

IN THE PROVINCIAL COURT OF NOVA SCOTIA

Citation: R. v. Brooks, 2008 NSPC 58

Date: September 30, 2008

Docket: 1669022; 1901347

Registry: Shubenacadie

Her Majesty the Queen

v.

Kathleen Andrea Brooks

DECISION ON SENTENCE

Judge: The Honourable Judge Anne S. Derrick

Heard: June 12 and September 5, 2008 in Shubenacadie
Provincial Court

Decision: September 30, 2008

Charges: *Criminal Code* sections 267(b) and 733.1(1)

Counsel: Karen Quigley - Crown Attorney
Brian Smith, Q.C. - Defence Counsel on s. 267(b) charge
Brian Stephens - Defence Counsel on s. 733.1(1) charge

By the Court:

Introduction - The Sentencing Proceedings

[1] On February 14, 2008, Ms. Brooks pleaded guilty to the offence of causing bodily harm to Belinda Syliboy on June 24, 2006. This was an included offence; Ms. Brooks had been originally charged with aggravated assault and maintained her not guilty plea to that charge. A Pre-Sentence Report was ordered and sentencing scheduled for April 24, 2008. The Pre-Sentence Report, dated April 17, 2008, was provided to the court and counsel in advance of the April 24th sentencing date. On April 24, Defence Counsel requested that Ms. Brooks be referred to a Sentencing Circle. The Crown initially opposed this request and a hearing on the application for the sentencing circle referral was set for June 12, 2008.

[2] On June 12, the Crown had modified its opposition to the sentencing circle, noting that courts must consider however if a sentencing circle is appropriate in a given case. The Crown's acknowledgment that the recommendations of a sentencing circle could be helpful in Ms. Brooks' case made it unnecessary to determine whether a sentencing circle should be convened. An analysis of the principles that go into making the determination of whether a sentencing circle should be used is found in the decision of the Newfoundland Court of Appeal in *R. v. J.J.*, [2004] N.J. No. 422.

[3] The court was advised that the Sentencing Circle could proceed in July and a new date for Ms. Brooks' sentencing was set for September 5, 2008. On June 12, the facts of the offence were recited to the court and a transcript ordered (Exhibit #2) so

that the Sentencing Circle would be able to proceed on an informed basis. Counsel and the court all indicated they would be unavailable to attend the Circle due to scheduling conflicts in July. The Circle was in fact held on August 19, 2008.

[4] On June 12, Ms. Brooks was also arraigned on a charge of breaching a Probation Order of July 25, 2007 by failing to report to a probation officer between December 10, 2007 and May 6, 2008 as directed. Ms. Brooks pleaded guilty to this charge on July 24, 2008 and on July 31, 2008 was directed to appear on September 5 for sentencing.

[5] An update to the April 17th Pre-Sentence Report was prepared on August 20, 2008. At Ms. Brooks' sentencing hearing on September 5, I had before me: the Pre-Sentence Report, the Update, a copy of Ms. Brooks' criminal record, the Report of the Sentencing Circle, Ms. Syliboy's Victim Impact Statement, the transcript of the facts of the offence, a description of Ms. Syliboy's injuries and photographs of Ms. Syliboy (Exhibit #1), cases from the Crown and a Defence brief and cases.

Facts - The Assault on Ms. Syliboy

[6] On June 24, 2006, Indian Brook RCMP were dispatched on a call concerning a woman found lying in the middle of the road bleeding from her face. When the police officer arrived at 4:57 a.m. he identified the victim as Belinda Syliboy. Ms. Syliboy was lying face down, crying and holding her face. Although hysterical, intoxicated and in pain, she was able to indicate that three females had assaulted her,

one of whom she named as Kathleen Brooks. The other two females were young persons. None of the three were still at the scene.

[7] Ms. Syliboy told the investigating officer that she had been at a party earlier which had been moved to the residence of Craig Peter Paul. Soon afterwards, Ms. Syliboy's cousin, Danny Syliboy arrived. One of the females who later participated in the assault on Ms. Syliboy began to argue with Danny. Ms. Syliboy intervened to try and convince her to stop. The girl then began to argue with Ms. Syliboy and Ms. Syliboy punched her in the face causing the girl to fall down the stairs. A scuffle followed at the foot of the stairs. Ms. Syliboy got on top of the girl and was starting to punch her. Kathleen Brooks, who is related to the girl, appeared and succeeded in getting Ms. Syliboy off her. Ms. Brooks then began punching and kicking Ms. Syliboy.

[8] Ms. Syliboy got to her feet and began to walk away toward her home. Ms. Brooks went after her, tackling her to the ground and again punching and kicking her. Ms. Syliboy got to her feet and again started off for home but was attacked by Ms. Brooks and knocked to the ground. At this point a second female young person got involved in the assault on Ms. Syliboy.

[9] Ms. Syliboy was badly injured in the attack and spent one night in the hospital. She suffered major facial bruising and cuts. She received several stitches for a laceration to the area above her eyebrow. She had significant bruising on other parts of her body - her arms, shoulders, back, head and behind her ears. The bruising and the soreness associated with it lasted for weeks. Ms. Syliboy sustained two fractured

ribs and chipped teeth. Her jaw was so sore she thought it had been broken but that was determined not to be the case. Ms. Syliboy's eyes were swollen shut for approximately two weeks and continued to be very bloodshot after that.

[10] The photographs taken on June 24 at approximately 6 a.m. when Ms. Syliboy was still at the hospital show Ms. Syliboy's bloodied and pummeled face with her eyes swollen shut.

[11] Ms. Syliboy missed two months from work as a result of her injuries and experienced some income loss. The cost of repairing her chipped teeth was covered by insurance. She continues to experience some discomfort from the broken ribs although they have now healed.

[12] The bodily harm which Ms. Brooks has admitted to was caused by Ms. Brooks and the second girl when Ms. Syliboy was trying to walk home after the initial altercation at Mr. Paul's house.

Victim Impact Statement of Ms. Syliboy

[13] Ms. Syliboy's Victim Impact Statement prepared on July 12, 2006 details her injuries and describes the physical and psychological impact of the assault. Ms. Syliboy indicated that she was getting better but could not help out around the house because of the pain she was experiencing from her injuries. She said she suffered from being "jumpy and nervous" and gets "very anxious and fearful." She told of never going anywhere by herself. She obtained some counselling and found that helpful.

