NOVA SCOTIA COURT OF APPEAL
Citation: R. v. Calder, 2012 NSCA 3

Date: 20120111
Docket: CAC 347492
Registry: Halifax

Between:

Anne Calder

Appellant

v.

Her Majesty the Queen

Respondent

Judges:	Saunders, Hamilton, Fichaud, JJ.A.
Appeal Heard:	November 10, 2011, in Halifax, Nova Scotia
Held:	Appeal against conviction dismissed; leave to appeal sentence is granted and the appeal is dismissed, per reasons for judgment of Hamilton, J.A.; Saunders and Fichaud, JJ.A. concurring.
Counsel:	Craig M. Garson, Q.C., for the appellant Paul B. Adams, for the respondent

Reasons for judgment:

[1] The appellant, a criminal defence lawyer, was convicted by Nova Scotia Supreme Court Justice Kevin Coady of trafficking in hydromorphone, a substance included in Schedule I of the **Controlled Drugs and Substances Act**, S.C. 1996, c. 19 (**CDSA**), contrary to s. 5(1) of the **CDSA**. She was also convicted of possession for the purpose of trafficking in hydromorphone and marihuana, a substance included in Schedule II of the **CDSA**, contrary to s. 5(2). She was sentenced to 30 months for trafficking, 30 months concurrent for possession for the purpose of trafficking in hydromorphone and three months concurrent for possession for the purpose of trafficking in marihuana. She appeals her convictions and applies for leave to appeal, and if granted, appeals her sentence. The judge's reasons for conviction are reported at 2011 NSSC 96 and his sentencing decision at 2011 NSSC 312.

Background

[2] For the purpose of this appeal, I need only summarize the facts set out in detail in the judge's reasons for conviction. On July 14, 2009, the appellant smuggled a three to four inch long, cigar shaped, saran wrapped "prison package" containing tobacco, rolling papers and 2.6 grams of hydromorphone (dilaudid) beads, to one of her clients at the Central Nova Scotia Correctional Facility ("Facility"). She did this in a video monitored interview room at the Facility that allows direct contact between counsel and their clients. A correction officer observed the transfer as it took place. The interview was terminated, Ms. Calder's client was taken from the room, searched and the prison package was retrieved. Correction officers confronted Ms. Calder about the package, suspended her visiting privileges and turned the matter over to the police. Later that day, Ms. Calder was arrested just outside her home/law office.

[3] When she was interviewed at the police station that evening she stated that she believed the package contained only tobacco and indicated a similar package had been delivered to her home/law office in the same manner she received this one – anonymously left in an envelope in her outside mailbox. She indicated she did not know what happened to the other envelope, but thought it may have been thrown in the garbage. She was detained at the police station and the next day her home/law office was searched. Two similar "prison packages" were seized from

the computer tray in her upstairs office, one containing a similar amount of dilaudid and the other containing approximately three grams of marihuana along with tobacco.

[4] The Crown successfully applied at trial to have the evidence in relation to the trafficking charge considered in relation to the two possession for the purpose of trafficking charges.

[5] The appellant's defence at trial was that she did not know and was not wilfully blind to the fact the "prison packages" contained anything but tobacco, a contraband substance at the Facility. In his conviction reasons, the judge referred to a significant amount of evidence, including that of Dr. Rosenberg, a psychiatrist. He accepted Dr. Rosenberg's opinion that Ms. Calder had a "major depressive disorder recurrent, of moderate severity with features of anxiety", a "personality disorder not otherwise specified with features of dependant and avoidant type predominating" and that she was unfit to practice law at the time of the transaction.

[6] The judge rejected Ms. Calder's testimony that she did not know the packages contained an illegal drug and indicated he was not left with a reasonable doubt by it or by the other evidence he accepted. He explained he was satisfied she knew the parcels contained illegal drugs because of her experience as a prosecutor and criminal defence counsel; the manner in which the packages were delivered to her; the surreptitious manner in which the transfer to her client took place in the interview room; the appearance of the packages themselves; the fact a person with her knowledge of criminal law would know such packages are used to smuggle illegal drugs to inmates; and, as shown on the videotape of her interview at the police station, her admitted visceral reaction to the packages when she received them at her home/law office – "ah no, no, no, no, don't wanna know about it, don't wanna see it ... I don't want anything to do with that."

