PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R v. Smith*, 2023 NSPC 17

Date: 20230508
Docket: 8464106, 8464107. 8464112, 8464113
Registry: Kentville

Between:

His Majesty the King

v.

Tina Lee Smith

Judge:	The Honourable Judge Ronda van der Hoek,
Heard:	February 21, 2023, in Kentville, Nova Scotia
Decision	February 28, 2023 **Sentencing Decision**
Charge:	Section 5(2) Controlled Drugs & Substances Act Section 7.1(1)(b) Controlled Drugs & Substances Act Section 91(1) Criminal Code of Canada Section 91(1) Criminal Code of Canada
Counsel:	Michael Taylor, for the Crown Nicholas Fitch for Tina Smith

Cases considered: *R. v. Scott*, 2013 NSCA 28; *R. v. Chase*, 2019 NSCA 36; *R. v. Howell*, 2013 NSCA 67; *R. v. Livingstone; R. v. Lungal*; *R. v. Terris*, 2020 NSCA 5 and *R. v. Hickey*, 2023 NSSC 33

By the Court:

Introduction:

[1] Following a three-day trial, I found Mrs. Smith guilty of four charges: two counts of unauthorized possession of firearms, contrary to section 91(1) of the *Criminal Code of Canada*; possession of cocaine for the purpose of trafficking, contrary to s. 5(2) of the *Controlled Drugs and Substances Act* and possession of tools for use in trafficking contrary to s. 7.1(1) of the *Act*. (*R v. Smith*, 2022 NSPC 39)

[2] In reaching decision on sentence the Court considered a pre-sentence report, four letters of support from family and friends, submissions of counsel and case law presented for my consideration. On a busy plea day, I provided an abridged version of my written reasons with promise of this complete decision to follow.

Background:

[3] The convictions arose following execution of a warrant to search the Smith family residence. Mrs. Smith was sitting outside the house with a number of children when police arrived to execute the warrant. She complied with their direction and permitted entry through the front door. Inside the house, police located and arrested a fleeing Mr. Smith who first grabbed cocaine from the

kitchen counter and attempted to flush it down the toilet while wrestling a police officer. Six grams of cocaine was located behind the toilet.

[4] In the house police located various paraphernalia related to possession for the purpose of trafficking including scales that tested positive for cocaine, a 10-gram weight, two spoons containing cocaine residue, a cell phone with coded language, cash, imitation firearms, a taser, dime bags, a larger bag with cocaine residue, 6 grams of cocaine, and a safe containing $3,000.00. The majority of the items were seized from the kitchen counter.

[5] Outside the house, an otherwise compliant Mrs. Smith told police she did not have a key to a locked seacan located at the end of the driveway. Police eventually gained entry to it and located therein two firearms in locked cases stored without nearby ammunition. Mrs. Smith was not the holder of a licence under which she might possess firearms.

Sentencing positions:

[6] The Crown seeks a total two-year federal sentence of incarceration and notes same remains the starting point based on provincial appellate case law. While the presentence report (PSR) was generally positive, setting out an unsettled parental situation while growing up, hers was an otherwise decent childhood. She

minimized her own involvement in the offences as well as that of Mr. Smith who she described to the PSR author as one who “used cocaine a little”. The Crown points out that they are married, and she must be taken to be aware that her husband has, once before, served a period of federal incarceration for similar offences.

[7] Defence counsel seeks an eighteen-month conditional sentence order and reminds the Court that recent legislative changes render that an available sentence. He asks the Court to review previous sentencing decisions when same was available, and agree Mrs. Smith meets the test for such a disposition. She is not a danger to the community as a minimally involved person who was not the principal offender. The principles and purposes of sentence can be achieved despite the Crown’s concerns such as Mrs. Smith’s comment to the author of the PSR that her husband used a little cocaine. He says that is not an aggravating factor on sentence.

The presentence report:

[8] The PSR explained that Mrs. Smith was born to a young mother and raised by her maternal grandmother. She was actively involved in community sports and mentored youth in the sport in which she excelled. Her childhood was free from any form of abuse- substance or otherwise. She was devasted by her grandmother’s death.

[9] Mrs. Smith was in a 12-year relationship that produced children. Her partner abused alcohol and was described as “not nice”. Their situation attracted the attention of Family and Children Services, the relationship ended, and after some time Mrs. Smith gained custody of the children. While the report was somewhat sparse, I easily conclude Mrs. Smith was severely impacted by this dysfunctional relationship.