Ms. Syliboy also commented on the fact that she had planned to apply to the Armed Forces which represented an opportunity for her to “get away from here and do something with my life.” She indicated she was not in good enough shape to have the required medical examination and felt her life had been “ruined” because she could not pursue her application. Ms. Syliboy is now back at work.

Facts of Probation Breach

[14] Ms. Brooks was sentenced on July 25, 2007 for theft and breach of an undertaking. She was placed on twelve months probation which included a condition requiring her to report to a probation officer in Truro. Although Ms. Brooks attended some initial appointments with her probation officer, she failed in her reporting obligations between December 10, 2007 and May 6, 2008. She missed six appointments in total and was consequently charged with breaching her probation.

[15] Ms. Brooks’ probation order also required her to perform a total of 10 hours community service work by February 1, 2008. The Defence advised the court that Ms. Brooks had completed her community service hours by September 23, 2007.

Crown’s Position on Sentence

[16] The Crown’s position is that Ms. Brooks should be sentenced on the assault charge to twelve months in a provincial correctional facility. It is the Crown’s view that the nature of the assault on Ms. Syliboy and the severity of her injuries makes a conditional sentence inappropriate in this case. The Crown seeks to have the custodial

term followed by two years of probation. The Crown is also requesting a 10 year firearms prohibition and a DNA order. The Crown submitted that should the court consider a conditional sentence to be a proper disposition in this case, the period of the sentence should be between 18 - 24 months (that is to say, two years less a day) with house arrest, followed by probation.

[17] The Crown's position on sentence for the breach of probation charge is that Ms. Brooks should receive a custodial term of seven days to run concurrent to the sentence on the assault charge.

Defence Position on Sentence

[18] The Defence does not dispute that given the seriousness of the assault on Ms. Syliboy, a custodial sentence is warranted here. However, the Defence submits that Ms. Brooks is an appropriate candidate to serve her sentence in the community and supports the Sentencing Circle's view that a four month conditional sentence is a fit and proper sentence. I will review the specific recommendations proposed by the Circle, and endorsed by the Defence, when I discuss the Circle's role in this sentencing process.

[19] With respect to the breach of probation charge, the Defence notes that Ms. Brooks did not violate her probation by committing fresh offences. She had a baby in early November 2007 which contributed to her spotty reporting under the probation order. The Defence submits that a period of custody for this offence would not be appropriate and that Ms. Brooks should be sentenced to perform community service

for breaching her probation, although in view of the fact that she has a baby, community service could be problematic for her and would have to be assigned with her other responsibilities in mind.

Ms. Brooks' Prior Record

[20] Ms. Brooks' prior record consists of convictions in July 2007 for one count of theft under \$5000 and failing to comply with a condition of an undertaking. These offences post-dated the assault on Ms. Syliboy. It was in relation to these offences that Ms. Brooks was placed on probation for a year, commencing July 25, 2007, with a condition to report. Ms. Brooks has no record for violence.

The Pre-Sentence Report of April 17, 2008

[21] Kathleen Brooks (DOB January 28, 1987) was 19 when she assaulted Belinda Syliboy on June 24, 2006. She and Ms. Syliboy have known each other for a number of years and, according to Ms. Brooks, have had ongoing conflict.

[22] Ms. Brooks is Mi'kmaq and has lived most of her life in Indian Brook. She has a good relationship with each of her parents, who are no longer together, and reported no issues of violence or substance abuse in the home when she was growing up.

[23] Ms. Brooks is involved in a relationship with Nelson Solomon, 25. Their baby son was born in November 2007. Ms. Brooks indicated in the April Pre-Sentence

Report that she had moved back with her mother when the baby was born in order to have family support as she is a first-time mother.

[24] Ms. Brooks has not finished high school but, in the April 2008 Pre-Sentence Report, expressed an interest in doing so through upgrading at the Nova Scotia Community College. Her only employment has been painting and odd jobs for the Indian Brook Band Council and working at a blueberry factory in Maine. Ms. Brooks supports herself through social assistance and a little help from Mr. Solomon for the baby.

[25] Ms. Brooks has some history of drug use, having been a chronic user of marijuana in her teens. At age 14 she was referred to the CHOICES Program on an in-patient basis for approximately three weeks. She informed the author of the Pre-Sentence Report that she benefitted from her experience with CHOICES. Ms. Brooks decided on her own initiative to stop smoking marijuana because it was making her feel “burned out and tired all the time”. She has not experimented with other illegal drugs and described herself as a “social drinker” only. That being said, Ms. Brooks confirmed when speaking to the author of the Pre-Sentence Report that she was intoxicated on the night of the attack on Belinda Syliboy.

[26] The author of the Pre-Sentence Report interviewed Mi’kmaw Legal Support Network Court Worker, Alice Abram, who has known Ms. Brooks for several years. In Ms. Abram’s words, Ms. Brooks is a busy, hard-working person who is accountable to her supportive and successful family. Ms. Abram commented on Ms. Brooks having matured “a great deal over the last few years” and described her as “a

very smart and bright young lady who has developed good people skills throughout the years.”

[27] Also interviewed was Shelly Johnson, a friend of Ms. Brooks for approximately eight years. Ms. Johnson described Ms. Brooks as a good mother who has matured since the birth of her child and is making “significant efforts in turning her life around for the positive.” Ms. Johnson expressed the view that the assault was out of character for Ms. Brooks and observed that alcohol had played a role in her behaviour. Indian Brook RCMP were also contacted and Cst. Lynsey Murray indicated that Ms. Brooks is well known to the detachment with anger and substance abuse issues being of concern.

[28] In the Pre-Sentence Report, Ms. Brooks expressed remorse for the assault on Ms. Syliboy stating that she wished it had never happened.

[29] Ms. Brooks expressed considerable remorse at the sentencing hearing on September 5, 2008. She said she “looks at things differently” since she had her baby and is “really, really sorry” for what she did to Ms. Syliboy.

The Pre-Sentence Report Update of August 20, 2008

[30] Additional sources were contacted for the update to the Pre-Sentence Report: Anne Marie Augustine of the Indian Brook Band; Lynn Sack, Ms. Brooks’ aunt, and Cst. John MacMinn of the Indian Brook RCMP. Ms. Augustine confirmed that Ms. Brooks had been working during the past summer for the Band and described her as

“a really good worker” who was sometimes late for work. Ms. Sack echoed comments from the original Pre-Sentence Report that Ms. Brooks has grown up a lot since her baby was born. In Ms. Sack’s opinion, Ms. Brooks has “a different view of life now.” Ms. Sack identified anger and impulsivity as problems Ms. Brooks needs to address and commented that Ms. Brooks is “working to get off drugs.” She referred to substance abuse and mental health counselling as being of potential benefit to Ms. Brooks.

