NOVA SCOTIA COURT OF APPEAL
Citation: ***R. v. Adams***, 2010 NSCA 42

Date: 20100513
Docket: CAC 313056
Registry: Halifax

Between:

Her Majesty the Queen

Appellant

v.

Peter Frederick Adams

Respondent

Judges:	Bateman, Fichaud and Farrar, JJ.A.
Appeal Heard:	April 1, 2010, in Halifax, Nova Scotia
Held:	Leave to appeal granted and appeal allowed per reasons for judgment of Bateman, J.A. Fichaud and Farrar, JJ.A. concurring.
Counsel:	James A. Gumpert, Q.C., for the appellant Warren K. Zimmer, for the respondent

Reasons for judgment:

[1] The Crown seeks leave to appeal and, if granted, appeals the sentence imposed by Castor Williams, J.P.C. on guilty pleas entered by Peter Frederick Adams in relation to certain charges on a multi-count indictment. Judge Williams' reasons for sentence are reported as **R. v. Adams**, 2009 NSPC 44.

THE OFFENCES

[2] In an Information dated June 26, 2007 Mr. Adams was charged with numerous counts of fraud; theft; break, enter and theft; and possession of stolen goods. He was later charged with one count of counselling another person to commit perjury. On December 5, 2008, after about 50 days of trial, the Crown accepted Mr. Adams' guilty pleas to a reduced number of the many counts, certain of which were a consolidation of several separate charges. In all Mr. Adams was sentenced for counselling perjury; break, enter and theft at Metro Storage; break, enter and theft at United Rentals; theft from LaFarge Construction; and eight counts of possession of stolen goods, again, some counts representing a collection of separate possessions. The details of the offences to which guilty pleas were entered follow.

Break and Enter at Metro Self Storage

[3] Between March 25 and 27, 2006 the respondent broke into several storage units at Metro Self Storage on Chain Lake Drive in Halifax. He carried out the offences by breaking through the gyproc walls connected to the adjacent storage units so as to avoid tripping the alarm which would have been triggered by entry through the storage unit door.

[4] Property valued at $190,332.86 was stolen by Mr. Adams during these break-ins. It was electronic equipment owned by Wacky Wheatley's, much of which was slated to go to one of the IWK Dream Homes.

[5] Of the total value stolen, $141,999 in goods was recovered at two locations. One portion was found by the police in a cube van located at 31 Cole Drive, which is the residence Mr. Adams shares with his common-law spouse, Ms. Susan

Holman. The other portion of the electronic equipment was recovered by the police from a cube van located at another search site. It was not disputed that all of the equipment was in Mr. Adams' possession.

Break and Enter at United Rental Premises

[6] On December 18, 2005 Mr. Adams broke into United Rentals, a Dartmouth commercial equipment and supply rental firm. The fence surrounding the business's storage compound was cut open and a $2,000 plate tamper (a piece of construction equipment weighing about 300 pounds) and three pails of kerosene were taken, for a total value of $2,450.

[7] The plate tamper was recovered on April 19, 2006 when the police executed a search of Mr. Adams' residence.

Theft From LaFarge Construction

[8] On August 19, 2005, Mr. Adams stole another plate tamper, owned by LaFarge Construction, from a construction site on the Purcell's Cove Road. It was recovered on April 19, 2006, when the police conducted a search of the house located at 42A and B Frederick Avenue in Halifax, located in an area of the house controlled by Mr. Adams. Along with the plate tamper were found many additional items which were the subject of a possession of a stolen property charge, described below.

Counselling Perjury

[9] This offence was committed between August 30, 2007 and September 19, 2007. During that time frame, Mr. Adams was released on a $100,000 recognizance awaiting trial on the many offences for which he had been charged in June 2007. Included in the charges were those involving the theft of two utility trailers from a retail outlet as well as a charge of possession of one of the trailers, as only one had been recovered to that point. The missing trailer was subsequently discovered at a work site in Truro and tracked to Mr. Adams who, on September 5, 2007, was arrested and charged with its possession as well. He was taken to Provincial Court, the Crown intending to apply to revoke his recognizance. The revocation hearing was adjourned first to September 10, 2007 and then to

September 19th. Between August 30, 2007 and September 19, 2007, continuing both before and after Mr. Adams was again committed to custody, he communicated with Charles Pare asking Mr. Pare to fabricate a story that this trailer was his and that Mr. Adams had unwittingly borrowed it from him without knowing it was stolen.

[10] At the sentencing hearing the Crown Attorney continued with the details of the offence, as outlined in his sentencing brief:

> . . . These communications while [Mr. Adams] was in custody occurred with the assistance of third parties who would facilitate three-way telephone calls eventually connecting [Mr. Adams] and Mr. Pare. [Mr. Adams] initial communications with Mr. Pare were for the purpose of Mr. Pare 'taking the charge' with respect to this trailer by way of providing this concocted story to Cst. Morgan. However, after [Mr. Adams] was taken into custody and the hearings were scheduled ...
>
> The hearings being, Your Honour, the bail revocation and the bail hearings.
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> ... [Mr. Adams] counselling of Mr. Pare focussed on Mr. Pare providing perjured testimony at these hearings for which he offered to pay Mr. Pare $3000 to $4000, $4000 if Mr. Pare was able to have the trailer eventually returned to [Mr. Adams]. The ruse further involved Mr. Pare telling the Court that he bought the trailer from a man on the Ross Road in the Cole Harbour area of HRM who was heading to Western Canada. Mr. Pare was further counselled to say that he loaned the trailer to Trevor MacDonald and that Mr. Pare affixed the license plate registered to [Mr. Adams], which was found on the trailer when recovered by Cst. Morgan, without [Mr. Adams'] knowledge.
>
> So just to be clear, Your Honour, if there is any confusion, when the plate was recovered by the police in the Truro area that had ... when the trailer was recovered, it had a license plate that was registered to Mr. Adams on it.
>
> Unbeknownst to [Mr. Adams], Mr. Pare became a police agent with respect to this matter between September 5, 2007, and September 14, 2007. Mr. Pare gave his consent for a wiretap authorization of his telephone where approximately 17 pertinent calls were captured in addition to his previous phone calls and other conversations with [Mr. Adams]. [Mr. Adams] counselled Mr. Pare to attend court in Truro for [Mr. Adams'] show- cause and revocation hearings and provide perjured testimony that the trailer was his. On September 19, 2007, immediately prior to the scheduled hearings, [Mr. Adams] was arrested at Truro Provincial Court on this charge and the accompanying charges on this information.

