IN THE PROVINCIAL COURT OF NOVA SCOTIA

Cite as: R. v. Al-Awaid, 2015 NSPC 52

Date: August 28, 2015
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Registry: Halifax

BETWEEN:

HER MAJESTY THE QUEEN

v.

HASSAN AL-AWAID

BEFORE THE HONOURABLE JUDGE ANNE S. DERRICK

HEARD: March 27, April 10, May 26, and July 16, 2015

DECISION: August 28, 2015

CHARGES: section 29(2)(a) x 10 *Citizenship Act*; section 126 x 8 *Immigration and Refugee Protection Act*

COUNSEL: Timothy McLaughlin and Ronda Vanderhoek, for the Crown

Ian Hutchison, for Hassan Al-Awaid

By the Court:

Introduction

[1] Hassan Al-Awaid has pleaded guilty to eight offences under the *Immigration and Refugee Protection Act* ("*IRPA*") and ten offences under the *Citizenship Act*. The *IRPA* offences were all committed in the Halifax Regional Municipality over a period of years, spanning November 1, 2002 to July 2011. The *Citizenship Act* offences were committed in relation to three individuals in the period of February 2006 to July 2011.

[2] Mr. Al-Awaid worked as an immigration consultant. Prospective citizenship applicants and permanent residents used his services to deal with the residency requirements associated with their applications for citizenship or to maintain their Permanent Resident status. Mr. Al-Awaid assisted his clients with the preparation of the required forms for Citizenship and Immigration Canada (CIC) and obtained supporting documentation where necessary. In 2007 some suspicious documentation led to an investigation by the authorities. The investigation revealed that Mr. Al-Awaid was operating a business that assisted clients circumvent their residency requirements.

[3] The Crown proceeded by indictment against Mr. Al-Awaid. Consequently, under section 128 of *IRPA*, the maximum term of imprisonment is five years in prison. The Crown is seeking a three year penitentiary term for the *IRPA* offences. The Defence submits that a two year less a day conditional sentence is appropriate. There is a joint recommendation for a $4000 fine for the *Citizenship Act* offences.

[4] There are a number of mitigating factors in Mr. Al-Awaid's case, including his serious health issues. The Crown indicates that the mitigating factors have influenced the Crown's position on the appropriate sentence for Mr. Al-Awaid on the *IRPA* charges and submits that any mitigatory effect of various factors, including Mr. Al-Awaid's health, do not justify a sentence less than three years in prison.

[5] This is a difficult sentencing which has caused me much anxious reflection. Mr. Al-Awaid is guilty of perpetrating a protracted for-profit scheme designed to mislead Citizenship and Immigration Canada (CIC). His serious offences justify a custodial sentence. Mr. Al-Awaid does not suggest otherwise. It is his submission

that the applicable principles of denunciation and deterrence can be effectively served by a conditional sentence of imprisonment. In support of this option, considerable evidence has been presented about Mr. Al-Awaid's previous good character and his health problems. In the Crown's submission anything less than a prison term is inadequate.

The Offences to which Mr. Al-Awaid has Pleaded Guilty

[6] The *IRPA* offences were committed by Mr. Al-Awaid having knowingly counseled, induced, aided or abetted permanent residents in relation to the immigration and citizenship applications of numerous individuals. The *Citizenship Act* offences involved Mr. Al-Awaid making false representations on behalf of certain individuals in relation to their applications for citizenship. As the Crown put it in its written submissions, Mr. Al-Awaid provided a range of services to his clients which facilitated the appearance of legitimacy; he enabled clients to falsify the documentation they submitted to maintain their permanent residency status and subsequently obtain Canadian citizenship.

[7] The specifics of Mr. Al-Awaid's offences are described in the charges to which he has pleaded guilty:

Information 695760 – *Immigration and Refugee Protection Act* Charges

- Between August 1st, 2006 and May 29th, 2009, Mr. Al-Awaid knowingly counselled, induced, aided, or abetted Abdullah Siddiqui, Uzma Aslam, Khaldoun Halasa and Nadia Iskander to directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induced, or could have induced an error in the administration of the *Immigration and Refugee Protection Act*, thereby committing and offence pursuant to s. 126 of the *Act*;

- Between October 1st, 2006 and July 8th, 2009 Mr. Al-Awaid knowingly counselled, induced, aided or abetted Bassam Chilmeran, May Al-Chalabi, Vladimir Krastev to directly or indirect misrepresent or withhold material facts relating to a relevant matter that induced, or could have induced an error in the administration of the *Immigration and Refugee Protection Act*, thereby committing an offence pursuant to s. 126 of the *Act*;

- Between July 17th, 2006 and May 22nd, 2009 Mr. Al-Awaid knowingly counselled, induced, aided or abetted Syed Mahmud, Mohamed Abdalaai, to directly or indirect misrepresent or withhold material facts relating to a relevant matter that induced, or could have induced an error in the administration of the *Immigration and Refugee Protection Act*, thereby committing an offence pursuant to s. 126 of the *Act*;

- Between Jan 28th, 2004 and April 1st, 2009 Mr. Al-Awaid knowingly counselled, induced, aided or abetted Faris Abu-Dayeh, Abeer Sabanekh, Majeda Omar, George Mushawar, to directly or indirect misrepresent or withhold material facts relating to a relevant matter that induced, or could have induced an error in the administration of the *Immigration and Refugee Protection Act*, thereby committing an offence pursuant to s. 126 of the *Act*;

- Between September 17th, 2003 and October 21st, 2008, Mr. Al-Awaid knowingly counselled, induced, aided or abetted Assaad El Abbas, Mustafa Al-Mehdawi, Hind Malhas, Nagham Malhas, to directly or indirect misrepresent or withhold material facts relating to a relevant matter that induced, or could have induced an error in the administration of the *Immigration and Refugee Protection Act*, thereby committing an offence pursuant to s. 126 of the *Act*;

- Between November 1st, 2002 and March 30th, 2009 Mr. Al-Awaid knowingly counselled, induced, aided or abetted Mohd Morelly, Ziad Musleh, Wael Kamal, Rozana Al Labadi, Sherif Assran, Iman El-Meniawy, Ziyad Al-Zabet, Areej Salah, Neveen Khalaf, Samir Kattan, Maha Quossos, Issam Nehlawi, Roudayna Nhanna Nehlawi, to directly or indirect misrepresent or withhold material facts relating to a relevant matter that induced, or could have induced an error in the administration of the *Immigration and Refugee Protection Act*, thereby committing an offence pursuant to s. 126 of the *Act*;

- Between June 9th, 2005 and June 3rd, 2009 Mr. Al-Awaid knowingly counselled, induced, aided or abetted Effah Dajani to directly or indirect misrepresent or withhold material facts relating to a relevant matter that

induced, or could have induced an error in the administration of the *Immigration and Refugee Protection Act*, thereby committing an offence pursuant to s. 126 of the *Act*;

Information 667024 - *Immigration and Refugee Protection Act* Charges

- Between August 7th, 2007 and July 26th, 2011, knowingly counselled, induced, aided, or abetted Polina Dimitrova to directly or indirectly misrepresent or withhold material facts relating to a relevant matter that induced, or could have induced an error in the administration of the *Immigration and Refugee Protection Act* contrary to Section 126 of the *Act*.

Information 623732 – *Citizenship Act* Charges

- Between February 6th, 2006 and January 17th, 2008 on behalf of Majeda Omar, Mr. Al-Awaid made false representation, committed fraud and knowingly concealed material circumstances contrary to Section 29(2)(a) of the *Citizenship Act*;

- Between August, 2006 – date unknown - and January 1st, 2008, Mr. Al-Awaid, on behalf of Khaldoun Halasa and Nadia Iskinder, made false representation, committed fraud and knowingly concealed material circumstances contrary to Section 29(2)(a) of the *Citizenship Act*;

- Between August 9th, 2004 and January 6th, 2008 Mr. Al-Awaid, on behalf of Bassam Chilmeran and May Al Chalabi, made false representation, committed fraud and knowingly concealed material circumstances, contrary to Section 29(2)(a) of the *Citizenship Act*;

- Between June 10th, 2004 and January 3rd, 2008 Mr. Al-Awaid on behalf of Mohd Morelly, made false representation, committed fraud and knowingly concealed material circumstances, contrary to Section 29(2)(a) of the *Citizenship Act*.

Information 628115 – *Citizenship Act* Charges

- Between January 19th, 2008 and December 23rd, 2008 Mr. Al-Awaid on behalf of Vladimir Krastev, made false representation, committed fraud and

knowingly concealed material circumstances contrary to Section 29(2)(a) of the *Citizenship Act*;

- Between December 19th, 2006 and December 29th, 2008, Mr. Al-Awaid on behalf of Mohamed Abdalaal, made false representation, committed fraud and knowingly concealed material circumstances contrary to Section 29(2)(a) of the *Citizenship Act*;

- Between July 17th, 2006 and December 15th, 2008 Mr. Al-Awaid on behalf of Syed Mahmud, made false representation, committed fraud and knowingly concealed material circumstances contrary to Section 29(2)(a) of the *Citizenship Act*;

- Between June 10th, 2004 and March 6th, 2008, Mr. Al-Awaid on behalf of Rima Dib, made false representation, committed fraud and knowingly concealed material circumstances, contrary to Section 29(2)(a) of the *Citizenship Act*;

- Between December 10th, 2006 and December 22nd, 2008, Mr. Al-Awaid on behalf of Abdullah Siddiqui and Uzma Aslam, made false representation, committed fraud and knowingly concealed material circumstances contrary to Section 29(2)(a) of the *Citizenship Act*.

