

**IN THE PROVINCIAL COURT OF NOVA SCOTIA**

Cite as: R. v. Sheppard, 2015 NSPC 23

**Date:** April 30, 2015

**Docket:** 2601673, 2601675, 2601676, 2601678

**Registry:** Halifax

Her Majesty the Queen

v.

Deborah Sheppard

**SENTENCING DECISION**

**Judge:** The Honourable Judge Anne S. Derrick

**Heard:** March 27, 2015

**Decision:** April 30, 2015

**Charges:** section 368(1)(b) x 2; 380(1)(a) x 2

**Counsel:** James Clarke - Crown Attorney  
Peter Planetta - Defence Counsel

**By the Court:***Introduction*

[1] Between February 9, 2011 and July 31, 2012, Deborah Sheppard undertook various fraudulent schemes that ultimately led to her being charged criminally and her victims, former close friends, experiencing very significant financial hardship and personal heartache. She is also being sentenced for perpetrating a forgery in the period of April 30 and July 2, 2010, the facts of which I will be briefly reviewing in these reasons.

[2] How much Ms. Sheppard siphoned out of her victims' pockets has not been agreed, but she does admit to having perpetrated a major fraud. The joint recommendation includes orders for restitution totaling \$50,000.

[3] Why Ms. Sheppard defrauded her friends remains something of a mystery, one that it is not within my abilities or remit as a judge to solve. I am confronted instead by the challenge of determining the fit and proper sentence for Ms. Sheppard in the context of a joint recommendation by experienced Crown and Defence for a conditional sentence.

[4] What has made the joint recommendation in this case a cause for anxious reflection by me is primarily the fact that Ms. Sheppard has a history of fraud. She was sentenced on September 3, 1987 for five frauds and on April 20, 1993 for one. The frauds must have been relatively minor as fines were imposed. Approximately 10 years then went by apparently without incident. But Ms. Sheppard was in trouble again by 2004. On February 12, 2008 in the context of a joint

recommendation, Ms. Sheppard was sentenced to a one year conditional sentence for 10 frauds she committed during the period of July through October 2004. A two year probation order that formed part of the sentence included a restitution order. Ms. Sheppard's failure to pay the restitution as ordered led to a breach of probation charge for which she was sentenced on August 23, 2012. She received a six month conditional sentence and two years' probation, a sentence jointly recommended by Crown and Defence. (Neither Mr. Clarke nor Mr. Planetta were involved in these earlier cases.)

[5] Ms. Sheppard's February 2008 conditional sentence concluded in February 2009. She then began her two year probationary term. In 2011 and 2012 she immersed herself in fraudulent scheming that eclipsed her previous criminal conduct. A forgery Ms. Sheppard perpetrated in 2010 had a walk-on part in the frauds. These are the crimes I am sentencing Ms. Sheppard for today.

#### *The Circumstances of the Offences*

[6] Ms. Sheppard's current offences fall into two broad categories: frauds and forgeries she perpetrated against friends and a forgery she perpetrated against a real estate agent in the context of making an offer to buy a home she had no ability to finance and could not afford.

[7] The facts of Ms. Sheppard's offences were included in the Crown's written sentencing submissions and recited by the Crown at the sentencing hearing. With some fairly modest editing of the Crown's version, the facts are as follows:

[8] On February 10, 2011, while serving in the capacity as a Bishop of Sackville Ward of the Church of Latter Day Saints, George Evans, received a phone call from Ms. Sheppard claiming that she was facing some hardships and was requesting help from the church. She advised Mr. Evans that she had been referred to the church by a person in her apartment building. Mr. Evans at that time had referred her to the Bishop of the Halifax Ward as she lived in his area. Later, Mr. Evans was called again by Ms. Sheppard who advised him that the other Bishop was not in. Ms. Sheppard then told Mr. Evans that Revenue Canada had frozen her accounts and she could not get at her money which she needed for food and bills. In addition to her problems with Revenue Canada, Ms. Sheppard said she was in the process of receiving money from her late father's estate but that upon deposit into her account, the funds would be frozen for 10 days. Mr. Evans thought this to be a legitimate request so he drove into Halifax with his son to buy groceries and withdraw cash from his personal account to provide to Ms. Sheppard.

[9] Subsequently, on behalf of the church, Mr. Evans helped Ms. Sheppard out on three occasions to pay a power bill and purchase some groceries. Ms. Sheppard had advised Mr. Evans that her own church would not help her out. She offered to make a donation to the Church of Latter Day Saints in exchange for the help that Mr. Evans had been providing. After the donation to the church was made, Mr. Evans no longer involved the church in providing assistance to Ms. Sheppard.

[10] Over the next several weeks, the Evans' were led to believe that Ms. Sheppard had or was about to come into an inheritance from her father's estate worth in excess of one million dollars. Ms. Sheppard had shown the Evans' documentation which they relied on as proof of what she was telling them. She complained about not having sufficient funds to pay for groceries or for her

husband's medications. She also told the Evans' she had entered into a purchase agreement on a new house, however, the builder and contractors wanted payment which she couldn't honour because of the delay in receiving funds from her father's estate. Ms. Sheppard said the lawyers had the estate money tied up. Believing Ms. Sheppard to be in a desperate situation, the Evans' continued providing monies to her on a weekly basis, in anticipation of being reimbursed when the estate funds were released. With a promise of repayment dated March 4, 2011 from Ms. Sheppard to the Evans', Mr. Evans continued to fund Ms. Sheppard from his own monies. Mr. Evans believed that Ms. Sheppard needed the money to pay for such things as the costs incurred in the purchase of a home and the threatened legal action by contractors.

