

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R v Kitch*, 2026 NSPC 6

Date: 20260204
Docket: 8277386
Registry: Halifax

Between:

His Majesty the King

v.

Tracey Leanne Kitch

DECISION ON SENTENCE

Judge: Associate Chief Judge Ronda van der Hoek

Heard: January 6, 2026

Decision: February 4, 2026

Charge: Section 380(1)(a) *Criminal Code*

Counsel: Peter Dostal and Alex Keaveny, for the Public Prosecution Service of N.S.
Nicholas Fitch, for Ms. Kitch

By the Court:

Introduction

[1] Following trial, Ms. Kitch was found guilty of one count of fraud over \$5,000.00 (*R v Kitch*, 2025 NSPC 23 (CanLii)). She is now before the Court for a decision following sentencing submissions and my review of counsel's briefs and submitted caselaw.

[2] Ms. Kitch was the CEO of the IWK Children's Hospital when she used IWK resources, including a corporate credit card, flight passes, and taxi and limousine services, for personal purposes. After doing so, most of these personal expenses were accounted for on related IWK financial accountability documentation, Credit Card Expense Reports (CCER), where she attested that those purchases were IWK business-related expenses. She also failed to honestly disclose the true nature and extent of her personal spending to the IWK Board of Directors.

[3] The Crown says her actions represent a serious breach of trust that requires a carceral sentence of nine-months with probation to follow, and various ancillary orders. The defence agrees that a period of incarceration is warranted, however argues Ms. Kitch meets the test to serve that sentence in the community on a

lengthy Conditional Sentence Order [CSO]. Probation and ancillary orders are conceded.

[4] The substantive issue to be decided is whether Ms. Kitch meets the test for a CSO. While there is no debate she meets four of the five prerequisites for such a sentence, the fifth is the focus of my consideration- Is such a sentence consistent with the purpose and principles of sentencing?

Personal Circumstances:

[5] Sentencing is a highly individualized process, and the Court ordered the preparation of a presentence report [PSR] to, among other things, assist in understanding Ms. Kitch's personal circumstances, allow her to express her attitude about the offence, and present information from people in her life. While Ms. Kitch did not testify at trial, she contributed to the preparation of the report and chose to allocute at the sentence hearing.

[6] Ms. Kitch is 65 years old first offender, raised in Toronto, Ontario by parents who were employed in insurance and marketing. She and her brother benefited from a financially stable upbringing, and a close family unit. Ms. Kitch spoke of time spent at the cottage, riding, skiing, and an absence of drama or trauma. Even after her parents divorced when she was between 14-15 years old,

Ms. Kitch maintained close relationships with both and eventually their new partners. Her parents are deceased. In 2023, her mother and brother died within three months of each other. This information was confirmed by Ms. Kitch's friend and former colleague Alison Quigley.

[7] Ms. Kitch reported a long-term stable marriage of 30 years to a supportive husband. The marriage produced four children, including triplets, and her husband stayed home to raise the children while she worked in nursing. Family life was active for the children and included regular travel to eastern Canada to spend time with their paternal grandfather. While Ms. Kitch listed four adult dependants in her PSR interview, the children are now adults in their mid to late twenties. The family information was confirmed her friend Ms. Cindy MacDonald.

[8] Ms. Kitch reported completing an undergraduate degree with honours and attending the University of Toronto, where she met her husband while completing a Master of Nursing. She professed a love of learning and does not rule out more education in the future.

[9] Her employment background includes working as a nurse for 22 years, first as a front-line nurse, then a clinical nurse specialist, and finally in nursing management. From there she was recruited for the position of CEO at the IWK

where she worked from 2014 until 2017 when she was terminated due to the matters before the court. Since then, she has been employed as a contract nurse and in the film industry. She is currently unemployed and in receipt of employment benefits. Ms. Quigley also confirmed the employment situation.

[10] Ms. Kitch provided four personal references. A former colleague, Ms. Alison Quigley, says Ms. Kitch “was highly respected and known for putting patients and families first ... she was a great nursing leader, truly”. She “has suffered more than anyone will ever know. She has no money, and her husband was a stay-at-home dad. She pays rent and is selling her belongings and is still a strong partner and friend. She has suffered enough.” “She is kind-hearted and caring. Very smart and can see through complexities and politics ... is a devoted and caring mother and friend.”

[11] Ms. Cindy MacDonald, a friend, says “[E]ven with her life being turned upside down, she has managed to keep a positive outlook and recognizes the things the news says is not her, and she continues to find work where she can. She has made a name for herself in the movie industry where other people could have broken down.” Ms. MacDonald also expressed upset about “chatter at work and people talking about Ms. Kitch without really knowing the situation”, adding she does “not understand the verdict, and it does not ring true to those of us who know

Tracy”. She is confused about “the Tracy portrayed in the media versus the Tracy she knew and worked with”. She says Ms. Kitch is “resilient compassionate and caring”. She also takes issue with a description of her friend not wanting to move to Nova Scotia, emphasizing the family situation at the time. She says Ms. Kitch and her husband had a conversation with their kids and decided to stay there until they finished school. She says they felt that it was the right decision and Mrs. McDonald supported her in that.