Possession of Stolen Goods

[11] Mr. Adams pleaded guilty to eight separate possession of stolen goods offences. Globally, these eight offences comprised 75 counts of possession of stolen goods rolled into eight counts. The first six counts, most of which were a consolidation of several counts, involved the possession of goods with the following, approximate pre-tax values: $24,500; $63,000; $22,700; $25,000; $4600 and $950. All items could be identified as deriving primarily from break and enters into commercial premises (including retail stores) or construction sites, some being from the same commercial establishment victimized multiple times.

[12] In order to highlight the gravity of these possession offences I have provided, in Appendix A to these reasons, the details of the two largest composite counts. The value of the property possessed by Mr. Adams in those two counts was $97,499 and $101,458.01. As is evident from the particulars, the recovered goods could be tracked to sixty-four robberies perpetrated as far back as 2003 and continuing through to April of 2006. The value of the property stolen in those robberies substantially exceeded that which was found in Mr. Adams' possession.

THE SENTENCES

[13] The total value of the goods that Mr. Adams was convicted of stealing or possessing was $690,000. For this collection of offences and for the counselling perjury he was sentenced to serve 42 months incarceration followed by twelve months probation and 150 hours of community service along with fines of $82,000. After double credit for pre-trial custody, Mr. Adams would actually serve seven months post-sentence custody.

ISSUE

[14] The Crown says the global sentence is demonstrably unfit for this offender and these offences, submitting that it inadequately gives effect to the objectives of deterrence and denunciation and reflects error on the calculation of remand credit. The Crown suggests that a fit sentence, taking into account totality, would be 8 years.

STANDARD OF REVIEW

[15] In fixing sentence a judge is exercising a statutorily authorized discretion under s.718.3(1) of the **Criminal Code**. As with other discretionary decisions, the standard of review on appeal is a deferential one. This standard has been articulated in a number of ways. As expressed by Macdonald, J.A. of this Court in **R. v. Cormier** (1975), 9 N.S.R. (2d) 687 at p. 694:

> 20 Thus it will be seen that this Court is required to consider the "fitness" of the sentence imposed, but this does not mean that a sentence is to be deemed improper merely because the members of this Court feel that they themselves would have imposed a different one; apart from misdirection or non-direction on the proper principles a sentence should be varied only if the Court is satisfied that it is clearly excessive or inadequate in relation to the offence proven or to the record of the accused.

[16] In **R. v. M.(C.A.)**, [1996] 1 S.C.R. 500; S.C.J. No. 28 (Q.L.), Lamer, C.J.C., for a unanimous Court, said:

> [90] Put simply, absent an error in principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors, a court of appeal should only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit. Parliament explicitly vested sentencing judges with a discretion to determine the appropriate degree and kind of punishment under the *Criminal Code* ...
>
> (Underlining in original)

[9] This deference applies whether the sentence arises after a trial or from a guilty plea.

ANALYSIS

[17] At sentencing the Crown sought a global period of incarceration in the eight to ten year range, effectively reducing what it submitted would be fit sentences for the crimes individually, to give effect to the totality principle. Mr. Adams suggested, in view of the fifteen months served in pre-trial custody, a “short, sharp” period of incarceration followed by 200 to 250 hours of community service. Counsel had agreed to a global fine of $10,000 but did not specify in relation to which offence it would be levied.

[18] In his reasons, the judge referred, generically, to the principles of sentencing. However, his remarks contain virtually no analysis as to how he concluded that the sentence of forty-two months' incarceration plus fines and community service was appropriate. He broke the components of the sentence down as follows:

> [21] As a result, considering the principle of totality and following the principles governing consecutive sentences and to ensure that the cumulative sentence does not exceed the overall culpability of the accused I sentence him as follows:
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> -counselling perjury, 6 months to run consecutive to any other disposition;
>
> -break enter and theft, count 289 - Metro Self Storage - 12 months to run consecutive and consecutive to any other disposition and in addition pursuant to s. 734, a fine in the amount of $20,000.00;
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> - break enter and theft, count 229 - United Rentals - 12 months consecutive and consecutive to any other disposition and, in addition, pursuant to s.734 a fine of $10,000.00;
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> - theft, count 181- Lafarge Construction- Fine of $2000.00;
>
> - on the following possession counts a total of 12 months to run concurrent and concurrent to each other and consecutive to any other disposition. And, in addition, pursuant to s.734 fines totalling $50,000.00 as follows:
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> count 89 - 12 months;
>
> count 128 -12 months;
>
> count 197 - 12 months;
>
> count 199 -12 months;
>
> count 205- 12 months;
>
> count 213 - 12 months and in addition pursuant to s.734 a fine of $20,000.00;

> count 224 - 12 months and in addition pursuant to s.734 a fine of $30,000.00.
>
> [22] With respect to count 294 - I will sentence him to 12 months incarceration to run concurrent and concurrent to any other disposition. And, pursuant to s.731 (1) (b) after any term of imprisonment a period of probation for 12 months on the following conditions . . .
>
> [23] In my opinion, and, in the set of circumstances presented, a fit and proper sentence would be, as calculated, a total of 42 months of incarceration with fines totalling $82,000.00. One of his counts will attract a period of probation of 12 months with 150 hours of community service work. However, as agreed by counsel, I will give him credit of 35 months for pre-trial custody. Thus, in effect the accused will be now be imprisoned for a further period of 7 months at the end of which he will be on probation for 12 months and will complete 150 hour of community service work. In addition, he will pay fines totalling $82,000.00 or time in default.

The Applicable Sentencing Principles

[19] The purposes and principles of sentencing are laid out in various sections of the **Criminal Code**. Deserving of particular focus on this appeal is s. 718.2(c) which provides that "where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh". This is the statutory source of what is commonly known as "the totality principle".

[20] In **R. v. M. (C.A.)**, **supra**, Lamer, C.J.C. [**C.A.M**.], writing for the Court, referred to the totality principle as a particular application of proportionality which is a fundamental principle of Canadian sentencing law. The **Code** provides:

> 718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[21] Lamer, C.J.C. describes the totality principle as follows:

> 42 In the context of consecutive sentences, this general principle of proportionality expresses itself through the more particular form of the "totality principle". The totality principle, in short, requires a sentencing judge who orders an offender to serve consecutive sentences for multiple offences to ensure that the cumulative sentence rendered does not exceed the overall culpability of the

offender. As D. A. Thomas describes the principle in *Principles of Sentencing* (2nd ed. 1979), at p. 56:

> The effect of the totality principle is to require a sentencer who has passed a series of sentences, each properly calculated in relation to the offence for which it is imposed and each properly made consecutive in accordance with the principles governing consecutive sentences, to review the aggregate sentence and consider whether the aggregate sentence is "just and appropriate".