[11] When he could no longer fund Ms. Sheppard from his own resources Mr. Evans went to family friends in Utah for assistance. James and Sherise Clayton started to forward monies to the Evans' for Ms. Sheppard's use. Ms. Sheppard kept the payments coming by representing that she was the beneficiary of a large inheritance from her father's estate which was being held up by lawyers. To support this fraud Ms. Sheppard had produced letters purportedly from a lawyer and the Royal Bank. In the fall of 2011 she produced documentation to show she was to receive the estate funds. During this period of deception by Ms. Sheppard she provided to the victims a number of signed "Promise to Pay" documents with a letter on law firm letterhead and apparently signed by a lawyer. (*Exhibit 2*)

[12] Another tactic employed by Ms. Sheppard to garner sympathy from the victims was to call them, crying and upset, to claim that in order to pay them she would have to go to a loan shark for the money. Not wanting her to be placed in danger by dealing with loan sharks, the victims relented. Ms. Sheppard defrauded

them of thousands of dollars during the period of February 9, 2011 to July 31, 2012.

[13] It was not until 2012 that all parties involved with loaning money to Ms. Sheppard realized they had been deceived through her false pretenses and misrepresentations about the purported inheritance. There was no estate. In addition, everything they had been told by Ms. Sheppard about the estate, from her problems with purchasing the home through the real estate agent, Scott Warne, to her having cancer and other health issues, were falsehoods.

[14] Scott Warne, a realtor for Century 21, had negotiated a purchase and sale agreement with Ms. Sheppard in 2010. The Purchase and Sale Agreement was for the purchase of a home in Halifax for \$500,000. At the time Ms. Sheppard had provided Mr. Warne with a letter from the Royal Bank of Canada dated June 8, 2010 indicating that she had funds on deposit in excess of 1 million dollars to cover this purchase. The letter was accepted by Mr. Warne as if it were genuine, but he later identified problems with it and contacted RBC Security. RBC Security determined the letter to be a forged document. (*Exhibit 3*)

### *Charges*

[15] On May 28, 2013, Ms. Sheppard was charged that she,

- Between April 30 and July 2, 2010, knowing that a document - a letter from the Royal Bank of Canada - was forged, caused Scott Warne (a real estate agent) to act upon it as if it were genuine, contrary to section 368(1)(b) of the *Criminal Code*;

- Between February 9, 2011 and July 31, 2012, by deceit, falsehood or other fraudulent means, did unlawfully defraud Roberta and George Evans of a sum of money exceeding \$5000, contrary to section 380(1)(a) of the *Criminal Code*;
- Between February 9, 2011 and July 31, 2012, knowing that documents – cheques - were forged, caused George Evans to act on them as if they were genuine, contrary to section 368(1)(b), of the *Criminal Code*;
- Between February 9, 2011 and July 31, 2012, by deceit, falsehood or other fraudulent means, did unlawfully defraud James and Sherise Clayton of a sum of money exceeding \$5000, contrary to section 380(1)(a) of the *Criminal Code*.

#### *Victim Impact Statements*

[16] The victim impact statements vividly described the pain and hardship caused by Ms. Sheppard. George and Roberta Evans and their son, Caleb, and James and Sherise Clayton all read their statements. Ms. Clayton also read the victim impact statement of the Evans' daughter, Hannah Evans. Scott Warne did not file a victim impact statement.

[17] The effect of Ms. Sheppard's frauds on the Evans' has been devastating. Mr. Evans described serious health and employment difficulties and having to file for bankruptcy in November 2012. The financial and related consequences for the Evans family are ongoing. Roberta Evans continues to have significant health

problems and she and her husband and their children have all struggled with depression. A common theme in the victim impact statements of George and Roberta Evans is the humiliation they feel as a result of Ms. Sheppard's deceptions. The personal betrayal has been as overwhelming as the financial harms. Roberta Evans described this in her statement:

... Debbie Sheppard infiltrated our family, pretended to care for us, loved our family, our way of life, our faith, family and friends. We cared for and loved Debbie. We were truly concerned for her well-being, and the struggles that she was going through... I truly loved Debbie and spent time every day talking to her or being with her. I believed all her lies... The betrayal, humiliation, and loss of belief in myself is huge... I do not hate Debbie Sheppard, but feel sorry at how she deceives people...The betrayal, hurt, and humiliation has left me devastated. I am striving to help regain mine and my family's sense of self-worth.

[18] The Claytons expressed similar emotions. James Clayton spoke of being "totally devastated" when he found out that Ms. Sheppard was a fraud. Like the Evans', the Clayton's have suffered significant financial harm causing them anxiety and depression. They too have experienced serious health consequences. They describe feeling humiliated and suffering from self-doubt and anxiety. Sherise Clayton indicated the terrible violation of trust perpetrated by Ms. Sheppard has led to "a more widened sense of distrust of others..."



