PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R. v. Gloade*, 2019 NSPC 55

Date: 20190807
Docket: 8131882-883
Registry: Dartmouth

Between:

Her Majesty The Queen

v.

Tammy L. Gloade

Judge: The Honourable Judge Frank P. Hoskins

Decision August 7, 2019

Charge: **THAT** between the 31st day of December 2015 and the 18th day of March 2017 at or near Dartmouth, Nova Scotia by deceit, falsehood or other fraudulent means, did unlawfully defraud Elizabeth Fry Society of a sum of money, a total value exceeding $5,000.00, contrary to section 380(1)(a) of the *Criminal Code*.

AND FURTHER, that she at the same time and place aforesaid, did knowingly use a forged document, to wit, "a receipt for Killam Properties" as if it were genuine, contrary to section 368(1)(a) of the *Criminal Code*.

Counsel: William Mathers for the Crown
Quy Linh for the Defence

By the Court: (Orally)

Introduction:

[1] The Elizabeth Fry Society of Mainland Nova Scotia is a non-profit, charitable organization that engages with vulnerable women and girls to foster reintegration, rehabilitation, personal empowerment and addresses the root causes of criminalization. The organization is devoted to improving the lives of women in our province through building individual strength and capacity in all of the women they serve. The organization is dependant, in part, on donations from the community in its effort to fulfill its mandate of providing programs that support some of society's most vulnerable women.

[2] In her capacity as the Executive Director of the Elizabeth Fry Society, Ms. Gloade committed two serious criminal fraudulent offences against the Society, her employer. In doing so, Ms. Gloade breached her position of trust by employing multiple discrete methodologies to commit numerous fraudulent transactions against the Society which included: the submission of false invoices and forged documents; receiving fraudulent reimbursements and misappropriating funds.

[3] In March 2017, the treasurer and the Chairwoman of the Society detected evidence of Ms. Gloade's fraudulent transactions. As a result, Ms. Gloade's employment was terminated, and she was eventually charged with numerous fraudulent related indictable offences over an extended period of time. The multi-count Information alleges that between December 31, 2015 and March 18, 2017, Ms. Gloade committed 31 fraudulent related indictable offences. She pleaded guilty to two of the 31 offences; namely, fraud-over $5,000.00, contrary to s. 380(1)(a) of the *Criminal Code*, and uttering a forged document, contrary to s. 368(1)(a) of the *Criminal Code*. The total amount of loss the Elizabeth Fry Society suffered, as stated in the Admissions of Fact (Exhibit 1) is $9,933.70.

[4] A Pre-Sentence Report and Gladue Report were sought and received. On January 30, 2019, a Sentencing Circle was held at the Dartmouth Provincial Court. The purpose was to assemble community members in the development of recommendations for a sentencing plan for Ms. Gloade. Ms. Shannon Mooney, Mi'kmaq Legal Support Network Customary Law Caseworker, submitted a report following the Sentencing Circle which included a sentencing proposal for consideration.

[5] In assessing the issue of what is the just and appropriate disposition for these offences and offender, Ms. Gloade, I have carefully considered the following:

- The circumstances surrounding the commission of the offences and the offender, Ms. Gloade;
- The relevant *Criminal Code* provisions, including ss. 718, 718.1, 718.2, 718.2(e), 738, 380(1) & (2), and s. 462. 37;
- The Gladue Report dated May 23, 2019;
- The Pre-Sentence Report dated February 14, 2019;
- The Sentencing Circle and its recommendations; and
- The submissions of Counsel.

Circumstances Surrounding the Commission of the Offences

[6] The circumstances surrounding the commission of the offences are succinctly set out in an Admissions of Fact, (Exhibit 1). It reads as follows:

> Pursuant to section 655 of the *Criminal Code of Canada*, Tammy Gloade (Ms. Gloade) admits the following facts for the purpose of dispensing with the proof thereof at trial:

1. The Elizabeth Fry Society is an organization which seeks to address the criminalization of women and girls in Nova Scotia by providing outreach programs to women in custody, rehabilitative programs, and transitional housing options.

2. In March of 2017 David Richard (Mr. Richard), the treasurer of the Elizabeth Fry Society, along with Dawn Ferris (Ms. Ferris), chairwoman of the Elizabeth Fry Society, uncovered evidence of fraudulent activities conducted by Ms. Gloade, the Executive Director of the Elizabeth Fry Society.

3. On March 15, 2017 Mr. Richard and Ms. Ferris met with Ms. Gloade to discuss the various inconsistencies and apparent forgeries uncovered. During that meeting, Ms. Gloade admitted to, "forging a few - maybe three" of the cheques because she "realized she did not have them prepared to be signed." At the close of that meeting it was agreed that Ms. Gloade would return certain monies and submit a letter of resignation.

4. Following that meeting, Mr. Richard and Ms. Ferris uncovered evidence of further fraudulent activity and, accordingly, called an emergency meeting of the board of the Elizabeth Fry Society. At that time, the board voted to terminate Ms. Gloade's employment, as opposed to accepting a letter of resignation. It was at this point that Ms. Ferris contacted the police and reported the matter.

5. Ms. Gloade did deprive, by deceit, the Elizabeth Fry Society, of the following monies by the methods listed:

a) On August 29, 2016, $855.00 - Ms. Gloade received reimbursement for fraudulent expenses, primarily to provide emergency housing for a client named 'K.G.' Enquiries with Killam Properties revealed the address does not exist.

b) On January 13, 2017, $2500.00 - Ms. Gloade received funds for the purchase of two new computers from Best Buy, claiming she could get a better deal at Best Buy, than if she purchased the computers on the Elizabeth Fry Society Account at Staples. Ms. Gloade did not use the funds to provide new computers to the Elizabeth Fry Society, and simply kept the money.

c) Subsequent to the events listed in (b) Ms. Gloade used the Elizabeth Fry Account at Staples to purchase a single computer, for $930.00 which was also never provided to the Elizabeth Fry Society. On March 24, 2017, Ms. Gloade attended at Staples and repaid $700.00 of the $930.00 owing at Staples, leaving an outstanding balance of $230.00 for a computer never received by the Elizabeth Fry Society.

d) On January 22, 2017, $950.00 - Ms. Gloade forged a cheque with Mr. Richards' signature and cashed it. Ms. Gloade also forged a Cheque Requisition Form Claim, indicating the cheque was reimbursement for the first month's rent paid towards a client's apartment located at 207-1109 Cole Harbour Road, Nova Scotia. Enquiries with Elk Properties revealed no such payment had been made and that, moreover, the occupant of that address had been living there for years.

e) On January 26, 2017, $393.70 - Ms. Gloade forged a cheque with Mr. Richards' signature. Ms. Gloade also submitted a false travel claim for expenses, and then paid herself with the forged cheque.

f) On February 13, 2017, $350.00 - Ms. Gloade forged a cheque with Mr. Richards' signature and cashed it.

g) On February 14, 2017, $275.00 - Ms. Gloade forged a cheque with Mr. Richards' signature. Ms. Gloade also altered an old invoice for work previously completed, by a computer company, and then reimbursed herself with the forged cheque.

h) From May 2016 through December 2016, $4280.00 - The Elizabeth Fry Society has rooms they rent to clients. One of those clients, Ms. Willis, would pay Ms. Gloade $535.00 in cash, each month, none of which was ever deposited in the Elizabeth Fry Society bank account. Ms. Gloade simply kept the money for herself.

i) January 2016 - February 2016, $100.00 - The Elizabeth Fry Society rents a parking spot to a client for $50.00 per month. Ms. Gloade received the monies in cash from the client, and in return provided a receipt. In January and February of 2016, Ms. Gloade never deposited the $100.00 from these two payments and simply kept the money for herself.

> 6. The total monies defrauded amounted to $9,933.70, none of which was recovered.
>
> 7. The actions detailed 6(5) constitute fraud within the ambit of s. 380 of the *Criminal Code* and, moreover, constitute a breach of trust.

Circumstances of the Offender, Ms. Gloade

[7] In addition to the submissions of Counsel, the personal circumstances of Ms. Gloade have been disclosed in the Pre-Sentence Report, dated December 3, 2018, the Gladue Report, dated May 23, 2019, and the Sentencing Circle of January 30, 2019.

[8] Ms. Gloade is 53 years of age. She is of Mi'kmaq ancestry and is non-status under the *Indian Act*. Her ancestry comes from the Mi'kmaq area of New Brunswick. Although Ms. Gloade was informed at a young age of her Mi'kmaq ancestry, she did not embrace the cultural, teaching and Mi'kmaq traditions.

[9] Ms. Gloade was born and raised in Ontario. Her father was a graphic designer and her mother a nurse. She shared a close, loving relationship with her parents. Her parents were very supportive. She also has a very positive relationship with her brother.

[10] Ms. Gloade enjoyed a positive upbringing with loving and supportive parents. However, she reported that she had been sexually abused by her grandfather.

[11] Ms. Gloade's mother, Ms. Barbour, described her daughter as a being very intelligent and accommodating. She did well in school and was actively involved in sports. Ms. Barbour reported that her daughter never caused any problems or issues for them. Ms. Barbour stressed that she was shocked to learn about the current charges and mused that Ms. Gloade's partner was involved. She added that her daughter could benefit from mental health counseling.

[12] Ms. Gloade completed grade 13 at Henry Street High School in Ontario in 1985. In 1986, she commenced a three-year criminology program at Carleton University. Ms. Gloade was awarded a Bachelor of Arts degree with honours from Saint Mary's University in 2012. She earned a Masters Degree in Arts and Health Promotion from Dalhousie University in 2017.

[13] Ms. Gloade was married to John Abraham, who passed away in 2001. They had three children (ages 20, 26 and 27). Ms. Gloade described her relationship with John Abraham as very abusive. Consequently, she resided in several transition

houses. Following her husband's untimely death, Ms. Gloade began experimenting with illicit substances, including cocaine.

[14] Ms. Gloade reported that she was diagnosed with PTSD, anxiety and severe depression in 2003. She is prescribed medication.

[15] She further disclosed that she started consuming cocaine and opiates at the age of 36. She added that she has not consumed since 2017.

