YOUTH JUSTICE COURT OF NOVA SCOTIA

Citation: R. v. M.P. 2010 NSPC 54

Date: August 20, 2010
Docket: 2102949, 2102950, 2102952, 2102953
2102928, 2102930, 2102932, 2102933, 2102934, 2102937
2103099, 2103101, 2103103, 2103104
Registry: New Glasgow

Between:

Her Majesty the Queen

v.

M. P., M.M., C.S

Judge:	The Honourable Judge Theodore K. Tax
Heard:	May 11, 2010; June 25, 2010; August 20, 2010, in New Glasgow, Nova Scotia
Oral Decision	August 20, 2010
Charges:	Sections 348(1)(b), 348(1)(a), 434, 334(b) CC; Sections 348(1)(a), 348(1)((a), 434, 334(b), 334(b) 348(1)(b) CC; Sections 348(1)(a), 348(1)(a); 434, 334(b) CC
Counsel:	Jody McNeill, for the Crown Gerald MacDonald, for the Defendant, M. M. Douglas Lloy, for the Defendant C. S. Ronald Chisholm, for the Defendant, M. P.

ORALLY:

INTRODUCTION:

[1] The village of Sunnybrae, Nova Scotia is located in rural Pictou County. It is a very small village with few permanent residents. In the early morning hours of May 9, 2009, the relative peace and tranquility of Sunnybrae, Nova Scotia was seriously disrupted. The Macdonald family homestead residence in that community was broken into by a group of young males, who later returned there and intentionally set a fire which burned the house to the ground. In addition, a trailer belonging to Mr. Todd MacDonald was broken into and entered by those young persons and also that same evening, they stole a car belonging to Mr. Brian Sharpe.

[2] Following a police investigation lasting several months, four young persons, as defined under the **Youth Criminal Justice Act** were charged with the break and enter and the arson of the Macdonald family homestead, the break and enter of Mr. Todd MacDonald's trailer and the theft of Mr. Sharpe's car. MM, CS and MP have each entered separate guilty pleas to those charges and their cases are now before the court in order to determine an appropriate sentence. In terms of the incidents arising on May 9, 2009, MP also pled guilty to the theft of the property of

Brenda Sharpe and Lori Sharpe. The fourth young person (DWT) who was also charged with these and other offences which occurred on May 9, 2009, died recently in a tragic accident, and since then, all of the charges against him have been dismissed.

[3] Since the incidents of May 9, 2009, MP has pled guilty, as a young person, to a break, enter and theft which occurred between May 15, 2009 and June 30, 2009 at the Boy Scout Camp, near Sunnybrae, Nova Scotia. In addition, after he turned 18 years old, MP was charged with and pled guilty to uttering a threat to cause bodily harm on or about July 7, 2009 and to recklessly causing damage by fire to the bridge crossing the East River, near Sunnybrae, Nova Scotia, on August 16, 2009. After his 18th birthday, MM was charged with and pled guilty to breaching an undertaking in his release conditions by contacting a co-accused (DWT) on March 25, 2010.

[4] The principal issue raised in this case concerns the interpretation of subsection 39(1)(d) of the **Youth Criminal Justice Act**, S.C. 2002, c.1 (“ **YCJA**”) and whether this is one of those “exceptional cases” where a non-custodial sentence would be inconsistent with the purpose and principles of youth criminal

justice sentencing set out in section 38 of the **YCJA**. If subsection 39(1)(d) applies, then the issue to determine is the appropriate custodial disposition that would hold these young persons accountable for the offences by imposing just sanctions that have meaningful consequences for the young persons and that promote their rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public.

POSITION OF THE PARTIES:

[5] The Crown acknowledges that these young person's circumstances do not fit within any of the so-called custodial "gateways" enumerated in subsections 39(1)(a)-(c) of the **YCJA** which limits the number of circumstances in which a young person may be ordered to serve a custodial sentence. However, the Crown position is that these three young persons have been charged with and entered guilty pleas to indictable offences and that this is one of those "exceptional cases" where a non-custodial sentence would be inconsistent with the purpose and principles of youth criminal justice sentencing set out in s. 38 of the **YCJA.**

[6] If the court concludes that subsection 39(1)(d) of the YCJA applies in the

circumstances of this case, then the Crown acknowledges that a deferred custody order may be considered by the court. The Crown submits, however, that a deferred custody order is subject to a six-month maximum and would not be of sufficient length to promote a sense of responsibility in these young persons. The Crown submits that the appropriate disposition for all three young persons is a custody and supervision order of between 10 and 12 months pursuant to section 42(2)(n) of the **YCJA** to be followed by a period of probation of two years. The Crown submits that, in the case of MP, the top end of the recommended range should be imposed, as in addition to the offences under the **YCJA**, MP also entered guilty pleas to two indictable offences as an adult.

[7] Defence counsel for each of the three young persons before the court made their own individual submissions with a particular emphasis on the circumstances of their client. Each of the Defence counsel submitted that the facts and circumstances of this case do not fall within subsection 39(1)(d) **YCJA** as one of those “exceptional cases” and that a non-custodial disposition should be imposed. Alternatively, Defence counsel submitted that if the court concluded that this was an “exceptional case” and subsection 39(1)(d) applied, then, having regard to the purpose and principles of youth criminal justice sentencing set out in section 38

YCJA, the appropriate disposition would be a deferred custody and supervision order under section 42(2)(p) of the **YCJA,** followed by a period of probation to be determined by the court.

CIRCUMSTANCES OF THE OFFENCES:

[8] In the early morning hours of May 9, 2009, the police and the local fire department responded to a fire in the village of Sunnybrae, Nova Scotia, at the residence owned by Clyde Macdonald, a part-time judge of the Provincial Court of Nova Scotia and his five brothers and sisters. The building burned to the ground and all of its contents and family memorabilia were permanently destroyed in the fire. The home had been in the Macdonald family for almost 100 years, but at the time of the fire the house was not occupied by permanent residents.

[9] Shortly after the time that police responded to the fire at the Macdonald house, they were also told of the theft of a car belonging to Mr. Brian Sharpe. The keys to the car belonging to Brian Sharpe had been left in another family car parked on the driveway and were taken out of that car in order to steal Mr. Sharpe’s car. The car was eventually located one week later in the area of

Springville, Nova Scotia with minimal damage having been occasioned.

[10] In late May, 2009, rumours started to circulate in Sunnybrae, Nova Scotia, with respect to who had participated in the arson of the Macdonald house. A poster offering a reward for information leading to the arrest and prosecution of the perpetrators of the break and enter and arson of the Macdonald family house had been circulated and posted in the Sunnybrae area.