Information 667021 – *Citizenship Act* Charge

- Between August 7th, 2007 and July 26th, 2011 Mr. Al-Awaid on behalf of Polina Dimitrova, made false representation, committed fraud and knowingly concealed material circumstances contrary to Section 29(2)(a) of the *Citizenship Act*.

Facts

[8] The following recital of the facts is extracted from the Crown's sentencing brief and presentation of the facts on May 26, 2015. The description of the facts in the Crown's brief occupies approximately 35 pages, detailing the specific services Mr. Al-Awaid provided to clients that led to the charges to which he has pled

guilty. The facts are well-documented on the record and not in dispute. I will not be reviewing the specifics of them in these reasons.

[9] Mr. Al-Awaid's unlawful activities came to light in April 2007 when an agent at Canada Border Services, tasked to review citizenship applications noted that there were two different signatures for the same person. This raised concerns about the *bona fides* of the applications.

[10] The applications were being handled by CCG, the immigration consultancy business owned and operated by Mr. Al-Awaid. The RCMP Atlantic Region Immigration Passport section began an investigation into all the files in which Mr. Al-Awaid was known, or suspected to be handling.

[11] The investigation involved surveillance, client interviews, address checks to confirm residency, and the obtaining of production orders and search warrants. It revealed that Mr. Al-Awaid had been providing various services to his clients aimed at allowing them to falsify their residency obligations in order to maintain their permanent residency and ultimately obtain Canadian citizenship.

[12] An enormous amount of material was located as a result of the execution of search warrants – 20 filing cabinets containing meticulously kept files on CCG clients; computers and USB thumb drives; more than 140 cellular phones labeled with phone numbers and often the names of clients; a large number of ATM cards and personal identification numbers; and dozens of Government of Canada cheques representing benefits payable to CCG clients to which they were not entitled.

[13] The investigation identified a number of addresses of convenience which were provided to CCG clients enabling them to purport to have local residences when in fact, practically none of the individuals associated with the addresses lived at them during the times claimed.

[14] The investigation also obtained statements from seven clients which were helpful in outlining the services they had obtained from Mr. Al-Awaid and how the scheme had been operated. These statements outlined how Mr. Al-Awaid had assisted the clients and their families through, the filing of documentation containing false information at Citizenship and Immigration Canada (CIC),

obtaining or producing false letters of employment, T4 slips, paying bills through accessing their bank accounts, picking up mail and filing taxes based on false information. Files seized from Mr. Al-Awaid's office corroborated these client statements and contained a large volume of very explicit and inculpatory emails between the clients and Mr. Al-Awaid.

[15] The Crown has described the services being provided by Mr. Al-Awaid as a "complex suite of services", all connected to the ultimate goal of having CIC accept his clients' permanent residency and citizenship applications.

[16] Essentially Mr. Al-Awaid's clients would receive the following services: Mr. Al-Awaid would arrange for the clients to come to Halifax usually to stay only a few days for the purpose of establishing their false residency. Mr. Al-Awaid would meet the clients at the airport and take them to a pre-arranged motel. He provided them with an address of convenience, either by signing a lease or simply writing down an address for them. All the addresses Mr. Al-Awaid used were ones he had a personal connection to, including his own residence, enabling him to collect mail at the address. He also used the address of his business as an address for client mail.

[17] During the few days Mr. Al-Awaid's clients were in Canada, he would take them to government offices where they would obtain provincial identification or a driver's licence. MSI cards for provincial health care coverage were obtained. Mr. Al-Awaid would assist clients open bank accounts at local banks and retained their debit cards and PIN numbers so that he could generate activity in the accounts, creating the impression that the clients were conducting their affairs locally.

[18] Mr. Al-Awaid would also have clients sign blank applications for Renewal of Permanent Residency Card or applications for citizenship.

[19] After a few days of these activities, Mr. Al-Awaid would return the clients to the airport and they would leave the country. Mr. Al-Awaid maintained ongoing email contact with the clients after their departure and would manage their false indicia of residency in Canada. Mr. Al-Awaid collected mail for his clients at their phony addresses, paid monthly cell phone bills, recorded or paid agreed-upon residential rents, and maintained bank account activity.

[20] Mr. Al-Awaid's service to clients included reading the mail he collected for them to determine if there was anything CIC required them to do. Mr. Al-Awaid would alert clients if they needed to come to Canada for an in-person meeting with CIC.

[21] Another feature of the scheme being perpetrated by Mr. Al-Awaid was advising clients how to make it appear they had not left Canada when in fact they had. This was accomplished through the use of multiple passports (which many clients held legitimately) at a time when Canada Border Services Agency had only entrance control and no exit control. One passport would be used on entry to Canada and stamped and another passport used at the time of departure. The "entry" passport would then show no evidence the client had left the country.

[22] Mr. Al-Awaid also provided, for an additional fee, the yearly submission of income tax returns, mostly with no supporting documentation. These phony returns generated income tax refunds, GST/HST refunds and Child Tax/Child Care benefits totally thousands of dollars. Over $80,000 in uncashed government cheques were located during the search of Mr. Al-Awaid's offices.

[23] As the Crown put it: the illusion of local residency was a labour-intensive project requiring Mr. Al-Awaid to create the activity that made it appear as though his clients were living in Canada. Although only Mr. Al-Awaid communicated with CIC on behalf of clients, of necessity he had to hire staff to assist with managing the large volume of clients who were receiving services.

[24] It is undisputed that the clients identified in the *IRPA* charges were all legitimately on the path to obtaining citizenship. However, at some point along the way, they started using Mr. Al-Awaid's services to circumvent the *IRPA* requirements. The Crown indicated it had exercised its discretion not to charge any of the clients, many of whom have been able to continue or complete their permanent residency/citizenship application processes. The Crown chose to pursue a prosecution solely against Mr. Al-Awaid who orchestrated the schemes that violated the *IRPA* and the *Citizenship* Act.

First Principles of Sentencing

[25] In sentencing Mr. Al-Awaid I am guided by the provisions of the *Criminal*

Code. Section 718 of the *Criminal Code* sets 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.

[26] Mr. Al-Awaid's deliberate, protracted and extensive scheme for misleading CIC requires a sentence that emphasizes denunciation and deterrence. In crafting the appropriate sentence I have to carefully consider the Defence submission that these sentencing principles can be effectively served by a conditional sentence.

[27] Sentencing is a highly individualized exercise. (*R. v. Ipeelee,[2012] S.C.J. No. 13, paragraph 38*; *R. v. Wust, [2000] S.C.J. No. 19 paragraph 21*; *R. v. M. (C.A.), [1996] S.C.J. No. 28, paragraph 92; R. v. Shropshire, [1995] S.C.J. No. 52*) In determining a fit sentence, "…the sentencing judge should take into account any relevant aggravating or mitigating circumstances (s. 718.2(*a*) of the *Criminal Code*), as well as objective and subjective factors related to the offender's personal circumstances." (*R. v. Pham, [2013] S.C.J. No. 100, paragraph 8*; *R. v. Nasogaluak, [2010] S.C.J. No. 6, paragraph 44*)

[28] As the Supreme Court of Canada has said in *Ipeelee*,

> Despite the constraints imposed by the principle of proportionality, trial judges enjoy broad discretion in the sentencing process. The determination of a fit sentence is, subject to any specific statutory rules that have survived Charter scrutiny, a highly individualized process. Sentencing judges must have sufficient manoeuvrability to tailor sentences to the circumstances of the particular offence and the particular offender… (*paragraph 38*)

[29] Assessing moral culpability is a fundamental aspect of determining the appropriate sentence: a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. (*section 718.1, Criminal Code*) Proportionality is "closely tied to the objective of denunciation", promotes justice for victims, and seeks to ensure public confidence in the justice system. It is

"rooted in notions of fairness and justice." (*R. v. Priest, [1996] O.J. No. 3369 (C.A.), paragraph 26)* The principle of proportionality "ensures that a sentence does not exceed what is appropriate, given the blameworthiness of the offender", and serves "a restraining function" to achieve a just sanction. (*Ipeelee, paragraph 37*)

[30] Restraint is a foundational principle of sentencing. Sections 718.2 (e) and (f) of the *Criminal Code* temper the use of incarceration to achieve denunciation and deterrence, providing that "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 for all offenders…"

[31] Later in these reasons I will be returning to the principles of sentencing and how they are to be applied in Mr. Al-Awaid's case. I will next be discussing Mr. Al-Awaid's background and what have been identified as the aggravating and mitigating factors in his case.

Mr. Al-Awaid's Background

[32] Mr. Al-Awaid is 61. Born in Kuwait, he emigrated to Nova Scotia in 1992. He was married in Kuwait where his two older children were born. Twins, now in their early twenties, were born here. Three children, a daughter and the twins, are still living at home.

[33] Mr. Al-Awaid completed high school in Kuwait and subsequently earned diplomas in Public Administration and Distance Education. In Kuwait Mr. Al-Awaid was employed for a government-owned petrochemical company as the public relations and marketing officer. After working as an immigration consultant for many years, Mr. Al-Awaid is currently unemployed. His immigration consultancy business closed when he was charged with the *IRPA* and *Citizenship Act* offences.

Aggravating Factors

[34] As the Crown has pointed out, the nature and extent of Mr. Al-Awaid's scheme is aggravating. It was sophisticated, organized and lucrative. The deceits

were undertaken over an extended period. Mr. Al-Awaid utilized his societal position and good name to further his corrupt ends. In perpetrating his unlawful activities under the auspices of his immigration consultancy business, he abused a relationship of trust with CIC.