Issues

[7] The issues in this appeal are whether the trial judge:

(1) misapprehended the evidence of Dr. Rosenberg or other evidence;

(2) erred in finding she "possessed" the "prison packages" seized from her office; and

(3) imposed a demonstrably unfit sentence.

Misapprehension of the Evidence

[8] The legal principles applicable to an argument that the judge misapprehended the evidence are set out by Cromwell, J.A., as he then was, in **R. v. S.D.D.**, 2005 NSCA 71:

> [9] This Court may allow an appeal in cases such as this if persuaded that there has been a miscarriage of justice: see s. 686(1)(a)(iii) of the **Criminal Code of Canada**, R.S.C. 1985, c. C-46. A trial judge's misapprehension of the evidence may result in a miscarriage of justice, even though the record contains evidence upon which the judge could reasonably convict.
>
> [10] What is a misapprehension of the evidence? It may consist of "... a failure to consider evidence relevant to a material issue, a mistake as to the substance of the evidence, or a failure to give proper effect to evidence ...": **R. v. Morrissey** (1995), 97 C.C.C. (3d) 193 (Ont. C.A.) at p. 218. ...
>
> [11] Not every misapprehension of the evidence by a judge who decides to convict gives rise to a miscarriage of justice. A conviction is a miscarriage of justice only when the misapprehension of the evidence relates to the substance and not merely the details of the evidence, is material rather than peripheral and plays an essential part in the judge's reasoning leading to the conviction: see **Morrissey, supra**, at 221; **R. v. Lohrer**, [2004] 3 S.C.R. 732; S.C.J. No. 76 (Q.L.) at paras. 1-2.
>
> [12] It follows, therefore, that to succeed on appeal, the appellant must show two things: first, that the trial judge, in fact, misapprehended the evidence in that she failed to consider evidence relevant to a material issue, was mistaken as to the substance of the evidence, or failed to give proper effect to evidence; and second, that the judge's misapprehension was substantial, material and played an essential part in her decision to convict.

[9] The appellant argues the following excerpt from the judge's decision indicates he misapprehended Dr. Rosenberg's evidence:

> [45] ...Dr. Rosenberg admitted that he accepted the information provided to him by Ms. Calder and that if she is not truthful, then his opinion goes away. Consequently, the weight of Dr. Rosenberg's opinion is dependent on Ms. Calder's credibility.

[10] The appellant says Dr. Rosenberg made no such admission.

[11] On cross-examination, Dr. Rosenberg was questioned on the degree to which the validity of his opinion depended on Ms. Calder's credibility.

> Q. Yeah. So according to that video, she understood the consequences of what she was doing?
>
> A. In giving what she thought to be a package of tobacco.
>
> Q. Well sir, you don't know what she thought, okay?
>
> A. I know what she told me.
>
> Q. Yes, but you don't know what she thought. You have to believe what she said first, so please stay away from what she told you, okay? What I asked you was: The person on that video, Ms. Calder, passed a package to the prisoner in a way that indicated she understood the consequences of what she was doing. She knew exactly what she was doing, didn't she?
>
> A. She may have understood what she was doing; she may not have appreciated the consequences of what she was doing.
>
> Q. Well she knew it was wrong, because she was hiding it.
>
> A. She may not have appreciated the consequences of what she was doing.
>
> Q. You have no way of knowing that, though. You're not - I'm sorry to be flip, doctor, but you're not a mind reader, right? I mean, that's not what psychiatrists do, right?
>
> A. I don't know.
>
> ...

> A. No, I can't read her mind. I can only know what she told me, and make a judgment on the basis of what I know about her.
>
> **Q. And if she's lying, then your opinion is out the window. If she's pulling your leg, if she's deceiving you in terms of what she told you, then your opinion really has no validity at all, does it?**
>
> **A. If she is lying.**
>
> Q. Right.
>
> A. And I don't think she was.