[11] In late August, 2009, the police became aware of the names of several young persons who were suspected to have been involved in the break-in and arson of the Macdonald family house, the theft of the Sharpe vehicle, as well as a break and enter at the trailer belonging to Mr. Todd MacDonald which was also situated in Sunnybrae, Nova Scotia. Mr. Todd MacDonald had not been at this trailer for some time and as a result, police officers went with him to inspect his trailer. At the trailer, police confirmed that there had been a break and enter and that the perpetrators of the break-in had left empty beer and rum bottles, a purse with identification belonging to Ms. Brenda Sharpe and a copy of the reward poster which had been issued in the community by Mr. Clyde Macdonald.

[12] Police interviews with the suspected young persons in early September, 2009 led to a series of statements which implicated MM, CS, MP and DT as the active participants in the criminal charges which occurred on May 9, 2009. The statements provided by MM, CS, MP and DT confirmed that the group had met with two other young people on the evening of May 8-9, 2009 and had consumed rum and beer, smoked marijuana and snorted crushed ecstasy at one of their houses. Thereafter, their statements confirmed that MM, CS, MP and DT broke into the trailer of Todd MacDonald and continued drinking alcohol, doing drugs and playing card games.

[13] In their statements to police they also confirmed that a short time later MM, MP, CS and DT then walked over to the nearby Macdonald family residence and broke a window in order to gain access to the residence. They rummaged around in the house before leaving. After leaving the Macdonald family house, they proceeded to the Sharpe residence where they found the keys to Mr. Sharpe's car and then they drove off in it. While in the car, the four young persons smoked marijuana and discussed the fact that they had left their fingerprints in the Macdonald family residence. A mutual decision was made by MM, MP, CS and DT to return to the Macdonald family residence and start a fire in order to destroy

any evidence of their fingerprints. The statements of MP, MM, CS and DT confirmed that each one of them was an active participant in the effort to start the fire in the Macdonald family residence.

[14] MP has also pled guilty to taking Ms. Sharpe's purse and some of its contents out of her car, which was parked on her driveway on May 9, 2009. Police information confirmed that Ms. Sharpe's purse and some of its contents, including a credit card and her identification were found in the trailer belonging to Mr. Todd MacDonald. Some of the other contents to Ms. Sharpe's purse were found on the side of the road near where Mr. Brian Sharpe's car was located. The other charge for which MP entered a guilty plea as a young person under the **YCJA** related to the break-in and theft from the Boy Scout camp, situate on McKinnon Lake near Sunnybrae Nova Scotia. MP admitted to this break-in and the theft of a fire extinguisher from the camp which occurred sometime between May 15 and June 30, 2009. When police investigated at the Boy Scout camp, there was evidence of the break-in, which caused minor damage to the building.

[15] In addition to those charges as a young person under the **YCJA**, MP has also entered guilty pleas, as an adult, to two other **Criminal Code** charges under

section 434 [arson] and section 264.1(1)(a) [uttering threats]. The threat charge to which MP entered a guilty plea related to an incident on the evening of July 7, 2009. Police information established that a group of young males including MP got into a verbal altercation with Ms. Kimberly Carrigan, and during the altercation, MP threatened to smash the windows of her house and to rape her. Prior to that time, MP had seen Ms. Carrigan's daughter on a regular basis and as a result, MP was well known to both mother and daughter. Defence counsel acknowledged that his client had made this threat on one occasion and has since written a letter of apology to Ms. Kimberly Carrigan for his actions.

[16] Finally, when he was interviewed with respect to his role in the events of May 9, 2009, MP also admitted that, on August 16, 2009 at approximately 5 AM, he set fire to the bridge over the East River, near Sunnybrae, Nova Scotia. MP stated that he had consumed a 40 ounce bottle of alcohol by himself at a friend's house and then took some gasoline and went over to the bridge. His plan was to place gasoline in an empty can of pop, set it on fire and kick it into the river to watch it float away. However, some of the gasoline ended up on the bridge and when he lit it, a small fire started. Shortly after he ran away from the scene, a person living close to the bridge woke up when he smelled something burning.

After seeing the flame on the bridge, that person ran over and put the fire out with a water bucket. The bridge sustained minimal damage.

CIRCUMSTANCES OF THE OFFENDERS

(i) Circumstances of M.M.

[17 At the time of these offences, M.M. was 17 years old, having a date of birth of December 1, 1991. He had no prior involvements whatsoever with the youth criminal justice system. Since his release on an undertaking to the officer in charge on September 4, 2009, which contained strict requirements of abstaining from communications with the co-accused, reporting weekly to the police and abiding by a curfew, there was one alleged breach of that undertaking on March 25, 2010 by contacting a co-accused person. MM has since entered a guilty plea to that charge.

[18] Since his mother's death about 5 years ago, M.M. has primarily resided with his grandparents as his father is a long-haul truck driver who is often away from the home during the week. According to his grandmother, MM was "extremely

affected" by his mother's passing and he became a "behavioural problem" as he started drinking alcohol, using drugs and associating with a negative peer group at school. However, she added that, since being charged with these offences, MM has matured and now follows the rules of the house, stopped drinking alcohol and using "hard drugs," but he continues to use some marijuana. MM confirmed this information, and said that he wants to stay "clean and sober now."

[19] MM was at the time of the sentencing hearing enrolled in grade 11, was doing well in school and plans on attending community college to obtain a diploma in carpentry or welding. This information was confirmed by the school's principal.

[20] Since September 2009, MM has held two part-time jobs in the community. At one job he works eight hours per week, while at the other job, he works between 15 and 20 hours per week. He earns approximately $300 biweekly, owns a 1997 automobile which was given to him by his father and uses the money that he earns to maintain the car.

[21] In his meeting with the author of the pre-sentence report, MM stated that he knew what he was doing was wrong and that he was "very sorry" for what he did.

He stated that he was drunk and high on drugs at the time, but noted that he "should have known better." MM prepared and forwarded a letter of apology, dated September 6, 2009 to Mr. Clyde Macdonald. The letter of apology was filed as an exhibit at the sentencing hearing.

(ii) Circumstances of C.S.

[22] At the time of these offences, C.S. had just turned 17 years of age. He is now 18 years old. He had no prior involvements whatsoever with the youth criminal justice system. Since his release on an undertaking to the officer in charge on September 4, 2009, which contained strict requirements of abstaining from communications with the co-accused, reporting weekly to the police and abiding by a curfew, there have been no alleged breaches of that undertaking.