[12] Mr. McGrath, a former colleague, says Ms. Kitch is “energetic, kind, knowledgeable, forward thinking, honest, and engaged”. He worked closely with her and spoke of her leadership skills – “busy, engaged as the hospital took up a lot of her time, responsible and showed up”. He “didn't like her executive assistant at the time. When you're working 12 to 14 hours a day, your executive assistant steps in and needs to help you with financial things. My opinion is Ms. Kitch was sloppy in covering and making sure that her executive assistant did her jobs.” He says he can see how it could happen, “she was obviously sloppy” ... “You could not do that type of job without relying heavily on your executive assistant. She relied on the wrong person.” Additionally, Mr. McGrath stated, “I just thought she was a very decent and hardworking person who had the best interest of the IWK at heart. I still feel that.”

[13] Mr. Spencer, a family friend, says he has worked in child welfare for many years and seen people who deserve to be punished, and Ms. Kitch is not one of them. He says she is a wonderful person who does not deserve to go through this “Her life and career will never be the same and that's punishment enough”. He says, “she doesn't have a job or her reputation anymore and it should be done”.

Attitude about the offence:

[14] Ms. Kitch told the PSR author she does not “feel that what I did was malintent or dishonest”. She says, “I've always struggled with it to be honest”. She says she was not intentionally trying to defraud Nova Scotia. Says when offered the position, she was unable to move her whole family right away because three of her four children were still in high school. She says they were working toward that goal including purchasing property and a home. She said she was doing what was in the best interest of her family and just delayed the move.

[15] Ms. Kitch says that during the transitional period she was given a travel card to use, and all her expenses were submitted and signed off on, therefore, she never felt that what she was doing was wrong.

[16] According to Ms. Kitch, when questions arose about her expenses, she was honest and forthcoming stating, “I went through all the expenses with the auditor. I

also worked with the Director of Finance and sat down with her and went through everything, and if she had any questions I would answer. I told them if anything did not fit within the policy, I would pay for it". She says she paid back everything asked of her, including things she did not agree with. She said for the sake of resolving everything, she paid and "I assumed responsibility by resigning and in good faith settled things with the organization". She says she worked with a lawyer, and believes she is not guilty. She says "I don't sit here today and feel like anyone is owed in debt. I worked in good faith to try and settle everything, and I don't know what else I could have done."

Allocution:

[17] While Ms. Kitch need not say anything, her allocution very much mirrored her comments to the author of the PSR. She also told the Court that she was grateful to serve as CEO and proud of their work. She elaborated that she repaid some amounts that had *previously been approved as business and relocation expenses but were later reclassified as personal through the review process*. She acknowledged being ultimately responsible for decisions and practices related to her expenses, and resigned in recognition that the right processes, supports, and staff were not in place to facilitate expense reporting, "I did not prioritize alongside other issues I was dealing with... I should have and feel badly about that."

The Law:

Sentencing Principles

[18] The relevant sentencing provisions that the Court must consider are set out in the *Criminal Code* at sections 718, 718.1 and 718.2. Those sections provide the general principles and factors at play when 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. There is no question that denunciation and deterrence are the primary factors in this case.

[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] 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 purpose of sentencing and apply them to the facts to arrive at a fit sentence. This is not an easy ask, but one that should be undertaken with careful reflection. 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).

Assessing the Gravity of the offence:

[23] The Crown says, at her peak Ms. Kitch was nationally celebrated for making the 2017 list of *Canada's Most Powerful Women* by the *Women's Executive Network*. She was appointed by the Minister pursuant to the *Health Authorities Act*, SNS 2014, c 32 as the Chief Executive Officer of the largest Children's Hospital east of Montreal, an institution dedicated to providing health care to mothers and children in Nova Scotia. This position is not merely a job, but the highest-level appointment as a top paid civil servant with a starting salary of \$280,000.00 per year. Despite her stature and success, she conducted herself with a level of entitlement that placed her above the institution and its important objectives, with everything, including her personal expenditures, as beneath her. A fit and proper sentence must communicate that the public trust should not be taken lightly and that exploitation of a position of a senior executive attracts significant penalties.