[35] However, as I have noted, Mr. Al-Awaid's clients took advantage of the opportunity to "cheat" on the requirements for satisfying their citizenship applications. Unlike offenders in some of the cases provided to me, which I will be discussing, Mr. Al-Awaid's dishonest enterprise did not involve the exploitation of vulnerable clients.

[36] Although at the start he conducted his business lawfully, Mr. Al-Awaid strayed into the corrupt practices that came to characterize his immigration consultancy work. Even being charged did not stop him entirely as he continued to provide services to his client, Polina Dimitrova. The Crown points out that given the magnitude of his operation, Mr. Al-Awaid would have had to be wholly committed to managing it. There is no evidence he had any legitimate employment during the period when the offences were committed.

[37] The Crown makes a good case for a penitentiary sentence for Mr. Al-Awaid. As I have described, his offending was egregious: calculated, protracted and profitable. The Crown has submitted in its written brief that Mr. Al-Awaid's bank account "shows that he made hundreds of thousands of dollars on this scheme and has defrauded the government of countless thousands of dollars in unentitled GST/HST rebates, income tax refunds and Child Tax/Child Care Benefits."

[38] Having said that, and although Mr. McLaughlin has analogized Mr. Al-Awaid's offences to fraud, he was not charged with nor is he being sentenced for fraud. Mr. Hutchison points out that the maximum penalty for an *IRPA* offence is well below the maximum penalty for fraud in the *Criminal Code*. Fraud carries a maximum penalty of 14 years imprisonment if prosecuted by indictment. By contrast, the maximum sentence under *IRPA* is five years. Mr. Hutchison also notes that Mr. Al-Awaid's clients were all entitled to be in Canada. None of them was seeking entry to the country. They were trying, with Mr. Al-Awaid's assistance, to maintain permanent residency status and circumvent the requirements for citizenship.

[39] Mr. Al-Awaid's offending had harmful consequences. The Crown has submitted that the objectives of *IRPA* with respect to immigration, were undermined, Mr. Al-Awaid's clients received benefits to which they were not entitled, and immigration consultancy work will now face more scrutiny by the public and CIC. The Crown advised that some of Mr. Al-Awaid's clients had to withdraw their applications for citizenship while others had to re-start the process. This of course was a risk they took when they knowingly participated in misrepresenting the facts about their residency.

[40] The facts establish that Mr. Al-Awaid's activities undermined the integration of permanent residents by facilitating the misrepresentation of their actual residency. Integration into Canadian society, an *IRPA* objective, is a requirement for citizenship that seeks to benefit immigrants and Canada. *IRPA*'s objectives reference the rich social, cultural and economic benefits realized by immigration and its role in strengthening "the social and cultural fabric of Canadian society" (*sections 3(1)(a)(b)(c)*). *IRPA* also seeks to promote the successful integration of permanent residents into Canada, "while recognizing that integration involves mutual obligations for new immigrants and Canadian society." (*section 3(1)(e)*)

[41] Mr. Al-Awaid enabled his clients to avoid the obligations associated with integration, the opportunity in the process for acquiring Canadian citizenship of becoming what has been termed "Canadianized" which permits prospective citizens to experience Canadian society and "…all its virtues, decadence, values, dangers and freedoms, just as it is." (*Pourghasemi (Re) (F.C.T.D.), [1993] F.C.J. No. 232, paragraph 3*)

[42] It is the Crown's submission that the gravity of Mr. Al-Awaid's offences disqualifies him for a conditional sentence. As stated in *R. v. Proulx,* [2000] S.C.J. No. 6, Parliament has "denied the possibility of a conditional sentence for offenders who should receive a penitentiary term." (*paragraph 55*)

The Cases Relied on by the Crown

[43] The Crown says *R. v. El-Akhal,* [2011] O.J. No. 6247 (C.J.) is "strikingly similar" to Mr. Al-Awaid's case. Between 2003 and 2009, Mr. El-Akhal's for-profit enterprise assisted a significant number of people process applications for

residency and citizenship. The sentencing judge described the scheme as "quite complex" as it involved applications for various types of government identification, the use of a network of addresses, and the employment of other people to manage the case load. Mr. El-Akhal's clients were supplied with false addresses to create the illusion they were residing in Canada. The services provided to clients included the completion of income tax returns which generated tax refunds, GST rebates and child benefit cheques. Over the five year period, the government of Canada paid out tax refunds totaling $539,000 to the phony addresses.

[44] A joint recommendation of three years in prison was accepted by the court. Mr. El-Akhal was 64 years old with no prior record. This and his guilty pleas were treated as mitigating factors although Blacklock, J. remarked on how commercial fraudsters use their good characters "as an assist in the fraudulent activity." (*paragraph 6*) In accepting the joint recommendation, Blacklock, J. commented on the need in "substantial commercial fraud" cases for the penalty to be an effective deterrent to those who might be tempted to commit such offences.

[45] The case of *R. v Jacobson* (*unreported decision of Carlson, P.J., October 29, 2012*) also involved fraud charges as well as charges of forgery, identity theft, and *IRPA* offences. Mr. Jacobson had committed "an ongoing, complex, sophisticated, planned, and large-scale fraud…" in relation to hundreds of victims including "vulnerable foreign nationals". He was described as having "preyed" on his victims. It was noted that Mr. Jacobson had pleaded guilty, was remorseful, and had no prior record. It was held to be significantly aggravating that while on bail he had committed a further series of substantially escalated offences. The Court emphasized general deterrence. A joint recommendation for a total sentence of 4.5 years in prison and $300,000 in restitution was accepted by the court.

[46] In *R. v. Mendez*, [2004] O.J. No. 5733 (S.C.J.) a conditional sentence was rejected by the court as inconsistent with the purpose and principles of sentencing. (*paragraph 19*) Ms. Mendez pleaded guilty to one count under the *Immigration Act* for having assisted two Argentinian families falsely claim to be refugees. Ms. Mendez was an immigration consultant. She was charged when her "refugees"

went to authorities and admitted to having concocted, on Ms. Mendez's advice, a bogus story of persecution.

[47] While noting the mitigating factors of a guilty plea, no prior record, and community involvement and support, the sentencing judge described Ms. Mendez as "utterly disdainful of the immigration and refugee laws in Canada" and someone who felt "justified in counselling both dishonesty and breaches of the rules to accomplish her ends." (*paragraph 18*) Dambrot, J. viewed Ms. Mendez's conduct as a serious attack on the integrity of the immigration and refugee system and imposed a nine month jail term. He held that "only a sentence of actual imprisonment will adequately encourage respect for the law and sufficiently reflect denunciation of Ms. Mendez's conduct and general deterrence." (*paragraph 20*)

[48] In *R. v. Gedeonov* (*unreported decision of Nadelle, J. of the Ontario Court of Justice, May 22, 2014*), a conditional sentence for fraud was rejected as incompatible with the sentencing objectives of denunciation and deterrence. Mr. Gedeonov, operating an unauthorized immigration consulting business, defrauded five clients seeking study permits and entry visas of $52,000 over a two year period. He was also convicted of two *IRPA* offences. The sentencing judge imposed concurrent sentences of one year on each count.

[49] A jail sentence was imposed in *R. v. Lin* (*unreported decision of Hyslop, J, of the Newfoundland and Labrador Provincial Court, November 23,2005*) for *IRPA* offences involving the attempt to get five Chinese nationals into Canada illegally. Mr. Lin's people-smuggling scheme involved planning, false documentation, deceit, and misleading of immigration officials. Hyslop, J. imposed concurrent sentences of one year in jail. A proposed sentence of time served was rejected.

[50] The applicability of a conditional sentence for Mr. Lin was not discussed. As Mr. Hutchison has pointed out, Mr. Lin would not have been eligible as he was not resident in Canada.

[51] The Crown also provided the case of *R. v. Serré*, [2013] O.J. No. 1437(S.C.J.), involving a public official from the Ministry of Citizenship and Immigration who was convicted of fraud and breach of trust. A four year sentence

was imposed for these offences. Ms. Serré, who occupied a supervisory position, had formed a money-making enterprise with a colleague that gave special treatment to certain immigrants to Canada. She circumvented "regulatory or well-established practice requirements" in place to protect the integrity of the immigration process and took advantage of "vulnerable and desperate people." (*paragraph 48*) The scheme was described as involving a high degree of planning and forethought and motivated by personal gain. Aitken, J. emphasized denunciation and general deterrence as the paramount sentencing considerations where a breach of trust is involved.

[52] The cases provided by the Crown reflect the fact that sentencing cases for *IRPA* offences are still relatively uncommon. And not all cases involving immigration-related offences are useful. *Serré*, a breach of trust by a public official, and *Lin*, a case of people-smuggling, are distinctly different from the circumstances in Mr. Al-Awaid's case. The focus in *Gedeonov* was on the fraud offences that involved taking advantage of hapless clients. *Mendez* raises the issue that would have to be confronted in Mr. Al-Awaid's case if he even qualifies for a conditional sentence: the compatibility of a conditional sentence with the principles of denunciation and deterrence.

[53] *Jacobson* has to be considered from the perspective that Mr. Jacobson was sentenced for offences that carry a 14 year maximum penalty. His victims included vulnerable foreign nationals. He was not assisting clients who were already entitled to be in Canada.

[54] As the Crown notes, the enterprise in *El-Akhal* does resemble what Mr. Al-Awaid was doing. However, the issues of criminal fraud and the very substantial associated loss are not features of the sentencing for Mr. Al-Awaid.

[55] And notwithstanding judicial statements, for example, in *El-Akhal*, about the need for deterrent sentences in fraud cases, there are many examples of conditional sentences being imposed for fraud offences. 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.