Clayton Ruby articulates the principle in the following terms in his treatise, *Sentencing, supra*, at pp. 44-45:

> The purpose is to ensure that a series of sentences, each properly imposed in relation to the offence to which it relates, is in aggregate "just and appropriate". A cumulative sentence may offend the totality principle if the aggregate sentence is substantially above the normal level of a sentence for the most serious of the individual offences involved, or if its effect is to impose on the offender "a crushing sentence" not in keeping with his record and prospects.
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> (Emphasis added)

[22] In **R. v. Gallant**, 2004 NSCA 7, Cromwell, J.A., as he then was, described the totality principle with his usual clarity:

> [18] The purpose of the totality principle, said the Court in **R. v. Dujmovic**, [1990] N.S.J. No 144 (Q.L.)(C.A.) is to ensure that a series of sentences, each properly imposed in relation to the offence to which it relates, is in aggregate just and appropriate. (See also **R. v. ARC Amusements Ltd.** (1989), 93 N.S.R. (2d) 86; N.S.J. No. 331 (Q.L.)(C.A.). . . .

[23] In sentencing multiple offences, this Court has, almost without exception, endorsed an approach to the totality principle consistent with the methodology set out in **C.A.M.**, **supra**. (see for example **R. v. G.O.H.** (1996), 148 N.S.R. (2d) 341 (C.A.); **R. v. Dujmovic**, [1990] N.S.J. No. 144 (Q.L.) (C.A.); **R. v. Arc Amusements Ltd.** (1989), 93 N.S.R. (2d) 86 (S.C.A.D.) and **R. v. Best**, 2006 NSCA 116 but contrast **R. v. Hatch** (1979), 31 N.S.R. (2d) 110 (C.A.)). The judge is to fix a fit sentence for each offence and determine which should be consecutive and which, if any, concurrent. The judge then takes a final look at the aggregate sentence. Only if concluding that the total exceeds what would be a just and

appropriate sentence is the overall sentence reduced. (See for example, **R. v. G.O.H., supra** at para. 4 and **R. v. Best**, **supra**, at paras. 37 and 38)

[24] This Court has addressed and rejected any approach that would suggest that, when sentenced for a collection of offences, the aggregate sentence may not exceed the "normal level" for the most serious of the offences (see **R. v. Markie**, 2009 NSCA 119 at paras. 18 to 22, per Hamilton, J.A.).

[25] Very recently in **R. v. Draper**, 2010 MBCA 35, Steele, J.A. succinctly described the proper approach, as follows:

> 30 That procedure is for the sentencing judge to first determine whether the offences in question are to be served consecutively or not. Second, if they are to be served consecutively, then an appropriate sentence for each offence should be determined. Third, the totality principle should be applied to the total sentence thereby arrived at to ensure that the total sentence is not excessive for this offender as an individual. In effect, the sentence must be given a "last look." Fourth, if the judge decides that it is excessive, then the sentence must be adjusted appropriately. In some cases that might require a significant adjustment.
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> 31 In *R. v. Reader (M.)*, 2008 MBCA 42, 225 Man.R. (2d) 118, Chartier J.A. confirmed that this was the approach suggested by the Supreme Court in *R. v. M. (C.A.)* when it explained the totality principle found in s. 718.2(c) of the *Criminal Code*. He explained at para. 27 that at this stage of the sentencing process, the purpose of this last look is to ensure that the total sentence respects the principle of proportionality (set out in s. 718.1 of the *Criminal Code*) by not exceeding the overall culpability of the offender. The "last look" requires an examination of the gravity of the offences, the offender's degree of guilt or moral blameworthiness with respect to the crimes committed and the harm done to the victim or victims.
> ...

[26] Contrast this formulation of the totality principle with that endorsed by the Ontario Court of Appeal in **R. v. Jewell; R. v. Gramlick**, [1995] O.J. No. 2213(Q.L.). There, Finlayson, J.A. describes that Court's application of the principle:

> 27 In my view, the appropriate approach in cases such as the two under appeal is to first, identify the gravamen of the conduct giving rise to all of the criminal offenses. The trial judge should next determine the total sentence to be imposed. Having determined the appropriate total sentence, the trial judge should impose sentences with respect to each offence which result in that total sentence and

> which appropriately reflect the gravamen of the overall criminal conduct. In performing this function, the trial judge will have to consider not only the appropriate sentence for each offence, but whether in light of totality concerns, a particular sentence should be consecutive or concurrent to the other sentences imposed.

[27] In **R. v. A.T.S.**, 2004 NLCA 1, Rowe, J.A., writing for the Court, discussed these different approaches. He concluded that, where a judge gives effect to totality by first fixing the global sentence and then assigning the individual sentences to fit within the whole, s/he is more likely to pass a sentence which is problematic. As he observes, this formulation leads to confusion about the appropriate sentence for the individual convictions, had they been committed alone. It creates further difficulties where some but not all of the convictions are successfully appealed. In that instance, there is no guidance for the appellate court as to the appropriate sentence for the remaining offences. I would agree.

[28] Here, with respect, I would conclude that the judge did not turn his mind to the appropriate sentence for each individual conviction, but worked backwards from a global disposition. Although that methodology does not necessarily produce an unfit sentence, here it was an error in principle which, in fact, resulted in a sentence that is manifestly unfit (excessively lenient) for these crimes and this offender.

[29] As I have observed above, the judge provides a generic reference to the principles of sentencing in his reasons. Absent is any meaningful analysis of those principles as they apply to the offences and offender before him. For example, when one considers that a single break and enter offence attracts a benchmark sentence of three years (**R. v. McAllister**, 2008 NSCA 103), it is difficult to determine how he could have concluded that a total sentence of 42 months even with the addition of fines and community service, was fit for this collection of offences.

[30] To determine whether this seemingly low global sentence is, in fact, manifestly unfit I will consider what would be a fit sentence for the individual convictions, taking into account consecutivity and concurrency, and then take a last look to determine whether the resulting total sentence is excessive. Before doing so it is helpful to discuss the aggravating and mitigating factors.

