SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. LeBlanc*, 2019 NSSC 192

Date: 20190802
Docket: CRAT 475651
Registry: Antigonish

Between:

Her Majesty the Queen

v.

Coty Weston Warren LeBlanc and Michael Charles Benoit

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Judge: The Honourable Justice Peter P. Rosinski

Heard: September 10, 2018; October 9, 2018; January 7, 11; May 22, June 26 (Benoit), and August 1, 2019 (LeBlanc), at Antigonish, Nova Scotia

Written Decision: August 2, 2019

Summary: LeBlanc and Benoit occupied an apartment in downtown Antigonish, from which they conducted a mid-level cocaine trafficking operation, selling as a petty retailer to individuals, and in bulk to individuals who would then sell as a petty retailer to individuals. Numerous lockboxes, drug paraphernalia, score sheets, and indicia of ongoing trafficking operation. 210 g cocaine in total – street value between $16,800 and $21,000; over $6000 in cash found. Expert evidence established that typically individual consumers would purchase from 1 to 3.5 g of cocaine at between $80-$100 per gram.

LeBlanc had previously been convicted for trafficking 32 g of

cocaine in October 2016, and was still under sentence, at the time of the present offence. No other record.

Benoit had a dated (2000) and unrelated record. Both had been on release since their arrest November 4, 2017.

Issue: What is the appropriate sentence for each offender?

Result: General ranges of sentence are canvassed for offenders at each of the various hierarchical levels in the drug trafficking system with the following results in this case:

Benoit – 50-year-old offender with health issues, no expression of remorse but reasonably good rehabilitative potential. 2 years in a federal penitentiary.

LeBlanc – 25-year-old offender, with previous record, no expression of remorse, and very guarded prospects for rehabilitation. 5 years in a federal penitentiary.

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Counsel:	Wayne MacMillan, for the Crown Colin Strapps, for the Defendant Coty LeBlanc Daniel MacIsaac, for the Defendant Michael Benoit

By the Court:
Introduction

[1] After trial, I found Messrs. LeBlanc and Benoit guilty of possession of (210 grams) cocaine, a substance included in Schedule 1, for the purpose of trafficking contrary to section 5(2) *Controlled Drugs and Substances Act* ["*CDSA*"]. This offence carries a maximum of life imprisonment (s. 5(3)(a) *CDSA*). I note that Mr.

LeBlanc was sentenced for the very same offence (involving 32 g cocaine) on October 4, 2016, to 2 years' imprisonment[1].

[2] This decision addresses their sentencing.

[3] I conclude that Mr. LeBlanc should be sentenced to a term in a federal penitentiary for five years; and Mr. Benoit be sentenced to a term in a federal penitentiary for two years.

Background[2]

[4] In *R v Chase*, 2019 NSCA 36, our Court of Appeal has set out the range of sentence for possession of cocaine for the purpose of trafficking regarding the small petty retailer[3].

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[1] *R. v. LeBlanc*, 2016 NSPC 57 per Atwood PCJ.

[2] My decision convicting Mr. LeBlanc and Mr. Benoit contains much greater detail: 2019 NSSC 43.

[3] I might note that within the category of small petty retailer, courts do sometimes make distinctions between whether the trafficker was motivated by a need to feed a drug addiction or purely for money or other consideration: *R v Lively*, 2006 NSSC 274 para. 39 per Gruchy J. approving of Justice Casey Hill's reasoning in *R v Andrews*, [2005] OJ No. 5708, wherein he concluded that the onus is on the offender to establish addiction and a causal connection of the addiction to the criminal activity. On the other hand, I note that Justice Scanlan in *R v Oickle*, 2015 NSCA 87 stated at para. 49: "I am at a loss to figure out how individuals and communities are impacted in a different way depending on whether the trafficker is motivated by a desire to feed one's own drug habit as compared to selling for profit based purely on greed. In both situations, families are torn asunder, lives are destroyed and lost. The trade in Schedule 1 drugs or any drugs depends on those who traffick and those who consume. The potential for profit attracts individuals who might not otherwise be prepared to engage in criminal acts. How is the risk and harm decreased if the trafficker is selling to feed an addiction versus selling for profit?" I should also mention that the Supreme Court of Canada majority speaking through Chief Justice McLachlin in *R v Lloyd*, [2016] 1 SCR 130 found s. 5(3)(a)(i)(d) *CDSA*, which prescribes a minimum one-year punishment for those who have in the last 10 years been convicted of a designated substance offence, in spite of the exception in s. 10(5), as a violation of section 12 of

[5] In *Chase*, Justice Saunders said by way of summary regarding such offences (including the one before that court being an offender who had pled guilty to possessing 6 g of cocaine for the purpose of trafficking, i.e. a small petty retailer):

> 48 From all of this it can be said with certainty that nothing has changed this Court's repeated and consistent warning that deterrence and denunciation will continue to be the primary objectives when sentencing persons who choose to traffic in cocaine, and that convictions will normally attract a federal prison term. However, that does not mean that in an appropriate case, depending upon the particular circumstances of the offence and the offender, a lesser sentence cannot be imposed.
>
> [My italicization added]

[6] Let me explain why, based on the circumstances of the offence, the offenders, and a proper application of the law, I conclude that this case (characterized by Cpl. Lane as a "mid-level trafficking operation") involves a sentencing range of 2- 6 years custody[4].

Circumstances of the offence

[7] Mr. LeBlanc's common-law partner, Jayda Benoit, is Mr. Benoit's daughter. In June 2017 the three of them rented a 900 square-foot two-bedroom apartment in downtown Antigonish, Nova Scotia. On November 4, 2017 the apartment was

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the *Charter*. Notably one of the reasonable hypotheticals leading to that result was a situation of a drug addict with a prior conviction "only trafficking in order to support his own addiction" at para. 33.

[4] In *R v Murphy*, 2019 NSSC 105 I recently canvassed in greater detail the "normal" sentence range for small petty retailers and concluded that it is between 18 months and 30 months, which I believe is still accurate given the court's comments made shortly thereafter in *Chase*.

searched by police for indicia of trafficking in cocaine. In summary, the search revealed the presence of 210 g of cocaine, having an estimated street value of $16,800-$21,000. I infer an organized criminal group provided Mr. LeBlanc the cocaine. As I stated in my decision, the search revealed:

> Mr. Benoit's bedroom[5]
>
> 7 The search revealed, *inter alia*, unground or hard cocaine weighing 210 grams (Exhibit 18). Its estimated street value was $16,800-$21,000. A cutting agent (likely benzocaine) had also been found at the premises. Benzocaine had been mixed with cocaine (according to the Certificate of Analyst Exhibit 18 B), resulting in a total weight of 210 grams.
>
> 8 The cocaine was found in 9 green baggies (Exhibit 17) inside a plastic shopping bag which was in a lockbox (which was not made an exhibit) on the floor beside the bed in Mr. Benoit's bedroom (photo 4) in the so-called "bedroom number 1" shown in the sketch Exhibit 29 (see also photo 18).
>
> 9 Separately found in the lockbox were: a debt list or customer list reference of what I am satisfied were cocaine sales, with dollar amounts thereon approximating $2800 (Exhibit 20); eight $20 bills totaling $160 (shown in photo 20).
>
> 10 A digital scale was also found on the dresser in his room (Exhibit 4 -- photo 1) which tested positive for cocaine and tetrahydrocannabinol (Exhibit 28); a second digital scale was found on the floor near the closet (Exhibit 6) which also tested positive for cocaine and tetrahydrocannabinol (Exhibit 28).
>
> 11 A second safe was found on a chair in his bedroom (not introduced into evidence -- but see photo 5). Mr. Benoit testified without elaboration that it had been "left by somebody".
>
> 12 A number of baggies were also found in his bedroom dresser (photo 3).
>
> 13 24 pink pills found inside a safe on the floor in bedroom number 1 (Exhibit 19; photo 18) which were analysed to be clonozapam (Exhibit 19B).

