PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R v. Langille*, 2020 NSPC 36

Date: 20200608
Docket: 8331067
Registry: Halifax

Between:

Her Majesty the Queen

v.

Wayne Langille

Judge:	The Honourable Judge Elizabeth Buckle,
Heard:	November 13, 2019 and January 24, 2020 in Halifax, Nova Scotia
Sentencing Decision	September 28, 2020
Charge:	121(1)(c) Criminal Code of Canada
Counsel:	Mark Donohue and Constantin Draghici-Vasilescu, for the Crown Elizabeth Cooper, for the Defence

By the Court:

Introduction

[1] Wayne Langille has pleaded guilty to an offence under s. 121(c) of the *Criminal Code*, admitting that while he was an employee of the Government of Canada, he accepted benefits from a person having dealings with that government.

[2] Mr. Langille was employed by the Department of National Defence (DND) as the manager of a plant. Over a 3 ½ year period, from 2008 to 2012, he received benefits totaling approximately $8,700.00 from businesses operated by Harold Dawson. During that same time period, these businesses were doing business with DND and were awarded contracts directly related to the plant Mr. Langille managed.

[3] I now have to determine a fit and proper sentence for Mr. Langille. It is unfortunate that so much time has passed since Mr. Langille's guilty plea was entered. Mr. Langille would have been sentenced in the spring but Covid intervened.

Position of the Parties

[4] The Crown seeks a custodial sentence of 12 months. In doing so, the Crown emphasizes the need to denounce and deter conduct that impacts the integrity of government.

[5] The Defence seeks a fine or suspended sentence with probation or, in the alternative, that Mr. Langille be permitted to serve any custodial sentence in the community under a conditional sentence order. In doing so, the defence emphasizes the many mitigating factors relating to Mr. Langille's circumstances and argues that the otherwise appropriate sentence should be further reduced because Mr. Langille's *Charter* rights were breached during the investigation. The Crown disputes that there were *Charter* breaches.

Circumstances of the Offences

[6] An Agreed Statement of Facts was filed (Exhibit 1).

[7] During the offence period, April 1, 2008 to May 9, 2012, Mr. Langille was employed as manager of the Steam Heating Plant (the plant) at CFB Shearwater. Harold Dawson was a former employee of DND at the Shearwater Base. He operated four businesses that had dealings with DND. He and Mr. Langille were friends and often had lunch together.

[8] The plant required regular repair and maintenance. When parts or supplies were needed, employees of the plant would advise either Mr. Langille or the plant's maintenance supervisor, who worked for Mr. Langille. One of them would certify that the part was needed.

[9] Mr. Langille's authority to directly order parts changed during the offence period. For the first 9 months, from April 1, 2008 to the end of that year, he had purchasing/contracting authority for purchases up to a limit of $1,000.00 (before tax). He had a government issued credit card, could rely on a single quote to award a contract and was not required to use a competitive bidding process. He admits that during that time, he split contracts among businesses operated by Mr. Dawson on repeated occasions.

[10] For anything over the $1,000.00 limit in 2008, and for all contracts from 2009 to the end of the offence period, Mr. Langille and his maintenance supervisor were required to forward purchase requests to the Contracting Unit. At the time, Bry'n Ross was the Contracts Officer who was responsible for requests from the heating plant.

[11] Mr. Langille has admitted being involved in various irregularities relating to that requisition process:

1. The practice in place at the time was for government customers, like Mr. Langille, to provide the Contracts Officer with one quote from an outside supplier for the part they needed and to verify the part was available, particularly if it was needed quickly. During the offence period, Mr. Langille instructed his maintenance supervisor to obtain quotes preferentially from Mr. Dawson's businesses and did so himself with no exception;
2. When Mr. Langille signed requisition forms, he always directed that the part be delivered directly to the plant rather than through the Information Logistics warehouse which would have been the normal process. Mr. Langille admits that the effect of this was to remove any independent verification of delivery of the parts but denies that this was his intent. According to Mr. Langille, direct delivery was more efficient;
3. During the offence period, Mr. Langille had signing authority under ss. 32 & 34 of the *Financial Administration Act* (*FAA*), R.S.C., 1985, c. F-11, up to an annual limit of

$40,000.00. Mr. Langille did not comply with his responsibilities under s. 34 of the *FAA* by signing in bulk for the receipt of parts and directing others to do the same and was generally lax or careless in how he applied government rules and regulations; and,

4. Mr. Langille gave Mr. Dawson inside information about parts. This gave Mr. Dawson an advantage in the bidding process which Mr. Ross was mandated to use. Once Mr. Ross received the request for a part, he was required to comply with the Government Contracting Policy in acquiring it. That policy required him to obtain up to four quotes, depending on the total cost of the part requested. However, on numerous requisition forms submitted by Mr. Langille, the description of the requested part was generic or incomplete. Mr. Langille admits having prior informal discussions with Mr. Dawson that ensured he knew the specific part required. The result was that only Mr. Dawson, who had inside information, could properly bid on the contract without seeking further details.