[24] In my trial decision I found, “that Ms. Kitch held the most significant position at the IWK, CEO, rendered her actions truly dishonest. She was bound by a web of protocol and policy and granted a supreme position of power over almost every Crown witness. Yet she eschewed policies that bound others, engaged in actions that no other employee did.” (para. 181)

[25] The Crown argues, given the trust placed in her to execute the important duties of her position, she was subject to limited scrutiny. The supervision of the

CEO's expenditures was limited, and the review process was more of a sober second look rather than an inquisitive audit and reflects the degree of trust placed in her. The Board Chairs' evidence at trial demonstrated that they had no reason to believe that the expenses they were reviewing were remotely personal, nor should they have suspected as much. Instead, Ms. Kitch was responsible for maintaining the integrity and reputation of the hospital in the eyes of the public whose children were being sent there to treat serious conditions. There are few positions in the province where the expectation of honesty and trustworthiness would be greater. By using her position to enrich herself, she committed a grave violation of these relationships of trust.

[26] The defence says the monies were repaid before charges were even anticipated, and the amount, just over \$30,000.00, is not as significant as is in other cases of fraud.

[27] A sentence must be proportionate to the gravity of the offence and the offender's degree of responsibility. I found Ms. Kitch was not lawfully entitled to pay for her personal needs using IWK resources. She signed a corporate credit card contract to that effect and, when she accepted the CEO position, agreed to comply with IWK policies that preclude such activities. In the early days she used the credit card for gas and groceries and immediately acknowledged that she was not

permitted to do so and provided the money to her EA to settle up with the Finance Department. So, she was always aware such actions were not permitted.

[28] While documentary evidence presented at trial demonstrated that she prepared a short list of some personal expenditures and asked her EA to keep somewhat of a list, she did not action a payback plan on the list until after she was caught. The EA position is subordinate to the CEO and the two holding that position had no legitimate responsibility to deal with Ms. Kitch's fraudulent actions. It was clear from the testimony of the EAs that they were troubled by an inability to obtain receipts and prepare the CCER forms. The vast majority of Ms. Kitch's personal use of IWK resources, was not noted down by anyone and not discovered until a between-date focused Auditor General's Directive required the IWK to assess and report her expenses. While Ms. Kitch cooperated in the exercise to comply with the Directive, only afterwards when a broader media FOIPOP request came to the IWK, did the full extent of her personal spending come to light. The Court also found that since personal spending occurred outside relevant fiscal periods it was implausible she ever intended to reimburse the IWK.

[29] Much work had to be undertaken by the IWK to piece together all of Ms. Kitch's personal transactions because she did not keep a reliable account and did not, in any event, have Board permission to incur personal expenses in the first

place. These factors also render implausible an intent to repay. Among other things, the personal use of IWK resources largely funded her personal travel from Nova Scotia to Ontario where the IWK, an Atlantic Canada institution, had little business to conduct, and where Ms. Kitch's husband and three children resided.

[30] Ms. Kitch's offending has attracted national media attention, in large part due to, *inter alia*, the high level position of trust and leadership she held at the IWK, because a well loved children's hospital was defrauded, because tax payers and donors fund the entity, and because society places a high level of trust in such leadership positions, and the public was betrayed by her actions.

[31] It is also clear that Ms. Kitch has convinced herself and some of her PSR references that she did nothing wrong. That was clear from her allocution and the comments in the PSR. She believes she needed to have better systems in place to track her "expenses", not recognizing that her personal expenses did not require any such attention from the IWK. She was not authorized to use its resources for personal reasons, so there was no resultant need to track. If Ms. Kitch could not afford plane tickets and the like, she should not have purchased them and instead lived within her means.

[32] Despite Ms. Kitch's comments in the PSR, nothing in the evidence suggested any of the personal expenditures related to the \$22,000.00 paid to her for relocation costs. The subject matter of the fraud is the personal expenditures she made outside of that generous allowance. So, her comments about being provided a travel card during her transition to Nova Scotia appear to represent a misunderstanding of what she was convicted of, or what constituted the unlawful actions. That said, the Court is not without compassionate in recognizing that it is an extremely difficult proposition for some people to identify their actions as criminal when doing so shakes their perception of themselves. This is particularly so, when such a crime attracts labelling and disdain from society.

[33] I find the gravity of the offence quite high, and Ms. Kitch's degree of responsibility equally high given her education and responsibilities at the IWK.

Denunciation and Deterrence:

[34] The Crown and defence agree, and the case law supports, denunciation and deterrence are the primary sentencing objectives in cases of breach of trust fraud. See: *R v Steinhubl*, 2013 ABCA 39 at para 7; *R v Drabinsky*, 2011 ONC 582 at para 160; *R. v. Master Corporal C. Poirier*, 2007 CM 1023; *R v Stymiest*, 2006 NBQB 129; *R v Gray*, 1995 CanLii 18 (ONCA). Rehabilitation is secondary to

these principles. It is not at all clear from her allocution or comments in the PSR that rehabilitation can be addressed since Ms. Kitch still does not appear willing to appreciate that it was not the systems that led to her offending, instead it was her regular decisions to book plane tickets, charge personal expenses on the corporate credit card and call for taxis, when all these things should have been funded from her own substantial salary and not from the public funds of the hospital.