[5] I found Messrs. Benoit and LeBlanc in possession of the cocaine (for the purpose of trafficking) *inter alia* based on the law discussed by Justice Bourgeois in *R v Power*, 2017 NSCA 85 at paras. 27-30.

Coty LeBlanc and Jayda's Benoit's bedroom and the nursery

14 In the remaining so-called "bedroom number 2" and nursery room, which I am satisfied are properly characterized as primarily occupied by and under the control of Mr. LeBlanc and Jayda Benoit, the following were found:

1.A Sentry safe lockable metal box (photo 6) located in the crib in the nursery containing $2445 cash (Exhibit 7) and a paper with handwritten references to dollar amounts thereon, (Exhibit 7B; photo 13);

2.A Sentry safe lockable metal box located under the bed in bedroom number 2 (Exhibit 11; photo 16) containing $2383.10 cash (Exhibit 31) and an accounting, with dollar references thereon entitled "Jayda's money" (which interestingly has a starting balance of $1775, at one point an interim balance of $1775, and an ending balance of $1775);

3.An operational digital scale (Exhibit 8; photo 14) seized from the desk. The scale had residue of cocaine, tetrahydrocannabinol and cannabinol thereon (Exhibit 28);

4.A so-called "cutting agent" in a Ziploc bag (Exhibit 9; photo 8) seized from the desk;

5.Four plastic dime bags (Exhibit 10) seized from the desk;

6.Empty baggies with white powder residue which was not analysed (Exhibit 14) seized from the third dresser drawer;

7.A 6-gram baggie containing white powdered substance which was not analysed located on the desk (Exhibit 15; photo 12);

8.A heavy duty Sentry safe lockable metal box (photos 9 and 17) seen beside the bed containing plastic baggies having dollar amounts written on them such as "$2255 [and] $5375", $1300 and "only $1300", and "H" $270 (Exhibit 23; photo 21) - as well as unmarked clear sandwich bags (Exhibit 25) and one baggie containing white powder (Exhibit 33; photo 22) which was analysed and found to be benzocaine and acetaminophen (Exhibit 33 A). Also found in that safe were an envelope addressed from Coty LeBlanc to Jayda Benoit while she was living in Stellarton, Nova Scotia (Exhibit 24; photo 23) ; and a key ring (photo 25, with the tag "my dad my hero" attached to what appear to be two lockbox keys, and a larger (possibly a residence) key.

[8] I accepted the expert opinion of Cpl. David Lane that the circumstances were characteristic of a mid-level cocaine trafficking operation (ie. selling to petty retailers) with a component of (petty retailer) street level sales to individuals seeking cocaine for personal use. These circumstances lead me to conclude that Messrs. LeBlanc and Benoit had possession of the cocaine for the purpose of trafficking fitting both *Fifield* categories 2 and 3.

[9] Cases involving similar quantities of cocaine include:

- *R. v. Knickle*, 2009 NSCA 59 – 43 year old with no record – 312 grams – 3.5 years custody;
- *R. v. Dann*, 2002 NSSC 237 – 27 year old with a criminal record – 297 grams – 4.5 years custody;
- *R. v. Holland*, 2017 NSSC 148 – 36 year old with related but dated criminal record – 167 grams – joint recommendation on guilty plea accepted – 5 years custody;
- *R. v. Crossan*, (1993) 116 N.S.R. (2d) 352 (CA) – 21 year old offender with one previous conviction was apprehended with 2 kilograms of cannabis resin and 166 grams of cocaine. Concurrent sentences of 4 ½ years were imposed on appeal.

The Range of Sentences throughout the cocaine trafficking hierarchy[6]

[10] Trafficking in illegal drugs involves a hierarchy. In Nova Scotia, one's position in the hierarchy has been a significant determinant of the sentence that is imposed. As Chief Justice MacKeigan stated in *R v Fifield*, [1978] NSJ No.42 (CA), generally there are three categories of traffickers:

> 6 These sentences obviously must be materially increased. This is not the case of a *young user sharing marihuana with a companion or accommodating another user with a small quantity*; such cases are technically trafficking but are only slightly more serious than mere possession of marihuana, *where no previous record is involved*. [Citations omitted]
>
> 7 Neither is this the case of a petty retailer who peddles small quantities of marihuana, but who is not shown to be involved in full-time or large-scale commercial distribution or the like. [Citations omitted]
>
> 8 Here a large quantity was involved, indicative of an intention to distribute on a commercial scale and suggestive of similar past experience. Indeed, one Glasgow was caught with two pounds or so of marihuana leaving the house where the appellant was found; we may assume he got it from the appellant, who had thus actually started wholesaling the drug. Reported cases which illustrate the obvious principle that such *wholesalers or large retailers must be punished and, hopefully, deterred by materially larger sentences than those imposed on the petty retailers*, include the following: [citations omitted].
>
> [My italicization added]

[6] An unfit sentence is one that is "clearly unreasonable" or "clearly excessive or inadequate" – it is one that falls outside the range of acceptable sentences previously imposed in the jurisdiction of the Court. The range of sentences is established based on examination of sentences imposed on similar offenders for similar offences committed in similar circumstances – *R v. Cromwell*, 2005 NSCA 137 at para. 26 per Bateman, J.A.. I would add that the "acceptable range" is significantly affected by the gravity of the offence committed and the moral blameworthiness or culpability of the offender, both of which underlie the proportionality sentencing principle in s. 718.1 *Criminal Code*.

[11] Specifically, in relation to cocaine trafficking, Justice Roscoe stated in *R v Knickle*, 2009 NSCA 59[7]:

> 16 The first step of the analysis is a consideration of the appropriate range of sentence for the offence. *Here the judge briefly commented that the sentencing range in Nova Scotia for cocaine trafficking is a penitentiary term in the range of two to five years.* Then without further analysis, indicated that there was nothing to warrant a sentence in a three-and-a-half year range, and finally concluded that the defence had satisfied her that a sentence of two years less a day would be appropriate because of exceptional circumstances.
>
> 17 The judge failed to recognize how this court has consistently categorized drug traffickers, based on the type and amount of drug involved and the level of involvement in the drug business, to assist in placing them within the range. In *R. v. Fifield*, [1978] N.S.J. No. 42, the court described the following general categories of drug traffickers: the young user sharing marijuana with a companion; the petty retailer who is not shown to be involved full-time or in a large-scale commercial distribution; the large-scale retailers and commercial wholesalers. *Chief Justice MacKeigan noted that the amount of drugs involved helps determine the quality of the act or the probable category of trafficker. The Fifield categories have also been applied by this court to cocaine and crack cocaine trafficking cases. See, for example*:
>
> > *R. v. Carvery*, [1991] N.S.J. No. 501 -- high level retailer -- 6 1/2 ounces cocaine [184 g] -- five years' incarceration;
> >
> > *R. v. Steeves*, 2007 NSCA 130 -- not a lower level trafficker -- 77 grams of cocaine [2.7 ounces], and 100 pills of ecstasy -- 2 years, six months' incarceration;
> >
> > *R. v. Sparks*, [1993] N.S.J. No. 448 -- four counts of selling small amounts of crack cocaine and one count of possession for the purpose -- totalling just over 1.5 grams -- not a petty retailer -- 32 months' incarceration.
>
> 18 Numerous other sentencing decisions from this court repeatedly and consistently emphasize that persons involved in trafficking in cocaine will be subject to sentences of incarceration. This has been absolutely clear since the very first case heard by this court involving trafficking in cocaine: *R. v. Merlin*, [1984] N.S.J. No. 346, 63 N.S.R.