[12] Ms. Calder argues that when Dr. Rosenberg said "If she is lying", he was not answering the question in the affirmative – that he was not agreeing that if Ms. Calder was lying his opinion had no validity. It is clear from his reasons that the judge understood these words to be Dr. Rosenberg's affirmative response to the question. Listening to the tape of the trial supports his understanding. The judge did not mistake the substance of Dr. Rosenberg's testimony when he stated Dr. Rosenberg admitted the validity of his opinion depended upon Ms. Calder's truthfulness.

[13] The appellant argues the judge misapprehended the purpose of Dr. Rosenberg's evidence as being related to intent rather than knowledge, when he stated:

> [70] Dr. Rosenberg's testimony was called to support a conclusion that Ms. Calder's diagnosis, and the various stressors in her life, somehow deprived her of the level of **intent** required for a conviction. Given my findings of fact on the critical issue, Dr. Rosenberg's evidence does not have that effect....
> (Emphasis added)

[14] I agree with the Crown's response to this argument:

> 25. This passage is not indicative of a misapprehension of Dr. Rosenberg's evidence as the Appellant suggests. His opinion was intended to support the plausibility of Ms. Calder's evidence that she did not know that the "prison packages" contained illegal drugs. Whether she had that knowledge was central to determining whether she had "the level of intent required for conviction". In the context of this case, proof of knowledge and intent are one and the same. As

> such, the Trial Judge did not misapprehend the purpose of Dr. Rosenberg's evidence and its relevance to the central issue at trial, i.e. whether Ms. Calder knew the packages contained illegal drugs. He simply concluded that it did not raise any reasonable doubt in that regard.

[15] Ms. Calder also argues the judge erred by failing to consider Dr. Rosenberg's evidence that her testimony, as to her thought process in smuggling the package into the Facility, was "consistent" with someone suffering from a major depressive disorder, worsened by a number of stressors experienced by the appellant.

[16] I am satisfied the judge considered this aspect of Dr. Rosenberg's evidence along with the rest of his evidence in reaching his verdict. He outlined a significant amount of Dr. Rosenberg's evidence in his reasons (paras. 39-45). The fact he did not specifically refer to this evidence does not mean he did not consider it. He is not required to review all of the evidence in his reasons, **R. v. R.E.M.**, 2008 SCC 51, para. 56.

[17] Given the reasons the judge gave for rejecting Ms. Calder's evidence that she did not know the packages contained illegal drugs:

- her experience with criminal law;
- the manner in which the packages were delivered to her;
- the surreptitious manner in which the transfer to her client took place;
- the appearance of the packages themselves;
- the fact a person in her position would know such packages are used to smuggle illegal drugs to inmates; and
- her admitted visceral reaction to the packages when she received them at her office;

it is not surprising Dr. Rosenberg's evidence, that Ms. Calder's evidence about her thought process in smuggling the package into the Facility being "consistent" with someone suffering from a major depressive disorder, worsened by a number of

stressors experienced by the appellant, did not raise a reasonable doubt as to her knowledge of the illegal drugs. In addition, the judge had before him Dr. Rosenberg's admission that Ms. Calder's personality disorder may make her more susceptible to the demands of others, causing her to do things contrary to her best interest, even to the point of committing a crime.

[18] The appellant's last argument on misapprehension of Dr. Rosenberg's evidence is that there is an irreconcilable conflict between the judge accepting that Ms. Calder was not fit to practice law at the relevant time and his finding that it was "inconceivable that Ms. Calder would not be on the alert to the very real likelihood that the package contained drugs…" (para. 59). I agree with the Crown's response to this argument:

> 28. ...With respect, there is nothing inherently contradictory in these findings. They are not mutually exclusive. That Ms. Calder should not have been practicing law in 2009 in no way deprived her of the knowledge and experience associated with practicing criminal law over an extended period. There was no evidence, including that of Dr. Rosenberg, to suggest otherwise. As such, the Trial Judge was perfectly entitled to consider that experience, along with the numerous other factors he cited, in support of his conclusion that she knew exactly what she was doing.