[16] Ms. Gloade connected with mental health counselling in April 2017 and has been receiving counselling from Ms. Shawna Stewart since August 2017. Ms. Stewart reported that Ms. Gloade appears very motivated and noted that they have a good therapeutic relationship.

[17] Ms. Gloade has pleaded guilty to two offences, has taken responsibility, and expressed genuine remorse for her criminal misconduct.

[18] Ms. Gloade disclosed that during the time period of the charges, she was experiencing real difficulties in her personal life, which included her son being charged and prosecuted for assault charges. She also added that her marriage was failing. She was separated from her husband (Dana Gloade), who was intensely immersed in illicit drugs, including cocaine. Ms. Gloade described the adverse

effects of her marriage breakdown, which included her attempting to reconcile the relationship by joining her husband in consuming illicit drugs, and by abusing prescription drugs. She was depressed, lonely, and stressed. The consumption of the illicit substances provided her with some relief from the stresses in her life. She added that her husband was involved in a serious motor vehicle accident which destroyed her vehicle. She and her husband are currently separated. He is presently in the hospital, in the intensive care unit suffering from diabetic complications.

[19] Ms. Gloade lost custody of her three grandchildren as they have been taken into foster care. Her grandchildren ages are 10, 4 and 13 months, at the time of the writing of the Gladue Report. She expressed concern about her grandchildren because they are currently in foster care. Mi'kmaq Family and Children's Services have been involved with the family for many years. Ms. Gloade has expressed a real interest in gaining custody of her grandchildren - in the near future.

[20] Ms. Gloade and her family have lived on the reserve for many years in Millbrook First Nation and in Cole Harbour which is an extension of the Millbrook First Nations Community. She and her family also lived off reserve for many years travelling through various places in Canada.

[21] Ms. Gloade and her family transitioned from living-off and on-reserve over her lifetime. While on-reserve in Millbrook First Nation, Ms. Gloade and her husband and three young children had a band-owned family home, however, when they were living in various parts of the country they lived in small apartments. On occasion, Ms. Gloade and her children lived in homeless shelters. Ms. Gloade reported that the transient nature of their living caused hardship and stress on her family, which included a fire at her home where they lost everything.

[22] Ms. Gloade disclosed that her husband, Mr. John Abraham, would cause hardship to the family by spending all the monies on himself which forced the family to make alternative arrangements.

[23] Ms. Gloade reported that she has endured a significant amount of domestic violence as an adult, particularly in her relationships with men, as she was very vulnerable and often had to take care of the men in her life. She has endured domestic violence by her partners. She recalled that when Mr. Abraham was not in jail, he could be violent, which caused the family to suffer real hardship and trauma.

[24] Ms. Gloade's family accesses services at the Mi'kmaq Native Friendship Center and Mi'Kmaq Child Development Center in Halifax Regional Municipality, as well as through the Millbrook Band and *Indian Act.*

[25] Ms. Gloade is currently employed on a full-time basis as a Non-Insured Benefits Navigator (NIHB) at Atlantic Policy Congress of First Nations Chief Secretariat, in Dartmouth. Her employer is aware of the charges. Her supervisor reported that Ms. Gloade has successfully completed her probationary term and is doing well in her position. He explained that Ms. Gloade works for and advocates on behalf of First Nations clients and communities in assessing NIHB services from First Nations and Inuit Health/Indigenous Canada.

[26] Ms. Gloade reported that she is currently non-status under the *Indian Act*. However she is in the process of reinstating her Indigenous status within the family. At page 16 of the Gladue Report, the author noted that Ms. Gloade is engaged in Mi'kmaq culture and traditions, is seen as part of the community and will continue to receive support from the community. She has experienced and attended traditional/cultural gatherings, community events, sweats, traditional ceremonies, and cultural teachings. She has participated in cultural gatherings and in smudging ceremonies. She expressed an interest to learn more about her cultural

teachings and is hopeful to become more involved with the Mi'kmaq Native Friendship Center in Halifax. The author further notes that Ms. Gloade has expressed interest and genuine curiosity to learn more about her cultural heritage and ancestral roots as a Mi'kmaq. She expressed an interest in wanting to be more culturally engaged and wants to connect with her roots and identity, especially connecting with elders in the community and listening/learning through them.

[27] The author expressed the view that Ms. Gloade has a passion and true sense of identity and belonging within Indigenous cultural and Mi'Kmaq Nation. Ms. Gloade is very connected to her culture and it is a very strong part of her identity, even the work that she does with others is in the context of her Indigenous culture.

[28] The Author states at pages 18 – 19 of the Gladue Report:

> Tammy spoke in depth about taking responsibility for her actions, changing things in her life, and dealing with on-going issues her life. During the interview, Mrs. Gloade acknowledged that her actions were wrong and that it was serious. Tammy spoke about how she didn't want this "incident" to define her and that she didn't want to court to think that this represents who she is. Mrs. Gloade notes "I am in a different place now then I was back then and I want to move forward from this". Mrs. Tomas furthered this "Tammy is 'back on track', she was completely ashamed and embarrassed about this and remorseful. Now she has really worked hard to better herself and I see this difference in her". We want to emphasize that this is her first offence and that she does not have a criminal record to be taken into during sentencing.

The Impact Upon the Victim

[29] Although the Elizabeth Fry Society elected not to submit a Victim Impact Statement, the Society has emphatically stated that it remains opposed to the use of incarceration as a means of punishment. It seems that the Society has been put in a very difficult and compromising situation. The organization is devoted to improving the lives of women in our province through building individual strength and capacity in all of the women they serve. While the organization is dependant, in part, on donations from the community in its effort to fulfill its mandate of providing programs that support some of society's most vulnerable women, one of its trusted and valued employees, the Executive Director, breached their trust by committing the offences of fraud and forgery, by stealing monies intended to be used to fulfil its mandate. Ms. Gloade committed the offences while she herself was in a vulnerable state, as her marriage was failing and she was emotionally and financially stressed.

Aggravating and Mitigating factors Surrounding the Circumstances of the Offences and the Offender

[30] Section 718.2(a) of the *Criminal Code* requires the Court to consider the aggravating and mitigating factors surrounding the circumstances of the offences and the offender, Ms. Gloade.

[31] As the Supreme Court of Canada noted in *R. v. Pham*, 2015 SCC 15, at para. 8:

> [8] In addition to proportionality, the principle of parity and the correctional imperative of sentence individualization also inform the sentencing process. This Court has repeatedly emphasized the value of individualization in sentencing: *Ipeelee*, at para. 39; *R. v. Wust*, 2000 SCC 18 (CanLII), [2000] 1 S.C.R. 455, at para. 21; *R. v. M. (C.A.)*, , [1996] 1 S.C.R. 500, at para. 92. Consequently, in determining what a fit sentence is, the sentencing judge should take into account any relevant aggravating or mitigating circumstances (s. 718.2(a) of the *Criminal Code*), as well as objective and subjective factors related to the offender's personal circumstances.

[32] Accordingly, there are several aggravating factors present in this case, which include the following:

- The nature, extent and number of criminal transactions for which Ms. Gloade committed over an extended period of time is extremely aggravating, as she abused her position of authority and trust in perpetrating these crimes against her employer;

- The offence involved the abuse of a position of trust which is a statutory aggravating factor according to s. 718.2(a)(iii) of the *Criminal Code*

- It is aggravating that Ms. Gloade made a conscious and deliberate decision to repeatedly engage in these offences, which imports a

degree of premeditation, planning; malice aforethought, and deception;

- The duration of the dishonesty and deception was continuous over an extended period of time, which involved repetitive acts of dishonesty, as contrasted to a single isolated act. These offences occurred between March 31, 2015 and March 18, 2017;

- It is aggravating that the total monies defrauded amounted to $9,933.70; and

- The termination of the criminal activity was occasioned by the intervention of her employer; it was not voluntary.

[33] There are also several mitigating factors surrounding the offences and Ms. Gloade which include the following:

- She has pleaded guilty to the offences, which prevented the expenditure of considerable court cost, and the necessity of witnesses testifying;

- She entered guilty pleas and as a result, there was no need for a preliminary hearing or trial;

- She has accepted responsibility for the offences, and has expressed sincere remorse throughout these proceedings, including in making her comments to the court following Counsels' submissions, which I accept as being a sincere, genuine expression of remorse. Ms. Gloade has expressed shame and embarrassment for her actions. She has felt the effects of public shame, and humiliation, as this was clearly evident during this sentencing process, and at the Sentencing Circle where she expressed her sincere remorse;

- She was not motivated by pure greed, rather it was for personal gain for her and her family;

- All the reports prepared for this sentencing hearing, including the Pre-Sentence Report, the Gladue Report, and the Sentencing Circle report, recognized the positive attributes of Ms. Gloade and her potential of becoming a very productive member of the community;

- Ms. Gloade readily engaged in counselling and/or treatment and has been benefiting from that for a significant period of time;

- She has expressed a willingness to continue her counselling and/or treatment;

- Ms. Gloade has the strong community support to assist her in her rehabilitation, and has shown a sincere interest in becoming involved in her community;

- There is no longer a real and pressing concern about drug addiction; and

- She is a low risk to re-offend and is taking the necessary steps to address the risks associated with re-offending.

[34] It should also be noted that I have considered s. 380.1 of the *Criminal Code*.

[35] In sentencing decisions involving fraud, the courts seem to routinely consider the following key factors: the amount of funds taken, the period of time over which the fraud occurred, the sophistication of the plan, whether a position of trust was violated, the offender's motivation, including evidence of gambling, drug, alcohol, psychological or financial problems and any criminal record.

Positions of the Crown and Defence

[36] The Crown contends that the appropriate disposition for the offences and offender, Ms. Gloade, is a term of imprisonment in the range of eight to 10 months, followed by a three-year period of probation. The Crown submits that this sentence is warranted and necessary to adequately express society's condemnation of Ms. Gloade's criminal conduct. The Crown argues that denunciation and deterrence, both specific and general, must be emphasised in this case in light of the circumstances surrounding the commission of the offences and personal circumstances of the offender, Ms. Gloade.

[37] The Crown contends that Ms. Gloade abused her position of trust during each fraudulent transaction she perpetrated against the Society, while she was employed as the Society's Executive Director. Therefore, this case requires a strong emphasis on denunciation and deterrence in order to maintain public confidence in the effectiveness of the criminal justice system.