[12] The purpose of the multiple bidder requirement in the Contracting Policy was to ensure an open and fair competitive bidding process which would promote fair competition between private suppliers and assist government in obtaining the best value.

[13] Mr. Langille admits he was aware that during the offence period Mr. Ross was also involved in contract-splitting between Mr. Dawson's businesses and that Mr. Dawson's businesses were often successful in getting the contracts they had bid on.

[14] When Mr. Langille's home was searched, two uncashed cheques from two of Mr. Dawson's businesses were found. One, in the amount of $2,400, was undated and signed by Mr. Dawson with the "pay to" section left blank. The other, in the amount of $1,240, was payable to Wayne Langille but was over a year old so no longer cashable. A bank card issued to one of Mr. Dawson's companies was also found. Further investigation revealed that during the offence period, Mr. Langille had used the card to pay personal expenses, including car repair, insurance, heating oil and a telephone bill. The total was $8,742.16 in 14 separate transactions occurring between December 2008 and December 2011.

[15] Other information in the Agreed Statement of Facts were not within Mr. Langille's personal knowledge but he does not dispute them. During the investigation, documents related to Mr. Langille were found in the offices of one of Mr. Dawson's businesses: a blank copy of a DND purchase order, signed by Mr. Langille, and two credit card statements for Mr. Langille's government issued credit card. During the offence period, the majority of contracts awarded to Mr. Dawson's companies were for parts requisitioned by Mr. Langille. In those situations where one of Mr. Dawson's businesses was awarded the contract, Mr. Ross solicited quotes from non-Dawson companies only 11 times, and none of the outside businesses were awarded the contract. The result of Mr. Dawson's companies being the only bidders on the vast majority of the contracts was that he was often able to charge an exorbitant mark-up. These mark-ups are confirmed in documents obtained from potential competitors and seized from Mr. Dawson.

[16] A forensic audit of Mr. Dawson's businesses shows that the value of the contracts awarded to those businesses by DND Shearwater was almost 2 million dollars.

[17] Mr. Ross and Mr. Dawson were also charged and convicted of criminal offences, including "fraud over $5000", relating to procurement practices at DND Shearwater.

Mr. Langille's Circumstances

[18] Information about Mr. Langille's background and current circumstances was provided through a Pre-Sentence Report, character letters and the submissions of counsel.

[19] Mr. Langille is 73 years old. He has a very dated criminal conviction.

[20] The author of the pre-sentence report described him as respectful and co-operative. He appeared to be accountable for his actions and expressed shame and remorse.

[21] He grew up in Halifax and appears to have had a generally happy childhood. He has a good relationship with his mother who is 96 years old and with his five surviving siblings. His father passed away nine years ago, and he lost two siblings, one to drowning and one to cancer. He has one son. He and the child's mother separated about 45 years ago but were able to maintain a positive friendship. His son reports that his father was an active and supportive part of his life and they continue to have a good relationship. Mr. Langille also has two grandchildren and is expecting a great grandchild. He has been with his common law spouse for 27 years. She wrote a letter of support for him, describing him as hardworking,

respected by friends, family and co-workers, supportive of her and her interests, kind and positive.

[22] He has worked consistently throughout his adult life and was with DND for 20 years until 2012. He is currently working as a Chief Engineer with a company in High River Alberta. His friend and co-worker describe him as reliable, professional and trustworthy. The Assistant General Manager of the facility where he works confirms that he has been working there since 2014 and speaks very highly of him. He says that Mr. Langille manages people with respect and candor, has increased morale and maintained a budget. Due to his leadership and ability, the company wants to use him as a mentor and expand his responsibilities in the facility.

[23] Members of his community wrote letters of support, describing him as a good neighbour who was willing to provide help to individuals and with community projects.

[24] He earns a good salary in his current employment and is financially stable.

[25] He has no history of substance abuse, gambling addiction or mental health challenges. He has physical health issues including diabetes, high blood pressure, high cholesterol and a heart problem.

Sentencing Principles

[26] In sentencing Mr. Langille, I have to apply the purposes and principles set out in ss. 718, 718.1 and 718.2 of the *Criminal Code*. The overall purposes of sentencing are to protect the public and to contribute to respect for the law and the maintenance of a safe society. Those purposes are to be addressed by imposing just sanctions that have, as their goal, one or more of the following: denunciation; general and specific deterrence; separation from society where necessary; rehabilitation of the offender; promotion of responsibility in offenders; and acknowledgment of the harm done to victims and to the community.

[27] The weight to be given to each of these principles and objectives will vary depending on the circumstances of the case.