[19] The victim impact statements of Caleb and Hannah Evans indicate they have suffered in ways uniquely painful to children. Caleb described the financial devastation to his family - not having proper clothing and being teased at school because of it, sometimes not having enough to eat, and ultimately losing their comfortable rural home and the dogs that each child had raised since puppyhood. Caleb still misses his dog. His sister, Hannah, feels the losses suffered by the family as keenly. Her victim impact statement described the turmoil and distress caused by Ms. Sheppard's demands on the family and how she most of all misses her dog,

... and feel like my heart has been torn from me since we could not have dogs in the apartment where we moved into after we lost our home. I cry often and miss Leopold's strength, warmth, comfort, and noble spirit... It has been so painful to move to a place I'm not used to living in with no gardens, no land, and no animals which is a dramatic change for our family...

[20] Caleb's and Hannah's victim impact statements provide a window into how Ms. Sheppard's exploitation of the Evans' kindness and generosity disrupted the social arrangements within the family. As described by Hannah:

... I felt confused, sad, and didn't understand what was happening to my family and how Debbie Sheppard seemed to take over my family. My twin brother Caleb and I were often left alone at our log home and it became necessary for us to do more of the household chores, prepare meals, and care for our severe (sic) handicapped, wheelchair bound 30-year-old brother

Dave. I was in town more often than Caleb with my mom and dad going to Debbie Sheppard's apartment, running her to places, and getting moneygrams. I was embarrassed running so frequently to the bank and post office and seeing the same people when getting cash from the moneygrams. When my parents did get home late in the evening they were stressed, worried, and tired...

[21] When invited to address the court at the conclusion of the sentencing hearing, Ms. Sheppard revealed a startling lack of imagination and insight, remarking on how it was hearing the Evans' and Clayton's statements that caused her to realize the effect of her actions. She said that "sometimes it is not real until it hits you in the face...how I destroyed their life..." She followed this with an emotional apology made directly to the victims and an acknowledgement of how consistently kind and supportive they had been to her.

*The Circumstances of the Offender – The Pre-sentence Report*

[22] The pre-sentence report discloses that Ms. Sheppard is now 58 years old. She has been married since the age of 17 and has four grown children. She has a criminal record for fraud which I will discuss shortly.

[23] By all accounts Ms. Sheppard has been a loving and devoted mother who enjoys a positive relationship with her children. None of them have been in trouble with the law and all are employed with good jobs. Neither Ms. Sheppard's husband nor one of her daughters interviewed for the pre-sentence report offered any comments that shed light on Ms. Sheppard's fraudulent tendencies. Mr. Sheppard

advised that his wife is “too kind”, bending “over backwards and [giving] to people even if she cannot afford it.” He also appears to view her as too kind to their children. Mr. Sheppard indicated to the author of the pre-sentence report that his wife “would not tell him anything even if they were having financial problems in the past, noting a few times their power was almost cut off.” He now looks after their finances and pays their bills.

[24] According to the pre-sentence report Ms. Sheppard suffered emotional and physical abuse as a child and was sexually abused by a relative at the age of 14. There were some complicated family dynamics and Ms. Sheppard spent considerable time with her maternal grandparents.

[25] Ms. Sheppard left school in grade 12 at the age of 16 to begin working. She completed her high school equivalency during her thirties. She has had various types of employment, and also stayed at home to care for her children. More recent employment as a cook at Zellers and a shelf stocker at Walmart ended when she was injured. Currently she is self-employed running a floral business out of her home. Ms. Sheppard indicated in the presentence report that she earns approximately \$15-\$20,000 a year. Her husband receives pension income and also works. There does not appear to be any family debt now although there has been in the past.

[26] Although at the age of 15 and then again on two occasions in her twenties Ms. Sheppard was a patient at the Nova Scotia Hospital, she does not appear to have had any mental health treatment of any significance in relation to her criminal justice issues. I have the sense that floating under the surface are untreated mental health problems although it remains unclear to me whether Ms. Sheppard has been

unwilling or simply unsuccessful in getting help. She is presently connected into the Elizabeth Fry Society but there is nothing to indicate what therapeutic interventions will be undertaken. Although Ms. Sheppard said in her statement to the court that Community Mental Health did not want to accept her into a 12 week “Changing Patterns” program because the matter was before the courts, in her interview for the pre-sentence report Christine LeBlanc from Community Mental Health indicated that following Ms. Sheppard’s screening appointment on February 18, 2015 it was determined she would not be appropriate for the group as there was “no evidence to support that [she] was in the state of readiness for change.”

[27] Ms. Sheppard is unable to explain why she committed the offences. The various comments in the presentence report reveal little. She has said she does not know why she forged documents, described one of the other offences as involving “borrowed money”, and that although “she did take the money she did not borrow as much as the victims claimed.” In the pre-sentence report she also repeated a statement she made at her sentencings in 2008 and 2012 - that she feels embarrassed to be before the courts at her age.