[19] I am satisfied the judge did not misapprehend Dr. Rosenberg's evidence.

[20] Ms. Calder further argues the judge misapprehended other evidence at trial. She provides an extensive list of what she suggests are examples of such misapprehensions – the length of the packages, two, three or four inches; the judge's description of the duration of the confrontational meeting between the correction officers and Ms. Calder at the Facility as "brief", when it lasted five minutes; the judge's description of the police "opening" the package, when it was first opened at the Facility; his description of Ms. Calder as a "15 year criminal lawyer" when the evidence indicates she practised criminal law for nine years in the 15 years prior to the transaction; his description of Ms. Calder as having suffered all the classic symptoms of depression rather than of a "major depressive disorder". None of these disclose misapprehension. They are the judge's findings of fact from conflicting evidence or semantic distinctions that play no role in the judge's reasoning process.

[21] Other examples of what Ms. Calder suggests disclose misapprehensions by the judge are – the judge's indication that Ms. Calder had meetings at the Facility planned for the afternoon, when the evidence indicates they were originally scheduled for the morning; his misstatement of the names of the correction officers who confronted her; his reference to the police advising Ms. Calder she would "likely" be released after her interview at the police station, when the evidence suggests she was told she would be released; his reference to Ms. Calder being in the interview room for about an hour from the time her client was removed until she was confronted, when the videotape shows this was 26 minutes; and his reference to Ms. Calder being shown a trial decision indicating she had experience with drug cases during her cross-examination, when it was first presented to her during direct examination. While these are examples of misstatements of the evidence by the judge, they relate to immaterial details that play no part in the judge's reasoning.

[22] Ms. Calder argues the judge misapprehended the evidence relating to the meeting between the correction officers and Ms. Calder in the interview room. The issue was what she told them she knew about the contents of the package – whether she told them she didn't know what was in the package or that she thought it was only tobacco. If the judge slightly misstated the evidence, it had no effect on his verdict. He accepted Ms. Calder's evidence that she told them she thought the package contained only tobacco.

[23] Ms. Calder argues the judge erred by speculating when he found the level of concealment of the transfer suggested more than tobacco was being transferred, arguing there was no evidence to support this. There was evidence supporting this inference – the videotape of the interview that was played during the trial.

[24] The appellant has not satisfied me the judge failed to consider evidence relevant to a material issue, was mistaken as to the substance of the evidence or failed to give proper effect to the evidence. Any misstatements of the evidence by the judge are on matters of immaterial detail, are not substantial and do not go the judge's reasoning process resulting in the convictions. I would dismiss this ground of appeal.

Did the judge err in finding the appellant "possessed" the packages found in her office?

[25] Ms. Calder argues the judge erred in finding she "possessed" the "prison packages" seized from her office by failing to properly consider her evidence on this issue and failing to provide any analysis of how he reached his conclusion that she possessed them.

[26] After seventy-one paragraphs dealing with the trafficking charge, the judge dealt with the two possession for the purpose of trafficking charges:

> [72] During this trial I ruled that the evidence on count #1 would be admissible on counts 2 and 3. The prison packages seized in Ms. Calder's office contained illegal drugs. The crown must prove that Ms. Calder possessed these packages and she knew, or was wilfully blind, as to the presence of drugs in those packages. The crown must also prove that such possession was for the purpose of trafficking.
>
> [73] I find that Ms. Calder possessed these packages as possession is defined by section 2 of the **Controlled Drugs Substance Act** and section 4(3) of the **Criminal Code**. They were delivered to her home and brought to her attention. Ms. Calder's reactions to those deliveries and the evidence as a whole satisfies me that she knew the packages contained drugs or was wilfully blind to that likelihood.
>
> [74] I am also satisfied that Ms. Calder possessed these substances for the purpose of trafficking. I am satisfied that she is neither a user nor a seller of these substances. Her intent was to smuggle them to Mr. Izzard. The evidence on count 1 supports this conclusion.
>
> [75] On counts 2 and 3, I am satisfied that the crown has proven these charges beyond a reasonable doubt and I convict Ms. Calder of these offences.