Denunciation and Deterrence

[28] In my view, the objectives of general deterrence and denunciation must be emphasized when sentencing for this offence. Emphasizing those objectives is consistent with the seriousness of the offence, the potential impact of the underlying conduct on the integrity of government and the approach taken in previous cases.

[29] Section 121(1)(c) criminalizes conduct even where it is not proven that the government official had a corrupt intention or that actual substantive harm was caused (*R. v. Carson*, 2018 SCC 12, at para. 25; and Clayton C. Ruby, Gerald J. Chan & Nader R. Hasan, *Sentencing*, 9th ed. (Markham, Ont.: LexisNexis, 2017) at paras. 23.756). However, despite that, courts have recognized that ss. 121(1)(c) has an important purpose and, both on its own and as part of a larger scheme, seeks to prevent serious harm (*R. v. Hinchey,* [1996] 3 S.C.R. 1128, paras. 13 – 39). L'Heureux-Dubé, J., writing for the majority, explained why the conduct captured by s. 121(1)(c) is so serious:

> **14** It is hardly necessary for me to expand on the importance of having a government which demonstrates integrity. Suffice it to say that our democratic system would have great difficulty functioning efficiently if its integrity was constantly in question. While this has not traditionally been a major problem in Canada, we are not immune to seeing officials fall from grace as the result of a violation of the important trust we place in their integrity. See, for example, *R. v. Cooper*, [1978] 1 S.C.R. 860. I would merely add that the importance of preserving integrity in the government has arguably increased given the need to maintain the public's confidence in government in an age where it continues to play an ever increasing role in the quality of everyday people's lives. …..
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> **16** Section 121(1)(c) has a special role to play in this regard. This Court has decided on several occasions that the crucial purpose encompassed by this section is not merely to preserve the integrity of government, but to preserve the appearance of the integrity as well. In Greenwood, supra, at pp. 250-51, Doherty J.A. made several remarks in this respect regarding the purpose of s. 121(1)(c):
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> > Canadian courts have repeatedly recognized that s. 121(1)(c) exists to preserve both the integrity of the public service and the appearance of integrity of the public service. The government's business must be free from any suggestion of "under-the-table" rewards or benefits made to those who conduct business on behalf of the government by those who

stand to gain from those dealings: see, e.g., *R. v. Cooper, supra,* at p. 875 (S.C.R.), p. 29 (C.C.C.); *Giguere, supra,* at p. 462 (S.C.R.), p. 12 (C.C.C.) (pp. 12-13 C.R.); *R. v. Cooper* (No. 2) (1977), 4 C.R. (3d) S-10, 35 C.C.C. (2d) 35 (Ont. C.A.), at p. 36 (C.C.C.) (p. S-11 C.R.); *R. v. Sinasac* (1977), 35 C.C.C. (2d) 81 (Ont. C.A.), at p. 84.

That integrity is compromised not only by bribery and corruption in their crassest forms, but by other insidious arrangements whereby a government employee profits from his or her position or employment by way of a private benefit or advantage received from a person having dealings with the government. Such advantages or benefits can create the appearance of impropriety and suggest that the loyalty of the employee has been divided between his or her government employer and the private benefactor. I adopt the comments of Judge Lyon of the Ontario District Court, who on imposing sentence on one Gerald McKendry (the government employee who received the benefits referred to in *R. v. Cooper,* supra) said, in a passage quoted with approval in *R. v. Ruddock* (1978), 25 N.S.R. (2d) 77, 36 A.P.R. 77, 39 C.C.C. (2d) 65 (C.A.), at p. 71 (C.C.C.):

> "It is obvious in my view that altogether apart from s. 110(1)(c) (now s. 121(1)(c)) that the appearance of objective, uncorrupted impartiality must be of the highest importance. This indeed is an ethic which has been given the full support of the criminal law in the section that I have made reference to, and the reason for that, I think, is obvious because the appearance of justice is equally important as justice itself. And the appearance of honesty and integrity in dealings by Government employees particularly where large sums of public money is (sic) involved must be at all costs preserved lest the failure to do so could result in de facto corruption, one perhaps sliding imperceptibly into the other. It is clearly for this reason that s. 110(c) has been enacted."

The need to preserve the appearance of integrity within the public service requires that the words "advantage or benefit" include all gifts which can potentially compromise that appearance of integrity.

17 I substantially agree with this statement. In particular, I believe Lyon J.A. was correct when he indicated that preserving the appearance of integrity, and the fact that the government is fairly dispensing justice, are, in this context, as important as the fact that the government possesses actual integrity and dispenses actual justice. The two concepts are, however, analytically distinct. For a government, actual integrity is achieved when its employees remain free of any type of corruption. On the other hand, it is not necessary for a corrupt practice to take place in order for the appearance of integrity to be harmed. Protecting these appearances is more than a trivial concern. This section recognizes that the democratic process can be harmed just as easily by the appearance of impropriety as with actual impropriety itself.