[31] In formulating the sentence the judge referred to the aggravating factors:

> [15] At the heart of criminal law and the sentencing of an offender is the protection of society. Our whole society is affected by any criminal act as any crime perpetrated on any one of its members has a ripple effect that impacts upon the whole society in one way or another. Of great concern here is the number of victims, the value and type of the property and the period of time over which the crimes occurred. Also, there appears to be some elements of dare, arrogance, bravado and excitement in committing the offences. These were crimes of profit not of opportunity nor through poverty, substance abuse or addiction. Thus, it is incomprehensible that a well-off businessman like the accused with the responsibilities that he has and his well thought of community standing would engage in these criminal activities that adversely impact other businessmen and which he well knows will lead to his own disaster and disgrace.
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> [16] Here, in my view, the applicable sentencing objectives are denunciation, general and specific deterrence, rehabilitation and promotion of a sense of responsibility in the offender and an acknowledgement of the harm he has done to his victims and the wider community. Of these objectives, I think that specific deterrence and recognition of the harm he has done to the community are particularly important. This does not however mean that I have not factored in the other principles.
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> [17] In my opinion, the following aggravating factors apply in this case:
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> - the scale of the criminal enterprise and the value of the recovered property, estimated $690,000;
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> - the length of time over which the property was accumulated;
>
> - his re-offending while on bail;
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> - apparent crimes for profit and a well planned, somewhat sophisticated illegal enterprise.

[32] The judge found the following factors to be mitigating: A positive pre-sentence report; support for Mr. Adams in the community; no prior criminal record; and the guilty pleas.

[33] The “support for Mr. Adams in the community” was evidenced by “character reference” letters submitted by him for sentencing. The Crown

expressed concern about the content of those letters. The tenor of each of the four letters suggests that it is written as a general character reference and without the writer's knowledge of the criminal convictions. Indeed, one recommends Mr. Adams ".. . for any position or endeavor that he may seek to pursue", adding that "He would be a valuable asset to any organization." Another closes with the sentence: "He has always presented himself to be a honest and hard working business man whether it be on a personal or a professional level." A third describes him as being "...straight forward and professional in all of his dealings displaying both integrity and honesty" with all with whom he has contact. The fourth writes that he is "inspired by the professional way [Mr. Adams] runs his business, his genuine enthusiasm, his work ethic and his generosity...". Not one of the letters mentions sentencing, or criminal convictions or that it is written in anticipation of being presented to the Court. While the Crown brought this troublesome wording to the attention of the sentencing judge it appears to have escaped his notice.

[34] The extent of mitigation supported by the additional factors must be assessed in the context of the offences. That Mr. Adams had no prior criminal record is, with respect, more properly considered as the absence of an aggravating factor, given the length of time over which these offences were committed. These crimes were not representative of a momentary lapse in judgment or indicative of a short-term crime spree, where an offender might be granted some leniency. Mr. Adams' crimes speak of ongoing, long-term, organized, planned and targeted criminal activity which escaped police detection for a considerable period of time. In the circumstances, I would not consider the absence of a criminal record particularly mitigating.

[35] As for the favourable pre-sentence report, at the time of sentencing Mr. Adams was 38 years old and had been a self-employed business man for 15 years. He employed 50 people in his several businesses. Those include a billiards parlour; a bar; a video game rental business, a snow clearing business and the construction and renovation of business properties. He co-owns several commercial and residential rental properties. Mr. Adams estimated his monthly take-home income at between $8,000 and $15,000. He resides with his common-law wife and her son in a mortgage-free home. He has no health or substance abuse issues. Remarkably, he maintained that, until he sat through the preliminary inquiry, he did not appreciate the impact his criminal activity has had on the

owners of the stolen property. While the positive aspects of the pre-sentence report would be mitigating in the context of a single offence or brief spree indicative of a temporary lapse in judgment, the extent of mitigation relative to Mr. Adams' longstanding criminal activity is minimal.

[36] It would be my view that Mr. Adams' moral culpability here is significant. As a mature businessman with an enviable income, there is simply no explanation for his crimes apart from the obvious profit motive. The duration of the criminal activity; the number of victims; the value of the property stolen and possessed; and the fact that the only reasonable inference here is that he acted as a fence for stolen property, thus facilitating the underlying thefts all contribute to the high level of moral blameworthiness.

Break, Entry and Theft

[37] For each of these two offences the judge ordered a twelve month period of incarceration and fines of $20,000 and $10,000. The maximum sentence for this indictable offence, where not committed in relation to a private home, is 10 years (s. 348).

[38] In **R. v. McAllister**, **supra**, cited by the Crown at the sentencing hearing, this Court confirmed that the starting point for this offence continues to be three years' imprisonment. The benchmark derives from this Court's decision in **R. v. Zong**, [1986] N.S.J. No. 207 (Q.L.). The actual length of sentence may be adjusted up or down to reflect aggravating and mitigating factors. Both **McAllister** and **Zong** involved breaks into business premises.

[39] Mr. Adams argues that the offenders in **Zong** and **McAllister** were much more seasoned criminals with extensive records thus more deserving of the three year sentences imposed. Mr. McAllister was a relatively youthful offender with a significant record as a young offender but there would be some hope of his reform with maturity. He and two others had broken into the Amherst Justice Centre and stolen some cheques. This Court found no reversible error in the sentence of three years imposed by the trial judge. On the other hand, Mr. Zong was a mature offender who had spent much of his life incarcerated. After a trouble-free three years in the community, he and a friend broke into a pharmacy while intoxicated. They were looking for narcotics. The trial judge had sentenced Mr. Zong to 18

months. This sentence was increased on appeal to three years. It is significant that in each of **Zong** and **McAllister**, the three year sentence was imposed for a single offence. In any event, the benchmark was not set for Mr. Zong or Mr. McAllister in particular, but is a statement by this Court, that the appropriate starting point sentence for this offence is three years. Clarke C.J.N.S. said, at p. 433:

> This Court has frequently observed that it looks seriously upon the invasion of property by break and enter and it has expressed the view that three years' imprisonment is a benchmark from which a trial judge should move as the circumstances in the judgment of the trial judge warrant.

[40] The Metro Self Storage offence here was actually comprised of several break-ins at the same location. As I have said, these were targeted, planned and premeditated crimes where access to the property was gained through the walls of adjacent storage lockers thus avoiding the burglar alarms on the doors of the units. The value of the property stolen approached $200,000.