[56] My point is that conditional sentences have been imposed even in fraud cases, fraud being an offence that is thought to be particularly amenable to general deterrence. This point is made in another case supplied by the Crown, *R. v. Mazzucco*, [2012] O.J. No. 2508 where the Court observed that fraud offences are "more likely to be influenced by a general deterrent effect." (*paragraph 62*) (Also, see the Ontario Court of Appeal's comments on the role of general deterrence in sentencing perpetrators of fraud in *R. v. Gray, [1995] O.J. No. 92* and *R. v. J.W., [1997] O.J. No. 1380*.)

[57] It is impossible to sift out of *El-Akhal* what the sentence might have been, or even what the sentencing recommendations might have been, if he was before the court on *IRPA* charges only. I will also note that Mr. El-Akhal was not described as having any serious health problems. The court said only that a penitentiary sentence for someone in their 60's was "a very sobering sentence to impose and…a very sobering sentence to serve." (*paragraph 7*)

[58] I am unable to conclude, on the authorities provided to me, and on the basis of my own analysis and reasoning, that a sentence of two years' less a day - the threshold for a conditional sentence - could not be in the range of appropriate dispositions for serious contraventions of *IRPA*. It is instructive to consider the Supreme Court of Canada's decision in *R. v. Bunn*, [2000] 1 S.C.R. 183 where a conditional sentence was upheld for breach of trust by a lawyer. Using language that could be applied in Mr. Al-Awaid's case, the Court took note of the "ruin and humiliation Mr. Bunn had brought down on himself and his family, together with the loss of his professional status" and held that these factors "when coupled with" a conditional sentence of two years less a day "could provide sufficient denunciation and deterrence..." (*paragraph 23*)

[59] I will next examine the mitigating factors in Mr. Al-Awaid's case. This will involve an assessment of Mr. Al-Awaid's serious health problems and how they are to be factored into a determination of the appropriate sentence.

Mitigating Factors

[60] The Crown acknowledges that Mr. Al-Awaid pleaded guilty, has no prior record and was of previous good character. Guilty pleas represent a meaningful acknowledgment of responsibility and a commitment to the process of rehabilitation. Mr. Al-Awaid's guilty pleas avoided the expenditure of precious court time and resources in what would have been a lengthy prosecution and have spared witnesses from the ordeal and inconvenience of testifying. The Crown does note that considerable time and resources were expended by the state preparing for a lengthy preliminary inquiry prior to the change of plea. (I will say, parenthetically, there was massive disclosure and Mr. Al-Awaid had the misfortune of two of his lawyers being appointed to the Bench before he had entered his guilty pleas.)

[61] I received a significant amount of evidence attesting to Mr. Al-Awaid's character and the positive role he has played as a member of the local Muslim community.

Mr. Al-Awaid's Previous Good Character

[62] Evidence of Mr. Al-Awaid's character was presented through the pre-sentence report, letters of reference and witness testimony. This evidence establishes that Mr. Al-Awaid has been committed to his family and his community. Of course, the facts establish that he was also fully engaged in a protracted scheme of deceit, a scheme which benefitted from Mr. Al-Awaid's good standing.

The Pre-sentence Report

[63] In his interview for the pre-sentence report, Mr. Al-Awaid described that he had been a role model for his family and community and has now brought shame to his family. His family and his health have been affected by his involvement with the criminal justice system.

[64] Community involvement has been important to Mr. Al-Awaid, both in Kuwait and Nova Scotia. He was Vice President of the Maritime Islamic

Association during 1994 and 1995 and President of the Al Batool Islamic Society for the following eleven years.

[65] A long-standing friend of Mr. Al-Awaid, Mike Yari, was interviewed for the pre-sentence report. Mr. Yari and Mr. Al-Awaid have been friends for 30 years. Mr. Yari was shocked to learn from Mr. Al-Awaid that he had been charged. He described Mr. Al-Awaid as kind-hearted, honest, loyal and very family-oriented. He confirmed that Mr. Al-Awaid has been very involved with his community.

[66] Two other friends were also interviewed – Rosamund Luke and David Melnick. Ms. Luke has known Mr. Al-Awaid for almost 20 years and described him as caring, helpful and very business-savvy. She expressed her view that Mr. Al-Awaid fell prey to the temptations presented by the fact that "people from other countries will pay huge sums to come to Canada." (*pre-sentence report, page 6*) Ms. Luke also said that the Muslim community has very strict ethical standards and that it is her belief Mr. Al-Awaid's reputation has been tarnished.

[67] Mr. Melnick has known Mr. Al-Awaid professionally for approximately 20 years. He described Mr. Al-Awaid as generous, outgoing, kind and friendly.

Testimony from Family and Friends

[68] Mr. Al-Awaid's wife, his eldest daughter, Noor, a close friend and a family friend testified at his sentencing hearing.

[69] Mrs. Al-Awaid provided some basic background facts about Mr. Al-Awaid and their family. When she and Mr. Al-Awaid met in 1980 in Kuwait, he was an Iraqi national and she held a Jordanian passport. They experienced the first Gulf War in Kuwait and married in 1985. Life was increasingly difficult after the war as the Kuwaiti government was unwilling to permit Iraqis living in Kuwait to have jobs. The Al-Awaids left Kuwait for Egypt, waited for their Canadian visas, and moved to Halifax.

[70] Mrs. Al-Awaid and Noor Al-Awaid described Mr. Al-Awaid as a very different man before and after his arrest on the *IRPA* and *Citizenship Act* offences. They previously experienced Mr. Al-Awaid as very happy, sociable and connected to the local Muslim community. Mrs. Al-Awaid testified that her husband was

always very supportive of their immediate and extended family and involved with his children. Noor said her father was "the life of the party" and she and Mr. Al-Awaid's close friend, Jamal Saidi, spoke about Mr. Al-Awaid organizing Eid celebrations for the children and being such a helpful member of the Muslim community. Mr. Saidi testified that during Eid, Mr. Al-Awaid would bring the Muslim community together; "everyone knew him."

[71] Dr. Sura Hadad and her family have been friends with Mr. Al-Awaid since 1992 when she was 14. She described Mr. Al-Awaid as "an event planner for the Muslim community." She spoke of Mr. Al-Awaid being a leader in the Muslim community, someone she looked up to.

[72] Each witness – Mrs. Al-Awaid, Noor Al-Awaid, Mr. Saidi and Dr. Hadad – all spoke of how different Mr. Al-Awaid has been since his arrest. Dr. Hadad said she and her family don't see him very much now. He has withdrawn from involvement in his community and is a shell of a presence at home. He is worried and preoccupied. Noor explained that their community has remained very supportive, reaching out to Mr. Al-Awaid, but he is focused on his legal problems.

[73] It is no surprise to learn that the Al-Awaid family has been suffering along with Mr. Al-Awaid. The family has been profoundly affected by his wrongdoing. Mrs. Al-Awaid explained that their twin daughters, aged 21, would like to leave Halifax as they now feel uncomfortable around their friends. The negative impact on the family has included financial strain with Mrs. Al-Awaid having to get a job for the first time in their marriage. I was informed that the Al-Awaids were assigned into bankruptcy as a result of Canada Revenue Agency involvement, a direct consequence of Mr. Al-Awaid's offences.

[74] Mrs. Al-Awaid testified that her husband is very remorseful and apologetic, repeatedly telling her how sorry he is for what she and the children are going through, saying he is responsible. She said: "He knows what he did was wrong."

Testimony from Dr. Rhonda MacLean

[75] Mr. Al-Awaid's family doctor, Dr. Rhonda MacLean testified that he has been experiencing significant stress as a result of his involvement on the criminal

justice system – significant financial stress and interpersonal stresses within the family. He has lost weight and his appetite has been affected.

Letters of Reference

[76] Six letters of reference were filed on Mr. Al-Awaid's behalf. (*Exhibit 8*) Rosamund Luke and David Melnick, mentioned earlier as contributors to Mr. Al-Awaid's pre-sentence report, each provided a letter. Letters were also submitted by Tony Chedraoui, Arkan Alobaidi, Ghanim Raad, and Yasser Khalaf.

[77] The letters of reference describe Mr. Al-Awaid in very positive terms. I do not question the sincerity of their contents. It is apparent that people who have come to know Mr. Al-Awaid in the community and in the context of his family have experienced him as generous, helpful, thoughtful, and friendly. Mr. Al-Awaid has been supportive at a personal level (as evidenced in Mr. Alobaidi's and Mr. Khalaf's letters) and in the community. In his letter of June 19, 2014, Mr. Raad spoke of Mr. Al-Awaid's commitment to the Al Batool Islamic Society, describing him as "an asset to our religious sector." A "hard-working, dedicated individual", Mr. Al-Awaid has contributed positively to his community and its members.

Remorse and Stigma

[78] Mr. Al-Awaid's remorse for his wrongdoing and the stigma associated with his offences are mitigating factors for me to consider. I accept that Mr. Al-Awaid's remorse is sincere and he genuinely recognizes the harm he has done. He has not tried to minimize his wrongdoing or deflect responsibility. And while none of the witnesses nor the tendered letters of reference indicate a loss of respect for Mr. Al-Awaid, it is only reasonable to infer that Mr. Al-Awaid's involvement in the criminal justice system carries a significant stigma and has tarnished his reputation in the community even if the opinions of those closest to him are unaffected.