> **18** In my view, given the heavy trust and responsibility taken on by the holding of a public office or employ, it is appropriate that government officials are correspondingly held to codes of conduct which, for an ordinary person, would be quite severe. For the public, who is the ultimate beneficiary of honest government, it is not so easy to sort out which benefits are legitimate and which are laden with a sinister motivation. Moreover, it is inefficient for a government to be paralyzed by rumour and innuendo while an inquiry is made into the motivation behind a certain benefit or advantage conferred on an official. What Parliament is saying through this provision is that the damage sought to be prevented is actually done once the benefit is conferred, and not after an ex post facto analysis which demonstrates that no harm was intended. It is from the point of the conferral of the benefit forward that the appearance of integrity has been slighted. (emphasis added)

[30] In *R. v. Ruddock* (1978), 25 N.S.R. (2d) 77 (NSCA), when considering the appropriateness of a sentence for an offence under s. 110(1)(c), the predecessor to s. 121(1)(c), the Court used language that is consistent with general deterrence, saying, at page 73:

> "the main consideration is to impress upon government officials and employees (and indeed those who have dealings with the government) that if they accept anything (without the written consent of their department head) from people doing business with the government, they have breached the criminal law.

[31] In *R. v. Mathur*, 2010 ONCA 311, the Ontario Court of Appeal upheld a custodial sentence for an offender who had been found guilty of offences under ss. 121(1)(c) and 122. The sentencing judge had rejected a conditional sentence because he concluded it would not adequately address general deterrence which he viewed as paramount. The appellate court did not specifically adopt his comments but concluded that the sentence imposed was reasonable and well within the range.

[32] I will address Mr. Langille's specific conduct in detail when I address proportionality. I have concluded that both the offence in general and Mr. Langille's specific conduct undermined the appearance of integrity of government and had the potential to cause serious harm by increasing public distrust, cynicism and disillusionment with government and must be condemned. This requires a sentence that emphasises denunciation as "a symbolic, collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive criminal law." (*R. v. C.A.M.* [1996] 1 S.C.R. 500, at para. 81).

[33] The Crown acknowledges that specific deterrence is not a concern in this case.

Rehabilitation

[34] There is no identifiable need for rehabilitation in this case. At 73 years old, he is essentially a first offender. He has no addictions or mental health issues, no financial issues, and is fully employed.

Proportionality

[35] Section 718.1 says that the fundamental principle of sentencing is that a sentence must be proportionate to the gravity of the offence and the degree of

responsibility of the offender. It requires that a sentence not be more severe than what is just and appropriate given the seriousness of the offence and the offender's moral blameworthiness. It also requires that the sentence be severe enough to condemn his actions and hold him responsible for his conduct and the harm it has caused (*R. v. Lacasse*, 2015 SCC 64 at para. 12; *R. v. Nasogaluak*, 2010 SCC 6, at para. 42).

[36] Assessing the gravity of the offence requires me to consider the objective gravity of the offence and the relative gravity of Mr. Langille's specific conduct in the range of conduct that could constitute the offence.

[37] In s. 121(3), Parliament has mandated that an offence under this provision is an indictable offence and set the maximum term of imprisonment at five years. Removing from the Crown the option of proceeding by summary conviction is some indication of Parliament's view of the severity of the offence. As discussed above, the Supreme Court of Canada has said that an offence under s. 121(1)(c) is serious.

[38] I also have to place Mr. Langille's specific offending behaviour on the spectrum of conduct that could constitute an offence under s. 121(1)(c). I would place his conduct toward the higher end of that spectrum. The total amount of his benefit is not high as compared to a large-scale fraud. However, this was not a

single incident of a government official accepting a token gift. He had access to a bank card which he used repeatedly over a long period of time to pay for various living expenses. Unlike in some cases involving s. 121(1)(c), in this case, I have concluded that there was a risk of actual corruption because Mr. Langille had the power to assist Mr. Dawson. I have also concluded that Mr. Langille's actions contributed, albeit in a small way, to the commission by Mr. Ross and Mr. Dawson of a large-scale fraud on the government. I will discuss these conclusions in more detail when I address the aggravating factors.

[39] Mr. Langille is solely responsible for his own conduct. As a mature adult, he would have known in a general sense that what he was doing was wrong. As a long-serving government employee, he would also have known in a more specific way that his conduct was illegal and contrary to policy and ethical guidelines. His moral culpability is increased by the fact that he directed his employee to do things that favoured Mr. Dawson. It is further increased by the fact that it was at least foreseeable that his conduct would have an impact on the contracting process engaged in by Mr. Ross and that he had some knowledge of other improprieties, such as contract splitting, that Mr. Ross was engaging in with Mr. Dawson's businesses.

