecutors when dealing with the tight world of gangs....[n]ormal investigative avenues are often unsuccessful, and many witnesses are reluctant to come forward. This investigation is no exception.

61. These types of crimes strike at the very heart of our society's long held sense of security. There can be little doubt that this loss of security is felt by virtually everyone in the Lower Mainland and the quick arrests and charges in this matter will to some extent alleviate that concern.

62. The policy reasons underlying courts granting support to joint submissions, otherwise known as plea bargains, lies in the importance of these negotiations to the conduct of the criminal law system in this country. In other words, there is significant social interest in

trial court judges, where appropriate, making every effort to ensure that a plea bargain is honoured.

63. The Supreme Court of Canada, in *Burlingham v. The Queen*, (1995), 97 C.C.C. (3d) 385, at least indirectly, has acknowledged that there is a role to be played by plea bargains in the Canadian criminal process with the following comments by Iacobucci J.:

> [23] ....I should mention that, to the extent that the plea bargain is an integral element of the Canadian criminal process, the Crown and its officers engaged in the plea bargaining process must act honourably and forthrightly. [emphasis added]

64. The Alberta Court of Appeal in *R. v. G.W.C.*, [2001] A.J. No. 1585 (Alta.C.A.) has also articulated the principles and concerns involved in the plea bargaining process and the deference with which trial judges should give joint submissions:

> [17] The obligation of a trial judge to give serious consideration to a joint sentencing submission stems from an attempt to maintain a proper balance between respect for the plea bargain and the sentencing court's role in the administration of justice. The certainty that is required to induce accused persons to waive their rights to a trial [*and co-operate to the fullest extent by giving evidence*] can only be achieved in an atmosphere where the courts do not lightly interfere with a negotiated disposition that falls within or is very close to the appropriate range for a given offence. 'The bargaining process is undermined if the resulting compromise recommendation is too readily rejected by the sentencing judge.' *R. v. Pashe*, (1995), 100 Man. R. (2d) 61 (C.A.) at para. 11. [italicized section added]
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> [18] Joint submissions, however, should be accepted by the trial judge unless they are unfit: *R. v. Sinclair*, [1996] A.J. No. 464 at para. 4 (Alta.C.A.), or unreasonable: *R. v. Hudson*, [1995] A.J. No. 797 at para. 1 (Alta.C.A.). In *R. v. Dorsey*, (1999), 123 O.A.C. 342, the Ontario Court of Appeal held at p.345 that 'a joint submission should be departed from only where the trial judge considers the joint submission to be contrary to the public interest and, . . . if accepted, would bring the administration of justice into disrepute.' That view accords with the position of the Manitoba Court of Appeal in *R. v. Pashe supra* at para. 12, that 'while a sentencing judge has an overriding discretion to reject a joint recommendation, 'there must be good reason to do so, particularly . . . where the joint recommendation is made by experienced counsel'.' It seems to me that a trial judge who fails to inquire into the circumstances underlying a joint sentencing submission would be hard pressed, indeed, to determine whether there was 'good reason' to reject that joint submission on the basis that it was

> contrary to public interest and, if accepted, would bring the administration of justice into disrepute.

65. Specifically, the Ontario Court of Appeal has held that a sentencing judge should not reject a joint submission unless it is contrary to the public interest and the sentence would bring the administration of justice into disrepute.

66. The rationale behind this high threshold is that it is intended to foster confidence in an accused, who has given up his right to a trial, that the joint submission he obtained in return for a plea of guilty will be respected by the sentencing judge and thus encourage such pleas.

68. The Ontario Court of Appeal decision in *R. v. Cerasuolo* [2001] O.J. No. 359 also provides an helpful analysis of the rationale behind the high threshold:

> [8] This court has repeatedly held that trial judges should not reject joint submissions unless the joint submission is contrary to the public interest and the sentence would bring the administration of justice into disrepute: e.g. *R. v. Dorsey* (1999), 123 O.A.C. 342 at 345. This is a high threshold and is intended to foster confidence in an accused, who has given up his right to a trial, that the joint submission he obtained in return for a plea of guilty will be respected by the sentencing judge.
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> [9] The Crown and the defence bar have cooperated in fostering an atmosphere where the parties are encouraged to discuss the issues in a criminal trial with a view to shortening the trial process. This includes bringing issues to a final resolution through plea-bargaining. This laudable initiative cannot succeed unless the accused has some assurance that the trial judge will in most instances honour agreements entered into by the Crown. While we cannot over emphasize that these agreements are not to fetter the independent evaluation of the sentences proposed, there is no interference with the judicial independence of the sentencing judge in requiring him or her to explain in what way a particular joint submission is contrary to the public interest and would bring the administration of justice into disrepute. [emphasis added]

69. Our Court of Appeal has largely endorsed the Ontario view, with the exception that in British Columbia there may be a broader category of reasons to find a sentence "unfit" as set out by Prowse J.A. in *R. v. Bezdan*, 2004 BCCA 215:

[15] I am in general agreement with the sentiments expressed in the second paragraph of the passage quoted [set out above in paragraph 6]. It is apparent that the administration of criminal justice requires cooperation between counsel and that the court should not be too quick to look behind a plea-bargain struck between competent counsel unless there is good reason to do so. In those instances in which the sentencing judge is not prepared to give effect to the proposal, I also agree that it would be appropriate for that judge to give his or her reasons for departing from the "bargain." I would not go so far as to say that a sentencing judge can only depart from the sentence suggested in the joint submission if he or she is satisfied that the proposal is contrary to the public interest, or that the sentence proposed would bring the administration of justice into disrepute. It is not clear to me that these two circumstances cover all situations in which a sentencing judge might conclude that the sentence proposed was "unfit". [emphasis added]

70.

71. Assistant Commissioner German also publically commented at the same news conference that "the arrests also impact seriously on one of the Lower Mainland's most prolific gangs, the Red Scorpions."

this sentence, at least in the minds of what the courts often call "right thinking citizens". Indeed, it may well be that the public would take a dim view of the courts limiting this important investigative tool by making co-operation by accused and others less attractive and thus allowing the risk to their security to continue..

76. We submit that a sentence such as that proposed in the joint submission will provide significant protection to the public. In all of the circumstances it is an adequate punishment and would adequately express society's denunciation of these crimes.

77.

78. As Mr. Karbovanec would tell you himself, he can not undue this terrible act, but it is his hope that his guilty plea will provide some small degree of closure to the families of the victims.

79. In all of the circumstances, we submit that the joint submission presented to this court is a fit sentence that ought to be followed by this court.