[23] C.S. resides with his parents at their family residence and has an excellent and supportive relationship with his parents. His mother confirmed these details and said that CS is very respectful. She did express concerns regarding her son's use of intoxicants at the time of these offences, but since then, his mother noted and CS confirmed that he has stopped using marijuana, but still consumes alcohol

approximately once per month. In addition, CS's mother stated that she felt this was entirely out of character and that he was easily influenced by others in describing him as a "follower" and for those reasons, she had concerns about her son's choices of friends. She added that her son no longer associates with those negative peers.

[24] At the time of the sentencing hearing, CS had withdrawn from school as his prospects for successfully completing grade 11 were minimal. The school had flagged his "extremely poor attendance" as an issue. CS advised the author of the pre-sentence report that his mother had recently suffered a stroke and that he missed a considerable amount of school in order to look after her while his father was working in Western Canada. The school Vice-Principal noted that when CS attended school, he tended to associate with a negative peer group, but his behaviour in school was not an issue. CS would like to obtain his grade 12 education and enrol in a business course. A potential employer confirmed that he has applied for a job in the retail sector, and that once the reference checks were done, a hiring decision would be made.

[25] During his meeting with the author of the pre-sentence report, CS stated that

he was intoxicated at the time of the offences on May 9, 2009 , but he accepted full responsibility for the charges before the court, and expressed some regret and remorse.

(iii) Circumstances of M.P.

[26] At the time of the incidents of May 9, 2009, he was almost 18 years of age. He had no prior involvements with the youth criminal justice system at the time of these offences. He is now 19 years old and attained his grade 11 education but did not return to school in September, 2009. He advised the author of the pre-sentence report that he did not return to school because he was having difficulties with other students. The school had expelled him on two separate occasions for drug possession, but otherwise indicated he was not a behavioral concern,

[27] MP reported that his parents divorced when he was one year old and he initially lived with his mother during his childhood, but for the last two years he has been living with his father. The young person's grandparents also reside with his father and they are a very close and supportive family. MP's father stated that his son does have substance abuse issues and has attended meetings of Alcoholics

Anonymous and attended at Addiction Services in 2009. His father also indicated that MP has made significant improvements in the community by making efforts to maintain sobriety and separate himself from negative peers. Defence counsel stated that MP's efforts to withdraw from the negative peers has resulted in him being assaulted on two recent occasions (in January, 2010 and June, 2010). Photographs of the effect of the assault in early January, 2010 were filed as exhibits in the sentencing hearing, and at the time of the sentencing hearing, it was also obvious that MP had bruising and swelling around his eyes.

[28] From November, 2009 until a recent layoff, MP worked in a custom machining shop and his employer provided two quite positive letters of reference. They speak to MP's work ethic and dedication to his job. Since leaving school, MP was also employed in a couple of part-time jobs. He has indicated plans to upgrade his education and possibly join the militia at a future date.

[29] MP acknowledged that he suffers from depression and he is taking medications for that condition at the present time. He first began using marijuana and alcohol at age 12 and developed an addiction to ecstasy, LSD, cocaine and prescription medication during his adolescence. He said that he has a very strong

addiction to marijuana and uses it occasionally to reduce anxiety. MP added that he did not have an addiction to alcohol and has been sober from “hard drugs”for the last five months. He attended Addiction Services in the Fall, 2009 and again in June, 2010, when he was assigned a new clinical therapist, who has scheduled additional appointments.

[30] In his meeting with the author of the pre-sentence report, MP accepted full responsibility for his actions, and while noting that it was not an excuse, he did indicate that he was under the influence of drugs at the time that these offences were committed. He also expressed a considerable amount of remorse for his actions. With respect to the threats charge, MP wrote a letter to the victim, dated April 27, 2010, in which he apologized to her and accepted full responsibility for his actions.

VICTIM IMPACT STATEMENTS:

[31] In terms of the charges before the court, Victim Impact Statements were received from Gerald Macdonald, Clyde F. Macdonald, Virginia Macdonald, Brenda Sharpe, Tom Sherwood and Lorena Duncan.

[32] The members of the Macdonald family who filed a statement were "devastated" upon learning the news that their family homestead, its contents and a barn, located in Sunnybrae, Nova Scotia had been destroyed by a fire that was intentionally set. The Macdonald family noted that the house had been purchased by their grandmother during the First World War and had remained in the family since that time. The Macdonald family members pointed out that they were raised in this house by their parents and when the house was destroyed by fire, they also lost the large majority of the family's photographs, momentoes as well as the personal belongings of their parents. They indicated that the value of the loss of the house in monetary terms is difficult to assess, since many improvements were put into the house over the years by their mother until she passed away approximately 7 years ago. When the house was passed from their mother to her six children, the family decided to leave everything in the house as it had been when they and their parents had lived there. With the loss of the family homestead and all of the history and memories associated with it, the family expressed a deep feeling of "emptiness and loss." Mr. Clyde Macdonald presented a list of ascertainable losses and expenses that were occasioned by the crimes involving their family homestead. Mr. Clyde Macdonald put forward claims for restitution in the amounts of $2300.00 to clean up the destroyed house and $1000.00 as the estimated value of a piano

destroyed in the fire. Other amounts for a reward and preparation of a reward poster were also claimed.

[33] Ms. Brenda Sharpe commented on the “upset” upon realizing that a house in the village was on fire, fearing that it might be her parent’s house. Shortly thereafter, she learned that it was the Macdonald family house that was on fire and she also realized that their family car had been stolen. When she realized that, she checked her own car and learned that her purse had been taken and was also “very upset” to know that personal items in her purse could not be replaced. Ms. Sharpe indicated that the financial loss suffered by her and her husband totaled $680, which amounts were not covered by their insurance.

ANALYSIS:

The meaning and interpretation of section 39(1)(d) ***YCJA*****.**

[34] Crown counsel concedes that the “gateways” to a custodial sentence contained in sections 39(1)(a)-(c) of the **YCJA**. do not apply in this case and that the only possible gateway to a custodial sentence, is through section 39(1)(d) of the **YCJA**. Section 39(1) of the **YCJA** provides as follows:

> 39(1) the youth justice court shall not commit a young person to custody under section 42 (youth sentences) unless
>
> > (a) the young person has committed a violent offence;
> >
> > (b) the young person has failed to comply with non-custodial sentences;
> >
> > (c) the young person has committed an indictable offence for which an adult would be liable to imprisonment for a term of more than two years and has a history that indicates a pattern of findings of guilt under this act or the Young Offenders Act;
> >
> > (d) in exceptional cases where the young person has committed an indictable offence, the aggravating circumstances of the offence are such that the imposition of a non-custodial sentence would be inconsistent with the purpose and principles set out in section 38.