[7] Mr. Knickle was sentenced to 3.5 years custody by the Court of Appeal – rejecting a conditional sentence – for possession of 312 grams of cocaine for the purpose of trafficking. He was 43 year old with no prior record, and had plead guilty, although he was also in possession of legal firearms, illegally/carelessly stored.

> (2d) 78. See also, for example: *R. v. Dawe*, 2002 NSCA 147; *R. v. Jones*, 2008 NSCA 99; *R. v. Stokes*, [1993] N.S.J. No. 412, 126 N.S.R. (2d) 66; and *R. v. J.B.M.*, 2003 NSCA 142. This court has never approved or endorsed a conditional sentence on charges of possession for the purpose of trafficking or trafficking in cocaine.
>
> …
>
> 27 As noted above this Court has never wavered in expressing these principles in cocaine trafficking cases. Another example is found in *McCurdy*, s*upra*: … "Although it is not necessary that the length of sentence be precisely proportionate to the quantity of drugs involved, commercial distributors and growers require 'materially larger' sentences than petty retailers".
>
> [My italicization added]

[12] The hierarchical aspect of drug trafficking requires courts to be mindful of the parity principle in a larger context if we are to fairly assess the moral blameworthiness of the various participants in this pyramid-like distribution system. Hence, ranges of sentences for each of the *Fifield* categories inform an understanding of the proper ranges for each of the other categories[8].

[13] In *R v Chase,* 2019 NSCA 36, (who was in possession of 6 g of cocaine for the purpose of trafficking), Justice Saunders stated in relation to sentencings of such offenders:

> "… convictions will normally attract a federal prison term. However, that does not mean that in an appropriate case, depending upon the particular circumstances of the offence and the offender, a lesser sentence cannot be imposed." (para.48)

[8] I agree with Justice McArthur in *R v Maric*, 2019 ONSC 3099 at para. 80: "…two of the most significant factors affecting the quantum of sentence are 1) the quantity of drugs involved and 2) the role that the offender played…[are] related to the fundamental principle of proportionality: the more drugs…the higher the gravity of the offence; the more significant the role played…the higher the degree of moral blameworthiness."

[14] My review of the jurisprudence suggests that, before the application of mitigating and aggravating factors, the range of sentence appropriate here is between 2 years and 6 years.

[15] A number of previous cases have talked in terms of the range of sentence being between 2–5 years for *Fifield* category 2 (high level) and 3 offenders. For example:

1. *R v Clarke*, [2005] NSJ No. 358 (SC) per Kennedy CJ at para. 6 (36-year-old with no prior record, for-profit, involved in a significant level of trafficking in crack cocaine over a two-month period – became a mother after the offences-2 years custody);
2. *R v Smith*, 2012 NSPC 82 at para. 82 per Hoskins PCJ; and
3. *R v Jones*, 2003 NSCA 48 per Roscoe JA makes clear that the 2 to 5 year range of sentence was premised upon possession of cannabis products/marijuana for the purpose of trafficking, and that it was an aggravating factor if it involves cocaine possession for the purpose of trafficking:

> 1 This is an appeal by the Crown from a conditional sentence imposed by Justice Robert W. Wright ([2002] N.S.J. No. 562, 2002 NSSC 247) on charges of possession of cannabis resin for the purpose of trafficking, and possession of proceeds of crime, contrary to ss. 5(2) and 8 respectively of the Controlled Drugs and Substances Act, S.C. 1996, c. 19.

2 The respondent was stopped for speeding, which led to the discovery of a carton containing 4.6 kilograms of cannabis resin and $40,020 cash in the trunk of his vehicle. Justice Wright found that the respondent was "... acting as a courier for someone involved in the drug trade", and accepted his evidence that he was paid $1,000 to deliver the carton from Halifax to Moncton. On a voir dire during the trial, Justice Wright concluded that while it was not proved that the respondent knew the exact contents of the box, he knew it was related to the drug trade.

3 Justice Wright considered the relevant sections of the Criminal Code, the principles of sentencing, the respondent's criminal record and his role in the venture. The respondent, who is 41 years old, had a criminal record of 11 prior convictions, five of which were for simple possession and one for cultivation of a narcotic. He claimed to be a user of marijuana for medical reasons. Justice Wright sentenced the respondent to a term of imprisonment for 18 months, to be served as a conditional sentence in the community, and subject to certain conditions, including house arrest for the first nine months, with specific exceptions, curfew of 10:00 p.m to 6:00 a.m. for the next nine months, and 80 hours of community service. A lifetime firearms prohibition under s. 109 of the Code was imposed, as were forfeiture orders relating to the vehicle and the cash.

4 The rationale for the length of sentence selected is found in the following passage of Justice Wright's decision:

> para 18 As referred to earlier, s. 718.1 sets out the fundamental principle that sentencing must be proportionate to the gravity of the offence and the degree of responsibility of the offender. *Without question, anyone involved in the distribution of drugs, even as a courier, and even with soft drugs, commits a serious offence. But everything is relative. Here, it can be readily inferred that the offender knew, or at least held the trust of, someone involved in large scale commercial trafficking of cannabis resin. But there is no evidence before me that the offender was a principal of such an operation himself, or had a stake in the profits, or even that he acted as a courier for someone else as a recurring activity.* Although no excuse, nor a mitigating factor in any way, the evidence indicates that he was in a desperate financial situation at the time, trying to emerge from a personal bankruptcy, and saw this as an opportunity to make a fast buck to the tune of $1,000. He seemingly ignored the consequences of such criminal activity.
>
> para 19 While his degree of responsibility is not to be understated, at the same time, it does not rank as egregiously with that of a principal of a large scale commercial operation who, generating the trafficking of drugs, receives the proceeds of sale and reaps the profits in an enterprise of greed.
>
> para 20 Because I make this distinction, as urged by defence counsel, I reject a penitentiary term, as well as a sentence of probation, as inappropriate. I am

> further satisfied that the offender, having no history of drug trafficking or being a major player in the drug trade, does not present a risk of endangering the safety of the community. There is nothing in his Pre-Sentence Report or his past criminal record that persuades me otherwise. Those criteria being met, the question remains whether a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2.

5 The Crown applies for leave and, if granted, appeals the sentence, submitting that the sentence is demonstrably unfit, based on error in principle in characterization of the offences, and that the sentence inadequately reflects the principles of denunciation, deterrence and protection of the public.

…

7 I agree with the submission of the Crown that the sentence is outside the acceptable range for offences of this nature, and that the trial judge erred in principle in his characterization of both the offence and the respondent's degree of involvement in the drug trade, and in failing to give sufficient weight to the criminal record of the respondent.