[28] Contrary to the pre-sentence report prepared for Ms. Sheppard’s sentencing in February 2012, in which her husband stated that she had gambled “for a while” about “15 to 20 years ago”, Ms. Sheppard told the author of this latest pre-sentence report that video lottery terminal gambling had been a problem for a period of approximately four or five years. She said she stopped without any professional help and that gambling “has not been a concern for a couple of years.” She also claimed that her gambling had had no effect on her family and that she had used her own money.

[29] Later in these reasons I will refer to the opinion of Dr. Theriault, the forensic psychiatrist who prepared a court-ordered assessment of Ms. Sheppard in November 2013.

*The Joint Recommendation*

[30] The jointly recommended sentence is for a community-based sentence. Its proposed terms are about as onerous as a community-based sentence can be. It is being jointly recommended that Ms. Sheppard be sentenced to a conditional sentence with very strict conditions: 18 months of house arrest followed by six months less a day under curfew. Ms. Sheppard would wear an electronic monitoring bracelet. The only exception to the house arrest would be for a period from 8 to 9 AM each morning when she would be permitted outside of her apartment for the purpose of having a smoke. She would be prohibited from having more than one visitor at any one time while on house arrest and from having any visitors between 8 PM and 6 AM throughout the course of the conditional sentence.

[31] The conditional sentence would provide for the usual statutory conditions and additional conditions, including assessment and counseling. Ms. Sheppard would be under a no-contact order with respect to the victims, members of their families, and Brenda MacKenzie and Anna St. Clair.

[32] It is being jointly recommended that Ms. Sheppard's conditional sentence be followed by a three year probation order with a curfew from Monday to Thursday of 9 PM to 6 AM and on Friday, Saturday and Sunday nights from 10 PM to 6 AM. She would be required to perform 240 hours of community service work

before the end of the probationary period. Certain conditions of the conditional sentence order would also be present in the probation order such as the no-contact condition and the condition for assessment and counselling.

[33] The joint recommendation also includes orders for restitution for George and Roberta Evans in the amount of \$25,000 and for James and Sherise Clayton in the same amount.

[34] I will note that in his Victim Impact Statement George Evans has described the proposed restitution order as adding “insult to injury.” He says the restitution is “a fraction of our costs” and believes it to be “a deliberate attempt to deceive.” He concludes by saying: “I would feel better to have it removed from the order unless funds and payment can be verified.”

[35] I sympathize with Mr. Evans’ frustration and cynicism. He has no reason to believe anything Ms. Sheppard may say about her willingness and ability to make restitution. However, the restitution orders are part of a jointly recommended sentence advanced by the Crown on behalf of the public interest, and the Defence. I will be imposing them.

[36] What I have had to determine after much reflection, is whether to accept the joint recommendation for a conditional sentence and probation instead of the more obvious sentencing option of simply sending Ms. Sheppard to jail in order to emphasize the principles of denunciation and general and specific deterrence. What places incarceration so squarely on the radar in this case is the magnitude of Ms. Sheppard’s offending this time and her prior record for fraud and breach of probation which I will now discuss.

*Ms. Sheppard's Sentencings in February 2008 and August 2012*

[37] As I noted earlier, Ms. Sheppard's wrongdoing has been the subject of two previous joint recommendations – in February 2008 on fraud charges and August 2012 for a breach of probation. In each instance Ms. Sheppard pleaded guilty and admitted to the facts presented to the court. The details I am about to provide were obtained from the recordings of the earlier sentencing hearings. (Ms. Sheppard's criminal record was filed as Exhibit 4 in the sentencing proceedings. In preparing these reasons I listened to the recordings of the earlier sentencing proceedings and advised counsel that I had done so. At Ms. Sheppard's sentencing hearing on March 27, Mr. Clarke had indicated he intended to speak to the facts of the previous sentencings.)

*February 12, 2008 Sentencing for Ten Counts of Fraud*

[38] The February 2008 sentencing was for 10 counts of fraud. The frauds were perpetrated over a period of approximately four months. Ms. Sheppard requested a pre-determination of benefits on her husband's Blue Cross policy which she followed up by going to various service providers and ordering products or services. She paid for the products or services by post-dated cheques and remitted claims to Blue Cross for reimbursement. In the meantime the cheques bounced and the service providers were left out-of-pocket. This also meant that Blue Cross had reimbursed Ms. Sheppard for amounts she had not in fact paid. Ms. Sheppard would have been aware of what was happening because the service providers contacted her when the cheques came back NSF.

[39] Ten service providers were affected. They had provided orthodontics, dental services and on one occasion, the transport of Ms. Sheppard's son by ambulance to hospital. The frauds totaled \$9593.15.

[40] The Crown at the February 2008 sentencing noted Ms. Sheppard's earlier record for fraud (from 1987 and 1993) but acknowledged the mitigating effect of a lengthy hiatus since then and Ms. Sheppard's guilty pleas. The court accepted the joint recommendation for a one year conditional sentence with six months of house arrest followed by two years of probation. A stand-alone restitution order for \$9593.15 was imposed. Defence counsel indicated that Ms. Sheppard was agreeing to pay a regular monthly amount to discharge the restitution by the end of the sentence.