[41] While Mr. Adams is a first time offender, he is not youthful and, according to the information he provided for the PSR, had a significant legitimate business income; did not suffer from substance addiction and enjoyed a stable domestic relationship. In my view those factors are largely neutral, not mitigating and do not warrant a reduction from the benchmark. This offence would clearly warrant a meaningful increase above the three year benchmark taking into account the value of the goods; the obvious planning and premeditation; and the number of break in events contained within the charge. I would fix a five to six year sentence.

[42] While the value of the property stolen from United Rentals was far lower, it was, nonetheless, an invasion of property by break and enter. For this count alone, the absence of a prior record might warrant a reduction from the benchmark to two years.

Theft From LaFarge Construction

[43] Mr. Adams stole this property, valued at about $2300, in August 2005. It was recovered by the police, along with other property, in April 2006. The maximum sentence for indictable “theft under $5000” is two years (s.334(b)). For this offence, the judge set a fine of $2000. While no reasons are offered for

imposing a fine in lieu of incarceration, perhaps it was in the interests of totality. I cannot conclude that the fine here would be an unfit disposition viewing the crime in isolation.

Counselling Perjury

[44] The facts of this offence are reviewed above. Perjury is an indictable offence, carrying a maximum sentence of fourteen years (s.132 **Criminal Code**). By operation of ss. 464(a) and 463(b) the maximum sentence for counselling perjury is seven years.

[45] Perjury and counselling perjury, like obstruction of justice (s.139(2)), are committed with the goal of defeating the course of justice.

[46] It was the defence submission at sentencing that the theft of the trailers was not a particularly serious crime and would not have attracted much, if any, jail time. Therefore, counsel said, the perjured testimony would not have gained Mr. Adams a substantial benefit. Consequently, Mr. Adams should not receive a significant punishment for this charge.

[47] Of course that submission misses the point that Mr. Adams, although already arrested for a host of offences, by counselling perjury continued to flout the criminal justice system and was prepared to use any means to escape responsibility for his crimes.

[48] Counsel for Mr. Adams further suggested to the judge that the fact that the perjury did not, in fact, take place should mitigate sentence. I disagree. The offence was counselling perjury. Mr. Adams had completed the counselling. To his knowledge the witness was ready to testify as instructed.

[49] There is little helpful case law on the range of sentence for this offence. The circumstances of the cases cited bear no resemblance to those here. (**R. v. Crawford**, [1988] N.S.J. No.12 (Q.L.)(C.A.); **R. v. Hall**, [1993] N.S.J. No.115 (Q.L.) (C.A.) and **R. v. Corbett**, [2006] B.C.J. No.1211 (Q.L.) (C.A.)) However, **R. v. Crawford** is instructive on the nature of the crime where Clarke, C.J.N.S., wrote for the Court:

> The integrity of our system depends upon the honesty of those who are involved in it and the truthfulness of those who testify in its proceedings. Not only the appellant but the general public must be deterred from committing the offence of perjury.

[50] In **R. v. Kusnezoff**, [1991] B.C.J. No. 421 (Q.L.)(C.A.), after observing that perjury is a serious offence that strikes at the root of the judicial system, Lambert, J.A. noted:

> ... There ought to be a relationship between the sentence imposed for perjury and the crime in relation to which the perjury was committed.
>
> In addition, the nature of the perjury can affect the seriousness with which the offence is viewed. The most serious category is where the perjured evidence is being given to lead to the conviction of an innocent person.
>
> The second most serious category is where, as in this case, the perjured evidence is given in the hope of procuring the acquittal of a guilty person.
>
> The third and final category, in a descending order of seriousness, is where a person gives perjured evidence to protect himself or herself.
>
> I agree with that categorization though I emphasize that all categories of perjury are very serious offences because of their effect on the whole administration of justice.

[51] Although Lambert, J.A. is speaking of the offence of perjury, I would find that the counselling committed by Mr. Adams engages both the second and third categories above.

[52] Like perjury, counselling perjury and other offences which attempt to pervert the cause of justice, both general deterrence and denunciation must be emphasized. There are a number of aggravating factors here:

> Mr. Adams counselled perjury by another to secure his own acquittal, and not for the benefit of another person;
>
> This was not a single, spontaneous misjudgment by Mr. Adams but was a continuing offence involving in excess of 17 communications with Mr. Pare which speaks of significant planning and premeditation;

> Mr. Adams offered money for Mr. Pare's services;
>
> Payment was to be on a sliding scale, dependent upon the degree of success;
>
> The crime was committed while Mr. Adams was released on bail and, consequently, in so doing he was in breach of his bail conditions;
>
> In continuing the offence even after remand Mr. Adams reveals a shocking level of hubris and contempt for the judicial system.

[53] It is my view that the six month sentence imposed here is manifestly unfit for this crime considering the above aggravating factors. Taking into account the underlying offence in relation to which the perjury was intended and the range of sentences in the cases cited above, I would agree with the Crown's submission on appeal that a sentence of one year is fit for this crime, taken alone.

The Eight Possession Offences

[54] The maximum sentence for possession of stolen property (s.355(a) **Criminal Code**) is ten years where the value exceeds $5000 and two years where the value is below $5000. Here there are two offences in the lower category with the others substantially exceeding the $5000 threshold. The larger composite counts represent values which are off the chart, when compared to the threshold.

[55] The Crown at sentencing referred to some of the particular circumstances which aggravate these offences:

> Mr. Adams had the property warehoused in various places - for example, stolen property was recovered from the home he shared with his common-law wife and her son; his parents home; his brother's home; his business properties; other properties within his control and in two trucks. This speaks of a considerable amount of organization and a willingness to involve others in his activity;

> The stolen property could be tracked to break and enters running from 2003 to 2006. From this one would reasonably infer that Mr. Adams had been involved in the fencing of property over a lengthy period;
>
> The sheer enormity of the property, in terms of value, was aggravating;
>
> Thefts are encouraged if perpetrators have a place to dispose of stolen property. Mr. Adams clearly facilitated those crimes by providing a reliable place to offload the property.

[56] At sentencing the Crown sought a cumulative sentence for all of the offences in the 8 to 10 year range. Obviously, with an eye to totality, the Crown suggested that all eight possession counts be made concurrent. The Crown on appeal does not resile from that concession. The judge ordered concurrent sentences of 12 months on each of the possession offences, with added fines of $20,000 and $30,000 on the two counts with the largest value of goods.