Aggravating and Mitigating Factors

[40] Section 718.2 requires that I consider the aggravating and mitigating factors relating to the offence and the offender. The Crown and Defence disagreed about some of those factors. The Crown submits it has proven the following aggravating factors: there was actual corruption or the risk of corruption; the offence involved a breach of trust; and, the broad consequences of the offence include the large-scale fraud perpetrated by Mr. Dawson and Mr. Ross. The Defence disputes these factors. Relying on *R. v. Nasogaluak,*, the Defence argues that Mr. Langille's rights under ss. 8 and 11(b) of the *Charter* were breached and these breaches can be taken into account to reduce the sentence. The Crown disputes that there were *Charter* breaches but acknowledges some mitigation from the circumstances relied on by the Defence.

Corruption or Risk of Corruption

[41] The Crown argues that the admitted facts establish that Mr. Langille had the power to assist Mr. Dawson and did in fact provide him with advantages during a time period when he was accepting benefits from Mr. Dawson. The Crown submits that this creates the appearance of corruption or the risk of corruption which is recognized in the case law as an aggravating factor. The Defence submits that, other than a brief period in 2008, Mr. Langille had no power to give Mr. Dawson any advantage. Further, the Defence argues that Mr. Langille has not

admitted, either through his plea or otherwise, that there was any *quid pro quo* or corrupt intent. As such, the Defence argues that no actual or risk of corruption has been proven.

[42] The Crown has not proven a specific transactional *quid pro quo* and none has been admitted by Mr. Langille. However, I am satisfied beyond a reasonable doubt that Mr. Langille had power to assist Mr. Dawson and did provide Mr. Dawson with advantages while receiving benefits from him. Mr. Langille had the authority to award contracts in 2008. During that time, he preferentially awarded contracts to Mr. Dawson and engaged in contract splitting which increased the number of contracts he could give him. This clearly benefitted Mr. Dawson. The Defence argues that, because Mr. Langille could not award contracts in 2009 to 2012, Mr. Dawson had no hope of consideration or advantage. I disagree. After 2008, Mr. Langille continued to have some ability to benefit Mr. Dawson in the requisition process and used that ability to assist him. He provided Mr. Ross with quotes only from Mr. Dawson's businesses, gave Mr. Dawson inside information and provided vague information on requisitions which made the inside information more valuable. The fact that Mr. Langille did have power to assist Mr. Dawson establishes the risk of corruption. The only reasonable inference from the facts is that the financial benefit received by Mr. Langille was in a general way connected

to the advantages Mr. Langille was providing to Mr. Dawson. That is how a reasonably informed member of the public would view this. As such, there is also an appearance of corruption. The Defence submits that Mr. Langille's actions in 2008 should not impact his sentence because of the passage of time. I disagree. The impact of the passage of time may be relevant in the sentencing process but that conduct continues to be relevant.

Breach of Trust

[43] The Crown argues that Mr. Langille's conduct is a breach of trust. The Defence disputes this, arguing at least in part that Mr. Langille did not plead guilty to an offence under s. 122 which specifically relates to a breach of trust by a public officer. That is of course true. However, he was in a position of trust and used that position to commit the offence. That breach of trust is an aggravating factor irrespective of whether he pleaded guilty to a specific offence relating to breach of trust.

Consequences of Offence

[44] The Crown also argues that the large-scale fraud on the government committed by Mr. Ross and Mr. Dawson is a consequence of Mr. Langille's

conduct. In making that argument, the Crown submits that Mr. Langille's actions "facilitated" and were "absolutely necessary" to the commission of the fraud. I accept that Mr. Langille's conduct may have contributed to their fraud. I have concluded that it was at least foreseeable that Mr. Langille's conduct would have an impact on the contracting process engaged in by Mr. Ross and that he had some knowledge of other improprieties that Mr. Ross was engaging in with Mr. Dawson's businesses. However, I cannot infer from the admitted facts that Mr. Langille's conduct was a necessary part of their scheme, that he was fully aware of the extent of their dealings or fully aware of the quantum of their fraud. The fraud is an important part of the context of this offence and a clear reminder of the importance of the laws, guidelines and policies that help prevent corruption.

Mitigating Factors

[45] The Defence alleges that Mr. Langille's s. 8 rights were breached because investigators obtained his personal information without a warrant and then used that information to support a Production Order for financial documents. With respect to s. 11(b), the Defence argues pre and post-charge delay. Mr. Langille was charged in 2016 but was aware of the investigation in 2013. The Crown acknowledges that if Mr. Langille pleaded guilty believing he had arguable issues at trial, that can increase the mitigation of the guilty plea. Further, the Crown

acknowledges that it is mitigating that Mr. Langille has had this matter hanging over his head for some time.

[46] In *Nasogaluak, supra,* the Supreme Court of Canada said that state conduct that is relevant to the offence or the offender can be considered at sentencing, regardless of whether it amounts to a *Charter* breach or not.