[41] Ms. Sheppard told the court she was looking to move on and never be in these circumstances again. She referred to getting herself into "serious financial mismanagement" and having "financial stresses." She explained that she would receive the partial Blue Cross reimbursement and then fail to deposit the money into her bank account. One of her children would need something and she would "foolishly" give them the money with the result that the post-dated cheques she had written to the service providers would bounce. She acknowledged it was no excuse and she apologized "for being back here again."

*August 23, 2012 Sentencing for Breach of Probation*

[42] Ms. Sheppard failed to honour the payment schedule for the restitution that was ordered in February 2008. In advancing a joint recommendation for a six-month conditional sentence and two years' probation, the Crown explained that



Ms. Sheppard paid \$1530 and then stopped. She kept promising to make the additional payments. Nothing came of these promises and the breach of probation charge was laid. Following the laying of the charge and prior to the sentencing, Ms. Sheppard cashed in some RRSP's and paid off the outstanding balance.

[43] At her sentencing, Ms. Sheppard told the court that she had once again run into financial problems. She apologized and acknowledged the seriousness of the charge. In accepting the joint recommendation, Chisholm P.C.J. noted no evidence of a gambling or substance abuse problem.

#### *The Purpose and Principles of Sentencing*

[44] The sentencing provisions of the *Criminal Code* set out the objectives a sentence must achieve: denunciation, deterrence – both specific and general, separation from society where necessary, rehabilitation of the offender, reparations by the offender, and the promotion of a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

#### *Additional Sentencing Guidelines – Relevant Principles and Factors*

[45] With proportionality as the guiding principle of sentencing, the *Criminal Code* also directs judges to take into account a number of other considerations. (section 718.2) These are aggravating and mitigating factors, and the principles of parity, restraint and totality. Additionally there is the issue of how the *Criminal Code* views imprisonment as a sentencing option - as a last resort. An offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances, and all available sanctions other than imprisonment that are

reasonable in the circumstances should be considered. (*sections 718.2(d) and (e), Criminal Code*)

[46] Pursuant to section 718.2, relevant aggravating or mitigating circumstances relating to the offence or offender should increase or reduce a sentence. Section 718.2(b) requires that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances." The individualized nature of offenders and offending always makes sentencing a challenge, notwithstanding the principle of parity.

[47] A breach of a position of trust or authority is statutorily mandated as an aggravating factor in sentencing. (*section 718.2 (a)(iii), Criminal Code*) This is not relevant to this case. Ms. Sheppard's offences did not involve breaching a position of trust or authority in law. Her victims were not her employers or the public treasury, for example. It is entirely understandable however that Ms. Sheppard's victims view her as having betrayed them in a similar fashion – opportunistically exploiting their vulnerability and the trust they placed in her as a friend.

#### *Aggravating and Mitigating Factors*

[48] Ms. Sheppard's criminal history reveals that her criminal wrong-doing has escalated over the years. None of her past fraudulent behaviour has approached the scope of the offences she is now being sentenced for or the degree of sophistication or manipulation they involved. What were once some bad cheques became a nearly \$10,000 defrauding of small scale service providers to at least \$50,000 stolen from trusting personal friends.

[49] Mr. Clarke, in his helpful written submissions, indicated there are a number of factors I might wish to consider in sentencing Ms. Sheppard. Certain of these factors can be characterized as aggravating, for example: the degree of premeditation involved, the circumstances surrounding the commission of the offences and the degree of active participation by Ms. Sheppard, the gravity of her crimes, and her prior criminal record. In relation to the degree of premeditation involved, the circumstances surrounding the commission of the offences and the seriousness of the offences, Mr. Clarke has noted the manipulation of the victims by Ms. Sheppard through the use of falsified documentation, empty promises to pay, and false claims of illness and ability to pay. Mr. Clarke submits:

... What aggravates the situation in Ms. Sheppard's case is the relentlessness of the pursuit of monies from the victims and others. This was not a one-of-a-kind fraud by theft from the Evans' and Clayton's, this was a weekly occurrence for more than a year...

[50] As the facts indicate, Ms. Sheppard orchestrated the fabrications and lies that facilitated her perpetration of the frauds. Mr. Planetta submitted that at the very start Ms. Sheppard did not set out to commit fraud, which may be so, but she wasted no time embracing the opportunity to deceive the Evans' and Clayton's into giving her very significant amounts of money that she knew she did not have the means to reimburse. She exploited the victims' decent human impulses to help out a struggling friend, weaving a skein of lies in which to trap them. Ms. Sheppard's victims were vulnerable to her predations because of their fundamental belief

system. As the victim impact statements disclose, they sacrificed themselves in order to help someone they believed to be less fortunate and in need.

[51] I also note as aggravating the fact that it appears Ms. Sheppard was offending while she was on probation. The forgery she perpetrated against Mr. Warne was committed in the period of April 30 to July 2, 2010. It appears to me that Ms. Sheppard was, during this period, subject to a two year probation order that came into effect in February 2009 at the end of her one-year conditional sentence, the sentence imposed in February 2008 for the 10 frauds.

[52] The probation order imposed as part of the February 12, 2008 sentencing for the 10 frauds would have ended on February 12, 2011. On August 12, 2012, as I discussed earlier in these reasons, Ms. Sheppard was sentenced for breach of probation to a six month conditional sentence to be followed by two years' probation. This means that Ms. Sheppard was defrauding the Evans' and Clayton's in the time leading up to her sentencing on August 12. The dates relevant to the charges involving the victimization of these families were February 9, 2011 to July 31, 2012.