[38] The Crown is also seeking stand alone restitution orders for the victim, as well as a fine in lieu of forfeiture.

[39] In support of its position, the Crown has submitted several cases, including: *R. v. Pierce*, [1997] O.J. No. 715; *R. v. Bjellebo*, [2000] O.J. No. 478; *R. v.*

Thompson (2016) Dartmouth, NSPC (unreported); *R. v. Cassie and Hackett* (2018) Dartmouth, NSPC (unreported); *R. v. Lee*, 2011 NSPC 81; *R. v. Elmadani*, 2015 NSPC 65; *R. v. Allen* 2011 ABPC 318; *R. v. Foran*,[1970] 1. C.C.C. 336; *R. v. Bertram*,[1990] O.J.No.2013; *R. v. Sponagle*, 2017 NSPC 23; *R. v. Angelis*, 2016 ONCA 675; and *R. v. Khatchatourou*, 2017 ONCA 464.

[40] The Defence submits that given the numerous mitigating factors surrounding the offences and Ms. Gloade, which include her guilty pleas and acceptance of responsibility; her positive reports, which include her Pre-Sentence Report, the Gladue Report, the Sentencing Circle recommendations; and her sincere expression of remorse, as well as consideration of the parity principle, a suspended sentence with probation, is a fit and proper punishment for the offences and for the offender, Ms. Gloade.

[41] The defence contends that this sentence would be proportionate to the gravity of the offences and the degree of responsibility of Ms. Gloade. The defence argues that while Ms. Gloade was in a position of trust, she was, at the time of the commission of the offences, under a great deal of emotional stress. Further, the Defence contends that the principle of restraint should be applied by

emphasising the Gladue factors that are present in this case, which includes consideration of the sad life principle.

[42] The defence submitted the decision of *R. v. Pincook* (2018) Halifax, NSPC (unreported). In that case, the offender received a 90 day custodial disposition for having committed a fraud in the amount of $34,000.

[43] It should be noted that none of the cases submitted by Counsel are strikingly similar to the case at bar, but they do provide instructive guidance on the relevant principles and factors that should be considered.

[44] It should also be mentioned that a conditional sentence order is not available for the indictable offence of fraud–over; namely s. 380(1) (a) the *Criminal Code* because that offence imposes maximum sentence 14 years imprisonment, and thus, s. 742.1 (c) of the *Criminal Code* precludes it from consideration.

The Purpose and Principles of Sentencing

[45] In sentencing Ms. Gloade I am guided by the sentencing provisions of the *Criminal Code* and mindful that sentencing is profoundly subjective.

[46] The Supreme Court of Canada has enunciated the correct approach to sentencing in *R. v. M. (C.A.),* [1996] 1 S.C.R. 500, and Parliament has enacted

legislation which specifically sets out the purpose and principles of sentencing. Sections 718 to 718.2 codify the objectives and principles of sentencing and are intended to "bring greater consistency and clarity" to sentencing: *R. v. Nasogaluak*, 2010 SCC 6, at para. 39. Thus, it is to these sources, and the common law jurisprudence that courts must turn in determining the proper sentence to impose.

[47] It is trite to say that the imposition of a just and appropriate sentence can be difficult a task. However, as difficult as the determination of a fit sentence can be, that process has a narrow focus. It aims at imposing a sentence that reflects the circumstances of the specific offence and the attributes of the individual offender. Indeed, sentencing is not based on group characteristics, but on the facts relating to the specific offence and offender as revealed by the evidence adduced in the proceedings.

[48] As Lamer C.J. (as he then was), noted in *M.(C.A.)*, sentencing requires an individualized focus, not only of the offender, but also of the victim and community as well. Lamer C.J. emphasized that there is no such thing as a uniform sentence for a particular crime and that sentencing is highly contextual and an inherently individualized process.

[49] As stated, sentencing is governed by the specific purpose and general principles of sentencing provided for in the *Criminal Code* under s. 718. Section 718 sets out the objectives a sentence must achieve: denunciation, deterrence – both specific and general, separation from society where necessary; rehabilitation of the offender; reparations by the offender, the promotion of a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community. Section 718 also describes the fundamental purpose of sentencing as contributing to respect for the law and the maintenance of a just, peaceful and safe society.

[50] Assessing moral culpability is a fundamental aspect of determining the appropriate sentence; a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. Proportionality is closely tied to the objective of denunciation, promotes justice for victims, and seeks to ensure public confidence in the criminal justice system.

[51] While proportionality is the guiding principle of sentencing, the *Criminal Code* also directs judges to take into account a number of other considerations. These are aggravating and mitigating factors which should increase or reduce a sentence, and the principles of parity and restraint. Further, the *Criminal Code*

clearly states that imprisonment should be considered as a last resort. An offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances, and all available sanctions other than imprisonment that are reasonable in the circumstances should be considered.

[52] Sentences must promote one or more of the six objectives identified in s. 718, (a) to (f), inclusive.

[53] The purpose of sentencing is achieved by blending the various objectives identified in s. 718(a) to (f). The proper blending of those objectives depends upon the nature of the offence and the circumstances of the offender. Thus, the judge is often faced with the difficult challenge of determining which objective or combined deserves priority. Section 718.1 directs that the sentenced imposed must fit the offence and offender. Section 718.1 is the codification of the fundamental principle of sentencing which is the principle of proportionality. This principle is deeply rooted in notions of fairness and justice. Section 718.2 (e) of the *Criminal Code* is also of significance, especially in this case.

[54] I have considered the fundamental purpose of sentencing as clearly and succinctly expressed in s. 718, of the *Criminal Code*, the fundamental principle as stated in s. 718.1 of the *Criminal Code*, and the other sentencing principles as set

out in 718.2 the *Criminal Code*, which stipulates that a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or offender. Section 380.1 of the *Criminal Code* which set out the statutory aggravating factors in relation to the offence of fraud has also been considered and applied, particularly subsections (1)(a), (c.1), (d), and (2) which are relevant in this case. More will be said of s. 380.1(2) later in these reasons.

[55] I am also mindful of the principle of restraint which underlies the provisions of s. 718 of the *Criminal Code*, which is particularly expressed in s. 718.2(e).

The Principle of Restraint

[56] The principle of restraint is clearly reflected in the sentencing regime outlined in Part XXIII of the *Criminal Code*.

[57] In *The Law of Sentencing*, (Toronto: Irvin, 2001) at p. 102, Professor Allan Manson described how the principle of restraint is achieved. He wrote:

> A major aspect of the 1996 amendments was the entrenchment of the principle of restraint in sentencing. This is achieved through three specific provisions. Within section 718, the statement of purpose and objectives, the objective of "separation" (a euphemism for imprisonment) is qualified by the phrase "where necessary". Section 718.2(d), the correlative provision, provides that "an offender" should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances. To add some methodological bite to restraint, section 718.2(e)

> requires a sentencing judge to consider all available sanctions other than imprisonment that are reasonable in the circumstances. These provisions exist to discourage imprisonment when another less onerous sanction will also satisfy the relevant sentencing principles.
>
> Restraint means that prison is the sanction of the last resort. However, the 1996 amendments go beyond expressing this fiat. Restraint also means that when considering other sanctions, the sentencing court should seek the least intrusive sentence and the least quantum which will achieve the overall purpose of being an appropriate and just sanction. Moreover, the Supreme Court of Canada has interpreted the recent amendments as imposing on sentencing judges the obligation to expand the use of restorative justice principles. While this is a change in direction of general applicability, it has special meaning when courts are responding to aboriginal offenders.
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> In MacDonald, Lane J.A., writing for the Saskatchewan Court of Appeal, recognized that the 1996 amendments to Part XXIII of the *Criminal Code* were more than a simple restatement of the principles of sentencing as traditionally imposed. He wrote:
>
> Sections 718.1, the fundamental principle, and 718.2(a),(b) and (c) are a restatement of the jurisprudence as determined over the years with a specific restatement of certain aggravating circumstances. However, the principles set out in clauses (d) and (e) are more than a legislative intention to direct the courts to make more use of sanctions other than imprisonment within the existing principles of sentencing. They are more than a simple direction or encouragement to the courts to use sanctions other than imprisonment.
>
> Section 718.2(d) and (e) are a clear statement from Parliament that courts must consider the principle of restraint as a sentencing principle equal to other sentencing principles in s. 718.2. I read s. 718.2(d) and (e) as a clear intention on the part of Parliament to reduce institutional incarceration and to adopt the principle of restraint.

[58] Section 718.2 (d) and (e) are in large part a response to the problem of over-incarceration in Canada. Thus, Parliament has sought to give increased prominence

to the principle of restraint in the use of prison as a sanction through the enactment of s. 718.2 (d) and (e) of the *Criminal Code*.

[59] Section 718.2 (d) provides that: “an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances”.

[60] Section 718.2(e) provides that:

> 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.

[61] Parliament signalled a need to place greater emphasis on the application of restorative principles in sentencing as a result of the general failure of incarceration to rehabilitate offenders and reintegrate them into society. The objective of this approach is a reduction in the rate of incarceration and an improvement in the effectiveness of the sentencing process. As Lamer, C.J., in delivering the judgment of the Court in *R. v. Proulx*, [2000] 1 S.C.R. 61, at para. 19 observed:

> 19 Canadian sentencing jurisprudence has traditionally focussed on the aims of denunciation, deterrence, separation, and rehabilitation, with rehabilitation a relative late-comer to the sentencing analysis ... With the introduction of Bill C-41, however, Parliament has placed new emphasis upon the goals of restorative justice.

[62] The cumulative effect of s. 718.2(d) and s. 718.2(e) is that all other reasonable and appropriate sanctions should be considered before a sentence of imprisonment is imposed on an offender. Indeed, s. 742.1, the conditional sentence provision, follows from the principal of restraint as set out in s. 718.2 (d) and (e). In other words, a sentencing judge must consider the possibility that a less restrictive sanction would attain the same sentencing objectives that a more restrictive sanction seeks to attain.

[63] However, the application of this principle has been restricted to some extent in recent years. Amendments to the *Criminal Code* have passed that establish minimum periods of incarceration for certain offences, subject to any constitutional challenges. Further amendments have exempted certain offences from the conditional sentencing regime.