[31] Cst. MacMinn agreed that Ms. Brooks would likely benefit from anger management and substance abuse counselling.

[32] Although Ms. Brooks had indicated to the author of the Updated Pre-Sentence Report that she was planning to relocate to Moncton with Mr. Solomon and their son and considering enrollment in an educational program for possible upgrading, at the sentencing hearing on September 5, Ms. Brooks confirmed that she is prepared to postpone any relocation in order to comply with the Sentencing Circle recommendations.

[33] Ms. Brooks’ statements to the court at the sentencing hearing on September 5 indicated that she recognizes, notwithstanding the Sentencing Circle recommendations, she could be sent to jail. She said she accepts that she should be punished but asked not to be taken away from her child.

[34] The author of the Updated Pre-Sentence Report, who had been supervising Ms.

Brooks under the July 25, 2007 probation order noted Ms. Brooks' failure to meet the reporting requirements of the order and concluded the Update expressing scepticism of Ms. Brooks' future compliance with a community based sentence.

The Sentencing Circle

[35] A Sentencing Circle was held on August 19, 2008 at Indian Brook. The Sentencing Circle was established through the work of an Indian Brook Community Justice Committee. The Committee held three meetings over a two month period to prepare participants for the process. Members of the Committee also attended the Circle. In the report on the Circle, preparation for the Circle was described as promoting "balanced active participation by all affected interests and immeasurably improves outcomes." An elder, Earl Sack, who had been involved in the Committee meetings was unable to attend the Circle itself. In the meeting process however, he had expressed how the community should hold Ms. Brooks accountable.

[36] The Circle lasted approximately three hours. The ten Circle participants were described as having "relevant interests and skills to develop a sentence plan that was inclusive of the needs of the community, offender and victim." Francine Pierro, the Customary Law Worker for the Mi'kmaw Legal Support Network, was the facilitator of the Circle with Ella Paul of the Mi'kmaw Legal Support Network as co-facilitator. Other participants were Blanche Mousseau, an elder; Marie Sack, the Mental Health and Wellness Coordinator for Indian Brook; Theresa Morris, Clinical Therapist (Journey of Healing Program); Cst. Lynsey Murray of the Indian Brook RCMP; and

Lynn Sack, a community member. Ms. Brooks attended and participated as did Ms. Syliboy. Andrea Brooks attended as a support for Ms. Brooks.

[37] The Circle focused on the incident involving the assault of Ms. Syliboy. Although it had been intended that the probation breach would be dealt with in the Circle as well, this did not occur.

[38] Francine Pierro prepared a report for the court that detailed the process and the Circle's recommendations. In Ms. Pierro's report, the purpose of the Sentencing Circle is described as the assembling of a forum of community members to develop a sentence plan for Ms. Brooks. The Circle is characterized as an opportunity to involve the community and victim in the formal sentencing process, in a manner that is respectful of Mi'kmaq traditions and customary law. The Sentencing Circle,

... promotes responsibility in offenders and acknowledges both the harm done to victims and the community and their role in making recommendations to the courts in determining a more meaningful sentence. The circle takes into consideration the circumstances associated with being an Aboriginal person and it also considers the harm done to the victim.

[39] Ms. Pierro's report described the Circle as a process "based on the connectedness of all things" that addresses issues underlying the offence and looks at how relationships and individuals can be strengthened in the process. Reference is made in the report to *R. v. Gladue*, [1999] S.C.J. No. 19 and the comments at paragraph 77 of that decision:

The circumstances of Aboriginal Offenders are markedly different from those of other offenders, being characterized by unique systemic and background factors. Further, an Aboriginal offender's community will frequently understand the nature of a just sanction in a manner significantly different from that of many non-Aboriginal communities... Parliament has, more than ever before, empowered sentencing judges to craft sentences in a manner that is meaningful to Aboriginal Peoples.

[40] A focus on interests, reliance on consensus and involvement of all participants to “foster a sense of sharing and a creative problem solving environment” underpins the work of the Sentencing Circle. (Pierro Report, page 2) It is noted that the Circle participants were “careful to ensure that the sentencing recommendations were proportionate to the gravity and seriousness of the offence.”

[41] Francine Pierro was called by Defence counsel to testify at the sentencing hearing. It was her evidence that the Sentencing Circle was the community's way of holding Ms. Brooks accountable for her actions. Ms. Pierro indicated that the Circle had taken both specific and general deterrence into account. The Circle considered how Ms. Brooks could address substance abuse and anger issues to achieve specific deterrence and how to “show in the community how we were holding her accountable” to achieve general deterrence.

[42] Ms. Syliboy had been interviewed prior to the Circle as part of the preparation for the Circle and she advised the facilitators that the assault by Ms. Brooks had been “life-changing” for her. She indicated that she “still lives in fear” and recommended that Ms. Brooks go to jail as well as pay restitution for the two months Ms. Syliboy missed work due to her injuries. Ms. Syliboy participated in the Circle on August 19 until the discussion turned to the facts of the incident, at which point she became quite

upset and decided to leave. She advised that she could not handle hearing what happened to her all over again. This was about 45 minutes into the Circle. Ms. Pierro testified that Ms. Syliboy's supports at the Circle were to have been two family members who decided at the last minute not to attend. Ms. Pierro said Ms. Syliboy was supported in the Circle by Circle members.

[43] According to Ms. Pierro's Report, the recommendations by the Circle "were reached with the support and commitment of all participants. The context out of which the recommendations emerged is described as follows:

... the collective effort of the community to assist Ms. Brooks in recognizing the harmful consequences of her actions and to address the personal circumstances in [her] life that contributed to the crime. These recommendations were carefully deliberated and considered to provide Ms. Brooks with a holistic approach to her journey of reintegration and new found respect in the Mi'kmaq community. The Circle facilitators strived to ensure that all interests were addressed and acknowledged in the sentence plan.

[44] In her testimony, Ms. Pierro explained the process that was undertaken to determine if a sentencing circle should be convened in Ms. Brooks' case. It was essential to establish that Ms. Brooks was remorseful for what she had done and willing to listen to the community. Ms. Pierro indicated that the goal of the sentencing circle process is to "make the community stronger and [Ms. Brooks] a stronger individual in our community."

[45] The Sentencing Circle made the following recommendations for sentencing Ms. Brooks:

- 1) A four month conditional sentence followed by twelve months probation. The Circle suggested that Ms. Brooks could be subject to electronic monitoring at the discretion of the court.