Aggravating and Mitigating Factors:

[35] Section 718.2 of the *Criminal Code* requires identification of both the aggravating and the mitigating factors relating to the offence and the offender. Section 380.1(1)(a) of the Code specifically requires the court to consider the magnitude, complexity, duration, or degree of planning of the fraud.

[36] Justice Hill set out a non exhaustive list of potentially aggravating factors relating to fraud offences in *R v Williams*, 2007 CanLii 13949 (ONSC) at para. 30:

[30] *By way of overview and non-exhaustive list only, certain circumstances have, over time, been recognized as aggravating factors in “white collar” breach of trust cases:*

(a) The nature and extent of the loss: *R. v. Savard* (1996), [1996 CanLII 5703 \(QC CA\)](#), 109 C.C.C. (3d) 471 (Que. C.A.) at 474. The amount of the theft or fraud is one factor only: *R. v. Clark*, at 4; *R. v. Barrick*, at 82.

(b) The dishonest attainment of public monies is a serious crime with its own effects even though the institution, on its face, seems able to bear the loss: *R. v. Bogart*, at 396; *R. v. Coffin*, at para. 46.

(c) The degree of sophistication of the dishonesty and the degree of planning, skill and deception: *R. v. Dobis*, at 272; *R. v. Clarke*, at para. 18; *R. v. Wilson*, at para. 8; *R. v. Steeves and Connors*, at 285, 287; *R. v. Savard*, at 474; *R.*

- v. Downey*, [2003] O.J. No. 4997 (S.C.J.) at para. 55 (aff'd [2005] O.J. No. 6301 (C.A.)).
- (d) Whether the sole motivation is greed: *R. v. Savard*, at 474; *R. v. Clark*, at 5; *R. v. Steeves and Connors*, at 285, 287.
- (e) A lengthy period of dishonesty: *R. v. Dobis*, at 270; *R. v. Wilson*, at para. [8-9](#); *R. v. Clarke*, at para. [18](#); *R. v. Harding* (2007), [2006 SKCA 118 \(CanLII\)](#), 213 C.C.C. (3d) 543 (Sask. C.A.) at 548; *R. v. Reid*, at para. [15](#); *R. v. Coffin*, at para. [47](#); *R. v. Steeves and Connors*, at 285, 287; *R. v. Leaf*, [2007] EWCA Crim 802 at para. 14-15; *R. v. Gulam et al.*, [2006] EWCA 2320 at para. 11.
- (f) The number of dishonest transactions undertaken in the commission of the offence: *R. v. Smith*, [2004 CanLII 33793 \(ON CA\)](#), [2004] O.J. No. 4179 (C.A.) at para. [5-6](#); *R. v. Wilson*, at para. [9](#); *R. v. Harding*, at 548; *R. v. Coffin*, at para. [47](#); *R. v. McKinnon*, at para. [47](#).
- (g) Where there exists little hope of restitution: *R. v. Reid*, at para. [15](#).
- (h) The offender was caught as opposed to voluntary termination of the criminality: *R. v. McKinnon*, at para. [47](#); *R. v. Steeves and Connors*, at 287; *R. v. Gauthier*, at 186-7 (dissent); *R. v. Gulam et al.*, at para. 9.
- (i) Running the risk that others would fall under suspicion: *R. v. Gulam et al.*, at para. 3.
- (j) The impact on victims of the fraud including members of the public, the employer and fellow employees: *R. v. Dobis*, at 270; *R. v. Reid*, at para. [3](#); *R. v. Paul*, at para. [16](#).
- (k) The “quality and degree of trust reposed in the offender”: *R. v. Barrick*, at 82.

[37] Many of these factors are present in this case. The fraud involves the dishonest attainment of *over* \$30,000.00 of public monies from a children’s hospital by its highest-level executive who was entrusted with oversight of the IWK. The fraud was conducted blatantly after first testing the waters with the first two unauthorized credit card uses. Given her role as CEO, she could not practically expect to be challenged internally by those beneath her. Given the finding she was impecunious during much of the timeframe, greed is the sole motivator because the resources were not used to buy food and necessities, but largely to fund trips. The fraud involved hundreds of transactions over an extended period of time. She was

caught as opposed to voluntarily choosing to terminate her actions. Employees of the organization had to work to uncover the extent of the fraud, and outside resources were hired to assist. Executive assistants were directly impacted and upset by the fraud and testified to same during the trial. The IWK most certainly suffered reputational harm as a result of Ms. Kitch's actions.