[64] The law requires sentencing judges to give primacy to the principles of denunciation and deterrence in some serious cases, such as the case at bar, which involves a serious breach of trust in relation offences of fraud -over and forgery-over, for which a custodial sentence is likely required, as it is the only suitable way in which to express society's condemnation of the offender's conduct. As Iacobucci J., in *R. v. Wells*, [2000] 1 S.C.R. 207, at para. 44, aptly stated:

> 44 Let me emphasize that s. 718.2(e) requires a different methodology for assessing a fit sentence for an aboriginal offender; it does not mandate, necessarily, a different result. Section 718.2(e) does not alter the fundamental duty of the sentencing judge to impose a sentence that is fit for the offence and the offender.

[65] Section 718.2(e) directs that in considering the principle of restraint, particular attention must be given to the circumstances of Aboriginal offenders. It instructs that Aboriginal offenders must be sentenced individually, but also differently because of the unique circumstances of Aboriginal offenders and because of the overrepresentation of Aboriginal persons in custodial institutions. In order to achieve this analysis, a restorative approach to sentencing is emphasized. The Supreme Court of Canada in *R. v. Gladue*, [1999] 1 S.C.R. 688 held that to give effect to the objectives of s. 718.2(e), consideration must be given not only to any unique systemic or background factors of Aboriginal persons, but also to any types of sentencing procedures or sanctions that may be appropriate for the offender because of his or her Aboriginal heritage or connection. The Supreme Court in *Gladue*, at para. 66 succinctly addressed what it means to consider the circumstances of Aboriginal offenders as follows:

> 66 How are sentencing judges to play their remedial role? The words of s. 718.2(e) instruct the sentencing judge to pay particular attention to the circumstances of aboriginal offenders, with the implication that those circumstances are significantly different from those of non-aboriginal offenders. The background considerations regarding the distinct situation of aboriginal

> peoples in Canada encompass a wide range of unique circumstances, including, most particularly:
>
> > (a) The unique systemic or background factors which may 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.

[66] Thirteen years later, the Supreme Court of Canada, in *R.* v. *Ipeelee*, [2012] 1 S. C. R. 435, reaffirmed the approach to sentencing an Aboriginal offender; leaving no doubt that the sentencing judge is required to apply the principles from Gladue in every case involving an Aboriginal offender. Justice LeBel, writing for the majority, at para. 87 held:

> The sentencing judge has a statutory obligation, imposed by s. 718.2(e) of the *Criminal Code*, to consider the unique circumstances of Aboriginal offenders. Failure to apply Gladue in any case involving an Aboriginal offender runs afoul of this statutory obligation. As these reasons have explained, such a failure would also result in a sentence that was not fit and was not consistent with the fundamental principle of proportionality. Therefore, application of the Gladue principles is required in every case involving an Aboriginal offender, including breach of an LTSO, and a failure to do so constitutes an error justifying appellate intervention.

[67] Sections 718.2(e) therefore necessitates a different approach for determining a fit and proper sentence for an Aboriginal offender, but this is not to say that s. 718.2(e) necessarily mandates a different result. The section does not automatically reduce the sentence of an Aboriginal offender, and this is particularly true in situations of violent or other serious crimes. In *Wells*, at para.

50, the Supreme Court of Canada commented on the application of *Gladue* principles to serious crimes:

> 50 The generalization drawn in Gladue to the effect that the more violent and serious the offence, the more likely as a practical matter for similar terms of imprisonment to be imposed on aboriginal and non-aboriginal offenders, was not meant to be a principle of universal application. In each case, the sentencing judge must look to the circumstances of the aboriginal offender. In some cases, it may be that these circumstances include evidence of the community's decision to address criminal activity associated with social problems, such as sexual assault, in a manner that emphasizes the goal of restorative justice, notwithstanding the serious nature of the offences in question.

[68] In the present case, Ms. Gloade is of Mi'kmaq ancestry and accordingly s. 718.2 (e) and the *Gladue* approach to sentencing Aboriginal offenders is applicable.

[69] In this case, the following *Gladue factors* have been identified and/or recognized in the Gladue report, at p. 20. They are as follows:

- Ms. Gloade is of Mi'kmaq, Indigenous Descent;
- Ms. Gloade has shown some willingness to address the underlying factors that lead to the charges;
- Ms. Gloade has personally and generationally experienced the adverse impact of many factors that continue to plague Inuit, Aboriginal

> communities since colonization, including, but not limited to: substance abuse; personally, immediate, extended family and within the general community; poverty: personally, family and community; Family deterioration: domestic violence, separated, absent parents, and community/family break down; unemployment, low income, lack of employment opportunity; Loss of identity, culture, ancestral knowledge; poor socioeconomic conditions affecting home community; lack of housing, homelessness, over-crowding and unstable setting; overt or covert racism; domestic violence; abuse: sexual, emotional, verbal, mental, physical, or spiritual; isolation; involvement with Mi'Kmaq Family and Children Services; and involvement in criminal activities.

[70] Clearly s. 718.2(e) of the *Criminal Code* imposes a duty on the sentencing judge to give the remedial purpose of the provision real force in relation to Aboriginal offenders. Accordingly, the sentencing judge must take into account the unique systemic and background factors that contributed to the commission of the offence. Further, the judge must consider the type of sentence that is appropriate given the offender's specific aboriginal heritage or connection to an Aboriginal community. The section is intended to provide the necessary flexibility and

authority for sentencing judges to resort to a restorative model of justice in sentencing Aboriginal offenders.

[71] As stated by Rosenberg, J.A., in delivering the judgment of the Ontario Court of Appeal in *R. v. Collins*, 2011 ONCA 182, at paras. 32 to 37:

> 32 There is nothing in the governing authorities that places the burden of persuasion on an Aboriginal accused to establish a causal link between the systemic and background factors and commission of the offence. Further, s. 718.2(e) and the *Gladue* approach to sentencing Aboriginal offenders is not about shifting blame or failing to take responsibility; it is recognition of the devastating impact that Canada's treatment of its Aboriginal population has wreaked on the members of that society.
>
> 33 As expressed in *Gladue*, *Wells* and *Kakekagamick*, s. 718.2(e) requires the sentencing judge to "give attention to the unique background and systemic factors which may have played a part in bringing the particular offender before the courts": *Gladue* at para. 69. This is a much more modest requirement than the causal link suggested by the trial judge. As counsel for the appellant submitted in this case, it would be almost impossible for most Aboriginal offenders to establish a direct causal link between systemic factors and any particular offence. Commission of offences are affected by a host of circumstances, the systemic factors of the particular Aboriginal community may, as the name suggests, be nothing more than the background or the setting for commission of the offence. However, the *Gladue* principles require those factors to be taken into account. In cases where those factors are shown to have played a significant role, it may be that imprisonment will utterly fail to vindicate the objectives of deterrence or denunciation: *Gladue* at para. 69. In other cases, where the impact is not as dramatic, those systemic and background factors must nevertheless be taken into account in shaping the appropriate penal response.
>
> 34 It seems to me that the systemic and background factors affecting the FWFN generally, and the appellant in particular, must have played a part in bringing her before the courts. Her earliest years were shaped by abject poverty. She grew up in an atmosphere of dislocation, discrimination, and alienation as a result of government policies that subjected her father to the ravages of residential schooling and deprived her mother, father and siblings of their rights as

Aboriginals . Her mother's upbringing was riddled with substance abuse and violence. The appellant herself suffers from a severe gambling addiction.

35 Even if the systemic and background factors did not play a part in bringing the appellant before the courts, the *Gladue* principles still require recognition of the impact of Canada's treatment of its Aboriginal population in shaping the appropriate sentence. The court is required to consider how this particular offender has been affected by those systemic factors. As the court said in Gladue at para. 80:

> As with all sentencing decisions, the sentencing of aboriginal offenders must proceed on an individual (or a case-by-case) basis: For this offence, committed by this offender, harming this victim, in this community, what is the appropriate sanction under the *Criminal Code*? What understanding of criminal sanctions is held by the community? What is the nature of the relationship between the offender and his or her community? What combination of systemic or background factors contributed to this particular offender coming before the courts for this particular offence? *How has the offender who is being sentenced been affected by, for example, substance abuse in the community, or poverty, or overt racism, or family or community breakdown*? Would imprisonment effectively serve to deter or denounce crime in a sense that would be significant to the offender and community, or are crime prevention and other goals better achieved through healing? What sentencing options present themselves in these circumstances? [Emphasis added.]

36 And, as the court said at para. 81: "Sentencing must proceed with sensitivity to and understanding of the difficulties aboriginal people have faced with both the criminal justice system and society at large." And again, at para. 68:

> It is true that systemic and background factors explain in part the incidence of crime and recidivism for non-aboriginal offenders as well. However, it must be recognized that the circumstances of aboriginal offenders differ from those of the majority because many aboriginal people are victims of systemic and direct discrimination, many suffer the legacy of dislocation, and many are substantially affected by poor social and economic conditions. Moreover, as has been emphasized repeatedly in studies and commission reports, aboriginal offenders are, as a result of these unique systemic and background factors, more adversely affected by incarceration and less likely to be "rehabilitated" thereby, because the

> internment milieu is often culturally inappropriate and regrettably discrimination towards them is so often rampant in penal institutions. [Emphasis added.]
>
> 37 I conclude this discussion with the point made by LaForme J.A. at paras. 34 and 35 of *Kakekagamick*:
>
> Nor is being an Aboriginal offender, as I have heard it referred to, a "get out of jail free" card.
>
> Rather, s. 718.2(e) was enacted as a remedial provision, in recognition of the fact that Aboriginal people are seriously over-represented in Canada's prison population and in recognition of the reasons for why this over-representation occurs.

[72] Ms. Gloade is also a first offender, as she has no previous criminal convictions. Indeed, she was previously a person of exemplary character. However, I must consider her previous exemplary character in the context of her committing serious indictable offences while in a position of trust. Thus, this requires consideration of s. 380.(2) of the *Criminal Code* which provides:

> When a court imposes a sentence for an offence referred to in sections 380, 382.1 or 400, it shall not consider as mitigating circumstances the offender's employment, employment skills or status or reputation in the community if those circumstances were relevant to, contributed to, or were used in the commission of the offence.