[57] In my view, the case for concurrency of these possession counts is tenuous at best, given the length of time over which the property was stolen and, presumably, acquired by Mr. Adams. In **R. v. Smith** (1980), 40 N.S.R. (2d) 272 (C.A.) MacKeigan C.J.N.S. commented on the approach to concurrency where the charge is possession of stolen goods:

> 14 [The trial judge] treated concurrently all charges against Raymond Smith arising from the search of October 29, 1979, even though the goods came from different thefts. He similarly treated concurrently those against Donald Junior with respect to goods found in the search of December 3, 1979. Conversely, he dealt with goods found on different searches as warranting consecutive sentences even when they came from the same source; e.g., the two Donald Junior Smith charges respecting goods from the Robinson house. I respectfully disagree with his approach to concurrency in these particular possession cases. Where two batches came from the same theft, their possession would, in my opinion, warrant concurrent sentences, even though they were found in the accused's possession at different times. Where, however, the fruits of several thefts were in an accused's possession at the same time, consecutive sentences would seem appropriate, where, as here, the accused must have known that they had been separately stolen.

[58] However, in giving effect to totality, this Court has commented that the law respecting concurrency and consecutivity need not be slavishly applied. In **R. v. Hatch**, *supra*, MacKeigan C.J.N.S. wrote:

> 7 The choice of consecutive versus concurrent sentences does not matter very much in practice so long as the total sentence is appropriate. Use of the consecutive technique, when in doubt as to the closeness of the nexus, ensures in many cases that the total sentence is more likely to be fit than if concurrent sentences alone are used. Conversely, unthinking use of concurrent sentences may obscure the cumulative seriousness of multiple offences.

[59] In **The Law of Sentencing** (Toronto: Irwin Law, 2001) Professor Allan Manson says, to similar effect, at p. 102:

> There has been some controversy over how to calculate individual sentences when the totality principle operates to cap the global sentence. One method would be to artificially reduce the duration of the component sentences so that when grouped together consecutively they add up to the appropriate global sentence. This has been rejected by most courts which prefer to impose appropriate individual sentences and then order that some, or all of them, be served concurrently to reach the right global sentence. The latter method is preferable because it ensures frankness in that each conviction will generate an appropriate sentence, whether served concurrently or consecutively. Moreover, the impact of individual sentences will be preserved even if an appeal intervenes to eliminate some of the elements of the merged sentence.

[60] I would respectfully conclude that the sentencing judge did not appreciate that in proposing concurrency for these possession offences, the Crown was acknowledging that the application of totality worked to reduce the total sentence from what would otherwise be fit for the individual components. This was not a single instance of possession of goods from one crime but spoke of organized and ongoing fencing activity by Mr. Adams.

[61] In **R. v. Altenhofen**, [2003] A.J. No.1206 (Q.L.)(C.A.) the Court upheld a sentence of two years imprisonment imposed for 11 counts of possession of stolen property and two counts of fraud. The total value of the property was $400,000 with the offences committed over a period in excess of one year, and some while the appellant was on bail. The offender was a 50 year old businessman. The

Crown sought a sentence in the two year range while the defence requested a conditional disposition which would require a sentence of less than two years. Finding the sentence to be within the range, the Court of Appeal quoted the remarks of the sentencing judge, which seem equally applicable to Mr. Adams:

> 3 . . . The sentencing judge found that the appellant was not naive but, rather, was bright, competent, and capable. He concluded that the appellant had treated south-east Calgary as a free trade zone for stolen property, that he was an experienced businessman and that his moral responsibility was high.

[62] In **R. v. Kloss**, [1994] B.C.J. No. 502 (Q.L.)(C.A.) the British Columbia Court of Appeal upheld concurrent sentences of two years less a day for five counts of possession of stolen property valued at over $1,000 and one count of uttering a forged cheque in the amount of $200. The offences occurred within a 30-day period. Unlike Mr. Adams, Kloss had a number of previous criminal convictions, unrelated and largely for disruptive behaviour, but was only 22 years old. The Court felt that Kloss's involvement as part of extensive criminal activity in the Vancouver Island area was a factor requiring an emphasis on deterrence. The court also considered as serious the fact that Kloss was an "admitted fence".

[63] There is little case law on the appropriate range of sentence for this crime. In my view, the aggravating factors in Mr. Adams' case would take a sentence for the two more serious possession charges beyond the two year range imposed in **Kloss** and **Altenhofen**, above. I would conclude that a sentence of three years for each of these two offences would be fit.

[64] On appeal the Crown submits that the concurrent 12 month sentences here were manifestly unfit, failing to properly emphasize deterrence and denunciation. I would agree. The Crown proposes a sentence of two years for each of the eight counts, concurrent to each other to give effect to totality, but consecutive to the other sentences. While this falls below the sentence I would otherwise impose, in my view this disposition is not so low as to be unfit taking into account totality.

The Total Sentence

[65] It is my view that none of the sentences above warrant concurrency, but for the application of totality. The appropriate sentences for the component offences are:

Break, entry and theft: 7 to 8 years (5 to 6 years plus 2 years)

Theft: $2000 fine

Counselling Perjury: 1 year

Possession of Stolen Property: 2 years concurrent for all eight counts, taking into account totality

[66] By simply adding together the sentences for the individual offences the global sentence would be ten to eleven years incarceration plus a fine of $2000. In my view, the totality principle is adequately accommodated by making the eight possession offences concurrent and reducing the sentences for those counts by one year below what would otherwise be fit.

[67] I would find the sentence under appeal to be manifestly unfit. In the circumstances of these offences the fines imposed by the sentencing judge are not an adequate substitute for the discrepancy in the period of imprisonment and do not properly give effect to the need for general and specific deterrence, denunciation and a recognition of the harm to the community.

[68] Not just the individual businesses targeted but the entire community are victims of these offences. The costs associated with theft from commercial enterprises and the related offences of breaking and entering as well as possessing stolen goods, become a part of the price of goods sold and are ultimately borne by consumers. Mr. Adams, a businessman himself, must have understood this.

[69] As I have said, the Crown at sentencing was seeking a global sentence in the eight to ten year range, after applying the totality principle. This was a reasonable, if not modest, submission in the circumstances. The Crown on appeal asks that we substitute a global sentence of eight years before remand credit. Although lower

than that which I have calculated a fit sentence, it is not so low as to be unfit. I would not exceed the Crown request.