[53] There are no extraordinary facts or circumstances in this case that mitigate Ms. Sheppard's conduct. While it is possible that Ms. Sheppard may have once again been experiencing financial stresses, she resorted once again to running a fraudulent scheme for solving financial problems with other people's money. I suspect there is, lying beneath the surface, at least a partial explanation unrelated to financial stresses for Ms. Sheppard's criminal offending but to date at least nothing has really come into focus.

[54] In her statement to the court at her sentencing hearing on March 27, Ms. Sheppard said she accepts full responsibility for what she has done and acknowledged she has “never done anything like what I’ve done now.” She went on to say: “I can’t even explain it. I seem to hurt the people that I care about.” When commenting on her law-abiding children, Ms. Sheppard observed: “I taught them morals and I didn’t learn any myself along the way and I’ve ruined peoples’ lives and I don’t know why.”

[55] I will note at this juncture that a forensic psychiatric assessment was prepared pursuant to section 672.12 of the *Criminal Code* to determine the issues of fitness to stand trial and whether Ms. Sheppard might be not criminally responsible. Dr. Scott Theriault prepared the report dated November 1, 2013 which Mr. Clarke provided with his written sentencing submissions. (*Exhibit 1*) Dr. Theriault concluded that Ms. Sheppard does not appear to have had “any regular mental health contacts.” He viewed Ms. Sheppard as not having “strong ownership of her problems nor is she making any concerted effort in dealing with her issues in a realistic fashion.” Dr. Theriault did note indications in the “Crown File Report” of “observations that Ms. Sheppard was gambling during the period of time that she was alleged to have been defrauding the victims in this matter.” Dr. Theriault did not find any fitness or NCR issues and in his opinion: “Ms. Shepherd appears to be using a significant amount of denial, distortion and minimization of her behavior, even those behaviors for which she has previously been convicted or to which she admits to.”

[56] Dr. Theriault’s opinion in relation to Ms. Sheppard was formed at a relatively early stage of these proceedings and well before Ms. Sheppard pleaded guilty. At the time he did not regard it as “productive to have Ms. Sheppard receive

mental health services to help her understand why she does what she does.” He suggested that efforts should be directed instead at “more criminological factors that underpin Ms. Sheppard’s behavior...” This sounds to me like cognitive behavioural intervention. It tells me that Ms. Sheppard should be assessed for the purpose of determining the most suitable approach to rehabilitation.

[57] The primary mitigating factor is Ms. Sheppard’s guilty plea. That has some significance in relation to the issue I am about to discuss: should the joint recommendation in this case be accepted?

#### *Joint Recommendations*

[58] The legal principles establish that joint recommendations resulting from a plea bargain are to be given “very serious consideration.” (*R. v. MacIvor*, [2003] N.S.J. No. 188 (C.A.), paragraph 31) A sentencing judge must assess whether the jointly submitted sentence is within an acceptable range and if it is, there must be sound reasons for deviating from it. (*MacIvor*, paragraph 31) The standard for departing from a joint recommendation is meant to be an exacting one. (*MacIvor*, at paragraph 33 citing the *Quebec Court of Appeal in R. v. Verdi-Douglas* (2002), 162 C.C.C. (3d) 37)

[59] Our Court of Appeal has endorsed the view that “the interests of justice are well served by the acceptance of a joint recommendation on sentence accompanied by a negotiated plea of guilty.” The caveat remains that the jointly proposed sentence should fall within the acceptable range with the guilty plea being supported by the admitted facts. (*MacIvor*, paragraph 34) However, even jointly

recommended sentences that fall outside the range are “not necessarily unfit.” (*R. v. Marriott*, [2014] N.S.J. No. 139 (C.A.), paragraph 98)

[60] Even where a jointly recommended sentence is “clearly unreasonable”, that is, clearly excessive or inadequate, a judge may only reject the joint recommendation if she is “satisfied there are no compelling circumstances justifying, as in the public interest, a departure from an otherwise fit sentence.” (*R. v. Cromwell*, [2005] N.S.J. No. 428 (C.A.), paragraph 21) A joint recommendation is not to be disregarded on the basis that the sentencing judge would have imposed a different sentence had there been no joint recommendation. (*R. v. Sinclair*, [2004] M.J. No. 144 (C.A.), paragraph 17; *R. v. G.P.*, [2004] N.S.J. No. 496 (C.A.), paragraph 15; *Cromwell*, paragraph 21; *MacIvor*, paragraph 31)

[61] As our Court of Appeal has plainly stated: “Counsel presenting a joint submission should come to the hearing prepared to address all relevant issues supporting the sentence.” (*R. v. G.P.*, paragraph 20) The kinds of issues counsel may be required to address were discussed by the Court of Appeal in *R. v. Cromwell*, [2005] N.S.J. No. 428, paragraph 19:

There are many situations in which it is in the public interest for Crown and defence counsel to enter into negotiations which result in a guilty plea and a joint sentence recommendation. There may be uncertainties in evidence which induce both counsel to prefer compromise. Avoidance of a trial may save substantial public expense and spare prosecution witnesses the trauma of testifying. A negotiated resolution, which shortens the time between the charging of the offense and disposition,

protect the public from those who would reoffend while on pretrial release and spares victims of crime the long ordeal of awaiting trial of the perpetrators. Offenders sometimes provide the police with critical information leading to the solution of the crimes. This can serve as a quid pro quo for a sentence somewhat reduced from what would otherwise be appropriate. Heavy criminal caseloads resulting in court backlogs can also be alleviated through consensual resolution, in the proper circumstances. Such resolutions are more likely to be achieved where it is probable that the sentencing judge will accept the recommendation of counsel.