[27] In these paragraphs, the judge notes his prior ruling that the evidence on the trafficking count is admissible on the possession for the purpose of trafficking counts, recognizes possession is one of the essential elements the Crown must prove beyond a reasonable doubt with respect to the possession for the purpose of trafficking charges, correctly refers to the applicable definition sections for "possession" in the **CDSA** and the **Criminal Code of Canada**, R.S.C. 1985, c. C-46, finds the two packages found in her office were delivered there and brought to her attention, and that she knew they contained illegal drugs and intended to traffic them to her client.

[28] Earlier in his reasons, the judge referred to Ms. Calder's evidence along with the evidence of the other witnesses. He made findings of fact that support his conclusion that she possessed the two packages. There was no need for him to repeat the process. He found Ms. Calder knew her client had arranged for all of the packages to be delivered to her so that she could smuggle them to him at the Facility and that they were brought to her attention when they arrived at her office. He found she knew the packages contained illegal drugs and that she had already smuggled one to her client. The evidence was that the packages were tucked away on the computer tray in her office. He accepted her assistant's testimony that she did not put them on the computer tray. Ms. Calder lived alone, and while there was evidence her brother, assistant and cleaning staff had access to her office, Ms. Calder provided no explanation of how the packages got to her computer tray and there was no evidence that anyone else had knowledge of or handled the packages. While the judge did not refer to these findings and evidence in his reasons with respect to "possession for the purpose of trafficking" of the two seized packages, his reasons, read as a whole, together with the record, explain the basis of his conclusion.

[29] As stated previously, the fact the judge did not refer to specific aspects of Ms. Calder's evidence does not mean he did not consider it. He is not required to recite all of the evidence (**R.E.M.**, para. 17).

[30] I would dismiss this ground of appeal.

Sentence

[31] This Court gives deference to the decisions of sentencing judges. Absent an error in principle, failure to consider a relevant factor or overemphasis of the appropriate factors, we will not interfere with a sentence unless it is demonstrably unfit: **R. v. L.M.**, 2008 SCC 31, para. 14.

[32] Ms. Calder argues the judge erred by failing to appreciate the magnitude of her psychiatric disorders and by determining her convictions called for a sentence in excess of two years, precluding a conditional sentence.

[33] The record does not support Ms. Calder's argument that the judge failed to appreciate the magnitude of her psychiatric disorders. Ms. Calder and Dr. Rosenberg were the only two witnesses called by the defence. Dr. Rosenberg testified extensively about Ms. Calder's psychiatric condition. The judge reviewed Dr. Rosenberg's evidence in paras. 39 to 45 of his conviction reasons and specifically accepted his diagnosis. The judge referred to Dr. Rosenberg's opinions in reaching his verdicts. He again referred to her psychiatric condition several times in his sentencing decision (paras. 15, 33, 34, 42 and 44), concluding it was a mitigating factor in sentencing. There is no merit to Ms. Calder's argument that the judge failed to appreciate the magnitude of her disorders. It was open to the judge on the record to decide that her psychiatric condition did not diminish her responsibility for her actions; that it did not affect the consciousness of what she was doing. Dr. Rosenberg admitted there was no evidence of deficits of memory, cognition or concentration problems on July 14, 2009 disclosed in the videotapes of the interview room at the Facility or the police interview.

[34] Ms. Calder's second argument is that the judge erred in determining that her convictions called for a sentence in excess of two years. She points to four cases where conditional sentences have been awarded for drug offences: **R. v. Coombs**, 2005 NSSC 90, **R. v. Provo**, 2001 NSSC 189; **R. v. Brown**, [1997] N.J. No 233 (Q.L.); **R. v. C.B.**, 2006 ABPC 167. She refers to two other cases where a custodial sentence has been ordered for less than two years; **R. v. Klassen**, 2008 YKTC 64; **R. v. Charlish**, 2001 BCCA 27. Based on these cases she argues the judge erred in finding the minimum sentence for her was in excess of two years.