[79] Mr. Al-Awaid's offences brought him into the national spotlight, broadening the scope of the stigma and shame he has experienced. The Crown included in its written brief an article from the December 9, 2011 edition of the National Post in which Mr. Al-Awaid is mentioned by name as having been charged "with more than 50 citizenship fraud-related offences." According to the article, the Federal immigration minister, Jason Kenney, had, at the time of Mr. Al-Awaid's arrest in

March 2011, commented on the investigation and his charges. The article also referred to the short title of the government's proposed legislation, "*The Cracking Down on Crooked Consultants Act",* which, when it came into force on June 30, 2011, amended *IRPA*. The Legislative Summary of the Bill (Bill C-35) notes that the House of Commons Standing Committee on Citizenship and Immigration proposed amendments to the Bill which included deleting its short title "because of its pejorative connotation with respect to the profession of immigration consultant." The Bill was passed by the House of Commons with all the amendments proposed by the Committee.

[80] The profiling of Mr. Al-Awaid's offences in a national newspaper and the spotlighting by use of pejorative language of his corrupt practices can only have added to the shame he feels for his unlawful actions.

Mr. Al-Awaid's Health as a Mitigating Factor – The Evidence

[81] I have come to view Mr. Al-Awaid's serious health issues as the most significant mitigating factor in this sentencing. Evidence about his health problems was provided through several sources – letters from two specialists treating him, an ophthalmologist and an endocrinologist, and by Dr. MacLean, his family doctor, in letters dated July 16, 2014 (*Exhibit 2*) and February 8, 2015, (*Exhibit 3*) and *viva voce* testimony on March 27, 2015.

[82] Dr. MacLean has been practising family medicine since 2002. Mr. Al-Awaid has been her patient since that time. He is being treated for hypertension, hypothyroidism, elevated cholesterol, gout and Type 2 diabetes. His high blood pressure is controlled by several medications that he takes in tablet form. He takes Synthroid, a synthetic replacement for thyroid hormone, to regulate his hypothyroidism. Hypothyroidism can affect blood sugar control in diabetics. To reduce his risk for heart attack and stroke, Mr. Al-Awaid has also been prescribed a medication in tablet form for his high cholesterol. His gout, which can cause joint inflammation, is controlled by a pill that helps prevent the build-up of uric acid.

[83] Dr. MacLean indicated in her letter of July 16, 2014 that Mr. Al-Awaid "is at considerable increased risk for both heart attack and stroke." According to her

letter, Mr. Al-Awaid requires "ongoing laboratory monitoring for optimization of diabetes, thyroid, cholesterol, and gout therapy."

[84] Dr. MacLean explained Type 2 diabetes as a condition in which the body's cells develop resistance to insulin increasing blood sugar. Mr. Al-Awaid has had Type 2 diabetes for approximately 25 years. He has been a "significant diabetic" in the 12 years that Dr. MacLean has had him as a patient and requires "quite large" doses of insulin administered by subcutaneous injection. Dr. MacLean described Mr. Al-Awaid's treatment as "intensive insulin therapy" with him requiring five injections a day which he administers himself. Injections are given through an insulin pen with the dose dialed in mechanically requiring only that the patient change the needle tip.

[85] Mr. Al-Awaid uses both long-acting, slow onset insulin in the morning and evening and shorter duration, rapid-onset insulin at meal times. Despite the management of his diabetes, which in Dr. MacLean's opinion is presently under reasonable control, Mr. Al-Awaid shows evidence of organ system damage, including to his kidneys and most significantly, to his eyes. This, explained Dr. MacLean in her July 16 letter, is caused by microvascular disease, a complication of long-standing diabetes.

[86] In her letter Dr. MacLean indicated that Mr. Al-Awaid will continue to require treatment to preserve his remaining vision. One of the delays in Mr. Al-Awaid's sentencing occurred because in November 2014 he required surgery on his left eye to reverse some vision loss.

[87] The ophthalmologist providing care to Mr. Al-Awaid, Dr. Arif Samad, prepared letters dated July 22 (*Exhibit 10*) and August 6, 2014 (*Exhibit 11*) about Mr. Al-Awaid's visual problems. He has treated Mr. Al-Awaid since 2000. He confirmed that Mr. Al-Awaid's vision loss is a result of complications associated with the progression of diabetic retinopathy. Dr. Samad indicated in his letter of July 22 that Mr. Al-Awaid has required "extensive laser treatment to both eyes in an effort to reduce ischemia and decrease leakage." Dr. Samad noted that: "The leakage has resulted in loss of central vision to the point of legal blindness in his left eye." He stated: "Mr. Al-Awaid is developing microvascular complications associated with his long-standing diabetes. He will require long-term close follow-

up for his eye care in an effort to diagnose and continue treatment of the macular edema. Failure to do so would result in continued leakage and progressive vision loss."

[88] In his August 6 letter, Dr. Samad again stressed that "…Mr. Al-Awaid's eyes require regular monitoring and treatment in an effort to stabilize the retina and stop leakage. Failure to do so would result in loss of central vision with which he is currently functional."

[89] The management of Mr. Al-Awaid's diabetes requires blood sugar monitoring which is done using a lancet and obtaining a blood sugar reading. Dr. MacLean testified that ideally the more often the blood sugar is checked the better the control of the diabetic condition. Mr. Al-Awaid checks his blood sugar levels multiple times a day although at the time when Dr. MacLean testified the frequency had been less. According to Dr. MacLean's testimony in March, Mr. Al-Awaid's blood sugars had become more stable.

[90] Dr. MacLean testified that Mr. Al-Awaid's diabetic control has been "difficult." Out of her caseload of over 100 diabetic patients, Mr. Al-Awaid has one of the highest insulin levels. It was Dr. MacLean's evidence in March that Mr. Al-Awaid's control had recently been "the best" since she started to treat him but was still "not optimal." Mr. Al-Awaid's other conditions were under control and he did not need to see a doctor on a daily basis.

[91] Dr. MacLean was asked to discuss the risks that hypoglycaemia poses for a diabetic. She noted that low blood sugar should be treated as soon as possible. As long as the patient recognizes the symptoms and can take something that has a "sugar load" such as a snack, or drink, or Dextrose, followed by some protein, the problem can be averted. However a diabetic may be unaware that his blood sugar is lowering which affects cognition creating a situation where he may require assistance to stabilize his blood sugar levels. In the most serious of circumstances, a hormonal reversal agent can be injected.

[92] Dr. MacLean expressed her concerns about the ability in an institutional setting for Mr. Al-Awaid to maintain the level of control he has attained which is important for cardiovascular risk and the long-term health of his eyes and kidneys.

She also indicated her concerns about the ability of an institution to recognize changes to cognition as a result of low blood sugar and provide appropriate interventions such as reversal agents.

[93] This is reflected in Dr. MacLean's letter of July 16, 2014 where she stated:

> I have grave concerns about both immediate and long term effects of a jail sentence. I believe there is significant risk of deterioration in his diabetic control and progression of both eye and kidney complications. I fear that an institutional setting will not be able to accommodate the intensity of treatment that he requires to optimize his control and mitigate his health risks.

[94] Asked about the ability of someone monitoring a video screen - prisoners are often monitored on camera - to observe a hypoglycemic incident, Dr. MacLean testified about the potential the observer would not be able to tell that there was a low blood sugar problem. Hypoglycaemia can cause complaints of headache or hunger and symptoms of sweating and irritability. A reduced level of consciousness can occur and the person may appear to be sleeping. This can mean that even someone walking by a cell would not necessarily be aware that the occupant is being affected by a drop in blood sugar. Hypoglycaemics can also become belligerent, obstructive or even violent which is then mistaken for behavioural disturbances. As a consequence, the diabetic may obstruct attempts at intervention.

[95] Of the factors that Dr. MacLean described as necessary to safely and successfully manage Mr. Al-Awaid's diabetes, she identified the supervision of him and his condition and the awareness by the correctional personnel of the potential for low blood sugar as the most important. She made the point that a low blood sugar incident could lead to Mr. Al-Awaid lying in his bed and having a cardiac arrest and dying. Missing an insulin dose would not be life-threatening.

[96] On cross-examination Dr. MacLean was asked what would address her concerns about the management of Mr. Al-Awaid's diabetes in prison. She indicated the following: access to monitoring blood sugar levels, a regular insulin-administration schedule; someone being aware of his circumstances; and access to

nutrition. She agreed there was some responsibility as well on Mr. Al-Awaid to manage his condition. She acknowledged that hypoglycaemia can be addressed through nutrition or access to medical intervention if required.

[97] Although Dr. MacLean testified that Mr. Al-Awaid did not require daily visits by a doctor, in her July 16, 2014 letter she stated: "He requires regular visits to both me and treating specialist for medication adjustment, disease progression monitoring and treatment and supportive care."

[98] Dr. Barna Tugwell is Mr. Al-Awaid's endocrinologist. He prepared a letter dated August 7, 2014. (*Exhibit 12*) He indicated that suboptimal glycemic control of Mr. Al-Awaid's diabetes will place him at risk for "progression of his retinopathy, progression of renal dysfunction, and development of neuropathy. The consequences of these are well known in the general population with diabetes, including blindness, renal failure, amputation, infection, etc." Dr. Tugwell noted that Mr. Al-Awaid is not at risk "in the immediate future" of renal failure or amputation.

[99] Dr. Tugwell had been asked by Mr. Hutchison to comment in his letter on the issue of Mr. Al-Awaid's treatment for diabetes in the event he was incarcerated. Dr. Tugwell stated:

> Specifically, I would suggest that Mr. Al-Awaid continue to receive regular ongoing medical visits with a diabetes specialist or internist about every 3 months if possible and certainly with his ophthalmologist on a schedule that the ophthalmologist should determine. Certainly, his sight could be in jeopardy if he does not receive ongoing medical care from his specialists. He would also require ongoing general practitioner follow-up for his daily management…

[100] Dr. Tugwell confirmed what Dr. MacLean had said in her testimony: that Mr. Al-Awaid would require access to all his medications, his insulin injections, glucometer equipment, testing strips, and the ability to record his findings in a logbook, as well as access to treatment for hypoglaecemia – dextrose tablets, juice

and personnel with a glucagon emergency kit for insulin hormone reversal in the event of a severe incident.