Disposition

[70] I would grant leave to appeal, allow the appeal and set aside the sentence, including the fines and community service, save for the fine of $2000 on the theft from Lafarge Construction. I would substitute a total period of incarceration of eight years (96 months) which I would calculate by arbitrarily reducing the sentence for the Metro Self Storage break and enter to 3 years, for a total of 5 years on the two break and enters. In all other respects the sentences would be in accordance with para. 65, above. There is a 4 month error in the sentencing judge's calculation of that credit which must be corrected. Mr. Adams served 15.5 months on remand which, at the agreed double count would entitle him to 31 months credit. His net sentence would therefore be 65 months calculated from May 27, 2009. Mr. Adams is to receive credit for the time he was incarcerated under the original sentence but no credit for any community service completed.

[71] I am not unmindful that in allowing this sentence appeal Mr. Adams will face re-incarceration. As this Court said in **R. v. Fitzgerald**, [1985] N.S.J. No. 434 (Q.L.), per Matthews, J.A.:

> 14 This Court has expressed its reluctance to send a person back to prison where the sentence of imprisonment has been fully served at the time of the hearing of the appeal. We must question whether the interests of the public or of the accused would be served by reincarceration.
>
> 15 In **Regina v. Barktow** (1978), 24 N.S.R. (2d) 518, former Chief Justice MacKeigan said at p.524:
>
> > "We must always be disinclined to send a man back to jail to serve the remainder of a longer term substituted on appeal unless that disinclination is overridden by the need to deter others by a much greater sentence." [citations omitted]

[72] It is my view that the need for deterrence and denunciation here are so great as to make Mr. Adams' re-incarceration unavoidable and appropriate.

Bateman, J.A.

Concurred in:

Fichaud, J.A.

Farrar, J.A.

APPENDIX A

Count 213

The following goods were discovered by the police when exercising a search warrant at 44 Frederick Avenue:

1) Helly Hanson clothing valued in excess of $10,000. These items had been stolen at a break and enter into the Purolator Courier premises at 220 Joseph Zatzman Drive in Dartmouth. The break and enter occurred between June 6 and 8, 2006. Some of the clothing recovered was still in its original packaging with Purolator shipping labels attached to the boxes. In total there were approximately 100 to 150 items of clothing recovered.

2) A door valued at $250. This door had been stolen on November 7, 2003 from a house under construction at 3125 Stanford Street.

3) Two Fridgidaire stove tops and a Fridgidaire stove valued at $2,148. These items had been stolen in August of 2005 from a van owned by and parked on the premises of Beacon Electric.

4) Two stoves, valued at $575 each wholesale or $850 each retail. Two refrigerators, valued at $1,000 each retail. These items had been stolen from a break and enter in Art Penny Appliance and Repair on 6160 Almon Street.

5) A jackhammer, tampers, a pump, a generator and other construction equipment, valued at $7,500. These items had been stolen on April 10, 2006 in a break and enter into a construction trailer owned by Dexter Construction which had been located in the Hemlock Ravine area of Halifax.

6) Windows, Tyvek building wrap and pressboard, valued at $3,951. These items had been stolen in a break and enter into a new home construction site at 8071 Chokecherry Drive, owned by Ramar Construction.

7) Snowplow truck equipment, valued at $2,575. This equipment had been stolen in a break and enter on October 17, 2005 into the fenced compound at the rear of Ocean Truck Equipment.

8) Windows, valued at $3,000. These items were stolen on June 29, 2005 in a break and enter into a home under construction. The front door of the home had been forced open and the windows taken had already been installed in the home. The victim was Ramar Construction.

9) Four doors and three sets of windows, valued at $5,000. These items had been stolen along with another $12,000 worth of inventory in a February, 2004 break and enter into delivery trucks owned by Nova Windows and Doors.

10) A cement trowel with Honda motor valued at $1,500. This item had been stolen in 2004 from United Rentals.

11) Two generators, valued at $5,000. These items had been stolen in a break and enter into United Rentals along with other generators.

12) Construction equipment, including saws, pumps, survey tools, a core drill and a generator, valued at $15,000. These items had been stolen along with approximately $25,000 worth of other equipment from a break and enter on April 10, 2006 into a secured trailer owned by Dexter Construction. The trailer had been located on Transom Drive.

13) A hydraulic breaker for an excavator, valued at $15,000. The breaker had been stolen from a construction site on December 16 or 17, 2004. The breaker was not installed on the excavator and weight about 400 pounds. The breaker was owned by Doug Boehner Trucking and Excavating Limited.

14) Drills, saws, chainsaws and miscellaneous tools valued at $3,700. These items had been stolen from premises of Spears Framing in January, 2006 along with over $6,000 worth of other materials.

15) A Hilti drill, valued at $350. This item had been stolen from Hilti Canada.

16) Two Rubbermaid storage boxes, valued at $600. These items had been stolen from Kent Building Supplies in October, 2004.

17) A light fixture and work lights valued at $75. These items were stolen in February, 2004 from Kent Building Supplies.

18) A concrete mixer valued at $750. This item had been stolen in a July, 2004 break and enter into United Rentals. This concrete mixer was one of $20,000 worth of items stolen in the break and enter.

19) A Hilti hammer drill valued at $200. The drill had been stolen in a break and enter in Ontario in July 2004.

20) Another Hilti hammer drill valued at $200. This drill had been stolen along with another drill in a break and enter into a trailer owned by Maritime Mechanicals on July 6, 2005.

21) Doors, windows, insulation, tin wrap, caulking and other construction products valued at $10,000. These items had been stolen in a break and enter into a delivery truck owned by Bancor Products in September, 2005. Stolen in the break and enter were tools and construction materials valued at approximately $25,000.

22) Chairs, a sofa, bathtub and lights valued at $7,000. These items had been stolen from a construction site owned by Pinehurst Developments at 100 White Glove Terrace in Halifax on May 24, 2003. In total $10,400 worth of materials had been stolen from that new home construction site.

Count 224
The following goods were discovered by the police when exercising a search warrant at 42A and 42B Frederick Avenue:

1) Drills, drivers, grinders, a generator and a cordless drill valued at $5,073. These items had been stolen in a break and enter into a construction supply company called Fastenal Canada Company on 3600 Kempt Road. The break and enter was on February 1, 2006. Stolen in the break and enter was $6,787 worth of inventory.

2) Sinks and toilets valued at $3,060. These items had been stolen from Kent Building Supplies in December, 2003 and were part of $5,600 worth of items that had been stolen at that time.