*The Joint Recommendation in this Case*

[62] Some of the “public interest” considerations I just mentioned are present in this case, notably Ms. Sheppard’s negotiated guilty pleas on these serious fraud charges where the quantum of the loss would have had to be litigated.

[63] At Ms. Sheppard’s sentencing hearing I made no bones about the fact that I was discomfited by the joint recommendation for Ms. Sheppard to again receive a conditional sentence followed by probation for committing fraud. This led to me asking Mr. Clarke and Mr. Planetta to explain the public interest underpinnings to the joint recommendation.

[64] Before I discuss the public interest considerations in this case, I want to mention that during his submissions Mr. Clarke rhetorically asked what was likely to be gained by “warehousing”, that is jailing, rather than rehabilitating Ms.



Sheppard in the community. This is a very legitimate question for Crown and Defence counsel and judges to ask. It is a question that the criminal justice system and its policy makers should be rigorously examining. The pointlessness of warehousing has not been a consideration for me in this sentencing. In sentencing Ms. Sheppard I am governed by the purpose and principles of sentencing under sections 718, 718.1 and 718.2 of the *Criminal Code* reviewed earlier. Rehabilitation is only one of the principles of sentencing to be applied in this case. I must also weigh into the mix the sentencing principles of denunciation and deterrence, especially in the case of a recidivist fraudster, and the fact that a fundamental purpose of sentencing is to “contribute...to respect for the law...” (*section 718, Criminal Code*)

[65] Mr. Clarke and Mr. Planetta emphasized a number of factors that, in their submission, satisfies the requirement that this jointly recommended sentence serves the public interest. They noted the following:

- The joint recommendation arose from a genuine plea bargain. There were lengthy negotiations to resolve the facts in support of the guilty pleas and the terms of the sentence to be recommended;
- Ms. Sheppard’s guilty pleas avoided the three weeks of trial that had been scheduled;
- The guilty pleas spared the victims having to testify and saved them the trauma of having to re-live the painful circumstances of the frauds. It was apparent from the Victim Impact Statements that even the sentencing hearing was traumatic, distressing and emotionally taxing for the victims;
- The Claytons would have had to attend the trial from their home in Utah. This would have required an extended period of time in Halifax. Sherise

Clayton has already returned to Nova Scotia three times, and James Clayton twice, at their own expense, to deal with this matter;

- The trial presented evidentiary challenges. While Mr. Clarke indicated his confidence that convictions would have been obtained, he pointed out that no forensic audit was prepared by the police. The absence of a forensic audit would have made the presentation of the evidence considerably more difficult for the Crown. The documentary evidence against Ms. Sheppard includes copious numbers of individual receipts ranging from a few hundred dollars to \$1000. The process of going through the minutiae of the fraud documentation would have been very time-consuming. It would have been draining for the victims.
- Mr. Planetta indicated that despite the confidence expressed by Mr. Clarke on the issue of securing convictions, there were triable issues, most notably on the issue of the quantum of the fraud. The amount of the fraud alleged by the Crown, approaching \$200,000, has not been admitted by Ms. Sheppard.

[66] In support of the joint recommendation, Crown and Defence noted that this is not a breach of trust case in the legal sense. As I mentioned earlier in these reasons, this is not a case where the offender, in committing the fraud, “abused a position of trust or authority in relation to the victim”, as contemplated by section 718.2(a)(iii) of the *Criminal Code*. This means that the aggravating circumstance of an abuse of a position of trust or authority is not present. Ms. Sheppard has not committed and does not have any criminal convictions for “breach-of-trust” fraud.

[67] I was also asked to take into consideration the important mitigating factor of Ms. Sheppard’s guilty pleas and the fact that, particularly after having listened to the victim impact statements, Ms. Sheppard is very remorseful.

[68] So she should be and if her feelings of remorse have, until now, been somewhat attenuated, as Dr. Theriault's assessment suggests, this should be a matter of real concern to Ms. Sheppard. If she finds it challenging to feel empathy for people she has harmed, at the very least she needs to focus on how she can control her victimizing behaviors.

[69] This is not a case where the joint recommendation is for a sentence that falls outside of the range. A sentence of two years less a day plus three years' probation is within the range for the offences committed by Ms. Sheppard. Mr. Clarke provided a number of cases which I do not intend to discuss, some of which were breach-of-trust cases which as I have said, this is not, and submitted, I find correctly, that the range is from non-custodial dispositions to Federal penitentiary time. I accept that a two year less a day sentence and probation is within the range for offences such as those committed by an offender such as Ms. Sheppard.