The Correctional Service of Canada and the Management of Offenders' Health

[101] The Crown does not dispute the evidence about Mr. Al-Awaid's serious health issues and acknowledged in oral submissions that his doctors have "valid concerns." However, in the Crown's submission the health needs of offenders are the responsibility of the Correctional Service of Canada, not the courts. The Crown's written submissions indicate: "…Corrections Canada shall provide all essential health care for inmates and the health care provided shall conform with professionally accepted standards." The Crown says that courts sentencing offenders with serious health issues have to trust CSC to meet its obligations under its governing legislation and policies.

[102] It is the Crown's submission that Mr. Al-Awaid's health problems can be adequately managed by the Correctional Service of Canada (CSC) in accordance with its statutory obligations. In this regard, the Crown provided a can-say from Mark Cormier, the Regional Manager of Health Care Services for CSC, and referred me to CSC's Commissioner's Directive 800 (*Exhibit 9*).

[103] Mark Cormier's "can-say" statement (*Exhibit 4*) is the only evidence from CSC concerning its management of prisoner health issues. Mr. Cormier did not testify. His "can-say" states:

> It is the obligation of Corrections Canada to provide essential health services to all of its inmates. This is provided for under sections 85 – 88 of the Correction Services and Release Act. This includes physicians' visits, medication and other therapies. The fundamental requirement is that it be an essential health service.
>
> For example, if an ophthalmologist or an endocrinologist recommends a particular treatment, they [meaning the Correctional Service of Canada] will provide it. In particular, if

> the treatment is continuing or ongoing, it is that much simpler to continue.

[104] The legislation to which Mr. Cormier referred is actually the *Corrections and Conditional Release Act* (*CCRA*). In Mr. Al-Awaid's case the most relevant sections are sections 86 (a) and 87 (a). Section 86 of the *CCRA* provides that CSC "shall provide every inmate with (a) essential health care…" Section 87 requires CSC to take "into consideration an offender's state of health and health care needs (a) in all decisions affecting the offender, including decisions relating to placement, transfer, administrative segregation and disciplinary matters…" These responsibilities are detailed in a Commissioner's Directive which I will discuss shortly.

[105] "Very non-specific and very generic" was how Dr. MacLean described Mr. Cormier's "can-say". In her letter of February 8, 2015, where she had reiterated Mr. Al-Awaid's medical problems and needs, she concluded by stating: "If Corrections Canada can provide for both ongoing and emergency care then it may be possible that a Federal jail sentence would have negligible consequences on his ongoing health." Dr. MacLean testified that Mr. Cormier's "can-say" did not specifically address the ability of the Correctional Service to maintain intensive insulin therapy and provide intervention on an emergency basis. She observed that diabetes has a very broad spectrum with many diabetics being able to control their condition initially by using oral therapies. Mr. Al-Awaid is not in that category of diabetic.

[106] In response to my request for some clarification of Mr. Cormier's "can-say", the Crown informed me that he did not review the letters provided by Drs. Samad and Tugwell referred to earlier in these reasons. There is also no evidence he read Dr. MacLean's letters.

Commissioner's Directive 800 – "Health Services"

[107] The Commissioner's Directive 800 covers a range of offender health related obligations borne by CSC. Given that the ability of CSC to effectively manage Mr. Al-Awaid's health has been put in issue, it is necessary for me to review what the Directive provides.

[108] The Directive states that "Inmates shall have access to screening, referral and treatment services." "Essential health services" are enumerated in section 6 and include, for the purposes of what is relevant in Mr. Al-Awaid's case:

a. emergency health care (i.e., delay of the service will endanger the life of the inmate);

b. urgent health care (i.e., the condition is likely to deteriorate to an emergency or affect the inmate's ability to carry on the activities of daily living);

[109] In section 7 the Directive states that: "Inmates shall have reasonable access to other health services (i.e. conditions not outlined above)…The provision of these services will be subject to the length of time prior to release, operational requirements, etc." Section 10 indicates that "Access by inmates to health services shall be available on a 24-hour basis." Access "can be provided through on-site coverage, on an on-call basis…"

[110] The Directive mandates staff to "inform a health care professional of the condition of any inmate who appears ill, whether he or she complains or not" and further states that "An inmate's request for health services must be relayed to a health care professional without delay." (*sections 11 and 13*)

[111] The Correctional Services' requirements for the delivery of health care to federally-sentenced offenders is further detailed in the Directive, for example: a nursing assessment within 24 hours of arrival at reception; a comprehensive nursing assessment within 14 days of admission; informing of the Medical Officer of Health for the institution by institutional health care staff prior to the "expected reception of inmates with mandatory treatment requirements"; procedures for health care emergencies; Medical Directives to be established "to outline the course of action to be taken by health care services staff in both routine and emergency situations where there is no Physician on site." The Directive requires that there be on-site staff with current certification in basic first aid and CPR training when "24-hour nursing coverage is not provided…" (*sections 20, 21, 25, 26, and 27*)

[112] The Directive contemplates that on-site physician and nursing care may not be available on a 24/7 basis. "On-call" access to health services may substitute for

on-site access. Consultation with outside physicians "or treatment for essential services" may be sought by the "institutional Clinician." The Directive accords the institutional Clinician discretion to make decisions about treatment: "Consistent with community standards, treatment recommendations by consultants are subject to approval of the referring institutional Clinician." (*sections 10 and 31*)

[113] The Crown submits that under the Commissioner's Directive offenders bear responsibility to advocate for their health care needs. However even the Directive recognizes that not all offenders are able to do so: as I noted earlier, section 11 provides that "All staff are responsible to inform a health care professional of the condition of any inmate who appears to be ill, whether he or she complains or not."

The National Parole Board

[114] In the Crown's submission there is also recourse to early parole for offenders whose exceptional health issues are beyond CSC's capacity to manage. The *Corrections and Conditional Release Act* provides in section 121 that "parole may be granted at any time to an offender (a) who is terminally ill; (b) whose physical or mental health is likely to suffer serious damage if the offender continues to be held in confinement; (c) for whom continued confinement would constitute an excessive hardship that was not reasonably foreseeable at the time the offender was sentenced…"

[115] There is provision in the Commissioner's Directive for CSC to consult with the National Parole Board "to determine eligibility for parole" in cases where the offender has an "incapacitating illness" or is "chronically sick" and "have impairments" which have "one or more of the following characteristics": (a) are irreversible; (b) leave residual disability; (c) are caused by non-reversible pathological alteration; and (d) require a long period of supervision, observations or care. (*section 45*)

[116] I will be discussing section 121 of the *CCRA* further when I get to the section of my reasons dealing with the Correctional Investigator's Report.

Case Law on Health as a Mitigating Factor in Sentencing

[117] The Crown has referred me to a number of cases where courts decided an offender's medical condition did not have much mitigating effect on sentence. In *R. v. Dobbin*, [2009] N.J. No. 348 the Newfoundland and Labrador Court of Appeal upheld a sentence of 26 months for drugs and firearms offences. The sentencing judge had received evidence of Mr. Dobbin's physical and mental health and acknowledged they would make any sentence more difficult for him to serve. (*paragraphs 10 and 28*) There is no indication that Mr. Dobbin's health issues could be life-threatening.

[118] In *R. v. Stauffer*, [2007] B.C.J. No. 6 (C.A.), an appeal from a 30 year sentence for a string of armed bank robberies, the British Columbia Court of Appeal considered Mr. Stauffer's argument that his ill health meant a reduced likelihood of re-offending. Noting Mr. Stauffer's "horrendous record", the Court gave no effect to this submission and held that his serious medical problems were best dealt with by the prison authorities under section 121 of the *CCRA*. Mr. Stauffer's health problems included medical complications from poor compliance with medication and dietary regimes "required to cope" with his diabetes and kidney failure requiring long sessions of dialysis three times a week. (*paragraphs 10, 53 and 54*)

[119] The British Columbia Court of Appeal in *R. v. Hill*, [2007] B.C.J. No. 1196 upheld a 30 month possession of marijuana for the purpose of trafficking sentence where there was evidence of medical issues. As a result of a kidney transplant, Mr. Hill needed to take anti-rejection medication every 12 hours. He required monthly blood work and assessments of his kidney function. Every three or four months he was seen by the transplant clinic. He was also on medication for cholesterol, hypertension and Type II diabetes. His diabetes required him to have a regular controlled diet.