The First Offender Rule

[73] The first offender principle requires the sentencing judge to exhaust all other dispositions, before imposing a custodial disposition on a first-time offender. The authority for this proposition is found in the seminal case of *R. v. Stein*, [1974]

O.J.No. 93, wherein Martin J.A., on behalf of the Ontario Court of Appeal, at para. 4 stated:

> 4 [i]n our view, before imposing a custodial sentence upon a first offender the sentencing Court should explore the other dispositions which are open to him and only impose a custodial sentence where the circumstances are such, or the offence is of such gravity that no other sentence is appropriate.

[74] The primary objectives in sentencing a first offender are individual deterrence and rehabilitation unless the offence is of such gravity that no other disposition aside from a period of custody is appropriate. In other words, there are certain very serious offences which require a custodial sentence notwithstanding that the offender has an unblemished past, is of good character, and accepted responsibility for the commission of the offence, such as the Crown contends in this case.

[75] The first offender principle has been codified in sections 718 and 718.2 of the *Criminal Code*. Section 718(c) instructs that the separation of offenders from society is an objective of sentencing - where necessary. Section 718.2(d) directs that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances. Further, s.718.2(e) is remedial in nature, not simply a re-affirmation of existing sentencing principles. It applies to all offenders

and requires that all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders.

[76] In *R. v. Priest*, [1996] O.J. No. 3369, at para. 20, Rosenberg J.A.'s comments are apposite:

> 20 The duty to explore other dispositions for a first offender before imposing a custodial sentence is not an empty formalism which can be avoided merely by invoking the objective of general deterrence. It should be clear from the record of the proceedings, preferably in the trial judge's reasons, why the circumstances of this particular case require that this first offender must receive a sentence of imprisonment

[77] Similarly, in *R. v. Laschalt*, [1993] M.J. No. 1931, at p. 1, Sinclair J., of the Manitoba Court of Appeal, stated:

> 1 The imprisonment of non-violent first offenders is counter-productive. It strains a system already strained by more violence and repeat offenders than it can rehabilitate. It often results in a first offender emerging bitter and more ready to commit further crimes. Better that a non-violent, first offender be punished in another way. The so-called first offender principle is a good illustration of the application of the principle of restraint in the sentencing process. However, its application is restricted where the offence is of such gravity that no other sentence is fit.

[78] The so-called first offender principle is a good illustration of the application of the principle of restraint in the sentencing process. However, its application is restricted where the offence is of such gravity that no other sentence is fit. For instance, crimes of violence; such as, armed robbery, violent home invasions and

brutal assaults and breach of trust fraud-over cases, require the sentencing judge to place emphasis upon the principles of denunciation and deterrence.

The Sad-Life Principle

[79] The sad life principle must be considered in this case, as there is an evidentiary basis for its consideration when one considers the personal circumstances of Ms. Gloade, as discussed in all the reports prepared for this sentencing hearing, including the Pre-Sentence Report, the Gladue Report and the sentencing proposal report arising from the Sentencing Circle.

[80] Let me be clear, the sad life principle involves much more than an evidentiary basis for a sad life. It also requires an offender to demonstrate a genuine interest in rehabilitation, such as Ms. Gloade has done in this case by successfully engaging in counselling and/or treatment, and by becoming gainfully employed in a position where her employer fully supports her rehabilitation efforts.

[81] The so-called sad life principle is premised on the principle of restraint and is often considered in cases where the offender has demonstrated a genuine interest in rehabilitation. These cases often involve offenders who are victims of sexual and /or physical abuse, or have experienced a horrific upbringing.

[82] Often the challenge for the sentencing judge is to consider all of the offender's personal antecedents and put the present offences into that context in crafting a sentence which underscores the principle of restraint.

[83] This approach usually underscores a reluctance to re-incarcerate the offender or to impose a lengthy period of incarceration where one would have otherwise been imposed. In these situations, the objective is to fashion a sentence that will promote self-rehabilitation and thus protect the public in the long-term.

The Parity Principle

[84] The parity principle as expressed in s. 718.2 (b) of the *Criminal Code* requires the court to take into consideration the principle that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances".

[85] The principle of parity is qualified by the recognition that sentencing is an individualized process. Although it is always desirable to minimize disparity in sentencing of similar offences and similar offenders, there will be undoubtedly be exceptional cases in which the disparity between sentences is justified. However, the justification is limited to a fit sentence which is within the acceptable range of sentence imposed for similar offences.

[86] The relationship between the principles of proportionality and parity was discussed by the Supreme Court of Canada in *R. v. Lacasse*, [2015] 3 S.C.R. 1089, at paras. 53-54:

> 53 This inquiry must be focused on the fundamental principle of proportionality stated in s. 718.1 of the *Criminal Code*, which provides that a sentence must be "proportionate to the gravity of the offence and the degree of responsibility of the offender". A sentence will therefore be demonstrably unfit if it constitutes an unreasonable departure from this principle. Proportionality is determined both on an individual basis, that is, in relation to the accused him or herself and to the offence committed by the accused, and by comparison with sentences imposed for similar offences committed in similar circumstances. Individualization and parity of sentences must be reconciled for a sentence to be proportionate: s. 718.2(a) and (b) of the *Criminal Code*.
>
> 54 The determination of whether a sentence is fit also requires that the sentencing objectives set out in s. 718 of the *Criminal Code* and the other sentencing principles set out in s. 718.2 be taken into account. Once again, however, it is up to the trial judge to properly weigh these various principles and objectives, whose relative importance will necessarily vary with the nature of the crime and the circumstances in which it was committed. The principle of parity of sentences, on which the Court of Appeal relied, is secondary to the fundamental principle of proportionality. This Court explained this as follows in *M. (C.A.):*
>
> > It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime... . Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. [para. 92]

[87] As emphasized by the majority judgement in *Lacasse*, proportionality is the cardinal principle that must guide courts in considering the appropriateness of a sentence imposed on an offender. The more serious the offence and its

consequences, or the greater the offender's degree of responsibility, the heavier the sentence will be. In other words, the severity of the sentence depends not only on the seriousness of the crime's consequences, but also on the moral blameworthiness of the offender. Determining a proportionate sentence is a delicate task. Both sentences that are too lenient and sentences that are too harsh can undermine public confidence in the administration of justice.

[88] The majority in *Lacasse* also stressed that although sentencing ranges are used mainly to ensure the parity of sentences, they reflect all of the principles and objectives of sentencing. Sentencing ranges are nothing more than summaries of the minimum and maximum sentences imposed in the past, which serve in any given case as guides for the application of all the relevant principles and objectives. However, they should not be considered "averages" nor straightjackets, but should instead be seen as historical portraits for the use of sentencing judges who must still exercise their discretion in each case.

[89] In *Lacasse*, the Supreme Court recognized, at para. 58, that:

> 58 There will always be situations that call for a sentence outside a particular range: although ensuring parity in sentencing is in itself a desirable objective, the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded. The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely mathematical calculation. It involves a variety of factors that are difficult to

> define with precision. This is why it may happen that a sentence that, on its face, falls outside a particular range, and that may never have been imposed in the past for a similar crime, is not demonstrably unfit. Once again, everything depends on the gravity of the offence, the offender's degree of responsibility and the specific circumstances of each case. LeBel J. commented as follows on this subject:
>
> > A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. Regard must be had to all the circumstances of the offence and the offender, and to the needs of the community in which the offence occurred.
> >
> > (*Nasogaluak*, at para. 44)

[90] In this case, the charges for which Ms. Gloade pleaded guilty are indictable offences. The maximum punishment for fraud in circumstances where the value of the fraud exceeds five thousand dollars is 14 years imprisonment. The maximum punishment for the forgery offence is 10 years imprisonment.

[91] As previously emphasized, the gravity of an offence lies in the nature and comparative seriousness of the offence, in the circumstances of its commission, and in the harm caused.

[92] In Nova Scotia, as in other jurisdictions, the range of sentences imposed for the offence of fraud varies considerably. The range of sentence for this offence is very broad, it extends from the suspension of the passing of sentence to periods incarceration. Each case appears to turn very much on its own unique set of circumstances. Thus, it is often a difficult challenge to apply the principle that a

sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[93] As observed by Beveridge J.A., in *R. v. Upton*, [2008] N.S.J. No. 527 (S.C.), at para. 61 wherein he wrote:

> 61 No two cases will be identical. Many times the facts which would be more aggravating in one, but the circumstances of the offender militate toward a more lenient sentence. There are any number of permutations of these two key driving factors. A judge must nevertheless consider these in arriving at an appropriate sentence. Furthermore arriving at an appropriate sentence is not a science. There is no predetermined table that spits out the end result. The difficult task of courts is always to be guided by the fundamental principle of sentence and to craft a sentence that best meets these principles.

[94] The following cases, albeit a small sample, illustrate the broad range of sentences in Nova Scotia for the offence of fraud:

- *R. v. Decoff*, [2000] N.S.J. No. 224 (NSSC), a manager of a small business had taken approximately $44,000 from deposits that were prepared but not taken to the bank over an eight month period. In imposing an 18-month conditional sentence, the judge took into account Ms. Decoff's personal circumstances of having a disabled spouse and the responsibility to care for a ten-month old baby.

- *R. v. Pottie*, [2003] N.S.J. No. 543 (SC), the secretary/bookkeeper pleaded guilty to fraud and forgery which resulted in a $46,000 loss. He was in poor health and was the primary daytime caregiver for his

five-year old grandson. He was sentenced to an 18 month conditional sentence order;

- *R. v. Naugle*, 2011 N.S.J. No. 68. The secretary/bookkeeper pleaded guilty to fraud and forgery which resulted in a loss of over $136,000 over a three-year period. The court imposed a custodial sentence of eight months followed by 12 months probation coupled with restitution in the amount of $145,000.

- *R. v. Lee*, 2011 NSPC 81, an assistant manager of a spa stole over $66,000 from her employer over a one-year period. She was found guilty after trial. She was sentenced to 10 months incarceration followed by a one year period of probation coupled with a restitution order for the amount.