[35] In the case of **R. v. R.E.W.**, 2006 CanLii 1761, 207 O.A.C. 184 (Ont.C.A), Mr. Justice Rosenberg conducted a detailed analysis of the meaning of section 39(1)(d) of the **YCJA** in the context of a sentence appeal by a young person following his conviction on two counts of being an accessory after the fact to murder. In that case, the appellant's circumstances, like the instant case, did not fit within any of the "gateways" to custody established by sections 39(1)(a)-(c) of the **YCJA.** The Ontario Court of Appeal agreed with the trial judge and held that section 39(1)(d) applied and that it was an "exceptional case" where only a custodial sentence would be consistent with the purpose and principles of youth

criminal justice sentencing set out in section 38 of the **YCJA**..

[36] In **R.E.W**., *supra*, the Ontario Court of Appeal reviewed the grammatical and ordinary meaning of section 39(1)(d), the object of the **YCJA**, the intention of Parliament and legislative history as well as the scheme of the **YCJA.** Mr. Justice Rosenberg succinctly summarized the court's conclusions on the interpretation of section 39(1)(d) at para. 44:

- The object and the scheme of the *YCJA* and Parliament's intention indicate that the Act was designed to reduce the over-reliance on custodial sentences that was the experience under the *YOA*. See **R. v. C.D.**; **R. v. C.D.K.**, *supra*, at para.50.

- An expansive definition of "exceptional cases" would frustrate Parliament's intention to reduce the over-reliance on custodial sentences.

- Section 39(1)(d) can be invoked only because of the circumstances of the offence, not the circumstances of the offender, or the offender's history.

- Exceptional cases are those where any order other than custody would undermine the purposes and principles of sentencing set out in section 38. Put another way, s. 39(1)(d) is intended to describe the rare non-violent cases where applying the general rule against a custodial disposition would undermine the purpose of the *YCJA*.

- Exceptional cases are limited to the clearest of cases where at custodial disposition is obviously the only disposition that can be justified.

- One example, of an exceptional case is a case where the circumstances are so shocking as to threaten widely-shared community values.

[37] More recently, the British Columbia Court of Appeal also dealt with the interpretation and meaning of section 39(1)(d) in **R. v. S.T.,** [2009] B.C.J. No. 1206; 2009 BCCA 274 which involved the theft of a truck and arson. In that case, the young person (ST) was 15 years old at the time of the offences, stole a pickup truck and then set it on fire to destroy any evidence of his fingerprints. The trial judge considered the offences to be a "horrendous property crime" and found that the circumstances of the offences were sufficiently aggravating so as to warrant the imposition of a custodial sentence under section 39(1)(d) of the **YCJA**. The British Columbia Court of Appeal reviewed the **R.E.W.** decision and agreed with the basic premise of the Ontario Court of Appeal decision, however, Madam Justice Kirkpatrick stated at para. 46:

> "46. ... As I read s.39(1)(d), in "exceptional cases" the aggravating circumstances of the offence render a non-custodial sentence inconsistent with the purpose and principles of s.38 because factors such as proportionality, responsibility and rehabilitation demand a custodial sentence. That determination will necessarily involve an

> assessment of the young person's circumstances and background. However, in the final analysis under s.39(1)(d) the aggravating circumstances ultimately outweigh those "other relevant considerations" and, in that sense, render them irrelevant in the resulting imposition of a custodial sentence."

[38] In **S.T**., the British Columbia Court of Appeal said at para. 54 that, "although close to the line," the circumstances of these offences as found by the sentencing judge were "sufficiently aggravating" so as to warrant the imposition of a custodial sentence and the court could not say that the sentence was unfit or unreasonable. Kirkpatrick JA agreed with the Ontario Court of Appeal in **R.E.W**. that an example of an exceptional case will be "where the circumstances of the offence are shocking to the community." In acknowledging that the facts of the **S.T**. case were "markedly different from those of **R. v. R.E.W.,**" the Court of Appeal concluded that the sentencing judge, being aware of the community's circumstances, was in the best position to determine whether these crimes amounted to "exceptional circumstances" that would shock the local community, and they were not prepared to interfere with that factual finding.

[39] Madam Justice Kirkpatrick noted in **S.T**., *supra*, that judges should be cognizant of Parliament's intention in enacting the **YCJA** to reduce the over-reliance on custodial sentences for young persons, and she observed that setting the

bar too low when interpreting “exceptional circumstances” would defeat Parliament’s intention. Kirkpatrick JA also mentioned in paras. 49 and 50 of **S.T**. that, to achieve a semblance of consistency, it was necessary, to the extent possible, to compare the case before the court with similarly-situated offences. The Court of Appeal then conducted its own cross-Canada review of reported cases where the threshold requirements of s. 39(1)(d) were considered. For the purposes of this case, it is significant to note that of the 21 cases located by the court, in the 5 cases where arson or arson and break and enter charges were involved, the court found that s.39(1)(d) of the **YCJA** was met.

[40] However, as Justice Gage noted in **R. v. N.G.**, [2007] O.J. No.1199 (Ontario Court of Justice), since all crimes are by their nature an affront to the shared values of society, when it comes to considering s. 39(1)(d) of the **YCJA** and determining if the circumstances are so aggravating that they are “shocking to the conscience of the community,” the line is not clearly marked and will often be difficult to draw. The **N.G**. a case involved charges of break and enter, theft, possession of a firearm obtained by crime and possession of a prohibited firearm with ammunition. However, in that case, based upon the prevalence of break and entry of homes and the possession of prohibited weapons by young persons in Toronto, Gage J.

determined that this was not an “exceptional case” and that therefore the custodial gateway in s.39(1)(d) was not available.

[41] I note here that while courts are cognizant of and attempt to determine cases in light of the consistency or parity principle mentioned by the British Columbia Court of Appeal in **S.T**., it is fair to say that, from time to time, different judges will come to different conclusions for different reasons. This point was aptly demonstrated by Gage J. in acknowledging that his colleague Justice Tuck-Jackson had come to a contrary view and determined that s.39(1)(d) was met when dealing with **NG**’s co-accused in the case of **R. v. A.R.**, [2007] O.J. No. 1202 (Ontario Court of Justice).

[42] As a result, while reported cases from across the country which considered the “exceptional case” gateway in s. 39(1)(d) may provide some guidance, I conclude that the decision whether this is an “exceptional case” where “the circumstances are so shocking as to threaten widely-shared community values” must be one that is made in the context of the local community.