[38] The fraud occurred over the length of her employment, and despite a requirement that she account for her use of the IWK resources in monthly financial filings, her executive assistants struggled to obtain information from her to complete the filings. Any suggestion she was not attempting to hide her actions is rejected. When the CCERs were complete, they were incorrect and Ms. Kitch signed them attesting to their accuracy. She knew the next step was a Board Chair signature and so the Board Chairs were also misled. It was her responsibility to ensure this minimal task of reporting each month's worth of spending was properly done. Each time she booked personal travel with IWK resources, she would, by necessity, be aware that she was not complying with the policies she had the overall fiscal responsibility to oversee. By necessity she, either online or by phone, made personal flight reservations to and from Toronto with or without the assistance of her EAs all while knowing these trips were not for business purposes, and she used IWK purchased flight passes to do so. These were her personal

flights that had to be paid for from her own monies. As CEO she could expect nobody to question her actions, and even when faced with some minimal internal push back by concerned EAs and in a round about way, the IWK lawyer, she continued the fraud. So, while these were not complicated frauds they were engaged in by a person who could expect not to be caught and demonstrated an arrogant disregard for hospital policies. She did not require an elaborate scheme simply because the position she held meant she was above scrutiny. That is why the Auditor General's role was so pivotal in this case, without the Directive, and the FOIPOP request, she may never have been caught.

[39] The Crown says nonetheless there was indicia of sophistication and deception because she also submitted the CCERs containing false information, such as marking 'cardiac' for a personal flight. She also created a veneer of transparency by marking some minor items as personal while not identifying the major purchases. At times she appeared to exploit her subordinates by downloading parts of the scheme onto them by making it difficult for them to account for her whereabouts in the shared calendar and locate her receipts.

[40] Fraud over \$5,000 has been described as "a thinking person's crime" (*R v Elmandani*, 2015 NSPC 65) and "a serious offence... not a crime of impulse and is

normally committed by a person who is knowledgeable and likely aware of the consequences.” (*R v Evanschuk*, 2017 ONSC 4014)

[41] I find the offence was deliberate, demonstrated corporate arrogance, and a high expectation that she would not be held accountable. She used the resources of the IWK as a personal bank account for a prolonged period. It is also aggravating that one EA left her position in frustration due to Ms. Kitch’s actions. Many staff were impacted in the work of the reviews, and the attempts to reconcile, and the hospital must have suffered reputational harm as well as certain financial costs to hire accountants to conduct the review.

[42] I am not convinced of the existence of many mitigating circumstances. She repaid the money. She is a first offender, and while there are certainly resultant costs to her fall from social and work status due to the conviction, which is to be expected. That previous status was the basis for obtaining the position of CEO, but for which she would not have had access to IWK resources. Reputational harm is the cost for those in high level positions who commit fraud in their employment.

[43] While her family did not provide comments for the PSR, her friend suggests Ms. Kitch has their support. This could in some cases suggest a positive indicator for rehabilitation, but I also note that her friends and former colleagues who were

interviewed, like her, do not appear to understand what she did or the seriousness of the matter.

[44] Her friends and former colleagues also provided references to her good character, and while that is normally mitigating and suggest prospects for rehabilitation, s. 380.1(2) of the *Code* now directs that a sentencing court “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.”

[45] Despite her loss of position, Ms. Kitch has continued to seek work to support herself and her family. I am not sure that is necessarily mitigating since people are expected to do so in our society and there is no history in this family of reliance on social assistance.

[46] Ms. Kitch pled not guilty and she need not accept the finding of guilt. However, she demonstrated little insight into her offending as evidenced in her allocution and comments to the PSR writer. I do not treat this as an aggravating factor but simply state that these comments do not bode well for the prospect of rehabilitation should she eventually hold another employment role where she is permitted to use resources for business purposes.

[47] The aggravating factors far outweigh the mitigating.

Parity:

[48] A fit sentence is proportionate to the gravity of the offence and the degree of responsibility of the offender and should also be similar to sentences imposed on similar offenders in similar circumstances. There were no cases presented to the Court that involve fraud committed by a hospital CEO.

[49] It appears noncontroversial that the range of sentence for breach of trust fraud matters is between 90 days and two years custody and, while a CSO is available, it is most often ordered where there are extenuating circumstances.

[50] The defence points to the following cases: *R v Hurlbert*, 2012 NSSC 291 arguing it is most similar to Ms. Kitch's situation. That case involved an MLA, who plead guilty to a fraud for making four fraudulent expense claims to the government totalling \$25,000.00. He apologized, resigned, and received a 12-month CSO. He repaid the money when he was caught by an auditor's review of MLA expenses and suffered social stigma. *R v Hayes*, 2018 NSPC 74 involved an 18-month CSO for a \$48,000.00 medical business fraud involving an accused with mental health issues. *R v Delgado*, 2017 NSPC 74 involved an accused with a gambling addiction who defrauded a building owner of rent she collected

amounting to over \$80,000 over seven years, who received a CSO. *R v Barker*, 2019 NSPC 24 involved a CSO for defrauding an elderly mother of \$45,000.00. *R v Lee*, 2011 NSPC 81 did not involve a CSO, and money not repaid.