[10] Following the end of that relationship, she married her co-accused and they have been together for over eighteen years. They share two children, and she is also close to the children he fathered with another woman during their marriage.

[11] Over the course of the pandemic her husband left his employment and remained at home. She continued her full-time employment.

[12] Her husband was interviewed for the report. He says Mrs. Smith is “a good mother who may suffer from anxiety due to dealing with the pandemic and current Court matters over the past couple of years”. Furthermore, he stated that to his knowledge, she has never attended counselling. Mr. Smith became emotional speaking of the current offences and expressed his devastation at watching his wife before the Court for a ‘stupid’ choice he made. He indicated the index offences

“are not a true reflection of Tina Smith's character, for she had nothing to do with the violations”.

[13] Her mother-in-law was interviewed and described Mrs. Smith as “gainfully employed and an excellent provider to the children”.

[14] Mrs. Smith is 50 years old, completed grade ten, and has been gainfully employed since the age of fourteen. She does not use substances and is reportedly a homebody who is deeply connected to her children. She described her weakness as not dealing well with confrontation.

[15] Mrs. Smith was asked about the offences and “indicated she intends to be more aware of her surroundings and ensure they remain unproblematic” and “advised she considered the nature of the offences as serious but noted she was found guilty. She discussed how Shaun Smith used cocaine ‘a little’ and reflected on how he should have locked the substance up because of the children within the home” and says, “her husband is aware she is angry about the current offences before the Court”.

[16] The author of the PSR summed up the situation:

> Ms. Smith is gainfully employed and has strong support within the community. She asserted there have never been any concerns regarding her substance use, nor does she feel there are any issues with anger management or mental health.

> Collateral contacts highlight an individual who does not appear to have any areas of concern, is family-oriented, thoughtful and an excellent provider to her children.

Allocution:

[17] Mrs. Smith took the opportunity to allocute and spoke extensively about her children and the impact the offences have had on her family. She asked the Court to allow her to stay home with her children noting she is embarrassed, ashamed, and successfully dealt with Family and Children Services who left the children in her care. She says she is extremely remorseful and fighting for her family to remain together. She spoke of the impact the stress of the situation has had, and continues to have, on her entire family.

The Law:

Sentencing Principles

[18] The relevant sentencing provisions that I must consider are set out in the *Criminal Code* at sections 718, 718.1 and 718.2 and the *Controlled Drugs and Substances Act* at section 10. They provide the general principles and factors a court must consider in fashioning a sentence that serves to protect the public and contribute to respect for the law and the maintenance of a safe society.

[19] Section 718 instructs a court to impose a just sanction that has, as its 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.

[20] Section 718.1 says it is a fundamental principle of sentencing- that a sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[21] Section 718.2 requires a court to consider the aggravating and mitigating factors relating to the offence or to the offender and increase or decrease a sentence accordingly; the principles of parity and proportionality; that an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and that 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.

[22] Section 10 of the *CDSA* incorporates the foregoing principles and requires a sentence that encourages treatment of offenders in appropriate circumstances.

[23] Sentencing has an overarching goal of promoting the long-term protection of the public. As a result, the Court must balance the relevant principles and purposes of sentencing and apply them to the facts to arrive at a fit sentence. This is not an

easy task, but one that should be undertaken with careful reflection. Fortunately, case law provides guidance as to how a court should interpret and balance these principles, guiding how they should be applied to different categories of offence. However, the best means of addressing the principles and attaining the ultimate objective will depend on the unique circumstances of the case and the offender who appears before the court. Because of that, it has been consistently recognized that sentencing is a delicate and inherently individualized process (*R. v. Lacasse,* 2015 SCC 64 at para. 1 and *R. v. M. (C.A.),* 1996 SCC 230 at para. 91-92).

Denunciation and Deterrence

[24] Over the years, the Nova Scotia Court of Appeal has reconfirmed that denunciation and general deterrence must be the primary considerations when sentencing offenders who traffic in Schedule I drugs. (*R. v. Chase,* 2019 NSCA 36; *R. v. Steeves,* 2007 NSCA 130*; R. v. Butt,* 2010 NSCA 56*; R. v. Scott,* 2013 NSCA 28; *R. v Oickle,* 2015 NSCA 87; recently reaffirmed in *R. v. White*, 2020 NSCA 33 at para. 76, *R. v. Kleykens*, 2020 NSCA 49). Emphasizing these objectives reflects society's condemnation of these offences and acknowledges the harm they do to communities.