[120] The Court of Appeal noted that in sentencing Mr. Hill for a "mid to high level" sophisticated trafficking operation the sentencing judge took his health issues and medical treatment needs into account as mitigating factors. She had recommended "that the prison physician responsible for supervising his health be put immediately into contact with his renal transplant specialist in order to review his ongoing medical needs and treatment during his period of incarceration." The

Court of Appeal also noted the possibility that early parole could be given if that became medically necessary. (*Hill, paragraph 42*)

[121] A subsequent decision of the British Columbia Court of Appeal, *R. v. Potts*, [2011] B.C.J. No. 38 concerned a Crown appeal of a sentence imposed for serious drug offences arising out of a two-year RCMP investigation into the East End Chapter of the Hells Angels. The sentencing judge discounted Mr. Potts' sentence by six months on the basis that his health problems would make his sentence more onerous for him than for a healthy offender. The Court of Appeal critiqued the judge's approach, stating the following:

> It is relatively rare for the health of an offender to be taken into account in sentencing but there are cases in which an offender's health may be relevant. Although an offender's health status may be relevant at sentencing, in general these matters are best considered as part of the overall circumstances of the offender, rather than as a basis for deducting time from an otherwise appropriate sentence. There are cases in which an otherwise fit sentence may be reduced on compassionate grounds, but such reduction must be based on current, clear and convincing evidence…(*paragraph 85*)

[122] The Court of Appeal decision noted that Mr. Potts' medical conditions - recurring diverticulitis, chronic back problems, and a recurring abscess on his buttocks - had been described by the sentencing judge as causing him "great discomfort." (*paragraphs 43 and 45*)

[123] The Ontario Court of Appeal in *R. v. Drabinsky*, [2011] O.J. No. 4022 agreed with the determination of the sentencing judge that there was no evidence the correctional service could not manage Mr. Drabinsky's significant physical disability – impaired mobility and considerable pain due to childhood polio – in prison. The Court noted that, according to the trial evidence, Mr. Drabinsky led "a very full and active life, despite his very real disability." (*paragraph 170*)

[124] In *R. v. G.R.B.*, [2013] A.J. No. 205, the Alberta Court of Appeal found there was no evidence that G.R.B.'s age-related medical conditions could not be

accommodated in the prison system. Referencing the *Potts* decision, the Court held: "Any reduction in sentence on compassionate grounds should be based on "current, clear and convincing evidence." (*paragraph 18*) No such evidence was identified in G.R.B.'s case. G.R.B. was being sentenced for sexually assaulting his step-granddaughter in excess of one hundred times over seven years, starting when she was four years old.

[125] It is apparent however that examining the role of ill health as a mitigating factor in sentencing engages a very case-specific inquiry. The mitigating effect may be significant where there is the risk of a life-threatening medical event. In *R. v. McCrystal*, [1992] O.J. No. 385 (C.A.), an offender convicted of a serious fraud had his sentence reduced to time served as a result of medical opinions that the offender was at high risk of a life-threatening coronary event.

[126] In *R. v. C.D.*, [2012] O.J. No. 4847, a case of serious sexual assault against a young girl, the Ontario Court of Appeal took into account the offender's quadriplegia from a motor vehicle accident, severe pain, colostomy, daily requirements for nursing care and medications, and the "high risk of developing complications" to reduce a sentence of 30 months in prison to a conditional sentence of two years less a day. (*paragraph 22*)

[127] In *R. v. Duncan*, [2005] O.J. No. 4804, the Ontario Court of Appeal upheld a sentence of two years less a day which had been imposed, due to the mitigating effects of the offender's advanced age and his medical condition, instead of the three year penitentiary term that would otherwise have been warranted. (*paragraph 3*)

[128] *R. v. Ralph*, [2014] B.C.J. No. 485, a decision of the British Columbia Supreme Court, illustrates the extent to which the issue of health problems as a mitigating factor is case-specific. Ms. Ralph's significant health issues were found to "underscore the appropriateness of a conditional sentence." (*paragraph 106*) The Crown had argued for a three year prison term for a historic sexual assault of an elementary school student. The sentencing judge found:

> …An accused's infirmity is always a factor to be considered and may warrant a reduction in sentence that would otherwise

> have been imposed, or, in appropriate circumstances, a different kind of sentence. In such cases, the principles of denunciation and deterrence must give way to the more humane principles of compassion, empathy, and clemency. (*paragraph 106*)

[129] I do not suggest there is any universal acceptance by Canadian courts of these sentiments. More commonly sentencing courts and Courts of Appeal make reference to whether the offender's medical condition can be appropriately monitored and treated by prison authorities.

[130] This takes me to the Correctional Investigator's Report for 2013-2014.

The Correctional Investigator's Report for 2013 – 2014

[131] The Correctional Investigator's 2013-2014 Annual Report has been entered as an Exhibit at this sentencing by consent. (*Exhibit 5*) It was tendered by Defence. The Crown submits that it should be given very little weight.

[132] The Office of the Correctional Investigator (CI) has been established by Parliament. Its governing legislation is the *Corrections and Conditional Release Act*. The CI, an ombudsperson independent of CSC, reports directly to the Solicitor General by way of annual and special reports.

[133] As the Crown notes in its Supplemental Brief, in the course of a discussion on April 10, 2015 about the evidence to be considered at sentencing, I asked what use could be made of the reports of the Office of the Correctional Investigator. I was broadly aware that the OIC has reported on a range of issues affecting federally sentenced offenders including the provision of health care in Canada's prisons. The Crown made the following submission in its Supplemental Brief:

> The reports of the Correctional Investigator of Canada, while a public record and a government publication, are not documents that can be accepted for the truth of their contents in the absence of evidence. By way of illustration, general comments with respect to facilities may not be equally applicable across the country. This means the report contains items that are not readily or easily proven as accurate in all circumstances. What

> may prove correct of one facility, for instance, may not be the circumstance in another facility.

[134] The Crown referenced the Alberta Court of Appeal's decision in *R. v. Roberts*, [2005] A.J. No. 15 where the Court held that a sentencing judge cannot take judicial notice of the conditions in a remand centre. The judge had done so in calculating Mr. Roberts' remand credit on a 3:1 ratio. (*paragraph 72*)

[135] I find the Correctional Investigator's Report is properly before me. The *Criminal Code* provides that hearsay evidence is admissible at sentencing. (*section 723(5)*) Considering information in the Report is not the same as taking judicial notice of remand conditions to calculate a remand credit. What is significant about the Correctional Investigator's Report for my purposes is that it shines a light into how health care is delivered in the federal penitentiary system. I have what CSC is obligated to do according to its governing statute and policies. The CI's Report provides something more. My consideration of the issue of Mr. Al-Awaid's health issues does not end with what I know about CSC's stated responsibilities. I have to consider whether there is any basis for concern about how those responsibilities are carried out. Courts have found that seriously ill offenders may not be able to receive "adequate medical treatment in prison." (*R. v. Taipow, [2005] O.J. No. 4643 (C.A.), paragraph 7; R. v. Scott, [2014] S.J. No. 425 (Q.B.), paragraph 59*)

[136] I will now address the relevant portions from the CI's Report and how I have used the information in relation to Mr. Al-Awaid's sentencing.

[137] The Crown has submitted that it would be unreasonable to "expect perfection" when it comes to the delivery of health care in prison. That is a fair comment. It is equally fair to observe that a prison sentence should not be a death sentence. The Correctional Investigator's Report raises very significant concerns in my mind about the ability of CSC to safely and effectively manage Mr. Al-Awaid's health problems. I believe it would be irresponsible of me in the determination of Mr. Al-Awaid's sentence to ignore or marginalize what the Correctional Investigator has to say about the delivery of health services in the federal correctional system.

[138] In the CI's Annual Report for 2013 – 2014, he stated the following in a section entitled, "Access to Health Care":

> It is CSC's legal duty to ensure an inmate's health and safety while they are in custody. Health care can often be an especially complex area of offender complaint. Individual health care complaints typically break down as concerns involving access to health care services, quality of care as well as decisions regarding medication use, including discontinuance or alternatives. Provision of and access to health care services in a prison setting is contingent upon other competing operational demands and priorities (population management, institutional routines, staffing, counts, rounds and patrols), not to mention availability of external health care providers, services and clinics. Unlike the rest of us, offenders do not choose their health care provider and cannot shop around for service; they must accept what they get when they can get it. Most federal penitentiaries lack 24/7 health care staffing; access can be particularly challenging during the night shift and on weekends, especially in more isolated locations. (*page 19*)

[139] The CI's Report also indicates that CSC does not have "an automated medical records system or an electronically accessible records storage and retrieval capacity." (*page 20*) The Correctional Investigator reports that:

> The Service (CSC) is unable to reliably extract or account for essential health care services, up to and including what drugs are being prescribed and for what purpose. Equivalence and consistency of standards of care varies between regions, and even from one institution to another. Prevention and management of chronic health conditions is difficult in the absence of a reliable data management tool…(*page 21*)

[140] These findings led the Correctional Investigator to recommend that "CSC's review of chronic health conditions be integrated with and inform a comprehensive prevention strategy to reduce premature mortality." (*page 22*)

[141] Premature mortality has been a concern of the Correctional Investigator. In his 2013 – 2014 Report, he describes an independent review his Office commissioned, using the services of a senior medical practitioner, into the quality and adequacy of care provided in a sample of fifteen deceased male offenders. The CI's Report observes:

> The findings of the investigation were disturbing. The review raised serious compliance issues concerning the quality and adequacy of health care provided; questionable diagnostic practices; incomplete medical documentation; quality and content of information sharing between health care providers and correctional staff and delays and/or lack of appropriate follow-up on treatment recommendations…"

[142] According to the Correctional Investigator, CSC's mortality reviews conducted on these 15 cases had concluded that the care provided to the deceased offender was "congruent" with "applicable" health care standards and policy. (*page 29*)

[143] The areas of concern identified by the Correctional Investigator and the deficiencies in the delivery of health care by CSC may well inconvenience or disadvantage many offenders with health problems who are sentenced to prison. I am not addressing the issue at that level. I will be examining whether Mr. Al-Awaid should be considered one of those rare cases where the disadvantages to an imprisoned offender's health are likely to include the risk of a very serious consequence or even premature death.