[51] The Crown points to the following: *R v Zinck*, 2013 NSSC 328, another sitting MLA pled guilty to fraud of \$8,400.00 and was sentenced to four months in custody. *R v. Wilson*, 2012 NSPC 40, yet another MLA committed fraud involving \$61,000.00 and was sentenced to 9 months incarceration. *R v Hatfield*, 2015 ABPC 124, fraudulent use of a work credit card by an employee involving \$9,473, and exceptional circumstances of domestic abuse and a husband charged with similar offences, saved from a period of custody. *R v. Tavener*, 2017 ONCJ 469, an employee of an institution caring for the vulnerable, defrauded the organization of \$47,000 over six years and was incarcerated for 24 months. *R. v. Labbe*, 2020 QCCQ 541 (CanLii) a municipal officer who pled guilty to defrauding the municipality of \$28,000.00 over three years, incarcerated for 90 days. *R v. Fredson*, 2020 ONCJ 519, a receptionist who used the corporate credit card to defraud her employer of \$37,000.00, pled guilty and received a 6-month CSO, who had sympathetic circumstances including caring for an elderly parent. *R v. Van Orman*, 2018 ABPC 115, an executive assistant stole \$90,000.00 from her employer using a corporate credit card to gamble. This breach of trust resulted in a

12-month period of incarceration. *R v. Varga*, 2021 BCPC 286, a live in carer withdrew \$15,000 from her patient's account and received nine months incarceration. *R v. Henn*, 2021 ONCJ 547, an account manager stole \$45,000.00 from her employer, pled guilty but lacked personal insight and received 18 months incarceration. *R v. Caskenette*, 2018 ONSC 1691 six months incarceration for fraud against a hockey organization of \$13,000.00. Other cases included *R v Grant-Jury*, 2020 MBPC 6, *R v Holmberg*, 2021 MBPC 30, *R v Evaschuk*, 2017 ONSC 4014, *R v Ragadio*, 2021 ABPC 165, *R v Elliot*, 2021 ONCA 909.

[52] The Crown also submitted cases involving CSOs: *R v Sampson*, 2018 ONCJ 128, *R v Singleton*, 2015 CanLii 62815 (NL PC). These cases involve higher amounts of fraud.

[53] The Crown says the cases reviewed support a custodial sentence. While Ms. Kitch repaid the money, and the amount is lower than in other cases, her position as CEO distinguishes her from the situation of the other offenders who received a CSO. Unlike some of the other offenders, she did not plead guilty, does not benefit from personal insight, does not suffer from addictions, and was motivated by greed and a sense of entitlement.

[54] While range of sentence is not a hard and fast rule, range does demonstrate how other courts have applied the sentencing factors. My role is to do the same based on the individual offender before this Court. I conclude the amount of the fraud is not the sole determiner of whether custody should be imposed, nor is paying back the money taken.

Does a CSO give effect to the relevant sentencing factors:

[55] The Crown argues actual incarceration is required to give effect to the fundamental principles of sentencing. A CSO fails to denounce the serious breach of trust, properly deter others in senior public positions from engaging in similar conduct, does not adequately reflect the gravity of a sustained scheme to defraud the children's hospital, and fails short of acknowledging the harm done to institutional integrity and public trust that Nova Scotians hold for the hospital. It would be an outlier based on other cases. The Crown says the Court should express a clear and pointed condemnation of this type of conduct and communicate to all public servants that they should not violate the public's trust by exploiting their positions for personal gain.

[56] The defence says the amount of the fraud was lower than in other cases, and she paid the money back before she was criminally charged, and repaired the

financial harm caused by her actions before charges were even contemplated. All this signals a measure of accountability without any contemplation of leniency that distinguishes this case such that a CSO is a fit and proper sentence.