The Circle was of the opinion that incarceration “would not benefit Ms. Brooks” as she has a baby whose father is in and out of his life. The Circle also noted that “... incarceration would be too easy for Ms. Brooks because she has to be here in the community to prove herself to the community and be accountable for her actions.” The Circle referenced section 718.2 (e) of the *Criminal Code* which states that “all available sanctions other than imprisonment that are reasonable in the circumstances be considered for all offenders...” (I note that the words “with particular attention to the circumstances of aboriginal offenders” completes the wording of section 718.2(e).)

- 2) Individual counselling with a named clinical therapist through Eagle’s Nest Treatment Centre in Indian Brook for a four month period and then as needed. Counselling to include “anger awareness, impacts of exposure to violence on children, boundaries, grief and loss and goal setting.”
- 3) Alcohol and drug assessment at Addictions Services in Elmsdale, N.S. The Circle recommended an emphasis on the impact of alcohol and drugs on families.
- 4) Explore a spiritual environment to learn teachings and respect for others and family. The Circle identified Father Tom of St. Catherine’s Church in Indian Brook as the appropriate person for this aspect of the Circle’s recommendations.
- 5) Letter of apology to the victim and her family, to be written after Ms. Brooks has attended counseling and had time to reflect on her actions.
- 6) Presentations to youth as a mechanism for giving back to the community. Six presentations over six months with Cst. Lynsey Murray of the Indian Brook RCMP and Marie Sack of the Indian

Brook Wellness Program. Cst. Murray and Ms. Sack do presentations for youth on bullying, suicide and drug awareness and agreed that Ms. Brooks could assist with these presentations.

The Issue Confronting the Court on Sentencing Ms. Brooks

[46] While I have the benefit in this case of the Pre-Sentence Report and Update and the Sentencing Circle's report and recommendations, the fundamental issue before me was framed in *Gladue*: for this offence, committed by this offender, harming this victim, in this community, what is the appropriate sanction under the *Criminal Code*? Addressing that issue and tailoring a fit and proper sentence in this case requires me to consider and apply the legal principles that are relevant to sentencing Aboriginal offenders.

Sentencing Aboriginal Offenders

[47] Ms. Brooks is Mi'kmaq and therefore section 718.2 (e) of the *Criminal Code* and the Supreme Court of Canada decision in *Gladue, supra* are highly relevant to my deliberations on sentence. In *Gladue*, the Supreme Court of Canada recognized that there is a "drastic over-representation of Aboriginal people within both the Canadian prison population and the criminal justice system, [revealing] a sad and pressing social problem." (paragraph 64) The Court held that Parliament intended, by providing for distinct sentencing treatment in Section 718.2 (e) of the *Criminal Code*, to attempt to redress this social problem to some degree.

[48] As noted earlier, section 718.2(e) of the *Criminal Code* provides that:

A court that imposes a sentence shall also take into consideration the following principles... all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

[49] In *Gladue*, the Supreme Court of Canada held at paragraphs 64 and 65:

The provision that is in the *Criminal Code* may properly be seen as Parliament's direction to members of the judiciary to inquire into the causes of the problem and to endeavour to remedy it to the extent that a remedy is possible through the sentencing process.

...

It is clear that sentencing innovation by itself cannot remove the causes of aboriginal offending and the greater problem of aboriginal alienation from the criminal justice system. The unbalanced ratio of imprisonment for aboriginal offenders flows from a number of sources, including poverty, substance abuse, lack of education and lack of employment opportunities for aboriginal people. It arises also from bias against aboriginal people and from an unfortunate institutional approach that is more inclined to refuse bail and to impose more and longer prison terms for aboriginal offenders. There are many aspects of this sad situation which cannot be addressed in these reasons. What can and must be addressed, though, is the limited role that sentencing judges will play in remedying injustice against aboriginal peoples in Canada. Sentencing judges are among those decision-makers who have the power to influence the treatment of aboriginal offenders in the justice system. They determine most directly whether an aboriginal offender will go to jail or whether other sentencing options may be employed, which will play perhaps a stronger role in restoring a sense of balance to the offender, victim and community and in preventing future crime.

[50] It is necessary for me to approach Ms. Brooks' sentencing with regard for the fact that "the circumstances of Aboriginal people are unique and call for a special approach." (*Gladue*, paragraph 6) *Gladue* established the framework for the sentencing court in discharging its duty to determine a fit and proper sentence for Aboriginal offenders, requiring that a judge sentencing an Aboriginal offender must examine:

- (a) The unique systemic or background factors which have played a part in bringing the particular Aboriginal offender before the courts; and
- (b) The types of sentencing procedures and sanctions, which may be appropriate in the circumstances for the offender because of his or her particular Aboriginal heritage or connection. (paragraph 66, *Gladue*)

[51] The *Gladue* analysis must be performed in all cases involving an Aboriginal offender, regardless of the seriousness of the offence. (*Gladue*, paragraph 79: also see: *R. v. Jensen*, [2005] O.J. No. 1052 (Ont. C.A.) and *R. v. Abraham*, [2000] A.J. No. 645 (Alta. C.A.)) Other relevant cases I have reviewed include *R. v. Wells*, [2000] 1 S.C.R. 207 and *R. v. Kakekagamick*, [2006] O.J. No. 3346 (Ont. C.A.). *Wells* and *Kakekagamick*, building on the approach in *Gladue*, outline the appropriate approach for a sentencing court to take with respect to an Aboriginal offender. In *Kakekagamick*, the Ontario Court of Appeal, citing its recent decision in *R. v. Brizard*, [2006] O.J. No. 729 held at paragraph 31 that: "Failure to give adequate weight to an offender's Aboriginal status in accordance with section 718.2 (e) and *Gladue* amounts to an error of law." As noted in *Wells*, at paragraph 41, section 718.2(e) "imposes an affirmative duty on the sentencing judge to take into account the surrounding

circumstances of the offender, including the nature of the offence, the victims and the community.”