8 *Sentences for possession of narcotics for the purposes of trafficking imposed by this court over the last 25 years have consistently been largely influenced by the quantity of drugs involved and the function or position of the offender in the drug operation*. Other factors considered either more or less relevant, depending on the circumstances, are the criminal record and age of the offender, whether he was on probation at the time of the offence, and the sophistication and scope of the enterprise. This approach was emphasized in R. v. Fifield (1978), 25 N.S.R. (2d) 407, where MacKeigan, C.J.N.S. said at p. 410:

> In the various categories one cannot find or expect to find any uniformity of sentence. The cases above are merely random samples to illustrate the apparent categories. *Certainly, sentences are not, and should not be, closely proportionate in their length to the quantity of marihuana involved. The quantity is important in helping show the quality of the act or the probable category of trafficker* - - the isolated accommodator of a friend, the petty retailer, the large retailer or small wholesaler, or the big-time operator. *The categories respectively have broad and overlapping ranges of sentence into which the individual offender must be appropriately placed, depending on his age, background, criminal record, and all surrounding circumstances.*

9 I would agree with the trial judge that the respondent's role was not equal to that of the "principal of a large-scale commercial operation". *The trial judge appeared to have found that since the respondent was simply or merely a courier, he was not a significant player in the drug trade, and therefore equivalent to a petty retailer.*

However, it is indisputable that a courier is an integral part of the distribution system in the drug business. Drugs and money have to be delivered from the importation or cultivation location to the dealers and the users. *Couriers provide that critical link between the wholesalers and retailers, often shielding the major stakeholders from detection. In Nova Scotia, couriers have not traditionally been regarded as less culpable or treated more leniently than other middlemen in the organization.*

10 *An examination of possession for the purposes' cases, reveals that the typical range of sentences for small wholesalers or large retailers, the people on the third of the four rungs of the ladder identified in Fifield, is two to five years incarceration*. It also appears from this survey that *the quantity of cannabis resin necessary to categorize a person at this level is two to ten kilograms, with values in the tens of thousands of dollars range*. The presence of exceptional mitigating circumstances, such as youth, or previous unblemished character, may, of course, take an offender out of the normal range. Some of the cases, illustrative of these points, in chronological order are: [Citations omitted]

11 *All of these cases involved possession of a sufficient quantity of cannabis resin to place the offenders in the commercial sector, to use the Fifield terminology as either a large retailer or a small wholesaler. At the top end of the range, there were other aggravating factors, such as possession of cocaine or large sums of money*. Butler, at one-year custody, was outside the range because of youth and lack of a criminal record. Absent exceptional circumstances, a person involved in a small wholesale or large retail operation, such as this, should generally attract a sentence in the range. His placement within that range will take into account factors personal to the offender and his degree of involvement. Any suggestion that there is a separate and lower range of sentence for couriers within a commercial operation is rejected.

…

14 I also agree with the submissions in the Crown's factum in this respect:

> [16] Drug trafficking offences involve considerable planning and deliberation. In deciding to take a chance by breaking the law in hopes of making easy money, drug dealers engage in a rudimentary form of cost-benefit analysis, weighing the chances of getting caught and the possible consequences against the financial gains they will reap if successful. This is the very kind of thought process that the Respondent embarked upon when, to paraphrase the pre-sentence report, he chose to avail himself of an opportunity to make $1,000, being aware of the consequences and in spite of his own better judgment. In making decisions like this, drug dealers should know that they are likely to receive substantial penalties if caught. This is the type of conduct which is amenable to the deterrent force of the law.

> 15 *The circumstances of this offence and this offender require a sentence in the usual range, that is a penitentiary term,* and is not within the eligibility range for a conditional sentence. The circumstances are commensurate to those in R. v. Collette, supra, and R. v. Boudreau, supra. The sentence was unfit in that it is outside the range of sentence and does not appropriately reflect denunciation and general and specific deterrence.
>
> 16 *I would grant leave to appeal, allow the appeal, and substitute a term of incarceration of three years,* and give credit for six months served pursuant to the conditional sentence, so that the balance remaining as of this date is 30 months. I would affirm the prohibition and forfeiture orders and revoke the order for community service.
>
> [My italicization added]

[17] Cases involving similar circumstances (more elaborate retail cocaine trafficking operations with offenders having possession of larger amounts of cocaine, criminal records, and personal circumstances comparable to Messrs. LeBlanc and Benoit) include:

1. *R v Holland,* 2017 NSSC 148 (36-year-old with 167 g of cocaine, a sizable quantity of cash, also had 9 mm loaded handgun, with dated but related criminal record – plead guilty: joint recommendation 5 years accepted);
2. *R v Dann*, 2002 NSSC 237 (27-year-old with 300 g of cocaine having value $25-$30,000 – courier travelling between provinces – no lengthy criminal record – “it is clear to me, after a review of these cases and other cases in our jurisdiction that a fit and proper sentence

for this type of offence would be in the range of 4 to 5 years… I am prepared to accept a joint recommendation of 4 ½ years…");

3. *R v Huskins*, [1990] NSJ No. 46 (NSCA) (42-year-old with prior convictions including some drug-related, pled guilty to trafficking (3 ounces/85 g) $5000 worth of cocaine while on parole- 3 years imprisonment;

4. *R v Smith*, [1990] NSJ No. 30 (CA) (35 year old who twice sold 28.5 g of cocaine to undercover officer, plead guilty – 4 years' imprisonment;

5. *R v Carvery*, [1991] NSJ No. 501 (CA)-not a petty retailer, but "deeply and deliberately involved in a vicious traffic and the evidence suggests he had a sales volume on the order of $20,000 in connection with these [6.5 ounces/184 g cocaine] purchases"- 3 year sentence increased to 5 years;

6. *R v Knickle*, 2009 NSCA 59 (43-year-old with no prior record who pled guilty to possession of 312 g of cocaine street value $27,000, and very positive rehabilitative prospects who had been sentenced to a 2 years conditional sentence order and one-year probation, was re-sentenced by the court to 3.5 years custody;

7. *R v Steeves*, 2007 NSCA 130 (29-year-old within unrelated minor record and severe neurological condition, pled guilty to possession of 14 g of powdered cocaine and 63 g of crack cocaine as well as 100 ecstasy pills – had been sentenced to 2 years conditional sentence order and one-year probation, was resentenced by the court to 2.5 years custody. Notably, the court concluded that case was properly characterized as being in category 3 of *Fifield*.

[18] In *R v Chevrefils*, 2018 NSPC 60, her Honour Provincial Court Judge Elizabeth Buckle found the accused guilty of possession of 250 kg of cocaine for the purpose of trafficking contrary to s. 5(2) *CDSA*. In her sentencing decision, 2019 NSPC 16, she sentenced Mr. Chevrefils to 10 years in custody on the following basis: he was a trusted courier with close connections to the importer, involving cocaine of relatively high purity [67 – 84%] with a purchase price of approximately $2 million and resale value of between $11 million and $20 million if sold at the kilogram level and gram level respectively (a commercial wholesale operation at the top of the *Fifield* categories); his motivation was profit; he would normally receive for his services $1000-$2000 per kilogram payment; he was 60 years old with a dated and unrelated criminal record.

[19] Notably, Mr. Grenier, the captain of the vessel which imported the cocaine that Mr. Chevrefils intended to transport, pleaded guilty to importing and possession of cocaine for the purpose of trafficking. He had no prior record; was 69 years old at the time of sentencing and received a 13 year sentence. Apparently, the sentencing judge acknowledged that a 15 year sentence would have been appropriate but for his age.