[57] Judge Derrick, as she then was, helpfully set out the principles to be considered when assessing the viability of a CSO before rejecting such a sentence in *R. v. Lee*, [2011 NSPC 81](#) at paras 56-61 and 63-65:

[56] I noted in my reasons in *Naugler*:

87 Promoting respect for the law is a fundamental purpose of sentencing. Conditional sentencing has struggled to satisfy this objective although its effectiveness in this regard has been, in my opinion, undermined by a general misunderstanding on the part of the public and also a deliberate misrepresenting of its role as a legitimate, punitive sentencing option. Conditional sentencing was intended to reflect a new emphasis on the goals of restorative justice (*Proulx, paragraph 19*) Parliament had "mandated that expanded use be made of restorative principles in sentencing as a result of the general failure of incarceration to rehabilitate offenders and reintegrate them into society." (*Proulx, paragraph 20*) A conditional sentence is a hybrid:

... [it] incorporates some elements of non-custodial measures and some others of incarceration. Because it is served in the community, it will generally be more effective than incarceration at achieving the restorative objectives of rehabilitation, reparations to the victim and the community, and the promotion of a sense of responsibility in the offender. However, it is also a punitive sanction capable of achieving the objectives of denunciation and deterrence ... (*Proulx, paragraph 22*)

[57] I went on in *Naugler* to make the following comments that are relevant to repeat in this sentencing:

88 The Supreme Court of Canada discussing conditional sentencing in *Proulx* recognized that "Inadequate sanctions undermine respect for the law" and fail to provide sufficient denunciation and deterrence. The Court understood that if a conditional sentence is not distinguished from probation, it will not be accepted by the public as a legitimate sanction. (*Proulx, paragraph 30*)

89 The punitive effect of a conditional sentence is to be achieved through the use of punitive conditions, such as strict house arrest, to constrain the offender's liberty. (*Proulx, paragraph 36*) Another feature of conditional sentencing is its ready conversion to a sentence in a jail cell. As noted by the Supreme Court of Canada

in *Proulx*: "... where an offender breaches a condition without reasonable excuse, there should be a presumption that the offender will serve the remainder of his or her sentence in jail." (*Proulx*, paragraph 39)

[58] The Supreme Court of Canada's authoritative findings in *Proulx* that conditional sentences are not lenient sentences and with strict conditions can satisfy the sentencing imperatives of denunciation and deterrence and be sufficiently punitive and stigmatizing is still good law. Despite a sustained political campaign against conditional sentences and much public misunderstanding about their suitability as a sentencing option, there is no reasoned basis for challenging the continued legitimacy of the Court's statements. However, *Proulx* must be carefully read to fully appreciate what it is saying.

[59] *Proulx* held that there is no presumption in favour of conditional sentences: the fact that the prerequisites for a conditional sentence have been met, as they have been here, does not presume that a conditional sentence is consistent with the fundamental purpose and principles of sentencing. "The particular circumstances of the offender and the offence must be considered in each case." (*Proulx*, paragraph 85)

[60] Two main objectives underpinned the sentencing amendments that produced the conditional sentencing regime: (1) reducing reliance on incarceration as a sanction, and (2) amplifying the role for restorative justice in sentencing as exemplified by the objectives of rehabilitation, reparation to the victim and the community, and the promotion of a sense of responsibility in the offender. (*Proulx*, paragraph 98) The Supreme Court of Canada described how the conditional sentencing option can "facilitate the achievement" of these objectives:

99 ... It affords the sentencing judge the opportunity to craft a sentence with appropriate conditions that can lead to the rehabilitation of the offender, reparations to the community, and the promotion of a sense of responsibility in ways that jail cannot ...

100 Thus, a conditional sentence can achieve both punitive and restorative objectives. To the extent that both punitive and restorative objectives can be achieved in a given case, a conditional sentence is likely a better sanction than incarceration. Where the need for punishment is particularly pressing, and there is little opportunity to achieve any restorative objectives, incarceration will likely be the more attractive sanction. However, even where restorative objectives cannot be readily satisfied, a conditional sentence will be preferable to incarceration in cases where a conditional sentence can achieve the objectives of denunciation and deterrence as effectively as incarceration. This follows from the principle of restraint in s. 718.2(d) and (e), which militates in favour of alternatives to incarceration where appropriate in the circumstances.

[61] *Proulx* determined that the need for denunciation, one of the sentencing objectives to be achieved by an offender's sentence, may in some cases be "so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct." (*Proulx*, paragraph 106)

Likewise, *Proulx* acknowledged that "there may be circumstances in which the need for deterrence will warrant incarceration" depending "in part" on whether there is the prospect of incarceration being likely to have a "real deterrent effect." (*Proulx*, paragraph 107) In *R. v. Wismayer*, [1997 CanLII 3294 \(ON CA\)](#), [1997] O.J. No. 1380, Rosenberg, J. for the Ontario Court of Appeal regarded the general deterrence issue in the context of conditional sentencing as follows:

General deterrence, as the principal objective animating the refusal to impose a conditional sentence, should be reserved for those offences that are likely to be affected by a general deterrent effect. Large scale well-planned fraud by persons in positions of trust ... would seem to be one of those offences. (*paragraph 50*)

...