[144] Another subject area discussed by the Correctional Investigator is section 121 of the *CCRA*. Section 121 of the *CCRA* provides for the option of early parole for the medically compromised offender. A number of courts have viewed section 121 as a safety-net option for the seriously ill prisoner. The Crown's submissions referred to it in these terms. However the CI's Report indicates that "Very few federal inmates…are ever in fact granted…exceptional release…" under section 121. (*page 31*) The Correctional Investigator reports the recent statistics as follows:

> Parole Board of Canada statistics indicate that in the last five years between 2008/09 and 2012/13, the Board reviewed a total of 11 requests under Section 121. Of these requests, 7 were granted and 4 were denied. (*page 31*)

[145] In the CI's mortality review process, CSC reported that 14 offenders of 35 "expected deaths" were considered for Section 121 release "but none were in fact granted." Of the six applicants who didn't die before or during the application process, five were denied early parole by the Parole Board.

> *The Gravity of Mr. Al-Awaid's Offences and the Mitigating Effect of His Health Problems*

[146] Leaving aside for a moment Mr. Al-Awaid's health issues, it is my opinion, even taking into account the other mitigating factors in this case that a custodial sentence of two, not three, years would not be inappropriate given the gravity of Ms. Al-Awaid's offences and the degree of his moral blameworthiness. I find there is no bright line here. As I indicated earlier in these reasons, a sentence of two years less a day could also adequately serve the sentencing principles of denunciation and deterrence that must be emphasized. Or maybe not. In addition to its submission that Mr. Al-Awaid should receive a term of imprisonment that falls outside the permissible parameters for a conditional sentence, the Crown has made a strenuous argument that a conditional sentence in this case would not be consistent with the purpose and principles of sentencing, specifically, the principles of denunciation and deterrence.

[147] That being said, the Supreme Court of Canada held in *R. v. Proulx,* [2000] S.C.J. No. 6 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*)

[148] 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*)

[149] 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.

[150] Even in a close case where the "importance of public confidence in the integrity of Canada's immigration processes" is a vital concern, a conditional sentence can be appropriate. The "imposition of punitive conditions" to restrict an offender's liberty can drive home to the offender and the community that a significant sentence of imprisonment is being served. (*R. v. Ren, [2015] O.J. No. 2722 (C.J.), paragraph 37*) Such punitive conditions, with a sufficiently long period of house arrest, can seek to replicate as closely as possible the same kind of restrictions on liberty that would be experienced in a custodial facility.

[151] Holding everything else constant in this case, was Mr. Al-Awaid's health less compromised and unstable, I would be struggling to decide if, given the gravity of his offences and his moral culpability, a penitentiary term should be excluded. (*Proulx, paragraph 58*) But it is Mr. Al-Awaid's health and the opinion of his family doctor and specialists that tips the scales for me. Their evidence qualifies as current, clear and convincing evidence. I am simply not satisfied that the Correctional Service of Canada can safely and effectively monitor and treat Mr. Al-Awaid's very significant health issues. This is not a case where I am dealing with an offender who is a danger or has committed a violent offence. What I am dealing with is an offender whom, I believe, stands a real risk of experiencing a life-threatening medical event in prison. Even short of that, the evidence of the ophthalmologist, Dr. Samad, and the endocrinologist, Dr. Tugwell, establishes that Mr. Al-Awaid could experience vision loss and renal failure amongst other severe health complications if there is suboptimal glycemic control of his diabetes.

[152] I find Dr. MacLean's evidence about the management of Mr. Al-Awaid's diabetes to be particularly compelling and persuasive. I am not only concerned about the ongoing risks to Mr. Al-Awaid's heart, kidneys and eyes: based on the evidence, I find that the incarceration of Mr. Al-Awaid would expose him to a

uniquely high risk of a hypoglycaemic incident with potentially fatal consequences. That is what Dr. MacLean testified could happen. Mr. Al-Awaid's diabetes is particularly serious and has been challenging to manage even in the community. I appreciate that offenders with diabetes are managed in the federal (and provincial) correctional systems. I am not persuaded that *this* diabetic can be and it is *this* diabetic that I am sentencing.

[153] Saying that Mr. Al-Awaid could potentially experience a fatal hypoglycaemic event in prison is not speculative. The risk of this happening is supported by the evidence. I am not prepared to send Mr. Al-Awaid to prison and in this case trust that CSC and/or the National Parole Board will avert a tragedy. Maybe no such tragedy would occur. Maybe Mr. Al-Awaid would handily survive his incarceration. Maybe even if he had an acute hypoglycaemic event, it would be swiftly recognized and appropriate and timely interventions would occur. But I am not prepared to put Mr. Al-Awaid's precarious health status to the test.

[154] Proportionate sentences will continue to put ill, even seriously ill offenders in prison and CSC will continue to be responsible for managing their health issues and needs. Whether an offender's health is a factor or not, sentencing will continue to be a highly individualized exercise. In Mr. Al-Awaid's case I am dealing with a unique set of facts and circumstances. I have clear, coherent, compelling evidence of very significant health problems with a high risk of identifiable complications. I need to be confident that incarcerating Mr. Al-Awaid will not result in a disproportionate sentence, that is, a sentence rendered disproportionate because it causes an irreversible deterioration of his health or even death. I do not have that confidence.

[155] Consequently, and having weighed all the aggravating and mitigating factors in this case, I am sentencing Mr. Al-Awaid to a conditional sentence of two years less a day on each charge under the *Immigration and Refugee Protection Act* to run concurrently. I will hear counsel on the conditions for the conditional sentence and once I have determined what they should be will incorporate those terms into these reasons. I am satisfied that sufficiently punitive conditions will serve the sentencing objectives of denunciation and deterrence. As was proposed by Mr. Hutchison in his submissions, the goals of restorative justice can also be reflected

in the terms of the CSO through the inclusion of a significant number of community service hours. Mr. Hutchison had suggested Mr. Al-Awaid could perform 240 hours of community service in the local Islamic community which would amplify the denunciatory and deterrent effect of his sentence, heighten public awareness of the sentence, contributing to respect for the law, and satisfy the sentencing objectives of promoting in Mr. Al-Awaid a sense of responsibility and an acknowledgement of the harm he has done.

[156] Mr. Al-Awaid has pleaded guilty to ten *Citizenship Act* charges. As jointly recommended, I am imposing a $400 fine for each charge for a total of $4000. Counsel can indicate if time is required to pay the fine. (*Mr. Al-Awaid was given 12 months to pay the fine with the deadline being August 31, 2016.*)

Conditional Sentence Order – Conditions

[157] After receiving input from Crown and Defence, I ordered that Mr. Al-Awaid be subject to the following conditions under his Conditional Sentence Order:

(1) Keep the peace and be of good behavior;

(2) Appear before the court when required to do so by the court;

(3) Report by telephone to a supervisor at 1256 Barrington Street, Suite 200, Halifax on or before August 28, 2015 and as required and in the manner directed by the supervisor or someone acting in his stead;

(4) Remain within the province of Nova Scotia unless written permission to go outside the province is obtained from the court or the supervisor; and

(5) Notify promptly the court or the sentence supervisor in advance of any change of name or address, and promptly notify the court or supervisor of any change of employment or occupation;

(6) Complete 240 hours of community service work by August 25, 2017 as directed by his supervisor;

(7) Have no direct or indirect contact or communication with Effah Dajani, Hani Dalqamouni or Nael Al-Mehdawi;

(8) Make reasonable efforts to locate and maintain employment as directed by his supervisor;

(9) For the first 12 months of the conditional sentence order, Mr. Al-Awaid is to have no more than one visitor that is not a family member at a time at any point during the day;

(10) For the duration of the conditional sentence order Mr. Al-Awaid is to have no visitors between the hours of 8 PM and 7 AM;

(11) House Arrest – Mr. Al-Awaid is to remain on the civic lot of 96 Oceanview Drive Bedford Nova Scotia at all times beginning at 6 PM on August 28, 2015 and ending at 11:59 PM on the conclusion of the first 16 months of the conditional sentence order;

(12) Mr. Al-Awaid's house arrest condition will be subject to the following exceptions:

(a) When at regularly scheduled employment, which his sentence supervisor knows about, and traveling to and from that employment by a direct route;

(b) When dealing with a medical emergency or medical appointment involving Mr. Al-Awaid or a member his household and traveling to and from it by direct route;

(c) When attending a scheduled appointment with his lawyer, his sentence supervisor, and traveling to and from the appointment by direct route;

(d) When attending court at a scheduled appearance or under subpoena and traveling to and from court via direct route;

(e) When attending a regularly scheduled religious service, once a week, with advance permission of his supervisor;

(f) When making application for employment or attending job interviews, Monday to Friday between the hours of 9 AM to 5 PM;

(g) For not more than four hours per week, approved in advance by his sentence supervisor, for the purpose of attending to personal needs.

(13) Curfew – Mr. Al-Awaid is to remain on the civic lot of 96 Oceanview Drive, Bedford, Nova Scotia from 10 PM until 6 AM the following day, seven days a week beginning on the conclusion of the first 16 months of the conditional sentence order and ending upon the conclusion of the conditional sentence order,

(14) Mr. Al-Awaid's curfew condition will be subject to the same exceptions that apply to the house arrest condition.

(15) Mr. Al-Awaid will present himself at the entrance of his residence should a peace officer and or his sentence supervisor attend to check on his compliance with the house arrest/curfew conditions.

[158] A final note: after submissions from Crown in relation to the Community Service Work ("CSW") aspect of the Conditional Sentence Order, I decided not to restrict Mr. Al-Awaid's CSW to the Islamic community. The Crown made the point, which I found persuasive, that Mr. Al-Awaid's range of skills and experience could benefit community groups outside the Islamic community, and that it would be in the public interest to broaden the pool of potential beneficiaries for Mr. Al-Awaid's 240 hours. As the Crown submitted, Mr. Al-Awaid can bring experience and skills to the discharge of his community service obligation that the typical offender may not have.