[20] Judge Buckle opined that sentences in the range of 4 to 8 years are typical in cases involving trafficking or possession of cocaine for the purposes of trafficking at the kilogram or single digit multi-kilogram level – see *R v Williams*, 2016 NBQB 231[9]; *R v Sean Decker*[10]; *R v Field*, 2013 NSPC 51[11]; *R v Butt*, 2010 NSCA

[9] The sentencing decision after his trial (conviction) is unreported/unpublished. However, the Court of Appeal upheld the sentence of 78.5 months custody, being 4 years and 6.5 months for cocaine trafficking related offences and two years' consecutive for the criminal organization offences- 2018 NBCA 70 at para. 99.The offences occurred over a four-year period and are further summarized as Appendix "A" to the detailed decision of Brien, PCJ, regarding a three-year consecutive sentence (to the 78.5 months) after a plea of guilty to possession of proceeds of crime (s. 354/355(a) CC) and money laundering (s. 462.31(1)(a)/462.31(2) CC), involving $204,000 flowing from cocaine trafficking and an overall total of $611,200 proceeds of crime, which were ordered as a fine in lieu of forfeiture. The 36-year-old offender had no prior record.

[10] He pled guilty to *inter alia* arranging the purchase of 4 kg of cocaine in his capacity as a high-level trafficker connected to an intra-Canadian drug network. On a joint recommendation Justice Coady sentenced him to 7 years custody (unreported decision, but reduced to writing in 2015 – CRH 422512 (Halifax)).

[11] While he was on bail conditions regarding him having possession of 150 g of marijuana and 3.4 g of cocaine, a search revealed that he was in possession of 5 kg of marijuana, 1.4 kg of cocaine and 147 g of crack cocaine. He pled guilty to the initial charges and was sentenced to a jointly recommended 30 months in custody. He later also pled guilty to the more recent charges, at a time when 2.5 years of his original sentence remained to be served. Her Honour Provincial Court Judge Anne Derrick (as she then was) determined a fit sentence was 6 years' consecutive imprisonment, but as a matter of totality sentenced him to 5 years' consecutive custody. She characterized him as either a large retailer or a small wholesaler in the hierarchy.

56[12]; *R v Mugford*, 2019 NSSC 127[13]; *R v Majnoon*, 2009 ONCA 876 – leave denied [2010] SCCA No. 288[14]; *R v Bajada*, [2003] OJ No. 721 (CA)[15]; *R v Bryan* 2011 ONCA 273; *R v Nero*, 2008 ONCA 622[16].

[21] More ápropos to Mr. Chevrefils, she concluded that there were no reported Nova Scotian decisions of sentencings for possession of cocaine for the purpose of trafficking in the tens or hundreds of kilograms. However, she opined that generally where the quantity of cocaine involved is in the tens or hundreds of kilograms, the sentences are typically in the 8 to 15 year range: *R v Oddleifson*,

[12] 35 year old with continuous criminal record - plead guilty to acting as a middleman, facilitated receipt of 2 kgs of significant purity cocaine; trusted associate of those operating at higher levels of drug trade. 5 year sentence substituted for 3.5 year sentence.

[13] He pleaded guilty and had no prior criminal record. According to the agreed facts, Mr. Mugford was involved in the distribution of cocaine at the kilogram and multi kilogram level. He was a trusted member of a group that included five other individuals, three of whom pleaded guilty and been sentenced for their roles as co-conspirators. Mr. Mugford assisted higher level cocaine dealers with logistics, administrative support, and ran errands for them. He arranged for and provided transportation which included interprovincial transportation. As time went on, he took on more responsibility, but he was not an organizer in the group, he was a worker. He would sometimes play an important role in smoothing out difficulties in relationships and prevent things from escalating. He was motivated by money and received payment for what he did. He saw this as a way to "get ahead fast" and make money for his family. Justice Patrick Murray accepted the joint recommendation of four years' imprisonment.

[14] A 5-7 year sentence is appropriate for guilty plea to transportation of kilograms of cocaine [per month into Ottawa] by a person "involved in the distribution of the drug at that [multi-ounce] level" per Doherty, JA at para. 9.

[15] 51 year old with significant criminal record found guilty of possession for purpose of trafficking over ½ pound of cocaine (74% purity) and sentenced on appeal to 6 years custody – para. 13.

[16] Although I have not exhaustively researched the caselaw, nor included all the notable cases I reviewed for each *Fifield* category, I believe my estimated ranges of sentences are reliable. I will add that I sentenced a 39 year old (with two unrelated convictions) for possession of cocaine (2.4 kg) and ecstasy for the purpose of trafficking to a jointly recommended 4 years' imprisonment – *R v Walker*, 2014 NSSC 125. However, generally speaking I share the concerns of the Newfoundland Court of Appeal in *R v Kane*, 2012 NLCA 53 at paragraphs 28-9, that it may be unwise to rely on jointly recommended sentences to establish the range of sentences for a particular crime, given that most often such sentences will indicate the lower end of the range since a defendant would have no reason to accept a sentence that did not provide him with a *quid pro quo* for his agreement to forgo a trial, enter a plea of guilty and agree to a particular sentence.

2010 MBCA 44 (leave to appeal regarding conviction refused-[2010] SCCA No. 244; *R v Bacon*, 2013 BCCA 396 (although as I have noted in *R v Murphy*, 2019 NSSC 105 at para. 38, sentencing ranges in British Columbia tend to be different than in Manitoba, Ontario and Nova Scotia); *R v D' Onoforio* 2013 ONCA 145[17]; *R v Malanca*, 2007 ONCA 859, leave refused [2008] SCCA No 71; *R v Buttazzoni*, 2016 ONSC 1287; *R v Couture*, 2009 ONCJ 655.

[22] To recap, in my opinion, the normal range of sentences for possession of cocaine for the purpose of trafficking or trafficking in cocaine appear to be[18]:

- as I concluded in *Murphy*, for a petty retailer the range is from approximately 18 to 30 months in custody[19];

- for small scale retailers (with cocaine up to 1/3 kilogram available for further distribution), such as Messrs. LeBlanc and Benoit, the range of sentence is from 2 to 6 years in custody[20];

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[17] 46 year old who had been sentenced 15 years earlier to 6 years custody for trafficking 10 kg of cocaine – was convicted of trafficking 112 kg cocaine – upheld – sentence of 15 years custody.

[18] Bearing in mind the fundamental underlying considerations in s. 718.1 *Criminal Code:* the gravity of the offence and degree of responsibility of the offender – in the context of cocaine trafficking see *R v. Maric*, 2019 ONSC 3099 at para. 80.

[19] In Ontario, possession of an ounce (28.5 g) or less of cocaine for trafficking, the range is 6 months to 2 years less a day custody - *R v. Woolcock* [2002] OJ No. 4927 - and more than one ounce (28.5 g) to up to 300 g has a range of 2-5 years – *R v. McGill*, 2016 ONCJ 138 at para. 54 per Green J.

[20] See also *R v. Scharf*, 2017 ONCA 794 (5 years custody for 236 g cocaine).

- for medium scale retailers/small wholesalers (distributing more than 1/3 kilogram and up to lower single digit kilograms) the range of sentence is from 5 years to 8 years[21];

- for larger wholesalers and large scale retailers (distributing higher single digit, double digit or more multi-kilogram quantities), the range of sentence is from 8 to 15 years in custody[22];

- for importers (double digit or more multi-kilogram quantities) the range of sentences is from 12 to 20 years in custody[23].

Circumstances of the offenders

[23] Information about Messrs. LeBlanc and Benoit is available to me from: each of their police statements which were both admitted into evidence (Mr. Benoit agreed his statement was voluntarily given without the necessity of a *voir dire*; Mr. LeBlanc's statement was entered after a *voir dire* determined it was freely and

[21] *R v Bryan*, 2011 ONCA 273.
[22] *R v McGregor*, 2017 ONCA 399 at para. 13. In *R v Burnett*, 2019 NSSC 212, an RCMP officer stole 10 kgs of cocaine from police exhibit lockers, and effected its sale for money. Justice Chipman found him guilty, and sentenced him to a total of 10 years' imprisonment.