[47] I do not have enough information to assess the merits of the *Charter* claims. Based on the information I do have, even if I accept that Mr. Langille's personal information was improperly obtained without warrant, I would not find that any arising s. 8 violation would be particularly relevant to sentencing. Neither the type of information nor the way it was obtained were gross violations of Mr. Langille's privacy or dignity. I accept that if Mr. Langille pleaded guilty believing he had a viable s. 8 argument, the mitigating effect of his plea is increased.

[48] Excessive delay that is not attributable to the Defence is widely acknowledged as a mitigating factor in sentence without reference to the *Charter*. I accept that it is a mitigating factor in this case without having to comment on whether there was a breach of Mr. Langille's s. 11(b) rights.

[49] Therefore, in my view, the aggravating and mitigating factors are as follows:

<u>Aggravating Factors</u>

- the offence occurred over a three-and-a-half-year period;
- it required repeated acts with renewed decision to act;
- Mr. Langille had the authority to provide Mr. Dawson with advantage and did provide advantages during the time that he was accepting benefits from him so there was both the risk and appearance of actual corruption; and,
- the offence involved a breach of trust

Mitigating factors:

- Mr. Langille has pleaded guilty, believing he had viable arguments to make at trial;
- He has expressed embarrassment, shame and remorse and taken responsibility for his actions;
- Given the gap principle, he essentially has no criminal record;
- He has good family and community support;
- Mr. Langille has had this matter hanging over his head since he became aware of the investigation in 2013 and has been under charge since 2016; and,
- He is employed and financially responsible.

Parity / Range of Sentences

[50] Section 718.2 also requires that I consider the principle of parity. Within reason, a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. Each sentence has to reflect the unique circumstances of that offence and that offender, however, where a

sentence is different from other sentences imposed for the same offence, that difference has to be understandable (*R. v. LaCasse,*, *supra*; and, *R. v. Chase,* 2019 NSCA 36, at para. 41).

[51] Section 121(c), the specific offence that Mr. Langille has pleaded guilty to, differs from the offences in subsections (a), (d), (e) and (f) so care must be taken in looking at sentences for people who have committed offences under those other subsections.

[52] In support of its position the defence relies on: *R. v. Ruddock supra*; *R. v. Tanguay* (1975), 24 C.C.C.(2d) 77 (QCCA); *R. v. Sinasac* (1977), 35 C.C.C.(2d) 81; and, the unreported decision in *R. v. McKendry* (reviewed in *Ruddock, supra.*; *R. v. Cooper*, (1975), 7 O.R. (2d) 429 (ONCA); and *R. v. Cooper (No.2)*, (1977), 35 C.C.C. (2d) 35 (ONCA)).

[53] The Crown relies on *R. v. Hinchey*, *supra.*, *R. v. Serre,* (2013 ONSC 1732) and, *R. v. Elmadani,* 2015 NSPC 65., primarily for general principles. In support of its specific sentencing recommendation, it relies on the following: *R. v. Mathur, supra; R. v. Basi,*2010 BCSC 1622; *R. c. Tourville*, 2009 CM 1006; *R. v. Cochrane,* 2005 CarswellOnt 10531 (OSCJ); and, *R. v. Fontaine*, 2009 MBQB 165.

[54] Additionally, I have also reviewed: *R. v. Williams*, 29 N.S.R. (2d) 374 (NSCA); *R. v. Oatway*, ([1986] N.W.T.R. 64 (NWTSC); and, *R. v. Ross and Dawson*, 2020 NSSC 70.

[55] I have not been directed to, nor have I found, any recent Nova Scotia decisions involving individuals sentenced for offences under s. 121(1)(c). There are however some older decisions involving sentences under s. 110(1)(c), its predecessor.

[56] In *R. v. Ruddock, supra*, a fine of $2,000 was upheld on appeal for an offender who had pleaded guilty to an offence under s. 110 of the *Code*. He was the administrator of the Nova Scotia Liquor Licencing Board and had accepted Christmas gifts of sums of money over a period of four years totalling $1,000. A significant factor was the Court's conclusion that there was no possibility of actual corruption of Mr. Ruddock because he had no power to do anything in return for the gifts he received. When discussing general deterrence, the Court commented on the deterrent effect of the prosecution, public embarrassment and loss of employment.

[57] In *R. v. Williams, supra*, the Court of Appeal upheld a conditional discharge for an offender who had been found guilty of a s. 110(1)(c) offence. Mr. Williams

had been a chief collection officer with the Provincial Tax Commission. He accepted a game, valued at between $117 and $139, as a gift for his son from an individual who had some dealing with the Tax Commission. The Court accepted that Mr. Williams had no ability to influence any decision relating to the individual and had actually sought advice from his superior about the gift. The sentencing Court concluded that there was "no fraud, no bribery involved, no attempt to conceal the gift to his son, the seeking of advice from superiors, and the consequent inadequate and uninformed advice as to the criminal ramifications involved, and even - as stated by learned Crown prosecutor - the words, or the effect of the words were 'It might be best not to accept the gift.'" Mr. Williams had no record and was previously of impeccable character and lost his job as a result of his conduct.