[25] It is useful to quote paragraph 13 of the *Butt* decision:

> [13] … cocaine has consistently been recognized by this Court as a deadly and devastating drug that ravages lives. Involvement in the cocaine trade, at any level, attracts substantial penalties … It is significant that the *CDSA* classifies cocaine as one of the drugs for which trafficking can attract a life sentence.

Rehabilitation:

[26] Despite the focus on denunciation and general deterrence, rehabilitation continues to be a relevant sentencing objective. That said, consideration of an offender's prospect for rehabilitation has a reduced impact in sentencing those who possess hard drugs for the purpose of trafficking and, indeed, weapons without authorization. (*Kleykens*, *supra*, at para. 66)

[27] The Crown says it is difficult to assess Mrs. Smith's prospects for rehabilitation given a lack of acceptance of responsibility for what went on in her house where her children live. My sense she needs to stand up for herself, and the law, in her house.

Proportionality:

[28] The proportionality analysis requires the court to first assess the gravity of the offence. The second step requires consideration of Mrs. Smith's degree of responsibility.

[29] Possession of cocaine, a Schedule I drug, for the purpose of trafficking is a serious offence. It carries a maximum sentence of life imprisonment, cannot be

subject to discharge, but now qualifies for a conditional sentence order as a result of the recent change to the law. In this case the amount of the drug seized was on the low side- 6 grams. Cocaine is generally recognized as a hard drug that ravages communities by both the addictions it creates and supports, as well as the spinoff crimes that result from the trade.

[30] Possessing firearms without being the holder of permit is an offence that is particularly concerning in this province given the recent mass murders. These particular firearms were located in a locked seacan inside locked cases. They were not loaded, and their serial numbers were not obliterated. As I recall, they appeared to be hunting-type firearms. They were not readily accessible to the children and indeed not located near the cocaine.

[31] Defence counsel emphasizes that the two firearms were locked away in cases inside the locked seacan, and this should not be taken to aggravate the possession of cocaine charge. Instead, he argues this is a case of a wife who looked the other way when the primary person, her husband, involved himself in the illegal operation and possessed firearms while subject to a prohibition order. She is not the primary, he is. That position finds support in police locating additional cocaine in his truck parked on the property and his evasive actions taken when police arrived on the property as compared to the compliant actions of Mrs. Smith.

[32] Counsel says while she had knowledge of it, there is every reason to believe Mrs. Smith was not an active participant in the petty retail drug operation conducted in open view on her property.

[33] With respect to the guns, Mrs. Smith was also not subject to a prohibition order, as was her husband, and while she did not have a permit, it is arguable that the firearms were not readily accessible to her given her comment to police that she did not have a key to the seacan.

[34] The Crown says the petty retail operation was conducted in the face of a dangerous combination of factors- children living in the home and indeed playing just outside the door where cocaine and paraphernalia were located on the kitchen counter, the presence of firearms, and Mr. Smith's struggle with police as he tried to dispose of evidence. He points out that Mrs. Smith placed herself, as well as the young children, in danger by allowing connection to Mr. Smith's activities.

[35] In assessing Mrs. Smith's degree of responsibility, I applied the *Fifield* categories, "the isolated accommodator of a friend, the petty retailer, the large retailer or small wholesaler or big-time operator". Mrs. Smith was not accommodating a friend but turning somewhat of a blind eye to her husband's activities in her house around her children. The Crown has defined the operation as

petty retailer and I accept that characterization. (*R. v. Fifield*, 1978 CanLii 812 (NS CA)

[36] Mrs. Smith was found guilty following trial, was cooperative with police upon arrest, has expressed sincere remorse, is employed full time, benefits from family support, and has a history of not so enviable domestic relationships.

[37] I find Mrs. Smith's degree of responsibility relatively low in relation to her husband. I suppose it is not unusual that a woman with young dependant children may not be a position to control or manage her husband's activities; her PSR suggests she is non-confrontational. Her husband's PSR, which I have also reviewed, suggests that may indeed be the case. The operation appears focused on profit because there is no evidence of a drug addiction in the household, but it is also fair to say obtaining cocaine for resale must involve trusted contact with criminal operations at some level. Based on the visitor who came that day, it is far more likely than not her husband was the one with those contacts.