[23] *R v Duncan*, 2016 ONSC 1319 at paras. 25-39 – which neatly summarizes the gamut of range of sentences in Ontario.

voluntarily given: 2019 NSSC 234); their respective Pre-Sentence Reports ("PSRs"); and testimony I heard, particularly from Mr. Benoit and his son Keegan.

Mr. LeBlanc

[24] He was born June 8, 1994. Though not without difficulties, he describes his childhood as not unusual, except that for 15 years (1999-2015) his mother raised him by herself in Pictou County while his father was living in Halifax. He chose not to speak to his father out of "frustration from his absence in my life". Mr. LeBlanc moved out on his own at 19 years of age (2013) to live with a girlfriend (Jayda Benoit) in Stellarton, Nova Scotia.

[25] He was concurrently attending St. Francis Xavier University in Antigonish. After his second year there, his university studies ended- on July 11, 2015 he was driving erratically on Highway 104 near Marshy Hope in Pictou County, when he was stopped. A search of the vehicle revealed 32 g of cocaine and a significant amount of cash. On October 4, 2016 he was sentenced by his Honour Provincial Court Judge Del Atwood (who has been the resident judge in Pictou, Nova Scotia, for many years now) to the jointly recommended two years' custody in a federal institution (see *R v LeBlanc*, 2016 NSPC 57). Of note are Judge Atwood's comments:

> "I take into account the fact that Mr. LeBlanc has no prior record. I take into account the fact, as well, that Mr. LeBlanc would be a good candidate for rehabilitation. Mr. LeBlanc is 22 years of age. He successfully completed high school, began university courses at St. Francis Xavier University and hopes to resume his education after his release from custody and I believe that all of those objectives are realistic… I take into account Mr. LeBlanc's very young age, his lack of prior record, his cooperation with the police and the fact that he was very fairly and accurately characterized by the prosecution as being involved in petty retailing within the categories set out in *R v Fifield*, [1978] NSJ No. 42 (A.D.); therefore the court declines to impose a secondary designated offence DNA collection order."

[26] He also lived with friends for some period of time in Trenton, Nova Scotia. In 2017 he moved to Antigonish where he lived with Jayda Benoit and her father Michael Benoit. He next moved in with his mother in Stellarton and presently lives with his father. He has been free on conditions since his arrest[24]. He and Ms. Benoit have not lived together since approximately January 2018. In December 2017, Ms. Benoit gave birth to their son.

[27] Generally speaking, he has the support of his parents and Ms. Benoit. Ms. Benoit is concerned that he get counselling for an alcohol and drugs problem that he has had "for a while now". Mr. LeBlanc indicates he started using alcohol at 15 years of age, however he doesn't consider it to be an issue; and in relation to marijuana, he started using that at 17 years of age. "Hard drugs" were an issue for him when he was attending St. Francis Xavier University and going to music festivals. He noted he would use "psychedelics and uppers". He still presently

[24] I have considered the modest restrictions on his liberty in concluding a 5 year sentence of imprisonment is appropriate (eg. See Justice McArthur's reason in *R v Prasad*, 2019 ONSC 2953 at para. 41).

consumes marijuana a few days a week. He has not taken advantage of substance abuse programs that were made available to him. His physical health is excellent. He has always excelled at sports, including in the varsity context.

[28] Greg Purvis of the Pictou County Health Authority confirmed that Mr. LeBlanc attended, but did not follow up between 2018 and 2019.

[29] His employment has been limited to sporadically working at fast food franchises, including (by choice) for no more than two months during the summer of 2017 at the Dairy Queen in Antigonish. From everything I have available to me, I conclude that Mr. LeBlanc is not interested in working hard at minimum wage jobs, furthering his education or upgrading his skills, but rather was simply interested in making "easy" money. His motivation for having possession of cocaine for the purpose of trafficking was financial. At the time of the offence he was in receipt of social assistance. For the past 8 to 10 months he has also been in receipt of social assistance.

[30] In the PSR, it states that "at age 20, he became incarcerated and this was a different lifestyle to which she was previously exposed to. He feels this exposure to criminals, as well as this environment, was not a fair punishment and he struggled as a result of that sentence and placement."

[31] His parole officer, Eric McNeil, who supervised him between June and October 2018 when his earlier trafficking sentenced reached warrant expiry date, commented that there are concerns for the offender's motivation and associates. Mr. LeBlanc concedes some of his friends have a criminal record.

[32] Regarding Mr. LeBlanc's level of remorse, the PSR states that: "Mr. LeBlanc noted he feels 'horrible' with regard to his current involvement with the justice system. He also admitted it affects others around him as well, in particular his son. He stated it is also difficult as he is not 'able to progress my life the way I want to'." I conclude there is no evidence of any genuine remorse by Mr. LeBlanc. He does not even acknowledge the destructive and dangerous nature of the drug he sold, and its effects on his users and the community.

[33] In summary, I conclude Mr. LeBlanc's rehabilitative prospects are very guarded.

[34] At this juncture, it is useful to recall what Judge Atwood said in *R v Donaldson*, 2013 NSPC 41, a case of a youthful first-time offender having possession for the purpose of trafficking in cocaine:

> 4 The aggravating factors, that is to say, the factors that make the charge more serious, would include the fact that this was a Schedule I substance. The substance involved was cocaine. *It is well known to the Court, from numerous sentencing hearings involving other accused individuals, that cocaine is a highly addictive controlled substance. It is implicated directly in property and violent crime in the*

> *community, as drug dealers stake out territory and users of the drug steal and rob in order to support their addictions.*
>
> 5 Additionally, the Court is aware that, whereas a self-sufficient cannabis dealer who operates a local grow-op might find himself situated at the top of a very small pyramid, a dealer in cocaine feeds into a very expansive web. Cocaine is typically imported into the country. It is synthesized through a very extensive process. It is distributed through multiple layers of traffickers, and its presence in the community has a significant impact on community safety and the Court is certainly well aware of that.
>
> [My italicization added]

[35] Pictou County is contiguous to Antigonish County. Judge Atwood has rendered a number of decisions regarding cocaine including, *R v Greencorn*, 2014 NSPC 10:

> 4 The negative factors or aggravating factors in this case are as outlined by Ms. Duffy, the federal prosecutor, and by Mr. Gorman. Mr. Greencorn chose to become involved in the trade in cocaine; it is a controlled substance under Schedule I of the *CDSA. Furthermore, it is a highly refined and potent narcotic, not one that is synthesized locally, although is certainly distributed locally. Cocaine is distributed through networks that are linked to organized crime at the apex.* As was noted by Bateman J.A. in *R. v. Butt* 2010 NSCA 56 at para. 13:
>
> > 13 I would agree with the Crown that 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 (see, for example, *R. v. Conway*, 2009 NSCA 95; *R. v. Knickle*, 2009 NSCA 59; *R. v. Steeves*, 2007 NSCA 130; R. v. Dawe, 2002 NSCA 147; *R. v. Robins*, [1993] N.S.J. No. 152 (Q.L.) (C.A.); *R. v. Huskins*, [1990] N.S.J. No. 46 (Q.L.) (C.A.); and *R. v. Smith*, [1990] N.S.J. No. 30 (Q.L.) (C.A.)). It is significant that the *CDSA* classifies cocaine as one of the drugs for which trafficking can attract a life sentence.
>
> 5 The Court certainly is aware from the number of charges that it has dealt with over the preceding three years-involving substances such as cocaine, MDPV, MDMA, also the illegal use of analgesic prescription narcotics-that the trafficking of these sorts of substances in the community has a direct impact on community safety. Drugs such as cocaine are directly implicated in property crimes and crimes of violence.