The circumstances of the offences meet the meaning of “exceptional case” in

s.39(1)(d):

[43] In determining the context of the local community, I should first note that counsel were not able to provide, and I am not aware of, any cases in this province where s.39(1)(d) of the **YCJA** was previously considered. In looking at the issue of what would amount to "exceptional circumstances that would shock the local community," the first observation that I must make is that these crimes occurred in or around small villages in rural Pictou County. Given the relative tranquility of these communities, I believe that it is important to keep in mind that what might be "so shocking as to threaten widely-shared community values" in the local community, must be tempered by the view expressed by Mr. Justice Rosenberg in **R.E.W**. that an expansive definition of "exceptional cases" would frustrate Parliament's intention to reduce the over-reliance on custodial sentences.

[44] Looking at the circumstances of the offences, and not circumstances of the offender or the offender's history, for the following reasons, I conclude that the aggravating circumstances of the offences meet the meaning of "exceptional case" in section 39(1)(d) of the **YCJA**. First, the objective gravity of the offences is very high. The arson charge contrary to section 434 of the **Code** and the break and enter

charges contrary to section 348(1)(b) of the **Code** are both indictable offences. I note here that the Supreme Court of Canada has determined that the arson charge does not open a gateway to custody for "violent offences" provided by s. 39(1)(a) of the **YCJA** (see **R. v. C.D.**, 2005 SCC 78; [2005] 3 SCR 668 at para. 88). However, there is no doubt that the young persons committed some of the most serious "non-violent" property offences contained in the **Criminal Code.** An adult convicted of these offences would be liable to a maximum of 14 years in prison for the arson charge and liable to imprisonment for life for the charge of break and enter into a dwelling house.

[45] Second, each of the three young persons before the court played a substantial role in the commission of these offences. Although these young persons had consumed a significant amount of alcohol and controlled drugs and substances (ecstasy and marijuana), they all willingly and actively participated in the decision to break into the house and the trailer, and then to intentionally set the Macdonald house on fire. Damage to other neighbouring buildings was reasonably foreseeable and required the Volunteer Fire Department to be called, which placed them in danger as they fought to contain the fire and keep it from spreading to other buildings in the community.

[46] Third, given the number and seriousness of the offences committed by these three young persons on May 9, 2009 in a small village located in rural Pictou County, I have no doubt that these offences shocked the small community and threatened widely shared community values. The small size of Sunnybrae and the fact that everyone knows everyone else in the area, no doubt contributed to the residents' sense of peace and security. However, these offences had a profound impact on the community and especially on the victims, shocking members of the local community who were awakened in the middle of the night by the fire and then feared that the fire would spread to nearby buildings in the village. For the members of the Macdonald family, the loss was even more profound as they lost all of the family's historical personal possessions, memorabilia, and photographs relating to their upbringing as well as the family homestead itself.

[47] Fourth, the village of Sunnybrae is located in an area where there are several lakes and numerous cottages, and the residents of Sunnybrae would probably have been aware that there have been recent break-ins of the seasonal residences in the area. In that event, the fact that a break and entry occurred might be considered to be somewhat prevalent in that local community, and might not have shocked the

local community. However, in that community, the combination of the break and entries and the arson of the Macdonald family homestead, was in my view what Judge Hyslop of the Provincial Court of Newfoundland and Labrador said in **R. v. D.B.**, [2007] N.J. No. 423 at para. 14, as "a massive sucker punch to the local community." The break and enters, arson and theft of the automobile all occurring during the early morning hours of May 9, 2009 could only be regarded as a crime spree or rampage, which shocked the widely-shared community values in that community. The evening's crime spree left the members of the community feeling vulnerable and insecure.

[48] Fifth, the evidence disclosed that not only was the fire at the Macdonald family house intentionally set, but after leaving the house following the first break and enter, these young persons returned to the house, broke in again with the intent to burn the house down in order to destroy any evidence of their fingerprints. In this regard, this case is like the **S.T**. case, where a 15-year-old boy stole a truck, crashed and then set fire to the truck in order to reduce the prospect of discovery by destroying his fingerprints or any other evidence that he had been in the truck. In this case, there was also some evidence that DWT, who had been previously involved in the youth criminal justice system, had raised the issue of the

Macdonald house being owned by a judge and that the intentional setting of the fire may have been an attack on the justice system. However, since none of the three young persons before the court had ever been previously involved with the youth criminal justice system, I find that it cannot be inferred that they also had that motivation in mind when they intentionally set the Macdonald house on fire.

[49] This was a criminal enterprise in which each one of the young persons actively participated in the commission of a number of very serious non-violent indictable property offences in one evening. In this community, those offences are rare and unusual, but in breaking into the Macdonald house and setting it on fire, these young persons shocked the conscience of the community and imperiled its sense of safety and security. In my view, this is one of those “clearest” or rare “non-violent” indictable property offences where the circumstances of the offence are so exceptionally aggravated that the imposition of a non-custodial sentence would be inconsistent with the purpose and principles set out in section 38 of the **YCJA**.

Deferred Custody is an available option.

[50] As Mr. Justice Rosenberg pointed out in **R.E.W**, *supra*, at paragraph 53, even where the court finds that the case is "exceptional" and falls within section 39(1)(d) of the **YCJA**, the court must still consider the deferred custody and supervision order option under section 42(5). Section 42(5) provides as follows:

> (5) the court may make a deferred custody and supervision order under paragraph(2)(p) if
>
> > (a) the young person is found guilty of an offence that is not a serious violent offence; and
> >
> > (b) it is consistent with the purpose and principles set out in section 38 and the restrictions on custody set out in section 39.

[51] The Ontario Court of Appeal pointed out at paragraph 54 of **R.E.W.** *supra*, that while section 39(1)(d) necessarily focuses on the circumstances of the offence, when considering the deferred custody option, it is appropriate to look at the circumstances of the particular offender.

[52] As I have previously indicated, the Supreme Court of Canada in **C.D**, *supra*, at paragraph 88 has determined that the offence of arson is not a so-called "serious violent offence." Mr. Justice Bastarache opted for a harm-based definition and at paragraph 87 of **C.D**. defined the term "violent offence" as utilized in section

39(1)(a) as “an offence in the commission of which a young person causes, attempts to cause or threatens to cause bodily harm.”

[53] Given the Supreme Court of Canada’s decision in **C.D**., I therefore conclude that none of the offences for which the three young persons have entered guilty pleas and for which I have made section 36(1) **YCJA** “findings” of guilt involved a “serious violent offence.” Therefore, the first requirement in section 42(5)(a) of the YCJA does not foreclose consideration of the option of imposing a deferred custody and supervision order. I would note here, parenthetically, that MP did enter a guilty plea to a charge of uttering a threat to cause bodily harm contrary to section 264.1(1)(a) of the **Criminal Code** in relation to a charge which occurred after his 18th birthday, however, I conclude that the sentence imposed for that offence is subject to the purposes and principles of sentencing contained in the **Criminal Code**, and does not otherwise foreclose available sentencing options and considerations under the **YCJA** for offences committed as a young person.