Aggravating and Mitigating Factors:

[38] Section 718.2 of the *Criminal Code* requires identification of both the aggravating and the mitigating factors relating to the offence and the offender.

[39] The Crown points to the following aggravating factors: the Schedule I drug; the presence of firearms, albeit locked away in cases in the seacan; a number of very young children residing in the house; imitation firearms in the bedroom; a taser in the kitchen; her connection to the lifestyle; a dangerous mix of drugs and guns present in a family home; the financial motivation for the offences; and finally, that Mrs. Smith allowed this to occur in her house.

[40] While acknowledging the relatively small amount of drug, the Crown says that is not a mitigating factor as is the case for Mrs. Smith's very dated criminal record. He acknowledges her gainful employment and the letters of support, adding surely anyone can find friends and family to say nice things. The Crown says while unfortunate she would leave behind young children, there is no reason to deviate from a two-year federal sentence of incarceration.

[41] Defence counsel notes Mrs. Smith is essentially without a record, is full-time employed, leads an otherwise pro-social life, and despite being on bail conditions since 2020, has never breached any of those conditions. She has demonstrated that she can comply with the direction of the court, does not use drugs, has no addiction issues whatsoever, and is a devoted parent to young children.

[42] To that I would add cooperation with police, and her allocution that demonstrated remorse, embarrassment, shame, and an understanding of the effects of her choices on her family.

Parity / Range of Sentences

[43] Section 718.2 of the *Code* requires the Court to consider the principle of parity by examining the range of sentences imposed for possession for the purpose of trafficking Schedule I substances. As the Nova Scotia Court of Appeal said at para. 68 in *R. v. White, supra, "*one of the functions of parity is to ensure fairness and guide our responsibility as judges to impose a sentence that is just and fair". There is of course a connection between proportionality and parity, as individualization and parity of sentences must be reconciled for a sentence to be proportionate (*Lacasse*, *supra*, at para. 53).

[44] In *R. v. Kirkpatrick*, 2019 NSPC 56, I had occasion to review a long line of case law involving the *CDSA* sentencing regime, local decisions, and cocaine. Since that time, our Court of Appeal decided *White*, *supra*, and other crown appeals of non-carceral sentences imposed for possession for the purpose of trafficking offences in the province. While recognizing a two-year sentence may not always be a fit sentence for some offenders, that court continues to support the

oft referenced direction that cocaine traffickers should generally expect to be sentenced to imprisonment in a federal penitentiary. (See also: *Kleykens*, *supra*, and *White*, *supra*. Prior to that - *Steeves*, supra; *Knickle*, *supra*; *Butt*, *supra, R. v. Jamieson*, 2011 NSCA 122; and *Oickle*, *supra,* 87)

[45] Conditional sentences are once again an available tool in the sentencing toolbox for this offence and I am asked to impose this sentence. As such the defence asks the Court to consider the non-carceral sentencing decisions that have stood up to scrutiny. I am familiar with many of those decisions as they have formed the foundation for non-custodial sentences I imposed for offences under the *CDSA* of which I will say more later. (See also: *R. v. Scott, supra;* and, *R. v. Howell, supra*, *R. v. Chase, supra*.)

[46] While I have more often than not found it necessary to impose periods of federal incarceration for offenders convicted of section 5 *CDSA* offences, I will say a word about what is necessary and what is not to move the consideration away from incarceration. In *R. v. Scott, supra*, Beveridge, J.A., writing for the majority, concluded that it was not necessary for a sentencing judge to find "exceptional" circumstances to justify imposing a sentence lower than two years for trafficking cocaine (at para. 53). He reminded sentencing judges that the task in imposing a sentence for cocaine trafficking is the same as any other offence – "considering

all of the relevant objectives and principles of sentence as set out in the *Criminal Code*, balancing those and arriving at what that judge concludes is a proper sentence" (para. 26).

[47] *Scott* and *Chase* stand for the proposition that while it may be rare for a cocaine trafficker to receive a sentence less than a federal penitentiary term, where the court properly applies sentencing principles that justify the result, a sentencing judge is not required to make any specific finding that the circumstances are exceptional.

[48] Based on the majority decision in *Scott, supra*, reiterated in *Rushton,* 2017 NSPC 2, the lower end of the range has generally been imposed in cases involving one or more of the following: addictions; a youthful offender; limited or no prior record; relatively small amount of the drug; hope of rehabilitation; compelling *Gladue* factors for an aboriginal offender, and an absence of aggravating factors, statutory and otherwise.