[35] It is important to note the judge did not find that a sentence in excess of two years is always required for a trafficking offence or for a possession for the purpose of trafficking offence. He recognized a conditional sentence for these offences is a possibility:

> [67] The Defence has requested a conditional sentence based on exceptional circumstances. I accept that a conditional sentence addresses both punitive and rehabilitative objectives.
>
> [68] I also accept that trafficking Schedule I substances and possession of same for the purpose of trafficking are not precluded from conditional sentences.

[36] What the judge did find, was that for this offender and these offences, the range was two years at the lowest and four years at the highest.

[37] In reaching this conclusion, the judge in his 24 page sentencing decision, reviews the circumstances of her offences, considers the purposes and principles of sentencing, reviews the mitigating and aggravating circumstances and considers and correctly applies the principles established by the Supreme Court of Canada in **R. v. Proulx**, 2000 SCC 5.

[38] In reaching his conclusion that a sentence in excess of two years was required, the judge placed considerable weight on the fact Ms. Calder took advantage of her privileged position as a lawyer to traffic in a Schedule I drug, comparable to crack cocaine and oxycontin, into a prison. He referred to the particular problems caused by drug trafficking in prisons, to the case of **R. v. Li**, [2004] O.J. No. 6269 (Q.L.) (Ont. S.C.J.) where a lawyer was sentenced to four years imprisonment for such trafficking and to the case of **R. v. Bunn**, [2000] 1 S.C.R. 183, dealing with the sentencing of lawyers in general:

> [7] The problems caused by drugs in jail is well known. They cause violence, threats to the safety of the guards and other inmates, intimidation and they destroy any effort at rehabilitation.
>
> ...
>
> [12] Anne Calder exploited the trust that was extended to lawyers, a trust that has been established over many years. She took these drugs to Mr. Izzard thinking this trust would shield her from detection. This was an absolutely terrible error in judgment.
>
> ...
>
> [28] The facts as I have found them clearly establish that the gravity of these offences are very grave and that the moral blameworthiness of Ms. Calder is substantial.
>
> ...
>
> [49] Ms. Calder was a practicing lawyer who used her position of trust to smuggle a Schedule I narcotic to a client housed in a correctional facility. That says it all.

[50] It brings into focus the ultimate question on this sentencing hearing. That question is whether the principles of sentencing require a penitentiary term or a community based sentence.

...

[58] In the text “Sentencing Drug Offenders” the author stated at page 1-74:

> “A particularly serious form of drug trafficking is the smuggling and distribution of controlled substances into a correctional facility. Smuggling drugs into a correctional institution can create a potential hazard for inmates and staff in the facility and it can fuel the growth of the drug economy within the institution. Some courts have even suggested that one of the causes of violence in prison is the presence of drugs. For those reasons, courts have usually approached sentencing cases which involve smuggling drugs into correctional facilities with a focus on deterrence and denunciation and treated the circumstances as an aggravating feature on sentence.

[59] I have read the case of *R. v. Li*, [2004] O.J. No. 6269 (Ont. S.C.J.) involving a defence lawyer bringing marijuana and heroin into the Don Jail in large quantities. He received a sentence of four years and counsel have addressed that in their submissions today.

[60] The Court described the facts of that case as follows:

> 4 The facts as I found them were as follows: Mr. Li is a lawyer, a criminal lawyer, a member of the defence bar in Toronto. On November 21st, 2001, he attended at the Don Jail to meet with an inmate. The inmate and Mr. Li were placed in an interview room at the jail. Mr. Li and the inmate were observed by a prison guard with their hands touching underneath the table. It appeared to that guard that something passed from Mr. Li to the inmate. After the interview, the inmate was strip-searched and found attached to his leg by an elastic band was a package of Players tobacco in its cellophane wrap apparently unopened.

[61] The circumstances of the offender, Mr. Li, were described as follows at paragraph 8:

> 8 There are obviously many favourable and mitigating aspects or circumstances in Mr. Li's favour: His age. He is a first time offender. He

> has a good background. He is well educated. He has the support of his family. He has the support of many friends and colleagues all of whom speak very favourably of him. He has been described as dedicated and committed. He gave advice and offered assistance freely. He was generous, contributing greatly to the well-being of the Chinese community, engaged in volunteer activities in his community, and this occurrence is inconsistent with his background. He has been helpful to neighbours and strangers. He is intelligent, well read, and the other aspects that I have already mentioned.