[54] Looking at the second requirement contained in section 42(5)(b) of the **YCJA,** before the court actually imposes a deferred custody and supervision order, I am required to review the circumstances of the particular offender and determine

if such an order is consistent with the purpose and principles of sentencing in section 38 and the restrictions on custody set out in section 39. If it is determined that a deferred custody and supervision order is not consistent with the purpose and principles set out in section 38, then, having concluded that these offences meet the definition of an "exceptional case" in section 39(1)(d) and that a non-custodial sentence would be inconsistent with the purpose and principles set out in section 38, the analysis of the purpose and principles set out in section 38 will inform the decision as to the length of the custody and supervision order.

Analysis of Purpose and Principles of Youth Criminal Justice sentencing

[55] The purpose and principles of sentencing and factors to be considered in the sentencing process of a young person are set out in section 38 of the **YCJA**. In the circumstances of this case, regardless of whether the court orders a sentence of deferred custody and supervision or an order of custody and supervision, the sentence must be structured in such a way as to hold these young persons accountable with just sanctions that have meaningful consequences, while at the same time promoting their rehabilitation and reintegration into society and contributing to the long-term protection of the public.

[56] In the case of **R. v. B.W.P; R. v. B.V.N .**, 2006 SCC 27; [2006] 1 SCR 941, the Supreme Court of Canada held, after reviewing the declaration of policy principles with respect to young persons contained in section 3 of the **YCJA** and the purpose and principles of youth criminal justice sentencing in section 38, that specific and general deterrence are <u>not</u> factors to be considered in youth criminal justice sentencing. Speaking for the unanimous Court, Charron J. highlighted the "offender-centric" nature of a youth criminal justice sentencing decisions at paragraph 33:

> " In the same way, when the statute speaks of "accountability" or requires that "meaningful consequences" be imposed, the language expressly targets the young person before the court: "ensure that *a young person* is subject to meaningful consequences" (s.3(1)(a)(iii)); "accountability that is consistent with *the greater dependency of young persons* and *their* reduced level of maturity" (s.3(1)(b)(ii)); "be meaningful *for the individual young person* given his or her needs and level of development" (s.3(1)(c)(iii)). Parliament has made it equally clear in the French version that these principles are offender-centric and not aimed at the general public [Emphasis in the original]

[57] The Supreme Court of Canada acknowledged that a sentencing decision under the **YCJA** must take into consideration all relevant factors about the offence and the offender. In **B.W.P**, at para. 38 the court said that what "the **YCJA** does not permit, however, was the use of general deterrence to justify a harsher sanction

than that necessary to rehabilitate, reintegrate and hold accountable *the specific young person before the court*." [Emphasis in the original] The court also concluded at para. 40, that specific deterrence, as a distinct factor in youth sentencing, is also excluded under section 50(1) of the **YCJA**, and cannot be implied from any of the provisions of the **YCJA**.

[58] A recent article by Prof. Malcolm Thorburn of Queen's University Faculty of Law entitled "Accountability & Proportionality in Youth Justice" in Vol. 55, Criminal Law Quarterly, 2010 at p. 304 provides an excellent overview of the consideration of "accountability" outside the context of sentencing a young person as an adult under section 72 of the **YCJA**. In that article, Prof. Thorburn points out that the notion of "accountability" in the **YCJA** is not only concerned with sentence severity, and he says at page 322:

> " In fact in three other places in the YCJA (in the preamble, in s.38 and in s.39), it is plain that accountability is concerned not only with ensuring proportionality in sentencing between the seriousness of the offender's moral culpability for his wrongdoing and the severity of the resulting sentence, but also with ensuring the offender's rehabilitation and reintegration to society."

[59] From my review of sections 38 and 39 of the **YCJA**, the sentence imposed

by the court must be proportionate to the seriousness of the offence and the degree of responsibility of the young person for the offence [s.38(2)(c)]. However, I also conclude that proportionality and the young person's degree of responsibility are not the only principles that the court must consider in determining the "just sanction." In determining the youth sentence to be imposed, the court must consider the principles outlined in s.3 and s.38(2) of the **YCJA** and then take into account the factors contained in section 38(3) which include the consideration of any aggravating and mitigating circumstances.

[60] In determining the "just sanction" in any YCJA case that does not involve sentencing a young person as an adult under s.72 of the **YCJA,** the court must keep in mind that sentencing under the **YCJA** is an "offender-centric" determination. The court must balance accountability and meaningful consequences with the particular young person's rehabilitation and reintegration into society without imposing any harsher sanction than is necessary for those purposes, since specific or general deterrence are not factors to be considered. In my view, this approach reflects the Supreme Court of Canada's comments in **BWP** and **BVN**, *supra*, and is consistent with the approach suggested by Prof. Thorburn. Following this approach, a "just sanction" will have "meaningful consequences" and hold the

young person accountable and at the same time, is the most likely promote his or her rehabilitation and to reintegration into society and thereby contribute to the long-term protection of the public.

*Application of **YCJA** Principles and Purposes to this Case*

[61] As I indicated earlier in this decision, I am not aware of any other cases decided in this jurisdiction where a determination has been made that s.39(1)(d) of the **YCJA** applied in the facts and circumstances of the case. In addition, I am not aware of and counsel have not been able to provide me with any cases where a sentence has been imposed for similar young persons who were found guilty of the same offences committed in similar circumstances in this province. [s.38(2)(b)]

[62] In terms of the seriousness of the offences and the degree of responsibility of the three young persons before the court, there is no doubt that objectively speaking, the arson charge and the break and enter charges are some of the most serious "non-violent" property offences found in the **Criminal Code.** The arson charge and the break and enter of a dwelling house are indictable offences, which carry a maximum sentence for an adult of 14 years in prison and imprisonment for

life, respectively. The degree of responsibility for these and the other offences for which MM, MP and CS entered guilty pleas was very high as each of them participated actively in the commission of these offences as a common enterprise. [s.38(2)(c) and 38(3)(a)]

[63] Looking at the harm done to the victims, the Macdonald family clearly suffered the greatest loss as a result of their family homestead residence being burned to the ground, which caused the loss of the building, its contents, photographs and all family memorabilia associated with almost 100 years of residence in that location. The harm occasioned to the Macdonald family was clearly and unequivocally intentional and this is certainly an aggravating circumstance which I must take into account in determining the "just sanction." [s.38(3)(b)]. The theft of Brian Sharpe's vehicle and the break-in to the trailer of Mr. Todd MacDonald while certainly being intentional, resulted in less physical harm being done to those victims, but the emotional impact from this crime spree to the peace and security of their community, is obvious .

