

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** R. v. Young, 2022 NSSC 185

**Date:** 20220623

**Docket:** CRS. No. 504931

**Registry:** Sydney

**Between:**

Her Majesty the Queen

v.

Georgette Young, Lydia Saker, Nadia Saker, Angela MacDonald and  
Latatia Advertising Incorporated, The Spaghetti Benders Limited,  
25132004 Incorporated, 25132002 Incorporated, Kishk Incorporated,  
Maddie and Bella's Children's Clothing Incorporated,  
Artisan Hair Loss Therapy Incorporated, Housewives in Heels Incorporated,  
Juliette and John Incorporated and New and Chic Incorporated

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**Sentencing Decision**

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**Judge:** The Honourable Justice Robin C. Gogan

**Heard:** June 17, 21, 22, 24, 25, 28, 29, 30, July 5, 6, 7, 8, 9, 12, 13, 14, 19,  
20, 21, 22, 23, 27, 28, 30, 2021, February 22, May 24, June 10 and  
23, 2022 in Sydney, Nova Scotia

**Counsel:** Mark Donohue and Constantin Draghici-Vasilescu for the Crown  
Georgette Young, Angela MacDonald, Nadia Saker, Lydia Saker,  
self-represented Defendants

**By the Court (Orally):**

**Introduction**

[1] The matter before the Court today is the sentencing of the offenders in the *R. v. Young*. The trial decision in this case was delivered on February 24, 2022. Following the verdicts, presentence reports were ordered. Written submissions have been provided by the Crown as well as the individual offenders, Georgette Young, Nadia Saker, Lydia Saker and Angela MacDonald.

[2] This matter was before the Court in person on May 24, 2022. On that date, the Crown made extensive and comprehensive sentencing submissions. In response, the offenders requested more time to prepare their positions. The request was granted and written submissions were provided on June 3, 2022. The content of these submissions prompted the organization of an appearance by telephone on June 10, 2022 to discuss the continuance of the sentencing hearing and to provide the offenders with some further procedural assistance.

[3] Today, the offenders appeared with evidence in the form of medical records that they asked be considered by the court. The Crown was given time to review the information and did not wish to conduct a cross-examination. They were not opposed to the records being considered by the court for sentencing purposes. The

offenders requested an adjournment of the sentencing hearing to obtain further medical records and obtain a medical opinion. The nature of the records and the opinion was explained. The adjournment request was denied. In my view, it does not serve any useful purpose to delay this proceeding any further so that very dated medical records can be obtained on the speculative belief that a specific type of opinion will be produced at some unspecified point in time. I do consider the information contained in the records provided today which does bear on the personal history of all offenders.

[4] I have reviewed the offenders' submissions and reviewed the evidence offered on sentence. I note here that the Crown seeks custodial sentences for all the individual offenders while the offenders ask to serve any sentence imposed in the community under a conditional sentence order, or that the imposition of sentence be suspended.

[5] What follows is a sentencing decision. I will review the circumstances of the offences and each of the individual offenders. The sentencing principles will be reviewed and key authorities canvassed. I will conclude by imposing sentences for all offences on all offenders.

### **Circumstances of the Offences**

[6] The context for all that follows are the offences that bring us here today for sentencing. Georgette Young, Nadia Saker, Lydia Saker, and Angela MacDonald were charged with a multitude of *Criminal Code* and *Excise Tax Act* offences by Indictment dated March 11, 2021. Ten related companies were also charged. For the reasons set out in *R. v. Young*, 2022 NSSC 58, convictions were entered on all ten counts of fraud under s. 380(1)(a) of the *Criminal Code* and all ten counts under s. 327(1)(d) of the *Excise Tax Act*. The ten counts under s. 327(1)(a) of the *Excise Tax Act* counts were stayed.

[7] The factual basis for the convictions is set out in detail the trial decision. I noted there that all of convictions had the same broad factual basis. I found overwhelming evidence that the offenders had participated in a fraudulent scheme the purpose of which was to obtain GST refunds to which none were entitled. The method used to obtain these refunds was the filing of corporate GST returns with false information. The vehicles used to perpetuate the scheme were the companies owned and controlled by the individual offenders. In order for the scheme to be fully effective and maximize its potential, it required the group of related companies to exist and subsequently act in concert. I found that Georgette Young was the ringleader of the operation, but that her mother Lydia Saker and sisters

Nadia Saker and Angela MacDonald had knowledge of the scheme and actively participated. As I concluded in the trial decision:

[273] The magnitude of the fiction in this case is breathtaking. The hubris of it is shocking. When CRA began to review, and later audit the credit returns, the defendants doubled down on their fraud by supplying fictitious invoices and amending claims in an attempt to hide the massive scale of their fraud. In the early days of this conduct, the vulnerability of our tax system was exposed. When fraudulent claims were reviewed, the defendants made up records and invoices and provided these to CRA. Upon review of the information, CRA cleared the returns and the refunds were paid. This was early days of what later became a fraud on the Canadian public of staggering proportions. It was only the consistent work of diligent public servants that brought all of this to an end.