[58] There are also decisions from other Provinces.

[59] In *R. v. Tanguay, supra.*, the offender was an assistant director at Central Mortgage and Housing Corporation. He accepted a television set valued at $305.00 from a contractor doing business with CMHC. The Court of Appeal imposed an absolute discharge, apparently to prevent loss of employment.

[60] In *R. v. Sinasac, supra*, the offender was found guilty of 8 counts under s. 110(1)(c) involving the receipt of benefits totaling $ 28,000 over a lengthy period of time. The Ontario Court of Appeal set aside an absolute discharge and substituted fines totalling $1,000. Mr. Sinasac had been an auditor with Customs and Excise Branch. He accepted payment in the form of a percentage of rebate for preparing and filing claims for people. His employment responsibilities included auditing claims for sales tax refunds, but he did not personally review any claims he had submitted and there were no corrupt results.

[61] In *R. v. Oatway, supra*, the offender pleaded guilty to an offence under s. 110(1)(c) and was sentenced to 5 months in jail. He was a Regional Airport Officer and was engaged in procuring a contractor to install a new beacon. In the course of negotiations for this work he suggested that the contractor increase his bid by some $20,000. The plan was for $15,000 of this to go to the accused and $5,000 to the contractor. He had no criminal record, strong letters of reference and was apparently motivated by frustration and depression.

[62] In *R. v. McKendry* (unreported but reviewed in *Ruddock, supra., R. v. Cooper*, *supra.*, and *R. v. Cooper (No.2), supra.*, the offender was sentenced to 6 months in custody for an offence under s. 110(1)(c). He was employed by the Federal Government. He received airfare and accommodation from Mr. Cooper on

four occasions, with a total value of $1,200. Mr. Cooper had applied for grants from Mr. McKendry's specific group and Mr. McKendry had approved one. The Court found there was no corruption involved in awarding the contract to Mr. Cooper, that Mr. McKendry had been dismissed from his employment without compensation, and otherwise had an impeccable reputation. The Court reasoned that he held a position of responsibility and trust, likely had significant influence over the awarding of grants so the appearance of the integrity of government was at stake.

[63] In *R. v. Mathur*, *supra*., the accused worked for the National Research Council. He was convicted of offences under ss. 121(1)(c) and 122 as a result of his referring work to a company controlled by his wife. His request for a conditional sentence was denied and he was sentenced to six months in custody ([2007] O.J. No. 4366). The sentence was upheld by the Court of Appeal.

[64] Finally, I have to consider the sentence that was imposed on Mr. Ross and Mr. Dawson for their part in the matters that brought Mr. Langille before me. They were both found guilty after trial of "fraud over $5,000", contrary to s. 380(1) and Mr. Dawson was found guilty of conferring a benefit on a government official contrary to s. 121(1)(b). They each received conditional sentences of two years less a day (*R. v. Ross and Dawson*, 2020 NSSC 70). Their life circumstances are

similar to that of Mr. Langille, however, their offences, both in general and their specific offending behaviour, are more serious.

Restraint

[65] Finally, s. 718.2 requires me to consider restraint. 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 and consistent with the harm done to victims or to the community should be considered for all offenders. This principle of restraint is particularly important when sentencing a first offender (*R. v. Colley,* [1991] N.S.J. No. 62; *R. v. Priest,* [1996] O.J. No. 3369; and, *R. v. Best,* [2005] N.S.J. No. 347 (S.C.), para. 25).

Analysis and Conclusion

[66] There are aggravating features in this case that make it very serious. I have concluded that Mr. Langille had decision-making authority in 2008 and used that authority to assist Mr. Dawson's companies. After that, he no longer had direct decision-making authority, but still had power to assist Mr. Dawson's companies and his actions give the appearance that he was continuing to assist Mr. Dawson's companies. As such there was the possibility and appearance of actual corruption.

The type of benefit, the amount received and the time period over which the conduct continued are all aggravating. Mr. Langille's conduct is a far cry from that of a government official who accepts a bottle of wine at Christmas. He had personal expenses paid by Mr. Dawson over a lengthy period of time while Mr. Dawson's businesses had dealings with government. This behaviour, in my view, would significantly undermine the public's faith in the integrity of government.

[67] The Defence submits that if custody is required, a conditional sentence would be appropriate in the circumstances. Mr. Langille is 73 years old, essentially has no criminal record, is apparently otherwise of good character and is employed.