[63] The Supreme Court of Canada in *Proulx* recognized the deterrence issue expressly in the context of that case, which involved dangerous and impaired driving causing death. These offences were described as "often committed by otherwise law-abiding persons, with good employment records and families." Such persons, it was suggested by the Court, "are the ones most likely to be deterred by the threat of severe penalties." (*Proulx*, paragraph 129) Offenders in fraud cases are likewise not oblivious to the consequences of their choices. As noted by the Ontario Court of Appeal:

... there are few crimes where the aspect of deterrence is more significant. It is not a crime of impulse and is of a type that is normally committed by a person who is knowledgeable and should be aware of the consequences. That awareness comes from the sentences given to others. *R. v. Gray*, [1995 CanLII 18 \(ON CA\)](#), [1995] O.J. No. 92, paragraph 32, (Ont. C.A.)

[64] What conditional sentences are best at accomplishing is an effective balancing of the sentencing objectives of denunciation and deterrence with the objectives of rehabilitation, reparation and promotion of a sense of responsibility. Where those restorative objectives can be realistically achieved, "a conditional sentence will likely be the appropriate sanction ...", provided that denunciation and deterrence are not left out of the calculus. (*Proulx*, paragraph 109) In *Proulx*, the Supreme Court of Canada delineated the approach to be taken in deciding what type of sentence is the appropriate option:

113 ... In determining whether restorative objectives can be satisfied in a particular case, the judge should consider the offender's prospects of rehabilitation, including whether the offender has proposed a particular plan of rehabilitation; the availability of appropriate community service and treatment programs; whether the offender has acknowledged his or her wrongdoing and expresses remorse; as well as the victim's wishes as revealed by the victim impact statement (consideration of which is now mandatory pursuant to s. 722 of the Code). This list is not exhaustive.

[65] Determining a fit and proper sentence requires that the sentencing judge assess "which sentencing objectives figure most prominently in the factual circumstances of the particular case before them." (*Proulx*, paragraph 113)

[58] So, in *R. v. Proulx*, 2000 SCC 5, at para. 22, the Supreme Court held that a conditional sentence can be a "punitive sanction capable of achieving the objectives of deterrence and denunciation" for many offences, although there may be circumstances where the need for denunciation and deterrence is so pressing that a custodial sentence in "real" jail must be imposed. Continuing at para. 127, "As a general matter, the more serious the offence, the longer and more onerous the conditional sentence should be. ***There may be some circumstances, however, where the need for denunciation or deterrence is so pressing that incarceration will be the only suitable way in which to express society's condemnation of the offender's conduct or to deter similar conduct in the future.***" (*Emphasis added*)

[59] While a conditional sentence, depending on the severity of the conditions, might be consistent with the fundamental purpose and principles of sentencing, even where deterrence and denunciation are the predominant sentencing principles, the defence has not proposed punitive conditions other than house arrest in Ontario.

[60] In *R v Booker*, 2021 ONCJ 625 in rejecting a CSO for a paralegal who defrauded the public and the law firm where she worked, the court addressed recent appeal decisions upholding the rejection of a CSO:

[61] It is interesting to note that the MLA fraud cases in this province garnered significant public attention. In my opinion, the carceral sentences imposed in the latter cases, sent a powerful message of general deterrence evidenced by the fact that such offences virtually ceased.

[62] Having reviewed in detail the relevant considerations on sentence, a CSO does not give effect to the relevant sentencing factors in this case. Most of the referenced cases where CSOs were imposed did not involve such a significant breach of trust, there were exceptional circumstances such as an early guilty plea, a demonstration of remorse and an acceptance of responsibility (such that there existed a potential for rehabilitation), mental health concerns, and/or gambling or addictions were present. None of those factors are present here.

[63] I find the Crown's argument compelling and find that the proper application of the sentencing principles and purpose, require a period of incarceration. While I would have imposed a period of twelve months, in accord with the caselaw, and I am not bound by the submissions of counsel since this is not a jointly

recommended sentence, I exercise restraint in sentencing and will accede to the request of the Crown and impose nine months incarceration. I find nine months accomplishes the necessary sentencing objectives, reflects the seriousness of the offence, recognizes the aggravating factors that far outweigh the mitigating, denounces the deliberate misuse of public funds, is proportionate to other sentences imposed for breach of trust fraud, and is proportionate to the nature of the offence and the culpability of Ms. Kitch. In reaching this decision I adopt the reasoning in *Proulx* at para. 114, and find that here “punitive objectives such as denunciation and deterrence are particularly pressing, such as cases in which there are aggravating circumstances, incarceration will generally be the preferable sanction”.

[64] I adopt the recommendation for a 24-month period of probation and ancillary order pursuant to s. 380.3 of the *Code* for a period of ten years. A victim fine surcharge will present a hardship and will not be imposed.

[65] May this sentence also serve as a message to public officials that public service is a high calling, and fraud against public institutions should result in the doors of a jail cell locking behind an offender.

[66] Judgment accordingly.

van der Hoek ACJ PC