[70] This is a case that pivots around the question: is the sentence being jointly recommended, a strict conditional sentence with a lengthy period of probation, a fit sentence for Ms. Sheppard given the circumstances of her offending and her prior related record for fraud?

*Serving the Principles of Denunciation and Deterrence*

[71] Sentencing Ms. Sheppard to incarceration would be consistent with an emphasis on denunciation and deterrence for this type of case – frauds perpetrated with a pronounced degree of calculation over a significant period of time through numerous transactions and involving a considerable sum of money. An emphasis

on denunciation and deterrence is warranted in cases where, as here, there has been the perpetration of a deliberate, ongoing fraud. Ms. Sheppard continued the frauds against her friends until they figured out they were being fleeced.

[72] In *R. v. Proulx*, [2000] 1 S.C.R. 61 the Supreme Court of Canada recognized that, "Inadequate sanctions undermine respect for the law" and fail to provide sufficient denunciation and deterrence. The Court understood that if a conditional sentence is not distinguished from probation, it will not be accepted by the public as a legitimate sanction. (*Proulx*, paragraph 30) But the Court held that a conditional sentence can provide a significant amount of denunciation particularly when onerous conditions are imposed. (*paragraph 102*) The goals of deterrence can also be served by a custodial sentence served in the community. (*Proulx*, paragraph 107)

[73] The punitive effect of a conditional sentence is to be achieved through the use of punitive conditions, such as strict house arrest, to constrain the offender's liberty. (*Proulx*, paragraph 36) Another feature of conditional sentencing is its ready conversion to a sentence in a jail cell. As noted by the Supreme Court of Canada in *Proulx*: "... where an offender breaches a condition without reasonable excuse, there should be a presumption that the offender will serve the remainder of his or her sentence in jail." (*Proulx*, paragraph 39)

[74] I also note that a conditional sentence is served without any remission. Unless varied, the offender remains subject to the conditions until the sentence is finished.

[75] Conditional sentences have been ordered even for breach-of-trust frauds, including in cases where the amount of the fraud was very significant. Some Nova Scotia examples include: *R. v. Ferguson*, [1999] N.S.J. No. 481 (P.C.) - \$390,000; *R. v. Matheson*, [2001] N.S.J. No. 195 (S.C.) - \$117,000; *R. v. Decoff*, [2000] N.S.J. No. 224 (S.C.) - \$44,000; *R. v. Trask*, [2005] N.S.J. No. 561 (P.C.) - \$340,731.70 and a joint recommendation; *R. v. Pottie*, [2003] N.S.J. No. 543 (S.C.) - \$46,475; *R. v. Hurlburt*, [2012] N.S.J. No. 420 (S.C.) - \$25,320.77.

### *Accepting the Joint Recommendation*

[76] A joint recommendation is not a *fait accompli*. The sentencing judge makes the ultimate determination whether to accept a joint recommendation or not. That discretion is structured by the principles and factors I discussed earlier and while the circumstances here would justify a sentence of incarceration, the jointly recommended sentence is within an acceptable range and I do not have “sound reasons” for refusing to impose it. In the same spirit as Ross, P.C.J. in *Trask*, despite the “mixed feelings” that this case stirs within me and, I expect, others as well, I accept the joint recommendation by Crown and Defence for a conditional sentence of two years’ less a day with the conditions proposed.

[77] This is a case where denunciation and deterrence, including specific deterrence, must be emphasized. Ms. Sheppard’s incarceration could achieve those sentencing objectives but so can the extremely strict and punitive conditions of the jointly recommended conditional sentence of two years less a day, described in paragraph 30 of these reasons, followed by three years of probation.

[78] Deterrence and denunciation are not the only principles of sentencing to be factored into the sentencing analysis. Restraint and rehabilitation are also relevant and, particularly given Ms. Sheppard's history and proclivities, the ultimate objective of sentencing - protection of the public - is best achieved by her rehabilitation. I recognize that a conditional sentence affords the opportunity for Ms. Sheppard to access in the community the services she requires, tailored for her rehabilitative needs, such as cognitive-behavioural therapy or counselling or psychiatric services. It is my expectation that the types of services and therapies and the most appropriate combination for Ms. Sheppard are to be found in the community. This is, in all likelihood, Ms. Sheppard's last, best chance for addressing her issues in the context of a community-based sentence. If she re-offends and is once again sentenced for fraud, she can expect to be dealing with her issues in the correctional system and having to accept whatever correctional programming is available to her.

[79] To the conditions that have been jointly recommended I add the following:

- Ms. Sheppard is not to seek or accept employment where she would have the responsibility of handling money; and
- Ms. Sheppard is to attend for a psychiatric assessment and participate in any treatment, counselling or program recommended as a result.

[80] I will add that I expect Ms. Sheppard to make regular payments on the restitution orders. If this requires her to get additional employment she will have to do so.

[81] I am directing that Ms. Sheppard return to court in six months for a review of her compliance with the conditions of her sentence, including the psychiatric assessment. I will hear from counsel if there are any conditions or issues that need to be addressed. In light of the restitution orders I will not be ordering a Victim Surcharge as it would represent an undue hardship to do so.