[62] It is very obvious that Justice Caputo did not displace deterrence and denunciation as a result of those exceptional circumstances.

[63] On the issue of trust in the case of *Li, supra*, the following appears at paragraph 7-8:

> Lastly, there is the very serious aggravating factor and that is Mr. Li using his position of trust as a barrister and solicitor to facilitate this offence. But for his privileged status, Mr. Li would never have been able to commit this crime and that status in many other respects made Mr. Li a privileged member of our society, a member of an honourable profession which allowed him to earn a very good living, help others, and realize his dreams.

[64] There is another aspect at play in this sentencing hearing and that relates to the public's perception that when lawyers commit crimes they pay the same price as other offenders.

[65] The principles involved in the sentencing of lawyers who have committed crimes in the course of their legal practice was stated by Justice Bastarache in *R. v. Bunn*, [2000] 1 S.C.R. 183 at paragraphs 33 and 34:

> "It is well established that the focus of the sanction for criminal breach of trust is denunciation and general deterrence. In the past this has required that, absent exceptional circumstances, lawyers convicted of criminal breach of trust have been sentenced to jail. This emphasis on denunciation and general deterrence is, for a number of reasons, particularly important when courts punish lawyers who have committed criminal breach of trust. First, the criminal dishonesty of lawyers has profound effects on the public's ability to conduct business that affect people far beyond the victims of the particular crime. Second, as officers of the court, lawyers are entrusted with heightened duties, the breach of which brings the administration of justice into disrepute. Thirdly, judges are drawn from the

> legal profession and there is a duty of ensure public confidence in the pool from which members of the bench are selected.
>
> Finally, judges must be particularly scrupulous in sentencing lawyers in a manner that dispels any apprehension of bias. A lawyer should receive, and be seen to receive, the same treatment as any other person convicted of a similar crime. While they are not to be singled out for harsher penalties than others convicted in comparable circumstances, any perception that a lawyer might receive more lenient consideration by the Courts must be guarded against."

[66] There is another quote from the Newfoundland Court of Appeal in *R. v. Sweezey*, [1987] N.J. No. 295 where the Newfoundland Court of Appeal approved the trial judge's ([1987] N.J. No. 192) statement that:

> "The Canadian justice system relies on the honesty and integrity of counsel who practice within it. To that end, every lawyer is made an officer of the Courts in which he will practice...
>
> In dealing with criminal behaviour of this kind, factors of deterrence and protection of the public must take precedence over considerations of rehabilitation and reform, all of which call for an adequate custodial sentence."
>
> ...
>
> [79] Ms. Calder's case is so much more serious than the typical street transaction because of the trust factor and the fact the correctional centre was involved. That is exacerbated by the administration of justice factor ie maintaining the confidence of the public by guarding against any impression that we take care of our own.

[39] The judge imposed a total sentence of 30 months incarceration. This length of sentence is within the range of sentences imposed by courts in other jurisdictions for similar offences; see **R. v. Li**, **supra** (a defence lawyer was sentenced to four years imprisonment for smuggling marihuana and heroine to the Don Jail); **R. v. Crough** (unreported, April 20, 2011, Alta. Q.B.) (Ms. Crough was sentenced to 28 months imprisonment for smuggling a single package containing three types of drugs, including Schedule I drugs, into a Federal Penitentiary) and **R. v. Rathwell** (unreported, July 7, 2004, Alta. Q.B.) (Rathwell was sentenced to a

period of three years imprisonment for smuggling cocaine and marihuana into a Federal Penitentiary).

[40] The judge did not make an error in principle, fail to consider a relevant factor or overemphasize the appropriate factors. I am satisfied the sentence ordered is not demonstrably unfit.

[41] I would grant leave to appeal sentence, but dismiss the appeal.

[42] For the foregoing reasons, I would dismiss the appeal.

Hamilton, J.A.

Concurred in:

Saunders, J.A.

Fichaud, J.A.