[64] Having regard to other factors listed in section 38(3) of the **YCJA**, there have been a couple of letters of apology written, with one being from MP to the

victim in the threats charge and the other from MM to Clyde F. Macdonald who, at the time of the offences, was sitting as a part-time judge of this court [s.38(3)(c)].

[65] I have previously concluded that the circumstances of these offences meet the requirements of section 39(1)(d) of the **YCJA** and that the aggravating circumstances of these offences are such that the imposition of a non-custodial sentence would be inconsistent with the purpose and principles set out in section 38. However, since a deferred custody and supervision order remains one of the custodial possibilities for the "just sanction," I conclude that ss. 38(2)(e) and 39(3) of the **YCJA** require me to consider the least restrictive sentence that is capable of achieving the purpose and principles of **YCJA** sentencing. As a result, these sections require me to consider not only the circumstances of the offences, but also the circumstances of MM., MP and CS.

[66] For the most part, there are many common mitigating factors which relate to the background and circumstances of these three young persons which weigh in favour of their prospects for rehabilitation. Those mitigating factors may be summarized as follows:

(1) MM, CS and MP have all accepted full responsibility for these offences. Their acceptance of responsibility has been demonstrated in the following ways:

> (a) all three of these young persons cooperated fully with the police during the course of their investigation and each of them provided a full statement in which they acknowledged their role in each of the charges;
>
> (b) each of three young persons entered early guilty pleas to the charges before the court and therefore spared the owners of the Macdonald house, Todd MacDonald and the Sharpe's any further victimization by having to come to court and testify about these incidents on as many as three separate occasions;
>
> (c) each of the three young persons expressed remorse and regret for their actions in their comments to the author of the pre-sentence report. While each of the young persons indicated they were under the influence of drugs or alcohol or both at the time of these offences, they did not put that forward as an excuse as they knew what they were doing was wrong and continued to accept full responsibility for their actions.

(2) None of the three young persons have ever been involved with the Youth Criminal Justice system prior to these offences. There have been no prior findings of guilt made against any of these three young persons, and none of them have spent any time in detention as a result of the offences [s.38(3)(d) and (e)]. After their arrest, they were all released on undertakings to the officer in charge.

(3) each of the three young persons reside in the family home and have a pro-social supportive family background. Both MP and MM reside with their fathers, but also maintained a very close relationship and are supported by their grandparents who either live with them or at a nearby residence where they spend a great deal of time. In the case of CS, he continues to reside in the family home with his parents. In all three cases, the family members contacted by the author of the pre-sentence report were well aware of the issues faced by their young person, and each noted a significant improvement in the young person's behavior after this incident. Family members noted that each of the young persons have made a conscious effort to disassociate themselves from negative peers.

(4) each of the three young persons had been enrolled in grade 11 at the time that the pre-sentence reports were prepared in the April/ May, 2010. MM was doing well in school, plans to complete his grade 12 and go to community college. As for CS, attendance was the issue and he missed a lot of school to secure employment to assist with the family income as his mother had recently suffered a stroke. He plans to complete grade 12 and the school noted in the report that attendance was the issue but he was not a behavioral concern. MP also had attendance issues, but was expelled for drug possession, however, the school noted that apart from that, he was not otherwise a behavioral concern . MP plans to attend the adult learning program at a community college to obtain his grade 12 education.

(5) since being placed on undertakings by the officer in charge in September, 2009 CS has had no further involvements with the law and has abided by the terms and conditions of his release, which included a 9 PM to 6AM daily curfew unless accompanied by a parent or while at work. For his part, MM has also complied with the same terms and conditions of his release except for one incident on March 25, 2010 when he contacted one of the co-accused (DWT) contrary to the conditions contained in the undertaking to the officer in charge.

In the case of MP, he has admitted to the additional offences of break, enter and theft, arson and a threats charge. Defence counsel submitted that while

these offenses are serious, a further explanation was required. In the case of the break enter and theft [at the Boy Scout camp], no one was ever aware that this offence had actually occurred and no one had lodged a complaint with the police. MP admitted his responsibility for this offence during his statements regarding the May 9, 2009 incidents and the police subsequently verified that, in fact, a break-in had occurred between May 15 and June 30, 2009. As for the arson charge, based on the facts, again as related in a statement admitting his responsibility for that offence, Defence Counsel acknowledged that the essential elements were established, but MP's actions were more in the nature of being reckless than intentional. Regarding the threats charge, his client accepted full responsibility for his words and actions and immediately sent a letter of apology to the victim and entered a guilty plea at the earliest opportunity. The Crown does not take issue with any of these assertions.

(6) it is evident from the pre-sentence reports prepared for MM, CS and MP that they were somewhat influenced by an individual or a group of negative peers when they committed these offences. All have taken active steps to dis-associate themselves from those negative peers and since then their parents have noted a significant improvement in their behavior. In the case of MP, his Defence counsel tendered photographs as exhibits to depict the injuries suffered from two separate beatings in January and June, 2010 because he no longer wished to associate with the negative peer group.

(7) each of the young persons is working on a part-time basis. MP produced letters of reference from his employer which spoke of his positive attitude, willingness to learn and his good work ethic. MM has held two part-time jobs since September 2009 and works approximately 25 to 30 hours per week in total. CS had previously held a part-time job but was laid off, however, in June 2010, he had applied for and expected to receive a part-time job in a large department store.

[67] The purpose, principles and factors to be considered in youth criminal Justice sentencing are set out in sections 3 and 38 of the **YCJA**. As I have previously indicated, any sentence that I impose today must provide a just sanction

that fairly and proportionately holds the young person accountable for his actions and has meaningful consequences for the offender while at the same time, promotes his rehabilitation and reintegration into society, thereby contributing to the long-term protection of the public. Although I have already found that section 39(1)(d) applies and the imposition of a non-custodial sentence would be inconsistent with the purpose and principles set out in section 38, there still remains the issue of whether in order of deferred custody would be a just sanction in the circumstances of this case.

[68] In **C.D.,** *supra*, at paragraph 3, the Supreme Court of Canada confirmed that an order of deferred custody was a type of custodial sentence. The court approved the remarks of Prof. N. Bala who described a deferred custody order [s.42(2)(p)] as a type of custodial sentence that "allows the youth to serve what would otherwise be a custodial sentence in the community but subject to strict conditions and with the possibility of immediate apprehension and placement in a custody facility if the youth is believed to 'have breached or to be about to breach' any of the conditions": see N. Bala, *Youth Criminal Justice Law* (2003), at p.457.