[My italicization added]

[36] I have not found any reported decisions of relevance regarding possession for the purpose of trafficking/trafficking cocaine directly referencing Antigonish County. However, in *R v Wallace*, 2016 NSCA 79, Justice Beveridge noted in the court's reasons to uphold the issuance of a warrant to search, that (paras.9-18):

> "[*The Honourable Judge Halfpenny-MacQuarrie*], in an unreported oral decision, *convicted the appellant and his partner Danielle Stoilov of possession of cocaine for the purpose of trafficking and sentenced him to two years incarceration less credit* for time spent in presentence custody. Concurrent sentences were imposed for the possession of the methadone and breach of probation… With respect to August 23, 2015, Constable Gallant set out that source A told him: the appellant has coke for sale and is selling it out of his residence at 24 Indian Gardens; specifically that within the last 24 hours, the appellant had a half ounce of coke; he sells it for $80-$200 a gram or $500 for a half ounce; he also sells 4 mg Dilaudid for $15, 6 mg [Hydromorphone] for $15 and 12 mg for $25… When the police executed the warrant for 24 Indian Gardens later on August 23, 2015, they found two occupants… On the closet shelf above the clothes was a safe. It was open. *A pill bottle was visible. Inside the pill bottle were 11 individually wrapped plastic bags of cocaine, each weighing .7 g. Subsequent analysis showed it was "cut" or diluted with benzocaine*. A search of the top drawer of the master bedroom bureau revealed a digital scale along with various clear plastic baggies of the same type found in the safe. When tested, the digital scale was positive for the presence of cocaine and benzocaine.… Also located on the top of the bureau were: needles, scissors and spoons with white residue; and four methadone pills in a small black case. In the kitchen, the police found another digital scale, which also tested positive for cocaine and benzocaine."

[My italicization added]

Mr. Benoit

[37] Mr. Benoit was born November 21, 1968. He was apprehended by the (presently identified as) Department of Community Services at age 1, and placed in foster care. At age 7 he was adopted. While he describes his childhood years and

formative years as being very difficult, most significantly his adoptive parents separated when he was 14 years old (1992). His mother entered into a new relationship, with a man who sexually abused Mr. Benoit. Within the last several years an investigation was launched, and the perpetrator was convicted of sexually abusing him. As I understand it Mr. Benoit had to testify in approximately 2016 – 2017. Understandably, this abuse in particular wreaked havoc in his own personal life. At age 15 he relocated to his father's home and stayed with him until he was 24 years old.

[38] He and Ms. Susanne Benoit started dating in approximately 1992. Mr. Benoit quit school in grade 10 (1994).

[39] In 1995 they married. They had four children, Keegan (1996), Jayda (1998), Hailey (2000) and Liam (2003). He concedes that, "I was not a good father, as I was dealing with past issues in my life". They separated in 2012. She confirmed that Mr. Benoit is in desperate need of mental health counselling regarding past issues of physical and sexual abuse, and may suffer from fetal alcohol syndrome as his birth parents abused alcohol. Mr. Benoit believes that he may have a learning disability although he has never formally been tested.

[40] Mr. Benoit requires daily methadone and has significant health issues. He is on a disability pension because he has several herniated discs in his back. He has

arthritis and chronic pain. He sees Dr. Maureen Allen for pain management. The methadone is required because of an earlier reliance on prescription medications for his injuries. He has some difficulty breathing, and some form of heart condition.

[41] He has used marijuana since he was 13 years old, and continues to do so to control pain and because it assists with his appetite. He has experimented with other drugs over the years, but not used any on a regular basis. He has used cocaine over the past number of years with friends, and he stated it made him feel great.

[42] He has attended for addictions counselling with Geoffrine Boudreau – Arsenault in 2014. He does not believe he has a problem with illicit drugs or alcohol.

[43] He has a prior criminal record for:

1. 3 offences in October 1987 (s. 325 *Criminal Code* [“*CC*”]-forgery-sentenced March 8, 1988 to 18 months probation);
2. s. 306 *CC* January 3, 1988 (break and enter) sentenced March 8, 1988 to 1 month custody and 18 months probation;
3. s. 666 *CC* September 22, 1988 (breach of probation) sentenced February 6,1989 to a $100 fine;

4. s. 740 *CC* (breach of probation) November 28, 1988 to January 27, 1989 -sentenced February 6, 1989 to 10 months probation;
5. s. 6(2) *NCA* (*Narcotic Control Act*) cultivation of marijuana between January 1, 1991 to May 7, 1991 – sentenced October 31, 1991 to a $500 fine and 1 year probation;
6. s. 348(1)(b) *CC* (break and enter) for 24 1997, sentenced August 28, 1997 to 3 months custody and 18 months probation ($1183.69 restitution ordered);
7. s. 253 (b) *CC* (driving with more than 80 mg of alcohol in 100 mL of blood) June 12, 1997 – sentenced August 28, 1997 to a $500 fine and 13 month driving prohibition order; and
8. s. 7(1) *CDSA* (production of marijuana) August 22, 1999 – sentenced February 24, 2002 to a $2000 fine and 2 years probation.

[44] Mr. Benoit has a somewhat related record, but very dated. It is not material to his present sentence.

[45] Regarding this offence," Mr. Benoit stated he does not take responsibility for the offence and maintains his innocence in the matter… Mr. Benoit is considered suitable for a community disposition".

[46] Although Mr. Benoit did not contest the voluntariness of his police statement, that statement was effectively exculpatory in substance. Given Mr. Benoit's personal circumstances, and the level of his involvement in the present case, in spite of his lack of remorse, I conclude his prospects for rehabilitation are reasonably good.

The position of the parties[25]

[47] The Crown recommends:

1. Mr. LeBlanc- three years' custody; and
2. Mr. Benoit – two years' custody;

[48] Mr. Strapps for Mr. LeBlanc recommends- three years' custody.

[49] Mr. MacIsaac for Mr. Benoit recommends- a suspended sentence (i.e. probation), an intermittent sentence, or, if a more deterrent/denunciatory sentence is required, at most 2 years' imprisonment.

The sentencing principles

[25] In their written briefs, the Crown and Counsel for Mr. LeBlanc refer to their sentence recommendation regarding him as a "joint recommendation" of three years in a federal institution. Citing *R v Anthony – Cook*, [2016] 2 SCR 204, the Supreme Court of Canada's decision regarding "joint recommendations" or "joint submissions", Mr. LeBlanc's counsel seems to suggest that the court is bound by the reasons in *Anthony-Cook*. I am not. A true "joint recommendation" is premised on a *quid pro quo* – an offender pleads guilty in exchange for a specific recommendation on sentence by the Crown- see Justice Moldaver's reasons in *Anthony-Cook* at para. 2 and footnotes 1 and 3.

[50] The relevant sentencing principles are contained between ss. 718 – 726.2 *CC* and in section 10 *CDSA*. They have been extensively referred to most recently by our Court of Appeal in *Chase*.

[51] The primary considerations in these cases are deterrence and denunciation. Those considerations must be calibrated and proportionate to the gravity of the offence and the degree of responsibility of each offender. Any sentence for each of these offenders should generally be in parity with sentences imposed upon similar offenders for similar offences in similar circumstances, unless a deviation from parity can be justifiably explained. The court must act with restraint and impose the least restrictive sanctions appropriate in the circumstances, namely those consistent with satisfying the purpose and principles of sentencing. The application of these considerations has fairly been characterized as "a complicated calculus".