[49] As was noted in *R. v. Zachar,* 2018 ONCJ 631, a decision of Green J. of the Ontario Court of Justice, the range across Canada is broad and includes, in some provinces, intermittent sentences or suspended sentences with probation. He included reference to many such cases including: *R. v. Peters,* 2015 MBCA 119*; R.*

v. McGill, 2016 ONCJ 138*; R. v. Maynard*, 2016 YKTC 51*; R. v. Voong*, 2015 BCCA 285*; R. v. Carrillo*, 2015 BCCA 192*; R. v. Fergusson*, 2014 BCCA 347*; R. v. Arcand*, 2014 SKPC 12*;* and, *R. v. Yanke*, 2014 ABPC 88.

[50] Setting a range of sentence encourages consistency across the province as well as the country, but ranges, "are guidelines rather than hard and fast rules" (*R. v. Nasogaluak*, 2010 SCC 6 at para. 44).

[51] It is clear I can impose a sentence of less than two years if the sentence I impose is a lawful one that adequately reflects the principles and purposes of sentencing (*Nasogaluak, supra*, at para. 44).

[52] In *R. v. Saldanha*, 2018 NSSC 169, the court referenced *Scott* at paragraph 108 wherein Justice Saunders suggested some examples of the types of factors that a court might consider: the offence being a single one-time event; it being completely out of character and an aberration in the life of the offender for which great pain had been taken to make amends.

[53] The Court in *Saldanha* also suggests the grave hardship that a lengthy period of incarceration may cause, **the impact on dependents**, any deterioration of health due to a serious illness that likely could not be properly treated in prison. Mrs. Smith has a number of quite young children who depend upon her.

[54] In *R. v. Morrison*, 2019 NSPC 38, Judge Peter Ross' imposed an eight-month period of incarceration for a low-end retailer found in possession of 60 grams of cocaine. Mr. Morrison plead guilty, his PSR was positive, his family support strong, and since being charged he had engaged in commendable conduct in the community. The cocaine was valued at $100 per gram - $6,000.00. He was a user himself and claimed grief as a factor triggering his own use. He had a long and varied work history and his family asserted that he had disavowed the drug scene, taken on volunteer work, and maintained employment.

[55] In rejecting the request for a suspended sentence, Judge Ross considered recent reported decisions from the bench wherein such had been imposed and distinguished Mr. Morrison's situation noting his plea was not early, he was found with a greater quantity of drugs than in comparator cases – *Rushton*, *supra*, 6 grams of cocaine, *Casey*, *supra*, 0.23 grams of crack cocaine, *Saldanha*, *supra*, approximately 8 grams and *R. v. Provo*, 2001 NSSC 189, 0.67 grams.

[56] Judge Ross agreed that calls for leniency are understandable but must be tempered by an awareness of the destructive effects of hard drugs. He concluded a significant period of incarceration was required and the strong mitigating factors served to reduce an otherwise appropriate two-year sentence to eight months and probation, taking into account, *inter alia*, the significant amount of cocaine seized,

and Mr. Morrison's daily involvement in purchasing and distributing a Schedule 1 drug.

[57] As mentioned, I have sentenced three individuals to non-custodial sentences for offences under section 5 of the *CDSA*.

R. v. Nicholson (unreported, [November 26, 2018] (Crown appeal from sentence abandoned): Mr. Nicholson possessed approximately 1900 methamphetamine pills for the purpose of trafficking. His relevant *Gladue* factors, serious long-term drug addiction, some of the pills intended for his own use, finally beating his addiction through significant, sustained rehabilitative efforts, resulted in a non-custodial sentence.

R. v. Wilcox (unreported, [February 7, 2019]): An elderly first offender afflicted by a variety of medical conditions gave to a friend a number of pills from her own oxycodone script and received a suspended sentence and three years of probation.

R. v. Ward (unreported [June 17, 2019]): A middle aged first offender with a long-term addiction to pills, pestered by two fellow addicts relented and gave them two pills. The two men suffered an adverse reaction that required emergency medical intervention. Mr. Ward received a "shocking wake up call" and immediately addressed his own long-term addiction through sustained and intensive therapy and engaged in laudable efforts to assist other addicts in his community. He was supported by a significant number of community members including his employers and recipients of his recovery focused support. His sentence was suspended, and he was placed on probation for three years with significant community service hours.