3) A Honda pump valued at $1,195. This item was stolen from ProCycle on Windmill Road in a break and enter in January, 2004. The pump was among $5,000 worth of items taken in the break and enter.

4) A snowblower valued at $3565, including tax. This item had been stolen from Portland Street Honda in December, 2003.

5) Two canvas tents valued at $1,300. These items had been stolen from Bridgeport Wire and Rope on October 27, 2005. The tents were part of $2,800 worth of inventory that had been stolen in the break and enter.

6) A tamper and a chainsaw valued at $2,575. These items had been stolen from TRAX Construction in a break and enter into a trailer. These items were part of $14,000 worth of inventory that had been stolen.

7) A piece of survey equipment valued at $30,000. This item had been stolen from a vehicle in Tantallon in September, 2005. The item was owned by Municipal Construction.

8) Motors, generators, engines and a tamper valued at $13,680.85. These items had been stolen from Powerquip on Akerley Boulevard in a break and enter in which $45,000 worth of construction equipment had been stolen. The break and enter had occurred on April 1, 2005.

9) Two furnaces, a refrigerator, a washer and dryer, a dishwasher and a microwave valued at $6,700. These items had been stolen from two Greater Homes residences, one of which was a QEII Dream Home. The items recovered in the Respondent's possession were part of $13,013.95 worth of items that had been stolen in the break and enters.

10) Household items described as pots, knife sets, towels, toaster oven, sheets, baskets and candles valued at $6,048.75. These items had been stolen in a break and enter into Home Outfitters on Chain Lake Drive.

11) Eighteen truck tires valued at $4,482. These tires had been stolen from a locked compound within a locked exterior are of a building owned by Classic Freight on 30 Raddall Avenue in Dartmouth. The break and enter occurred on April 4, 2006. The truck tires found in the Respondent's possession were part of $10,000 worth of inventory that had been stolen.

12) A battery charger, welding gear and a spreader for a plow truck valued at $1,545.46. These items had been stolen from a break and enter into a business premises on Ilsley Avenue in which $13,180 worth of snow removal related equipment had been stolen.

13) Tires, wheel rims and a truck hood valued at $6,000. These items had been stolen in a break and enter in the Joe Johnson Equipment compound in Burnside Industrial Park. The break and enter occurred on February 17, 2006. Approximately $6,800 worth of equipment had been stolen in the break and enter.

14) Twenty-three motorcycle tires, eight all-terrain vehicle rear seats and all-terrain vehicle tracks valued at $5,122. These items had been stolen in a break and enter into Freedom Cycle, a motorcycle retailer on Chain Lake Drive. In the break and enter $8,480.44 worth of inventory had been stolen.

15) A window valued at $300. This window had been stolen from a property on Oxford Street in 1999.

16) Candles, table runners, a mirror and a blanket valued at $700. These items had been stolen in shoplifting incidents between 2002 and 2004 from Pier 1 Imports.

17) An outdoor fireplace valued at $200. This item had been shoplifted from a Canadian Tire store on May 13, 2003.

18) An outdoor heater and a mosquito magnet valued in total at $300. These items had been shoplifted from the Canadian Tire store in Clayton Park in June, 2003.

19) A George Foreman grill valued at $40. This item had been shoplifted from the Canadian Tire store on Quinpool Road on January 15, 2003.

20) A garage door opener valued at $150. This item had been shoplifted from the Clayton Park Canadian Tire store on September 29, 2003.

21) A woodstove valued at $669. This item had been shoplifted from Kent Building Supplies in November, 2003.

22) A safe valued at $100. This item had been shoplifted from the Quinpool Road Canadian Tire store in November, 2003.

23) Light fixtures, a barbeque cover and a kitchen sink valued at $394.93 in total. These items had been shoplifted from Home Depot in January, 2004.

24) Two air conditioners and a dehumidifier valued at $542. These items had been shoplifted from Kent Building Supplies in Lower Sackville, in May, 2004.

25) A nailer and table saw valued together at $635, taxes included. These items had been shoplifted from Kent Building Supplies in July, 2005.

26) Patio furniture and a paint sprayer valued at $868.27. These items had been stolen from Home Depot on September 1, 2005.

27) A tool box valued at $350. This item had been stolen in a break and enter into the premises of the Fastening House in January, 2006. Stolen in the break and enter was $14,000. worth of house fastening inventory.

28) Utility knives, paint masks and miscellaneous painting supplies valued at $400. These items had been stolen in a break and enter into Sherwin Williams Paint store premises in Burnside on January 10, 2006. Stolen in the break and enter was $15,000 worth of inventory.

29) Grease guns, booster cables and other inventory of Traction Heavy Duty Parts valued at approximately $1,000. These items had been stolen in a

break and enter on February 1, 2006. Stolen in the break and enter was $1,400 worth of inventory.

30) A chainsaw valued at $600. This item had been stolen from a private individual in a break and enter into his shed in Kamloops, British Columbia between January 1 and 11, 2006.

31) A drill kit valued at $125. This item had been stolen in a shoplifting early in 2006 from a business in Toronto.

32) Three pairs of work boots valued at $225. These items had been stolen in a break and enter into a business truck on January 26, 2006. Stolen in the break and enter was $20,000 worth of work boots and dress shoes.

33) A kerosene heater valued at $252.99. This item was stolen in a break, enter and theft into a work site between December 22 to 28, 2005 in which $5,000 worth of equipment was stolen.

34) Two sets of golf clubs and two golf bags valued at $1,053. The items had been stolen in a break and enter into Golf Central on May 28, 2004. Stolen in the break and enter was $11,414.33 of golf equipment.

35) A barbeque set valued at $41.99. This item had been stolen from a Halifax area Canadian Tire store.

36) A scooter valued at $149.99. This item had been stolen from a Halifax area Canadian Tire store.

37) A fire extinguisher and a dehumidifier valued at $329.98. These items were stolen from a Canadian Tire store in 2004.

38) Four tires valued in total at $400. These tires had been stolen in a break and enter into Miller Tire in which $17,475 worth of inventory had been stolen.

39) Shovels valued at $80. These items had been stolen in a break and enter into Home Depot on February 6, 2006. Over $5,000 in merchandise had been taken in the break and enter.

40) A floor stapler valued at $369.95. This item had been stolen from Home Depot.

41) A power inverter valued at $433.86. This item had been stolen from a Canadian Tire store.

42) Computer power supplies and card readers valued at $399.99. These items had been stolen from Purolator.