[68] The Crown's opposition to Mr. Langille serving any custodial sentence in the community is not due to a concern that the public safety would be endangered. Rather, they submit that a conditional sentence does not provide sufficient denunciation and general deterrence.

[69] There is no doubt that a properly crafted conditional sentence order can achieve those objectives (*R. v. Proulx,* 2000 SCC 5). Punitive conditions can be imposed such as house arrest or curfew. Further, there have been pre-sentence or extra-judicial consequences here which also have some collateral denunciatory and

deterrent impact. Mr. Langille's family and community are aware of his criminal conduct. This has caused him embarrassment. The community at large, and specifically government employees, would also be aware of the charges through media coverage. For many, the arrest and prosecution would be enough to impress upon them that this type of conduct is criminal and deter them.

[70] I have concluded that denunciation and general deterrence require a custodial sentence in this case. However, in these circumstances, the principles and purpose of sentencing can be satisfied through a conditional sentence order. Allowing Mr. Langille to serve his sentence in the community and, thereby, maintain his employment will ensure that the sentence does not interfere with those aspects of his life that are pro-social and contribute to the long-term safety of the community.

[71] Having reached that conclusion, I have to turn my mind to the appropriate optional conditions to be imposed and the duration of the Order.

[72] I am aware that neither Mr. Ross nor Mr. Dawson were ordered to abide by a curfew or house arrest. Both were required to complete community service work and were sentenced to the maximum allowable term of conditional sentence.

[73] The Nova Scotia Court of Appeal has said that a conditional sentence should generally include punitive conditions that restrict the offender's liberty, that house arrest or strict curfews should be the norm and there must be a reason for failing to impose punitive conditions (*R. v. Cromwell*, 2005 NSCA 137, at para. 32). In *R. v. Proulx*, *supra*, the Supreme Court of Canada said that conditional sentences are capable of satisfying the principles of sentencing when deterrence and denunciation are paramount in large part because they can include punitive conditions. Lamer, J., writing for the Court, at para. 117, said that in setting the optional conditions, courts should be guided by four general principles:

> 117 . . . First, the conditions must ensure the safety of the community. Second, conditions must be tailored to fit the particular circumstances of the offender and the offence. The type of conditions imposed will be a function of the sentencing judge's creativity. However, conditions will prove fruitless if the offender is incapable of abiding by them, and will increase the probability that the offender will be incarcerated as a result of breaching them. Third, punitive conditions such as house arrest should be the norm, not the exception. Fourth, the conditions must be realistically enforceable. . . .

[74] Without punitive conditions that restrict Mr. Langille's liberty, a conditional sentence would not address the need for denunciation and general deterrence, and I can articulate no reason not to impose them here.

[75] Because a conditional sentence is less punitive than a sentence served in an institution, it is accepted that conditional sentences will generally be longer than a jail sentence for the same offence and offender.

[76] Given the aggravating and mitigating factors and the principle of parity, I have concluded that a conditional sentence of 12 months would address the principles and purposes of sentencing. Therefore, I am imposing a period of imprisonment of 12 months to be served in the community under the following conditions:

- Keep the peace and be of good behaviour;
- Appear before the Court when required to do so by the Court;
- Permission is granted for Mr. Langille to be outside the jurisdiction;
- Report to a Supervisor in Halifax within two working days and thereafter as directed by your supervisor;
- Notify the supervisor in advance of any change of name or address, and promptly notify the supervisor of any change of employment or occupation;
- Not possess or consume alcohol or any other intoxicating substances;
- Not possess or consume a controlled substance as defined in the *Controlled Drugs and Substances Act* except in accordance with a physician's prescription for him or a legal authorization;

- Abide by house arrest for the first 6 months of this Order at your residence in Alberta or your residence in Nova Scotia;
- Advise your supervisor in advance of which residence you will be in;
- The only exceptions to the house arrest are as follows:
    - When at regularly scheduled employment which your supervisor is aware of in advance and travelling to and from that employment by the most direct route;
    - When dealing with a medical emergency or medical appointment involving you or a member of your immediate family and travelling to and from by the most direct route;
    - When attending court at a scheduled appearance or under subpoena and travelling to and from by the most direct route;
    - When attending a scheduled appointment with your lawyer or supervisor and travelling to and from by the most direct route;
    - When attending a regularly scheduled religious service and travelling to and from by the most direct route;
    - With written approval of your supervisor given in advance;
    - For a period of 4 consecutive hours each week, approved in advance by your supervisor for the purpose of attending to personal needs; and,
    - When travelling between your residence in Alberta and your residence in Nova Scotia by the most direct route.

- Prove compliance with the house arrest condition by presenting yourself at the door of your residence or answering the telephone should your supervisor or other authorized person attend or call you to check on your compliance; and,

- Provide your supervisor with a valid phone number for a land line for both your residence in Nova Scotia and your residence in Alberta.

Elizabeth Buckle, JPC.