- *R. v. Ford*, 2012 NSSC 340, the offender pled guilty to three charges, including fraud-over. The agreed quantum of funds involved was $322,634, which was diverted from a Health Canada program which covered non-insured pharmacy and other medical expenses for First Nations and Inuit beneficiaries. The fraud was perpetrated by virtue of the offender's role as an approved pharmacist with the Health Canada Program. A global sentence of 12 months incarceration was imposed, followed by a period of probation for 12 months. In addition, a restitution order was imposed in the amount of $322,634.

- *R. v. Hurlbert*, 2012 NSSC 291, a member of the Nova Scotia Legislature submitted four fraudulent invoices for repayment in the

amount of $25,000 over a two-year period. He pleaded guilty, resigned, accepted full responsibility, and made full restitution. The court imposed a conditional sentence order of 12 months followed by probation for 12 months.

- *R. v. Wilson*, 2012 NSPC 40, a member of the Nova Scotia Legislature defrauded approximately $61,000. He pleaded guilty. He was a first offender, with a gambling addiction. He received a custodial sentence of nine-months, followed by 18 months probation, coupled with restitution.

- *R. v. Zinck*, 2013 NSSC 338 (SC), a member of the of the Nova Scotia Legislature submitted fraudulent expense claims in the amount of $84,000. Limited and dated criminal record. He pled guilty and expressed remorse. He received a conditional sentence order of 18 months, followed by probation coupled with restitution.

- *R. v. Elmadani*, 2015 NSPC 65, an offender was a recruiter who claimed commissions on non-existent placements. The offender had a record for fraud and had recently completed a previous sentence. The total fraud was in the amount of $22,700.00. The offender received a custodial sentence of 12 months.

- *R. v. Shepard*, 2015 NSPC 23, the offender perpetrated frauds-over against her friends and a forgery against a real estate agent. She possessed a criminal record for frauds. She was not in a position of trust in the legal sense as contemplated by s. 718.2 (a)(iii) of the

Criminal Code. The Court endorsed a joint recommendation of two years less a day, coupled with a restitution order totaling $50,000.

- *R. v. Thompson*, (2016), Dartmouth, NSPC (unreported), the offender was sentenced to a ten-month custodial sentence, followed by probation coupled with a restitution order. The offender made 155 fraudulent returns to the company for which he worked, totaling $66,000.79. Prior to police involvement, the offender had voluntarily entered into a civil agreement to repay those funds not covered by the insurance policy. He pled guilty at the earliest opportunity. An order pursuant to s. 380.2 of the *Code* was also imposed.

- *R. v. Cain*, 2016 NSPC 54, the offender received a custodial sentence of 3 months for unlawful use of a credit card and fraud under. The offender was the care worker for the elderly victim. The total loss was $3,617.

- *R. v. Delgado*, 2017 NSPC 74, the offender pled guilty to fraud-over, expressed sincere remorse, and was a first offender who suffered from a serious gambling addiction. She was employed as an Accounts Clerk where she stole approximately $80,000. She received a conditional sentence of 24 months less one day, followed by a 36-month period of probation, coupled with an order to make full restitution.

- *R. v. Bartlett*, 2017 NSPC unreported, a 26 year-old offender found guilty of fraud and forgery. She was a first-time offender, who was in

a position of trust. She had worked at the Canadian Tire store at the customer service desk. Between April 2011 and May 2012 she had systematically taken advantage of her position of trust by processing at least 120 false, fictitious and fraudulent cash returns vouchers without an original receipt being provided and without receiving the manager's authorization. She received a 90-day intermittent sentence, coupled with a 24 month period of probation. A stand-alone restitution order was imposed in the amount of $17, 116.

- *R. v. Cassie & Hackett*, (2018), Dartmouth, NSPC (unreported), the offenders were the building managers of apartment buildings. Each offender pled guilty to four counts of fraud-under and one count of failing to account for monies. The offenders fraudulently received a total of $11,055.95 from various tenants. Ms. Cassie had an extremely limited criminal record with two prior convictions for theft. Mr. Hackett, however, had a significant and related record. Both offenders were sentenced to incarceration for a period of six-months.

- *R. v. Johnson*, 2018 NSSC 10, the offender, a Native Employment Officer, abused her position of trust over a three-year period wherein she stole over $100,000 from her employer by way of seventy-six fraudulent cheques. She was pressured by an abusive intimate partner to submit false medical-expense-reimbursement claims to her employer's health plan. She had a limited and dated criminal record. She pleaded guilty and was remorseful. Gladue factors were considered and applied. She received a conditional-sentence order of

18 months, followed by a 12-month period of probation with restitution.

- *R. v. Colpitts and Potter*, 2018 NSSC 180. The offenders together with unindicted co-conspirators, developed and implanted a sophisticated market manipulation scheme to artificially maintain the price of Knowledge House Incorporated shares to counteract the impact of the dot-com crash, attract new investment, maintain access to credit sources, and protect their personal net worth. The Court observed that the applicable sentencing range in Nova Scotia for large-scale, complex frauds is three to six years imprisonment. There were numerous aggravating factors in the case. The most significant mitigating factor for both offenders was delay. Mr. Potter was sentenced to five years imprisonment on each count, to be served concurrently. Mr. Colpitts was sentenced to concurrent sentences of four and a half years on each count.

- *R. v. Blumental*, 2019 NSSC 34, the offender committed fraud with respect to a single used car. He had 25 previous convictions, 12 of which were for theft or property related offences. He received a 2-year term of imprisonment and an order under s. 380.2 of the *Criminal Code* was imposed. Both restitution and a fine in lieu of forfeiture were also imposed.

- *R. v. Beverley and David Barker*, 2019 NSPC 24, the offenders pleaded guilty to fraud-over. Both were first offenders and were

considered unlikely to re-offend. For about nine months the offenders pressured Mrs. Barker's elderly mother, who was suffering from dementia and dysphasia, to sign financial documents. David Barker's criminal actions resulted in a loss of $36,000, and Beverly Barker's actions resulted in a loss of $15,519.55. They both received a suspended sentence with probation for 36 months. They also were required to make restitution.

- *R. v. Clark*, (2019), an unreported decision of this Court, where a joint recommendation of two years imprisonment, followed by 36 months probation was imposed on a 37 year old first offender for having committed 12 fraud-under offences over an extended period of time, and one offence of failing to comply with a recognizance. She pled guilty, and accepted full responsibility for her actions. She committed the offences to support her drug addiction. The sad life principle was considered and applied. In addition, an order for restitution in the amount of $ 10,786.32 was granted to compensate 12 victims.

[95] In *R. v. Savard* (1996), 109 C.C.C. (3d) 47, at p. 474, the Quebec Court of Appeal set out a useful framework respecting sentencing in a fraud case:

> The factors which permit one to measure the liability of an accused on sentencing, in matters of fraud, were well set out in the decision of our Court in *R. v. Lévesque* (1993), 59 Q.A.C. 307 (Que. C.A.). These facts can be summarized as follows: (1) the nature and extent of the loss, (2) the degree of premeditation found, notably, in the planning and application of a system of fraud, (3) the accused's actions after the commission of the offence, (4) the accused'[s] previous convictions, (5) the personal benefits generated by the commission of the offences, (6) the authority and trust existing in the relationship between the

> accused and the victim, as well as (7) the motivation underlying the commission of the offences…. Where these factors point to fraudulent wrongdoing with no indication of mitigating circumstances, the courts give preference to incarceration as the preferred means of protecting society and of general deterrence, and expressly reject consideration of rehabilitation.

[96] While there appears to be a wide range of dispositions for these types of offences, the aggravating circumstances surrounding the present offences necessitates a strong emphasis on the principles of denunciation and deterrence. Sections 718(a) and (b) of the *Code* identify denunciation and deterrence as appropriate objectives of sentencing. Where the primary objective of sentencing is denunciation, the sentence must publicly condemn the offender's conduct.

[97] Where, as here, the primary purpose of sentencing is to deter and denounce this type of behaviour, the Court must ensure its sentences are perceived by the public as strong condemnations of this type of behaviour.

[98] Again, I have considered and applied the parity principle in s. 718.2(b) of the *Criminal Code*. In doing so, I am keenly aware of what the Supreme Court of Canada stated in *M. (C.A.)*, where Lamer C.J., at para. 92, wrote:

> 92 It has been repeatedly stressed that there is no such thing as a uniform sentence for a particular crime ... Sentencing is an inherently individualized process, and the search for a single appropriate sentence for a similar offender and a similar crime will frequently be a fruitless exercise of academic abstraction. As well, sentences for a particular offence should be expected to vary to some degree across various communities and regions in this country, as the just and

> appropriate mix of accepted sentencing goals will depend on the needs and current conditions of and in the particular community where the crime occurred.

[99] Similarly, in *R. v. Muller*, [1993] B.J. No. 223. (B.C.C.A.), at paras. 32-33, McEachern, C.J., writing on behalf of the British Columbia Court of Appeal, expressed the view:

> . . . that it is often unproductive to approach the sentencing process either at trial or in this court as if absolute priorities can be given to various sentencing principles, such as deterrence, in any particular case.
>
> Also, it is unlikely that individually just results can be achieved by the application of formulae in which degree of importance are attached to specific sentencing factors. Sentencing is an art, not a science. It must take into account highly variable human behaviour and likely responses to penal sanctions. In some cases deterrence may be more important than rehabilitation; in others, the opposite will be true. Sentencing, in my view, should not be approached as a contest between those two important principles, for the raw material of sentencing is past and future human behaviour, which is never completely predictable.

[100] Thus, in view of these observations, it is arguable that case law is only helpful for the limited purpose of ascertaining the range of sentences imposed on similar offenders for similar offences committed in similar circumstances because the sentence must be crafted in a case specific individual manner, which includes consideration of the principle of restraint in cases involving Aboriginal offenders.

[101] Even after a review of the cases, in an effort to find similar cases, with similar offenders, charged with similar offences, Ms. Gloade's case is clearly distinguishable.

[102] While the paramount sentencing objectives in the present case are denunciation and deterrence, I must not lose sight of the prospect of rehabilitation, and the principle of restraint as expressed through s. 781.2 (e) of the *Criminal Code*.

The Just and Appropriate Sentence

[103] In the final analysis, I have considered all the relevant purposes and principles of sentencing, the aggravating and mitigating factors, the Gladue factors, and that the sentence must be proportionate to the gravity of Ms. Gloade's crimes and her degree of responsibility for having committed them.