[52] Even though Parliament and the courts have enshrined specific principles for assessing a fit and proper sentence for an Aboriginal offender, it does not automatically follow that the sentence for an Aboriginal offender will be different from a non-Aboriginal. (*Gladue, supra, at paragraphs 79 and 88; Kakekagamick, supra, at paragraph 73; R. v. Wells, supra, at paragraph 44; R. v. Julian, [2006] N.S.J. No. 545 (N.S.P.C.)*) The sentencing judge’s fundamental duty to impose a sentence that fits the offender and the offence remains intact. *Gladue* notes that there are “some serious offences and some offenders for which and for whom separation, denunciation and deterrence are fundamentally relevant.” (*Gladue, supra, at paragraph 78*) However, the Supreme Court of Canada held in *Wells* that the reasoning in *Gladue* does not foreclose “the possibility that, in the appropriate circumstances, a sentencing judge may accord the greatest weight to the concept of restorative justice, notwithstanding that an Aboriginal offender has committed a serious crime.” (*Wells, supra, at paragraph 49*)

[53] The relationship of the sentence to the “needs and current conditions of and in the community” is also a relevant consideration in the “delicate art” of carefully balancing the factors a judge is required to weigh when sentencing an offender. (*R. v. C.A.M., [1996] 1 S.C.J. No. 28*) In the sentencing of an Aboriginal offender where there has been a sentencing circle, the report from the circle offers the judge direct input from the community affected by what the offender has done.

[54] It will be apparent from the principles I have extracted from *Gladue*, *Wells* and *Kakekagamick* that sentencing an Aboriginal offender does not involve looking only at the offence. If that were the case, then the application of the principles in section 718.2(e) and the judicial consideration of the issue of incarceration in relation to Aboriginal offenders would be limited to less serious offences. Sentencing has been explicitly recognized as an individualized process. (*R. v. C.A.M. supra*) Although *Gladue*, *Wells* and *Kakekagamick* make it clear that more violent and serious offences will likely merit similar sentences for Aboriginal offenders and non-Aboriginal offenders, whether a sentence is a sentence of imprisonment or not is determined in either case on the basis of an assessment of the facts of the offence and the circumstances of the offender.

[55] In *Kakekagamick*, the Ontario Court of Appeal affirmed the five year prison sentence for a domestic assault on the basis of “all the circumstances”, making special note of the aggravating features in the case that included the brutal nature of the assault, that it was in the context of a domestic relationship, and the fact that Mr. Kakekagamick had been assessed as a high-risk to re-offend. (*Kakekagamick, supra, at paragraph 73*)

The Crown’s cases

[56] The Crown has relied on several cases to support its submission that Ms. Brooks should receive a jail sentence for assaulting Ms. Syliboy: *R. v. Withrow*, [2008] N.S.J. No. 229 (N.S.P.C.); *R. v. Cormier*, [1994] N.S.J. No. 150 (N.S.C.A.); *R.*

v. Hall, [1998] N.S.J. No. 114 (N.S.C.A.); and *R. v. Julian*, [2006] NSPC 67 (N.S.P.C.)

[57] I will examine each of these cases. In *Withrow*, Campbell, P.C.J. declined to give Mr. Withrow a conditional sentence for assault causing bodily harm in 2005 where the victim sustained significant injuries to his face from being beaten. Mr. Withrow had a criminal record that included some assault convictions. He had previously breached a probation order, driven while his license was suspended or revoked, and failed to appear for his sentencing, choosing instead to abscond to British Columbia. Campbell, P.C.J. decided that there was a real risk Mr. Withrow would not comply with the conditions of a conditional sentence and sentenced him to six months in jail followed by twelve months probation.

[58] In *R. v. Hall*, the Nova Scotia Court of Appeal dismissed the application for leave to appeal a sentence of nine months incarceration and two years probation. The Court held that the sentencing judge had properly taken into account the offender's lengthy prior record, including a conviction for armed robbery, and the need for denunciation and repudiation of an assault that involved three men, including Mr. Hall, beating up the victim in response to a perceived slight.

[59] *R. v. Cormier* also involved an assault causing bodily harm. It was decided before the conditional sentencing regime was legislated by Parliament. Mr. Cormier had received two years probation and 100 hours of community service work. The Nova Scotia Court of Appeal, substituting a jail sentence of six months, held that the

overriding consideration in sentencing for crimes of violence is specific and general deterrence, with the emphasis on general deterrence. (*Cormier, supra, at paragraph 33*) Mr. Cormier was a youthful first offender. The Court concluded that a custodial sentence was mandated given the facts of the case. The beating of the victim was characterized as a “swarming” and described as an act of “random violence.” (*Cormier, supra, at paragraph 37*)

[60] None of these three cases, *Withrow, Hall* or *Cormier*, involved the sentencing of an Aboriginal offender. As I have noted, *Cormier* was decided before conditional sentencing was an option. The fact that these cases are, in a variety of respects, distinguishable from the case before me makes them unhelpful in determining a fit and proper sentence for Ms. Brooks. If the point being emphasized by the Crown is that sentencing for crimes of violence must advert to principles of denunciation and deterrence, more relevant cases dealing with Aboriginal offenders address these factors but do so in the context of section 718.2(e), conditional sentencing and the *Gladue* analysis.

[61] The Crown has also asked me to consider my own decision in *Julian* as a useful precedent for sentencing of an Aboriginal offender for an assault causing bodily harm. *Julian* concerned an Aboriginal offender with a lengthy record. Mr. Julian had prior convictions for violence, including two prior assaults and a threat conviction against the same intimate partner. In that case I was not satisfied that “alternatives exist, in a meaningful way, to achieve denunciation and general deterrence, as well as healing.” (*Julian, supra, at paragraph 28, referring to R. v. Williams, [2004] B.C.J. No. 2587*)

(*B.C.P.C.*) I noted that for cases of domestic violence, the Nova Scotia Court of Appeal had emphasized deterrence and denunciation as paramount considerations. (*Julian, supra, at paragraph 25*) I was not satisfied that Mr. Julian did not pose a threat to the community and while Mr. Julian had formulated a plan for a community-based sentence, there was no evidence that the issues underlying the violence in his record had been adequately addressed.

Determining the Fit and Proper Sentence for Kathleen Brooks

[62] The Crown proceeded against Ms. Brooks by way of indictment. Therefore the maximum sentence available is 10 years in prison. Nothing close to that is being recommended although the Crown and Defence are in agreement that a custodial sentence is appropriate. The contentious issue is how that sentence should be served. The Crown's position focuses on two of the pre-requisites for a conditional sentence: the issues of community endangerment and the requirement that a conditional sentence must be consistent with the fundamental purpose and all the principles of sentencing found in section 718 of the *Criminal Code*.

Endangering the Community

[63] The Crown has expressed concerns about the need to specifically deter Ms. Brooks, submitting that the community's safety could not be ensured if she was allowed to serve her sentence conditionally. The Crown referred to Ms. Brooks' prior breaches as casting doubt on the likelihood of her compliance with an ongoing

sentencing order. The breaches relate to Ms. Brooks' release conditions on the assault charge and a probation order from July 25, 2007.