[58] In *R. v. Livingstone*; *R. v. Lungal*; *R. v. Terris*, 2020 NSCA 5, the court substituted suspended sentences and probation for eighteen-month periods of incarceration for all but Ms. Lungal, whose sentence was upheld.

[59] Mr. Livingston possessed 14 and 22 grams of cocaine in two spots in his house. He was cooperative at execution of the warrant and plead guilty. He was young and without a criminal record, and in the business by his own choice and for profit.

[60] Mr. Terris was also subject to execution of a warrant at his house. He was found in possession of 52 grams of cocaine. He was without a criminal record and his friends and family were shocked by his actions.

Reasonable Alternatives to Custody

[61] I must consider reasonable alternatives to custody. I note an offender should not be deprived of liberty, if there are less restrictive sanctions that are appropriate in the circumstances and that are available other than imprisonment. They must be reasonable in the circumstances and consistent with the harm done to victims or to the community and should be considered for all offenders.

[62] *R. v. Proulx* set out the well-known test that sentencing judges must apply when considering whether to impose a conditional sentence. It also reminds the Court that, "[c]onditional sentences are designed as an alternative to incarceration in order to encourage rehabilitation, reduce the rate of incarceration, and improve the effectiveness of sentencing".

[63] Our Court of Appeal considered and affirmed the appropriateness of a conditional sentence order in *R. v. K.R.D., supra,* involving an unsuccessful Crown appeal same for sexual assault upon a young daughter over a period of five years. In confirming the conditional sentence was not statutorily barred, the Court acknowledged that Judge Ross, the sentencing judge, recognized that by serving the sentence in the community, a relatively small one in that case, the goals of denunciation and deterrence were more likely to be achieved than in a larger community. Judge Ross concluded house arrest "can have a more stigmatizing and negative and denunciatory effect than it would in a large city where people are more anonymous and where people don't understand what their neighbours are doing...".

[64] After reviewing the foregoing, I conclude that a sentence of less than 2 years is fit and appropriate in the circumstances. Mrs. Smith's circumstances, I find, are sympathetic- she has a limited unrelated criminal record, was not the primarily involved individual, and appears to have followed along with her husband who was not the first in a serious of men in her life with concerning issues. But for the firearms, I would have considered imposing an eighteen-month CSO, but those additional charges support the imposition of a sentence of just under two years.

[65] I also reviewed *R. v. Ramos*, 2023 ONSC 1094, a decision that followed the change in the legislation making a CSO an available sentence option. That case involved more serious charges and a vulnerable woman with reduced moral culpability.

[66] Since hearing the sentencing submissions, I balanced and carefully considered the facts of this case, the contents of the PSR, and reviewed the case law. The mitigating factors, I find, substantially outweigh the aggravating factors. I am satisfied that a period of federal incarceration is not necessary to meet the sentencing principles applicable in this case- denunciation and general deterrence. Two years less a day is a fit sentence.

[67] I am satisfied that denunciation and deterrence can be achieved by imposition of a conditional sentence order with strict conditions including house arrest and curfew. Such a sentence will not endanger the safety of the community and is consistent with decreasing the use of incarceration in a facility. The sentence is a fit one for this accused in the circumstances. It balances the need for general deterrence and denunciation with rehabilitation in the sense that the counselling I am ordering will assist Mrs. Smith to learn how to better protect herself and her children, that based on the very complete picture of Mrs. Smith provided by the materials prepared for this Court.

[68] I will also take a moment to say that this sentence should not be considered light, a CSO is after all jail in the community. It recognizes that due to Mrs. Smith's particular role in the offence, and her unique circumstances, as set out in the PSR, actual incarceration would adversely impact both her and her young dependants. This sentence affords a better opportunity to restore balance by preventing future offences as a direct result of the counselling component-assertiveness training.

[69] I am also satisfied that all the sentences should be served concurrently one to the other as they are linked in time and arose out of the same circumstances.

[70] The CSO will be for a period of 24 months, with the conditions recommended by counsel. The sentence will be divided between twelve months of house arrest and twelve months of curfew. I am reminded of the Supreme Court of Canada's direction:

> [C]onditions such as house arrest should be the norm, not the exception. This means that the offender should be confined to his or her home except when working, attending school, or fulfilling other conditions of his or her sentence, e.g. community service, meeting with the supervisor, or participating in treatment programs. Of course, there will need to be exceptions for medical emergencies, religious observance, and the like."

Judgment accordingly

van der Hoek J.