[104] Moreover, in this case there must be a measured approach to the gravity of the offender's criminal behaviour and her degree of responsibility or moral blameworthiness for the offences before the court as well as for the harm done to the victim. As indicated earlier, I find Ms. Gloade's degree of responsibility or moral blameworthiness for the offences is high as is the gravity of her offences.

[105] Having given the matter careful consideration, I am reminded that the purpose of sentencing is to impose "just sanctions". A "just sanction" is one that is deserved. A fit sentence in that context is one that is commensurate with the gravity of the offence and the moral blameworthiness of the offender.

[106] In *Proulx*, Chief Justice Lamer repeated that principle, at para. 82, wherein he stated:

> 82 … [p]roportionality requires an examination of the specific circumstances of both the offender and the offence so that the "punishment fits the crime". Disparity in sentencing for similar offences is a natural consequence of the fact the sentence must fit not only the offence but also the offender.

[107] In *R. v. Priest*, 1996 CanLII 1381 (ON CA), [1996] 30 O.R. (3d) 538, at para. 26, the Ontario Court of Appeal expressed the view that proportionality insures that an individual is not sacrificed "for the sake of the common good".

[108] An appropriate or reasonable disposition will depend on the circumstances of the case in the context of all relevant considerations which includes not only the personal circumstances of the offender and the degree of responsibility of the offender for the offence, but also the gravity of the offence itself.

[109] As stated, the principle of restraint underlies the provisions of s. 718 of the *Criminal Code*, and must be considered, especially in respect to a first offender

such as Ms. Gloade, who is also an Aboriginal offender and therefore s. 718.2 (e), must be considered, as discussed earlier in these reasons.

[110] It should be noted I am mindful that as the gravity of the offence becomes more serious, this mitigating effect decreases. However, even in the most serious offences, courts have been sensitive to the principle of restraint in cases involving first offenders. Similarly, the Ontario Court of Appeal in *Priest*, at para. 23 held:

> 23 Even if a custodial sentence was appropriate in this case, it is a well-established principle of sentencing laid down by this court that a first sentence of imprisonment should be as short as possible and tailored to the individual circumstances of the accused rather than solely for the purposes of general deterrence.

[111] I am mindful that the paramount sentencing objectives at work in the present case are denunciation and deterrence. That said, since I am sentencing a first offender, an Aboriginal offender, I must not lose sight of the application of the Gladue principles.

[112] As stated, given that sentencing is highly contextual and an individualized process, the Court must impose a sentence that addresses the two elements of proportionality. That is, the circumstances of the offence and the circumstances of the offender. Thereby, the Court must reach a sentence that fits not only the offence, but also the offender. The sentencing judge must fashion a disposition

from among the limited options available which take both sides of the proportionality inquiry into account.

[113] While denunciation and deterrence are the primary factors to be considered in this case, they are not to be considered at the exclusion of rehabilitation, particularly in this case which engages the principle of restraint, as Ms. Gloade is an Aboriginal offender and a first offender. Indeed, Ms. Gloade's history and personal circumstances suggest there ought to be a rehabilitative component to any sentence imposed. This is supported by the Pre-Sentence Report, the Gladue Report, and the Sentencing Circle recommendations. Moreover, Ms. Gloade has begun to take steps toward her rehabilitation by engaging in personal counselling and treatment and is willing to continue with her rehabilitation to become, again, a productive member in the community.

[114] In my view, I find that there is real potential for Ms. Gloade to successfully, and fully rehabilitate as she has already secured full-time employment and continues to seek treatment. Thus, there would appear to be a very low risk of her re-offending as she has and continues to take the necessary steps to address the underlying causes of her emotional and financial stresses. I am also satisfied that specific deterrence has been met in respect to Ms. Gloade, as I accept that she has

learned from this experience and has gained greater insight into the underlying issues that brought her before this court.

[115] As previously mentioned, while I recognize that rehabilitation is an important objective in the sentencing calculus, I must not over-emphasize it, as there is a real pressing need in this case for a denunciatory sentence as well as one directed at both specific and general deterrence.

[116] While there appears to be a wide range of dispositions for these type of offences, the aggravating circumstances surrounding these specific offences necessitates a strong emphasis on the principles of denunciation and deterrence. Subsections 718(a) and (b) of the *Criminal Code* identify denunciation and deterrence as appropriate objectives of sentencing. Where the primary objective of sentencing is denunciation, the sentence must publicly condemn the offender's conduct.

[117] Where the primary objective is also deterrence, the sentence must attempt to discourage individuals through specific deterrence as well as to deter other potential offenders from committing similar offences by way of general deterrence.

[118] Where, as here, the primary purpose of sentencing is to deter and denounce this type of behaviour, the Court must ensure its sentences are perceived by the public as strong condemnations for this type of behaviour.

[119] I am of the view that a term of imprisonment is warranted in this case, given the gravity of the offences committed by Ms. Gloade and her level of moral blameworthiness which is indicative given the nature and scope of her involvement in committing the offences.

[120] In this specific case, having regard for the personal circumstances surrounding Ms. Gloade and the circumstances surrounding the offences, as described in these reasons, I am satisfied that a term of imprisonment followed by a substantial period of probation, will be a suitable way to express society's condemnation for her conduct and will deter similarly minded individuals.

[121] In the present case, the objectives such as denunciation and deterrence are particularly pressing. Therefore, a period of imprisonment is necessary notwithstanding that Ms. Gloade is a first offender, who has accepted full responsibility, expressed genuine remorse, and feels the effect of public shame

[122] However, because of her background and personal circumstances, rehabilitation is also an important factor that cannot be excluded by an emphasis on the principles of denunciation and deterrence.

[123] Notwithstanding all of the mitigating factors present in this case, this offence is a very serious crime that requires an appropriate disposition that effectively emphasizes the principles of deterrence and denunciation while at the same time balances the need to ensure the rehabilitation of Ms. Gloade.

[124] In my view, but for all of these mitigating factors, including the Gladue Factors, the sentence that I am about to impose would have been much higher.

[125] Given the gravity of the offence, and degree of Ms. Gloade's responsibility in such circumstances, deterrence and denunciation must be reflected in the sentence imposed.

[126] In my view, when sentencing first time adult offenders, who have struggled with underlying issues that are complex and multifaceted, such as the circumstances surrounding Ms. Gloade, requires careful consideration of the offender's unique and individual characteristics. The protection of the public in the long term is best served by the imposition of a sentence that promotes the

fundamental purpose of sentencing and appropriately balances all of the principles of sentencing, while emphasizing the principles of deterrence and denunciation, but not to the detriment of rehabilitation. In other words, rehabilitation should not be abandoned.

[127] Ms. Gloade is not opposed to the imposition of a restitution order in the amount of $8,595.45, as suggested by her counsel, Mr. Linh. It might be parenthetically noted that the need to make reparations does not necessarily preclude a sentence of incarceration as a restitution order under s. 738 of the *Criminal Code* would bind Ms. Gloade after her release from custody.

[128] While the circumstances surrounding the commission of the offences before the court are serious, this case should not be characterized as a large scale fraud.

[129] This case is similar to the *Bartlett* case, in the sense that it involved a first-time offender who abused her position of trust in committing fraud and forgery offences over an extended period of time, involving numerous fraudulent transactions. In that case, as previously mentioned, Ms. Bartlett received a sentence of 90 days to be served on an intermittent basis, followed by a two-year period of probation. The amount of the loss in that case was $17,000.

[130] Having considered all the relevant purposes and principles of sentencing, the aggravating and mitigating factors, the Gladue factors, and that the sentence must be proportionate to the gravity of Ms. Gloade's crimes and her degree of responsibility for having committed them, I am of the view that a custodial sentence of 60 days to be served on an intermittent basis is necessary because it will appropriately achieve the principles of denunciation and deterrence.

[131] Furthermore, a significant period of probation will provide Ms. Gloade the opportunity to further rehabilitate herself, and with the imposition of carefully crafted conditions, such as terms and conditions that require Ms. Gloade to perform community service hours, will promote a sense of responsibility in her and will acknowledge the harm done to the victim and the community.

[132] This sentence is obviously different than the disposition imposed in *Bartlett*, because I have placed an emphasis on the Gladue Factors in this case, which were not present in the *Bartlett* case, and the value of the fraud is lower in this case. And I should stress Ms. Gloade pleaded guilty, whereas Ms. Bartlett did not; she was convicted after a trial.

[133] In addition, to term of imprisonment of 60 days, for each offence to run concurrently, Ms. Gloade will be placed on probation for three years, the

maximum period, to provide her with sufficient time to rehabilitate and make restitution. I am imposing a restitution order in the amount of $8,595.45, which is to be paid in full before the expiration of the probationary term, as requested by Ms. Gloade. Again, in ordering the restitution, I am mindful that it is also a form of punishment which I considered in reaching the disposition that I view as being fit and appropriate for the offences and for Ms. Gloade.

[134] Additionally, I am also granting a Prohibition Order under s. 380.2 of the *Criminal Code*, that Ms. Gloade not seek, obtain or continue any employment, or become or be a volunteer in any capacity, that involves having authority over the real property, money or valuable security of another person for a period of ten years.

[135] In reaching this decision, I am of the view that a reasonable and thoughtful person, who is properly informed about the purposes and principles of sentencing, would be confident that the protection of the public in the long term is best served by sentences that emphasize the principles of denunciation and deterrence coupled with the consideration of rehabilitating an adult first offender who was suffering from an addiction during the time of the commission of the offence.

Forfeiture of Proceeds of Crime: Fine in lieu of Forfeiture

[136] Separate from the sentencing hearing, the Crown sought an Order for a fine in lieu of forfeiture of proceeds of crime.

[137] Part XII.2 of the *Criminal Code* governs forfeiture of proceeds of crime. These provisions were enacted to ensure that crime does not pay and reflect a Parliamentary intention to give teeth to the general sentencing provisions in Part XXIII. While the purpose of the sentencing regime is to punish an offender for committing a particular offence, the objective of forfeiture is to deprive offenders of proceeds of crime and deter future crimes: *R. v. Angelis*, 2016 ONCA 675, at para. 32.