[64] Ms. Brooks' minimal record and the circumstances of it do not indicate to me that she cannot be relied upon to follow the conditions of a conditional sentence order. Ms. Brooks did complete, by September 2007, the ten hours of community service work she was ordered to perform under the probation order. This is also not a situation where Ms. Brooks entirely failed to report: she did make some efforts to comply with the reporting condition before and after she had her baby in November 2007. She should have been more diligent and recognized better the importance of following the reporting requirement but I do not find that her conduct disqualifies her from being considered for a conditional sentence.

Satisfying the Purpose and Principles of Sentencing

[65] The Crown's argument is that a conditional sentence in this case would not satisfy the principles of denunciation and deterrence, particularly with respect to general deterrence. The Crown submits that, in fashioning its recommendations, the Sentencing Circle considered the specific deterrence of Ms. Brooks but not general deterrence.

[66] The Crown's position is that a conditional sentence in this case would be inappropriate because it would not express the necessary condemnation for Ms.

Brooks' actions nor would it carry a strong message to other possible violent offenders in the community. Concerns of this nature about conditional sentences in general have been answered by the Supreme Court of Canada in both *R. v. Proulx*, [2000] S.C.J. No. 6 and *Gladue*, *supra*. The Supreme Court of Canada referenced *Gladue* when, in *Proulx* after discussing the differences between serving a conditional sentence in the community and serving time in jail, the Court held: "This is not to say that the conditional sentence is a lenient punishment or that it does not provide significant denunciation and deterrence or that a conditional sentence can never be as harsh as incarceration." (*Proulx*, *supra*, at paragraph 41) In the context of Ms. Brooks' sentencing, the following passage from *Proulx* is particularly noteworthy:

A conditional sentence may be as onerous as, or perhaps even more onerous than, a jail term, particularly in circumstances where the offender is forced to take responsibility for his or her actions and make reparations to both the victim and the community, all the while living in the community under tight controls. (*paragraph 41*)

[67] As I just mentioned, the Crown has submitted that the Sentencing Circle considered only specific deterrence and not general deterrence in making its recommendations on Ms. Brooks' sentence. I disagree; the Circle expressly referred to the importance of accountability to the community and recommended, for example, presentations to youth. I note that in *R. v. Parker*, [1996] N.S.J. No. 410, MacDonald, J. (as he then was), in specifically addressing the issue of general deterrence, ordered Mr. Parker to make public presentations to youth in the community as part of his sentence. (*paragraphs 32 - 36*) This feature of Mr. Parker's sentence was expressly approved by the Nova Scotia Court of Appeal in their decision to uphold the

conditional sentence imposed on Mr. Parker. (*R. v. Parker*, [1997] N.S.J. No. 194 (N.S.C.A.))

[68] The Sentencing Circle's goal of achieving general deterrence through presentations to youth in the community was explicit in Ms. Pierro's evidence. She said that the purpose of presentations by Ms. Brooks is to show how her actions affected the community. Ms. Pierro testified that the presentations were to show other young people that "if you do this, this is what will happen... to show you don't get off lightly."

[69] I will further note that the criminal justice process itself, including the sentencing process, and community awareness about this case will also have been serving the goals of deterrence.

[70] In submissions on how Ms. Brooks' custodial sentence should be served, Defence counsel observed that it is important for the community to see how the sentence is being administered. Defence made the point that if Ms. Brooks is sent to jail, there will be no further community involvement and the community will not have the benefit of knowing what has happened to Ms. Brooks in the course of her sentence. As Ms. Pierro put it in her evidence: "If [Ms. Brooks] is not in the community, we wouldn't be able to show how she has made a change."

[71] This is a case where the community, through the use of a sentencing circle, has

considered not only specific and general deterrence in their sentencing recommendations but has also determined that, from the community's perspective, Ms. Brooks can serve her sentence in the community without endangering the community's safety. It is ultimately up to me to determine if I think that a community-based sentence will place the community at risk but, in this case, I do not find there is a sound basis for me to disagree with the Sentencing Circle's assessment.

[72] I am satisfied that Ms. Brooks can serve her sentence in the community without the community's safety being endangered. I am also satisfied that a conditional sentence in this case complies with the requirements for denunciation and deterrence and will most effectively address the rehabilitative goals that sentencing must try to achieve. *Proulx* describes how a conditional sentence has both punitive and restorative objectives. A conditional sentence "affords the sentencing judge the opportunity to craft a sentence with appropriate conditions that can lead to the rehabilitation of the offender, reparations to the community and the promotion of a sense of responsibility in ways that jail cannot... To the extent that both punitive and restorative objectives can be achieved in a given case, a conditional sentence is likely a better sanction than incarceration." (*Proulx, supra, at paragraphs 99 and 100*)

[73] Ms. Brooks is 21 years old and the mother of a ten month old baby. She has expressed great remorse for what she did to Belinda Syliboy. She has participated in the Sentencing Circle process and is willing to follow the Circle's recommendations. Her community believes in and supports her rehabilitation. A concrete plan to address Ms. Brooks' issues has been developed by the community through the work of the

Sentencing Circle. Specific areas of focus have been identified: “anger awareness, impacts of exposure to violence on children, boundaries, grief and loss, and goal setting.” Alcohol and drug assessment has also been recommended: while it is unclear from the material I have before me what Ms. Brooks’ alcohol/drug use was leading up to the assault on Ms. Syliboy, comments in the Pre-Sentence Report indicate an existing problem. What I do know is that Ms. Brooks was intoxicated by alcohol at the time of the offence.

[74] The Sentencing Circle also sought to achieve some reconciliation between offender and victim by recommending that Ms. Brooks write a letter of apology to Ms. Syliboy and her family. The Circle understood that for any such letter to be meaningful it needed to be sincere and therefore indicated that the letter be written once Ms. Brooks has had the benefit of some counseling and reflection. In this context I want to comment briefly on the June 24, 2006 incident. An altercation with Ms. Syliboy was triggered when she punched Ms. Brooks’ sister and Ms. Brooks intervened. Had the matter ended there, likely no one would have been injured and no charges would have been laid. Ms. Brooks however pursued Ms. Syliboy and beat her up, in retaliation. Ms. Syliboy was just trying to go home at that point. What I want to stress is this: whatever justification Ms. Brooks may have felt for initially intervening in a fight between Ms. Syliboy and Ms. Brooks’ sister, there is nothing to explain or justify her brutal attack on Ms. Syliboy. Ms. Brooks exploded in an alcohol-fueled rage and she has to get to the bottom of why she resorted to violence. Ms. Brooks’ expressions of remorse and the letter of apology it has been recommended she provide to Ms. Syliboy and her family are necessary to demonstrate

to Ms. Syliboy and the community that Ms. Brooks is prepared to accept full responsibility for her actions.