Aggravating and mitigating factors

Mr. LeBlanc

[52] They are as follows:

Aggravating

1. the nature of the drug – cocaine-Schedule 1 *CDSA*;

2. the quantity of the drug-210 g ($16000-$21,000 street value-typically sold to individual customers by the gram: ie. 1 to 3.5 grams at $80-100 per gram for personal use);
3. that the customers included young persons (eg Keegan's friends);
4. that a large contingent of (potential) young customers with money readily existed at St. Francis Xavier University (I infer it likely that some of their number were customers[26]);
5. that he was conducting the trafficking on a full-time basis with a purely profit motivation;
6. it appears that this offence is prevalent in the Counties of Antigonish and Pictou;
7. Mr. Benoit's sons Keegan and Liam were frequently exposed to these criminal activities;
8. he was on parole for the same offence at the time of committing it[27];

[26] The risk that they may have been customers is an aggravating factor. My inference is not *per se* itself an aggravating factor.

[27] While a prior criminal record generally should not cause a recidivist offender to be punished again for that offence [*R v. Mauger*, 2018 NSCA 41 at paras. 63-68 per Beveridge, JA], it "may lead a court to impose a harsher type or longer sentence… [if it] can speak to the need for greater emphasis on specific deterrence or diminish the importance of rehabilitation." Moreover, in this case, section 10(2)(b) *CDSA* makes his prior "designated substance offence" an aggravating factor on sentence. See also *R v. D'Onofrio*, 2013 ONCA 145 per Rosenberg, JA at para. 6, where a prior trafficking record was considered an aggravating factor. As a general proposition, it is accepted that in

9. this was not a one-time operation but rather on-going over a period of at least 8 weeks (they had only moved to the apartment in the preceding four months);

Mitigating

1. Mr. LeBlanc is still a young adult;
2. he has some positive family supports;
3. he has the ability to learn and live a pro-social life, however, he has not shown remorse, and the PSR writer stated: "There are concerns for the offender's motivation and associates."
4. he has been on release with a number of conditions, and until June 26, 2019, was so without incident[28].

Mr. Benoit

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sentencing a youthful non-violent offender with no prior record, a court should strive to emphasize specific deterrence and rehabilitation of the offender, not general deterrence – *R v Mohenu*, 2019 ONCA 291, at para. 12.

[28] The sentencing of Messrs. LeBlanc and Benoit was adjourned on May 22 to June 26, 2019, because Mr. Benoit was at the Emergency Department of St. Martha's Hospital, and it was uncertain when he would be available for court. On June 26, Mr. Benoit was present and sentenced. Mr. LeBlanc was present on May 22, but did not appear on June 26 for his sentencing. A warrant was issued, and numerous efforts were made by police to locate him. On or about July 23, 2019 he was arrested. I have not relied on the fact of his absconding and being at large for a month in rendering his sentencing decision; however, his misconduct does underline my conclusion (reached independently therefrom) that the prospects for his rehabilitation are "very guarded".

[53] They are as follows:

Aggravating

[54] Although some of the aggravating factors listed for Mr. LeBlanc apply to an extent as well to Mr. Benoit, it is important to recall that, as I stated in my conviction decision at paragraph 67:

> "I am satisfied that Mr. LeBlanc was the driving force behind the cocaine trafficking operation, and that Mr. Benoit played a lesser role… Mr. LeBlanc's more significant and dominant role in the trafficking enterprise… unlikely that Mr. Benoit was the leader...".

[55] In saying this, I intended to confirm my conclusion that Mr. LeBlanc is firmly within category 3 *Fifield* (large commercial retailer), while Mr. Benoit was primarily active in a category 2 capacity – small petty retailer- see *R v Murphy* sentencing; though he is also without question a party to the offence of possession of the entire 210 g cocaine for the purpose of trafficking, *inter alia*, since he held it for safekeeping when Mr. LeBlanc left to go to New Glasgow on November 4, 2017.

Mitigating[29]

[29] Mr. Benoit has recommended a suspended sentence as appropriate. His counsel relies on the following cases: *R v Douglas*, [1990] B.C.J. No. 2804 (CA)-25-year-old, single mother, drug addict, no previous record, realistically plans to go on to college, and successfully appealed her 6 month jail sentence for two separate sales of less than ½ g of cocaine; and *R v McGill*, [2016] O.J. No. 1346 (SC)-37-year-old, of aboriginal ancestry, who had spent time in foster care, residential schools and a dangerous criminal environment in the Toronto "projects", who pleaded guilty in a situation where a search warrant revealed 300 g of cocaine, $3000 in cash and various drug paraphernalia in his

1. Mr. Benoit is not a youthful offender, however he has some positive family supports, and in spite of his lack of remorse, I still conclude he has reasonably good prospects for rehabilitation;
2. For all intents and purposes, this is a first offence, given his previous record is unrelated, or related to marijuana, and is generally dated;
3. I note that he has been on release for a substantial period of time without incident;
4. Mr. Benoit does qualify as an offender who deserves mitigation as a result of what is sometimes referred to as "the sad life principle", which animates courts to give greater emphasis to the "restraint" principle[30].

Conclusion

Mr. LeBlanc

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residence. In three years on bail he had effectively made a complete 180° change in his life. The court concluded his circumstances met the threshold of exceptionality necessary to justify a non-custodial sentence.

[30] This was a significant factor in *R v Chase* -see para. 35.

[56] Mr. LeBlanc's circumstances, and his involvement in the offence, are both distinguishable from those of Mr. Benoit. Primary consideration must be given to denunciation and specific and general deterrence, keeping in mind his rehabilitation since Mr. LeBlanc is still a relatively young man.

[57] Having regard to the objectives and principles of sentencing contained in the *Criminal Code* and the *CDSA*, given the gravity of the offence and the degree of responsibility of Mr. LeBlanc, and acting with due regard to the principle of restraint, with his eventual hoped-for rehabilitation in mind, I conclude that a just sanction is 5 years' imprisonment.

[58] I will also sign the following orders:

1. s. 109(1)(c) and 109(3) CC- weapons prohibition order for life;
2. s. 487.051(3) CC- a secondary designated offence DNA order as I find it to be in the best interests of the administration of justice to do so, based on consideration of the relevant factors;
3. s. 16 *CDSA*- a forfeiture order, as I am satisfied on a balance of probabilities that the property the Crown suggests is offence -related property (ie. all seized property), and that the offence was committed in relation to that property, have been established. I would caution that

> these items should be maintained for an appropriate period of time beyond the minimum number of days required to allow for an appeal to be filed.

Mr. Benoit

[59] Mr. Benoit's circumstances, and his involvement in the offence, are sufficiently distinguishable from those of Mr. LeBlanc, such that lesser emphasis is required to be placed on the principles of denunciation and deterrence.

[60] Given the gravity of the offence and the degree of responsibility of Mr. Benoit, acting with due regard to the principal of restraint, and with his eventual hoped-for rehabilitation in mind, I conclude that a just sanction is 2 years' imprisonment[31].

I will also sign orders in relation to Mr. Benoit, as I have indicated I will for Mr. LeBlanc: s. 109(2) *CC* (beginning immediately upon the conclusion of his sentencing and ending 10 years after his release from imprisonment); 487.051(3) *CC*; s. 16 *CDSA* forfeiture regarding all seized property.

Rosinski, J.

[31] See also: *R. v. Connolly*, 2014 NSPC 68; *R. v. Conway*, 2009 NSCA 95.