[69] In assessing whether to impose an order of deferred custody or a custody

and supervision order in the circumstances of this case, I must keep in mind that ss. 38(2)(d) and (e) require me to consider all available sanctions other than custody in a facility that are reasonable in the circumstances and are capable of achieving the purpose of sentencing set out in section 38(1) and the one most likely to rehabilitate the person and reintegrate him into society. By virtue of my decision with respect to s.39(1)(d), given the exceptional nature of this case and the aggravating circumstances which I have outlined above, a non-custodial sentence involving a lengthy period of probation would not be consistent with the purpose and principles set out in section 38. By the same token, specific and general deterrence are not principles of sentencing at play for young persons under the **YCJA** and given the circumstances of these offenders and the very positive mitigating factors which I have outlined above, I find that an order of six months deferred custody and supervision order in the community would provide MM, CS and MP with a meaningful consequences for their actions that are, in my view, the least restrictive sentence capable of promoting a sense of responsibility, and at the same time are the most likely to rehabilitate these young people and reintegrate them into society.

[70] In terms of the offences for the two break, enter and commit indictable

offences, the arson charge of the Macdonald family dwelling house and the theft of the Brian Sharpe's car 348(1) for which guilty pleas were entered and findings of guilt made pursuant to s.36 **YCJA**, MM, and CS will be sentenced as follows:

(1) an order of six months deferred custody and supervision to be served in the community according to the following terms and conditions:

> (A) Keep the peace and be of good behaviour.
>
> (B) Report to a Youth Worker at 115 MacLean Street, New Glasgow, N.S. within 10 days from today and thereafter as directed by your Youth Worker.
>
> (C) Remain within the Province of Nova Scotia unless you receive written permission from your Youth Worker.
>
> (D) Not possess, take or consume alcohol or any other intoxicating substances.
>
> (E) Not possess, take or consume a controlled substance as defined in the Controlled Drugs and Substances Act except in accordance with a physician's prescription for you or pursuant to the Medical Marihuana Access Regulations.
>
> (F) Stay away from the person, premises and place of business, if any, of Clyde F. Macdonald and family, Todd MacDonald, Brenda Sharpe and Brian Sharpe and have no contact or communication with them, directly or indirectly, and there are no exceptions.
>
> (G) Attend for mental health assessment and counseling as directed by your Youth Worker.
>
> (H) Attend for substance abuse assessment and

counselling as directed by your Youth Worker.

(I) Attend for assessment, counselling or a program directed by your Youth Worker.

(J) Participate in and co-operate with any assessment, counselling or program directed by the Youth Worker.

(K) not associate with or be in the company of the following persons: individuals who you know to have a criminal record under the Controlled Drugs and Substances Act, Criminal Code of Canada, Narcotic Control Act, Food and Drugs Act, Young Offenders Act or Youth Criminal Justice Act except incidental contact in an education or treatment program or while at work.

(L) Curfew: Remain in your residence from 9 p.m. until 6 a.m. the following day, seven days a week except when with a parent or guardian or an adult approved by your parent or guardian and except as indicated below: Exceptions: When travelling to and from any of the exceptions to the curfew provisions, you are to travel by the most direct route from your residence:

(a) When at regularly scheduled employment

(b) When attending a regularly scheduled education program, or at a school or educational activity supervised by a principal or teacher which your Youth Worker knows about in advance.

(c) When dealing with a medical emergency or medical appointment involving you or a member of your household.

(d) When attending a scheduled appointment

with your lawyer or a Probation Officer.

(e) When attending court at a scheduled appearance or under subpoena.

(f) When attending to some other matter with prior written approval of your Probation Officer.

(M) Prove compliance with the curfew condition by presenting yourself at the entrance of your residence should a Youth Worker or a Peace Officer attend there to check compliance.

(2) The six (6) month deferred custody shall be followed by 18 months probation on the same terms and conditions as the order of deferred custody, except that for the first twelve (12) months while on probation, there will be a period of a curfew to remain in your residence from 11 p.m. to 6 a.m. the following day, seven days per week, subject to the same exceptions as noted in the deferred custody order.

(3) MM and CS are ordered to complete 180 hours of community service work under the direction and supervision of your probation officer or the provincial director by August 20, 2011.

(4) There will be a restitution order made under 42(2)(e) against each one of the three young persons to pay an equal amount of the restitution which was submitted to the court and accepted by counsel in the total amount of $3200. MP,

MM and CS shall each pay one third of that amount or $1066.67 in favor of Clyde F. Macdonald on the following terms one half of that sum to be paid on or before August 20, 2011 and the balance on or before August 20, 2012.

[71] (1) As for MP, he will also be subject to an order of six (6) months deferred custody and supervision to be served in the community, however, the deferred custody and supervision order in the case of MP will be followed by a period on probation of 24 months and subject to the same statutory and additional conditions as ordered in the case of MM and CS as outlined in paragraph 70 of this decision.

(2) For the first 12 months while on probation, MP will be subject to a curfew to remain in his residence from 11 p.m. until 6 a.m. the following day, seven days a week, subject to the same exceptions as noted in the deferred custody order.

(3) MP is ordered to complete 210 hours of community service work under the direction and supervision of your probation officer or the Provincial Director, by August 20, 2011.

(4) In addition to the sum of $1066.67 that MP shall pay through the Clerk of the Court in favour of Clyde F. Macdonald, with one half of that sum to be paid on or before August 20, 2011, and the balance on or before August 20, 2012, MP

shall also pay Brenda Sharpe the sum of $300 by August 20, 2012.

(5) Furthermore, MP must not be on or within 100 metres of the premises known as the Boy Scout Camp, MacKinnon Lake, Pictou County, N. S., and must stay away from the person, premises, and place of business, if any, of Kimberly Carrigan, and have no contact or communication with her directly or indirectly, and there are no exceptions.

(6) Given that the threats charge contrary to Section 264.1 of the **Criminal Code** is a secondary designated offence, I am making a DNA Order under s. 487.051 of the **Criminal Code** to provide a sample of M. P's DNA at a date, time and place to be determined by the local agency responsible for collecting that DNA sample.

(7) Finally, there will be a section 110 Criminal Code Firearms Order for a period of two (2) years.

[72] Those are the orders of the Court regarding the YCJA charges. I will now ask counsel for MM and MP to make additional sentencing submissions with respect to the matters for which adult sentences will apply.

Tax, J.