[138] Ms. Gloade benefited from $8,595.45 in "proceeds of crime" as defined in s. 462.3 of the *Criminal Code*. The monies fraudulently received from the victim are benefits obtained through the commission of designated offence as defined in s. 462.3 of the *Criminal Code*.

[139] The evidence establishes on a balance of probabilities that the monies are proceeds of crime obtained through the commission of the designated offences. The designated offences were committed in relation to that property as the monies were clearly obtained because of the commission of fraud. Accordingly, pursuant

to section 462.37(1), the Court shall order that property be forfeited to Her Majesty.

[140] As Justice Watt observed in delivering the judgment for the Ontario Court of Appeal in *Angelis*, at para. 33:

> 33 Parliament also recognized that the forfeiture of proceeds of crime is not always practicable. Sometimes, proceeds can't be found. They may be outside Canada. Or in the hands of a third party. What was taken may have been substantially diminished in value, rendered worthless or commingled with other property that cannot be divided without difficulty: Lavigne, at para. 18. And so, Parliament enacted a provision, s. 462.37(3), to permit judges to impose a fine in lieu of forfeiture.

[141] Thus, when the monies cannot be subject to an order of forfeiture having regard to the circumstances, including those outlined in s. 462. 37(3) of the *Criminal Code*, the Court may order a fine in lieu of forfeiture. Where the offender advised that he or she does not have the monies and, therefore, there are no proceeds to forfeit, a sentencing judge may impose the fine in lieu of forfeiture: *Angelis*, at paras. 3 and 36.

[142] In *Angelis*, Justice Watt, distilled several principles to guide the decision of whether to order the fine in lieu of forfeiture:

> (a)The principles of Part XXIII of the *Criminal Code* (sentencing) are applicable to only the extent that they are compatible with the specific provisions of Part XII.2 (proceeds of crime): para. 40;

(b)The imposition of a fine in lieu of forfeiture is not punishment imposed upon an offender: para. 50;

(c)The fine in lieu of forfeiture is not to be consolidated with sentencing on a totality approach: para. 51;

(d)The sufficiency of the carceral component of a sentence to satisfy the applicable sentencing objectives and principles cannot justify refusal to order payment of a fine in lieu: para. 53;

(e) Once the conditions for the imposition of a fine in lieu of forfeiture are met, a sentencing judge has limited discretion to refuse to make the order: para. 72;

(f)The exercise of discretion to refuse to order a fine in lieu of forfeiture is necessarily limited by the objective of the provision, the nature of the order, and the circumstances in which the order is made: para. 73;

(g)The provisions of Part XXIII have no say in exercising the limited discretion to refuse to impose a fine in lieu of forfeiture: para. 56;

(h)The ability of a victim to pursue civil remedies does not militate in favour of refusing to impose a fine in lieu of forfeiture: para. 74;

(i)Ability to pay is not a factor to consider in deciding to impose a fine in lieu of forfeiture nor in determining the amount of the fine: para. 81; and

(j)Ability to pay is a factor to be considered in determining the time in which the fine is to be paid: para. 81.

[143] As Justice Chipman stated in *R. v. Blumenthal*, 2019 NSSC 35, at paras. 43-45:

43 Where a fine in lieu of forfeiture of proceeds of crime is ordered, any payments made pursuant to the fine should be credited to any restitution orders made by the sentencing judge: Angelis, para. 18. As such, the offender will not be required to pay twice (i.e. the restitution and the fine in lieu of forfeiture). In *Angelis*, the Ontario Court of Appeal allowed the Crown's appeal and imposed a fine in lieu of forfeiture in the amount of the losses suffered by the victims. This fine in lieu of forfeiture was imposed in addition to the restitution order.

44 In *R. v. Sponagle*, 2017 NSPC 23, Judge Derrick (as she then was) adopted the reasoning in Ontario decisions that the sentencing Court can make both a restitution and fine in lieu of forfeiture order. The Court can explicitly order that restitution take priority over the payment of the fine in lieu of forfeiture and that the fine in lieu be reduced by any amount paid pursuant to the restitution order:

> paras. 43 and 59. Further, the direction in s. 740 of the *Criminal Code* (to first consider restitution and then consider whether a fine is appropriate) does not apply to the fine in lieu of forfeiture: para. 46.
>
> 45 Ordering both restitution and the fine in lieu of forfeiture fulfills the Parliamentary intention of "giving teeth" to the sentencing provisions. Upon application by the Crown and fulfillment of the conditions precedent, Part XII.2 requires forfeiture be ordered and only provides limited discretion to not order a fine in lieu of forfeiture. When that fine in lieu of forfeiture accompanied by restitution and priority given to restitution, the victims of the offences will receive the "proceeds" upon payments being made by the offender. Restitution orders require the victims to proactively seek enforcement, either through entering the judgment in a civil court or seeking other remedy: *Criminal Code*, ss. 741, 741.2. As such, remedy on an unpaid restitution order relies upon the victims' knowledge and navigation of the legal system. In contrast, failure to pay a fine in lieu of forfeiture within the time period set out by the sentencing Court will result in consecutive default time; there is a tangible consequence for failing to make payments. As a result, there is a greater impetus on the offender to make payments, the benefit of which goes first to the victims through restitution.

[144] In the case at bar, I am satisfied that the monies cannot be made subject to an order of forfeiture having regard to the circumstances, including those outlined in section 462.37(3) of the *Criminal Code*. Accordingly, a fine in lieu of forfeiture is imposed because Ms. Gloade advises through counsel that she does not have the monies to forfeit.

[145] I also have considered that where a fine in lieu of forfeiture of proceeds of crime is ordered, any payments made pursuant to the fine should be credited to any restitution orders made by the sentencing judge: *Angelis*, at para. 18. As such, Ms. Gloade will not be required to pay twice (i.e. the restitution and the fine in lieu of

forfeiture). In *Angelis*, the Court of Appeal allowed the Crown's appeal and imposed a fine in lieu of forfeiture in the amount of the losses suffered by the victims. This fine in lieu of forfeiture was imposed in addition to the restitution order.

[146] The Crown seeks an order for a fine in lieu of forfeiture in the amount of $8,595.45, pursuant to s. 462.37(3) of the *Criminal Code*. The Crown further asks that this order state that any restitution orders imposed shall take priority over payment of the fine in lieu of forfeiture ordered, and that moreover the fine in lieu of forfeiture shall be reduced by any amount paid pursuant to the Restitution Order.

[147] Having considered all the evidence proffered in this hearing, including the contents of the reports, and submissions of Counsel, I am satisfied that an order of forfeiture is not possible or practicable in this case.

[148] The objective of Part XII.2 would be frustrated if a fine in lieu of forfeiture was not ordered and the circumstances do not justify exercising the limited discretion available to this Court to not order the fine.

[149] Accordingly, I hereby order a fine in lieu of forfeiture in the amount of $8,595.45, pursuant to s. 462.37(3) of the *Criminal Code* which shall state that the restitution order shall take priority over payment of the fine in lieu of forfeiture ordered in this case, and the fine in lieu of forfeiture shall be reduced by any amount paid pursuant to the restitution order.

[150] The Court has discretion in the amount of time to be given to Ms. Gloade to pay the fine. Further, the Court has discretion to set the amount of default time to be served between twelve months and eighteen months of imprisonment, pursuant to s. 462.37(4)(a)(iii).

[151] In the result, I order that payment be made by Ms. Gloade within ten years of today's date.

[152] With respect to the three-year period of probation, Ms. Gloade must comply with the following terms and/ or conditions.

[153] Ms. Gloade, sentencing is very difficult. It is probably one of the most challenging and difficult tasks of a judge. Particularly in a case such as yours, where you were an outstanding individual in the community, you worked tirelessly and hard to graduate from university later in life, you went back and you upgraded

and studied and I admire and commend you for doing all of that. Then you ran into some difficulties and now you are going to rebound back again. I have confidence in you with the support of your community that you can do that. I really do and these terms and conditions that I am imposing are to assist you and make you feel better about yourself, in terms of giving back to the community and to move forward.

[154] You are sentenced to 60 days to be served at the Central Nova Scotia Correctional Facility intermittently starting on Fridays at 8:00 pm to Mondays at 5:00 am commencing on August 16, 2019. Both offences are serious and the 60 days of incarceration will be on each count to be served concurrently to one another.

[155] These are the terms and conditions of probation order :

- You shall for a period of 36 months from the date of this order be on probation;
- Keep the peace and be of good behaviour;
- Appear before the court when required to do so by the court;
- Notify the court, probation officer or supervisor, in advance, of any change of name, address, employment or occupation;

- Report to a probation officer within two (2) days at 277 Pleasant Street, Suite 112, Dartmouth, Nova Scotia and thereafter as directed by your probation officer or supervisor;

- Not to 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 a legal authorization

- Complete 140 hours of community service work as directed by your probation officer by February 8, 2021;

- Do not be on or within ten (10) metres of the premises known as the Elizabeth Fry Society located at 1 Tulip Street, Dartmouth, Nova Scotia, except while travelling on a highway in a moving vehicle;

- Make reasonable efforts to locate and maintain employment or an educational program as directed by your probation officer;

- Attend for mental health assessment and counselling as directed by your probation officer;

- Attend for substance abuse assessment and counselling as directed by your probation officer;

- Attend for assessment, counselling or a program directed by your probation officer;

- Participate in and co-operate with any assessment, counselling or program directed by the probation officer;

- Make restitution through the Clerk of the Court on or before July 7, 2022 to the Elizabeth Fry Society, 1 Tulip Street, Dartmouth, Nova Scotia in the amount of $8,595.45; and
- Report back to Court for a status update on August 25, 2020 at 1:30 pm in Courtroom 4.

[156] I am requesting a status update report. I hope that it will be very positive. At the time of the status update, if there are terms and/or conditions that you want to vary, then you can make that application at that time.

[157] Ms. Gloade, you are doing well since the commission of the offences. you are an intelligent person. You have worked extremely and you had a set back. I admire you for your courage to continue to move forward in a positive manner as you have shown a sincere interest in continuing your counselling and to break away from the cycle of abuse that you had to endure for far too long. Now, you have the opportunity to receive the wonderful and loving support of your community and work with your community. I hope that you embrace your tradition and your culture, because I'm sure that that will bring you a lot of peace that you, in my view, deserve.

Frank P. Hoskins, JPC