[75] The Circle's recommendations emerge from the collective efforts of community members who examined the circumstances of the offence and Ms. Brooks. Members of the Circle, for example, Marie Sack (Mental Health Coordinator for Indian Brook) and Theresa Morris (Clinical Therapist) have specific experience delivering services to Aboriginal clients at Indian Brook where they work. The Circle's recommendations have also been informed by the expertise of Elders who participated in the Committee and Sentencing Circle process. The contribution of the Circle to this sentencing process is invaluable. Not only do I have the benefit of the Circle's recommendations, I have the reassurance that the community is willing to be an active participant in Ms. Brooks' sentence and her rehabilitation. And I can be hopeful that Ms. Syliboy will in time feel less fearful and traumatized if she can see Ms. Brooks held accountable by her community and making progress on dealing with her issues.

[76] In this case there is a reasonable alternative to sending Ms. Brooks to jail. A jail sentence will remove Ms. Brooks from her community and prevent it from having a role in holding her to account. Jail will separate her from her child and make parental absence and family dislocation the experience of yet another generation. In Ms. Brooks' own background, her father, with whom she has a good relationship now, was "in and out" of her life, and members of her family underwent the Indian Residential School experience. (see page 5, Pre-Sentence Report) As a sentencing judge, I have the power and obligation to influence the treatment of this Aboriginal

offender. With section 718.2 (d) and (e) of the *Criminal Code* requiring me to consider all reasonable alternatives to incarceration and directing me to pay particular attention to the circumstances of Aboriginal offenders, in all the circumstances of this case, I am satisfied that a conditional sentence for Ms. Brooks “will play... a stronger role in restoring a sense of balance to the offender, victim, and community, and in preventing future crime.” (*Gladue, supra, at paragraph 65*)

[77] The remaining issues for me to address are the length of Ms. Brooks’ conditional sentence and articulate the conditions that should apply. A conditional sentence of four months followed by twelve months probation has been recommended to me by the Sentencing Circle, although no evidence or information was provided as to how this recommendation was arrived at. I presume the Circle decided that the objectives of the sentence would be accomplished within this time frame. For example, in respect of individual counselling with a clinical therapist, the Circle indicated a period of “four months and then as needed.” I note that the total sentence recommended by the Sentencing Circle is 16 months.

[78] It falls exclusively to me to determine the length and conditions of Ms. Brooks’ sentence. While I acknowledge and appreciate the work of the Sentencing Circle in providing me with very specific and culturally-attuned recommendations concerning Ms. Brooks’ issues, I alone must determine what constitutes a fit sentence in the circumstances of this case. Where the recommendations of a sentencing circle do not conform to what constitutes a fit sentence, the sentencing judge must disregard them and impose the sentence that is most appropriate. (*R. v. W.B.T., [1997] S.J. No. 826*)

at paragraph 161 (Sask. P.C.); R. v. Morin, [1995] S.J. No. 457 at paragraph 19 (Sask. C.A.)

[79] Ms. Brooks has pleaded guilty to a very serious assault. She has not always recognized the significance of the issues that contributed to her attack on Ms. Syliboy. For example, when the Pre-Sentence Report was prepared in April 2008, Ms. Brooks did not feel there was any need for any type of assessment, treatment and counseling with respect to substance abuse. This is notwithstanding the fact that Ms. Brooks has a history of drug abuse and was intoxicated by alcohol on the night she attacked Ms. Syliboy. Ms. Brooks has a more mature outlook now as indicated by her acceptance of the Sentencing Circle's recommendations which include measures for addressing substance abuse and mental health issues. However, I am not satisfied that a four month conditional sentence complies with the sentencing principles discussed previously that I am required to consider, including proportionality, that is to say the principle that the sentence must be proportionate to the gravity of the offence and the degree of the offender's responsibility. I am of the view that a sentence of a longer duration is more consistent with the principles of denunciation, deterrence and rehabilitation. A longer period of supervision by the court and community will afford a better opportunity to ensure Ms. Brooks' rehabilitation is achieved and will represent more consequences and accountability for such a serious offence. In keeping with the requirements that a conditional sentence have a punitive dimension, (*see Proulx, supra, at paragraph 36*) Ms. Brooks will be subject to house arrest and curfew conditions.

[80] I have determined that in relation to the assault, Ms. Brooks should be sentenced to twelve months of custody to be served in the community as a conditional sentence, followed by a period of eight months probation. This represents a total sentence of 20 months, during which Ms. Brooks will be subject to the supervision of the court and accountable to the community. The conditions for the conditional sentence will be as follows:

- > Keep the peace and be of good behaviour;
- > Appear before the court when required to do so by the court;
- > Notify promptly the court or the supervisor in advance of any change of name or address, and promptly notify the court or the supervisor of any change of employment or occupation;
- > Report to a sentence supervisor by the end of the day today and thereafter as directed;
- > Remain in Nova Scotia unless written permission is obtained from the sentence supervisor to leave;
- > Do not take, possess or consume alcohol or other intoxicating substances;
- > Do not take, possess or consume a controlled substance as defined by the *Controlled Drugs and Substances Act* except in accordance with a physician's prescription for you or a legal authorization;

- > Do not own or possess a weapon, ammunition or explosive substance;
- > Make reasonable efforts, subject to child care responsibilities, to obtain further educational qualifications as directed by your sentence supervisor;
- > Attend for assessment, counselling and treatment as directed by your sentence supervisor for mental health, substance abuse, anger management, violence intervention prevention and otherwise as directed by your sentence supervisor;
- > Attend for spiritual counselling as approved by your supervisor;
- > Participate in and cooperate with any assessment, counselling or program directed by your supervisor;
- > Conduct with Cst. Lynsey Murray of the Indian Brook RCMP and Marie Sack of the Indian Brook Wellness Program, a series of six presentations to youth. The content of these presentations is to be approved by Cst. Murray and Ms. Sack jointly in consultation with Ms. Brooks and Ms. Brooks is to make the presentations herself as part of Cst. Murray's and Ms. Sack's program of presentations to youth on bullying, suicide and drug awareness;
- > Have no direct or indirect contact or communication with Brenda Syliboy except for the purpose of a letter of apology to Ms. Syliboy, the content of such letter to be approved by your sentence supervisor;
- > To remain in your residence at all times beginning at 7:00 p.m. on September 30, 2008 and ending at 11:59 p.m. on June 29, 2009 except:

1. When dealing with a medical emergency or medical appointment involving you or a member of your household and travelling to and from it by a direct route;
 2. When attending regularly scheduled school classes, which your supervisor knows about, or at a school activity supervised by a principal or teacher, and travelling to and from school or the activity by a direct route;
 3. When attending a scheduled appointment with your lawyer, your supervisor, or a probation officer, and travelling to and from the appointment by a direct route;
 4. When attending court at a scheduled appearance or under subpoena, and travelling to and from court by a direct route;
 5. When attending a counselling appointment, a treatment program, at the direction of or with the permission of your supervisor, and travelling to and from the appointment, program, or meeting by a direct route;
 6. When attending spiritual counselling with the approval of your supervisor, and travelling to and from the spiritual counselling by a direct route;
 7. For not more than 3 hours per week to attend to personal needs and needs related to your baby, and travelling to and from by a direct route;
 8. When performing community service work arranged with your supervisor, and travelling to and from the community service work by a direct route;
 9. When making presentations with Cst. Murray and Ms. Sack, and travelling to and from the presentations by a direct route;
- > Subject to a positive report on sentence compliance, a curfew commencing on June 30, 2009 to remain in your residence from 9:30 p.m. until 6:00 a.m. the following day, seven days a week beginning on June 30, 2009 and ending on September 29, 2009 except:

1. When dealing with a medical emergency or medical appointment involving you or a member of your household and travelling to and from it by a direct route;
 2. When attending regularly scheduled school classes, which your supervisor knows about, or at a school activity supervised by a principal or teacher, and travelling to and from school or the activity by a direct route;
 3. When attending a scheduled appointment with your lawyer, your supervisor, or a probation officer, and travelling to and from the appointment by a direct route;
 4. When attending court at a scheduled appearance or under subpoena, and travelling to and from court by a direct route;
 5. When attending a counselling appointment, a treatment program, at the direction of or with the permission of your supervisor, and travelling to and from the appointment, program, or meeting by a direct route;
 6. When attending spiritual counselling with the approval of your supervisor, and travelling to and from the spiritual counselling by a direct route;
 7. For not more than 3 hours per week to attend to personal needs and needs related to your baby, and travelling to and from by a direct route;
 8. When performing community service work arranged with your supervisor, and travelling to and from the community service work by a direct route;
 9. When making presentations with Cst. Murray and Ms. Sack, and travelling to and from the presentations by a direct route;
- > If the reports of sentence compliance are not positive at the second review, the house arrest condition will continue to the end of the conditional sentence;

- > To prove compliance with the house arrest / curfew condition by presenting yourself at the entrance to your residence should a peace officer and / or your supervisor attend there to check compliance;

- > A copy of the court's decision, as well as recommendations of the sentencing circle, to be provided to the sentence supervisor.

[81] There will be a review of Ms. Brooks' sentence after four months, that is, in February 2009 and a further review before June 29, 2009 to address the substitution of the house arrest condition by a curfew condition. As I have indicated, if the reports of sentence compliance are not positive at this second review, the house arrest condition will continue to the end of the conditional sentence. I am directing that reports be prepared for both review dates by the Conditional Sentence Supervisor for Ms. Brooks, and I am asking that the Sentencing Circle provide a report for the second review. A Sentencing Circle report for the February 2009 review would be useful, but I am mindful of the volunteer role of the Circle participants.

[82] I am directing that following the expiry of her conditional sentence, Ms. Brooks shall be on probation for eight months with the same conditions as the conditional sentence with the exception of the house arrest/curfew conditions. I will note, that it is my intention that Ms. Brooks should write Ms. Syliboy and her family an apology letter as recommended by the Sentencing Circle, and that this is to be done before the end of Ms. Brooks' period of house arrest, in other words, by the end of June 2009.

[83] As for Ms. Brooks' sentence for the breach of probation, in the circumstances

of that offence, I am placing her on probation for nine months with the usual statutory conditions, a reporting requirement and a direction that she perform 15 hours of community service work to be completed by the end of the probation order.

[84] As a final matter, I want to comment on the issue of restitution, as that was raised by Ms. Syliboy with the Sentencing Circle Committee. This did not form part of the recommendations of the Sentencing Circle, and I have concluded that it would impose a financial obligation on Ms. Brooks that she would be extremely hard-pressed to satisfy given her limited employment opportunities, her education, the requirements that she attend for assessment and counselling, the community service hours, and most significantly, her responsibilities as the primary care-giver of a very young child. I am not prepared to set her up for failure by imposing an order that she has little prospect of satisfying.

[85] I will conclude by directing that the Report of the Sentencing Circle shall be provided to Ms. Brooks' sentence supervisor with a copy of my decision, and the indication that it is my intention that counseling and treatment for Ms. Brooks should include the specific recommendations of the Circle. Ms. Brooks' rehabilitation must be informed by her cultural heritage and the thoughtful efforts of her community to address the underlying issues that have brought her before the court on such a serious charge.

[86] I want to thank Crown and Defence for their submissions in this case. Most particularly, I want to thank each of the participants in the Sentencing Circle,

including Ms. Syliboy, for their contribution. I appreciate the investment made by the Circle members in this case and their efforts to address the complex range of issues presented by it.

[87] Upon reviewing the sentence order in this case when preparing my decision for publication, I noted that by not separating out the exceptions for Ms. Brooks' house arrest and curfew conditions when I delivered my decision, the house arrest exceptions were repeated for the curfew condition. This was inadvertent and produced a sentence order that recited exceptions to the curfew condition which made no sense. This was obviously not my intention. On November 20, 2008, after hearing from Crown and Defence counsel concerning which exceptions were irrelevant to the curfew condition, and with their consent, I amended Ms. Brooks' sentence order to delete, under clause (m), numbers 3, 4 and 7 relating to exceptions for appointments with her lawyer, supervisor or probation officer (#3); attendance at court (#4); attending to personal needs (#7). None of these exceptions made sense in the context of a curfew and were intended only to be exceptions for the house arrest condition. I thank counsel for their assistance in dealing with this.

Anne S. Derrick

Judge of the Provincial Court of Nova Scotia