[8] In the end, I accepted that throughout the offence period of January 1, 2011 to July 31, 2015, the offenders claimed refunds totalling \$3,628,805.06. The actual amount of refunds paid was \$275,960.04, while \$81,399.61 was allocated to existing tax debt, resulting in an amount of fraudulent gain to the offenders in the amount of \$357,359.00. The ten counts of fraud reflect the amounts claimed in the GST returns of the offender companies in the Indictment period. But all of the claims were part of one broader scheme involving all of the companies.

[9] What I extract from the circumstances of the offences is that the acts committed were deliberate, increasingly flagrant, and ongoing for a period of four and a half years. When the claims made were questioned, the offenders doubled

down with false invoices, amended claims that increased the amounts sought, and an increasingly sophisticated web of artificial transactions. I note here that the amended filings sought refunds totalling \$20,628,805.06. It goes without saying that the offences committed are very serious.

[10] Against this landscape of fiction, I consider the resources dedicated to discovering and then ending it. First, there were desk reviews and audits, then the full scale civil audit of Carol Power from April to November of 2015, including a visit to Cape Breton in October of 2015. This was followed by a criminal investigation that began with a referral in February of 2016. Investigator Boudreau was assigned to the matter on June 9, 2016 and his investigation continued until charges were laid on February 1, 2019. The trial of the Indictment took twenty-four trial days over six weeks and involved the presentation of a documentary and electronic evidence that was detailed, technical, and voluminous.

[11] Aside from the obvious resources devoted to the audit, investigation, and trial of these charges, the impact of these offences is challenging to characterize in a meaningful way. There is no single victim who can speak to the impact of the crime. Nonetheless, it must be said that there are many victims here. Defrauding the government is equivalent to stealing from your fellow citizens (*R. v. Coffin*, 2006 QCCA 471). It impacts all Canadian citizens and those who benefit from

services funded by the Government of Canada (*R. v. Hofbauer*, 2004 BCPC 604 at para. 6).

[12] It has been observed many times that the tax system in Canada is dependant upon the integrity of its citizens. Our tax system imposes a public duty on citizens and a breach of that fundamentally important public duty is a criminal offence (*Knox Contracting Ltd. v. Canada*, [1990] 2 S.C.J. No. 74, at paras. 17-18). Those who are honest and compliant with their tax reporting must know that there are consequences for those who are not. It is for this reason, that the dominant sentencing principles in cases of this kind are denunciation and deterrence.

### **Circumstances of the Offenders**

[13] At this point I consider the circumstances of the offenders. There are ten companies owned and operated variously by the four individual offenders. Georgette Young, Nadia Saker and Angela MacDonald are sisters and Lydia Saker is their mother. What I know about their personal circumstances comes from their Pre-Sentence Reports, the evidence they provided for consideration on sentence, and their submissions.

[14] I note here that none of the offenders have a criminal record. They are close family members and have positive things to say about one another. And they share

some key personal history that I will consider here. One of those is the shared ownership and operation of a restaurant called Spaghetti Benders in Boularderie, Nova Scotia for a period of about 15 years. There were other shared business ventures. More significantly, they have a shared exposure to domestic violence.

*Lydia Saker*

[15] Lydia Saker is 77 years old. She comes from a large family and lived in the same home until leaving to get married at age 26. Her parents were married for 75 years but are both deceased. She had a good relationship with both but is estranged from all her living siblings since the death of their parents.

[16] The offender was married to George Saker but the marriage ended in 1990. She describes having her children as a positive part of her life. Unfortunately her marriage was not positive. She reports that her husband was verbally, mentally, and physically abusive. There were incidents when her life was threatened with a knife and a loaded gun. One incident of physical assault happened in the presence of her daughters. She suffered significant injuries at the hands of her husband over an extended period. The records indicate that her husband was convicted of an offence in relation to these assaults, spending time in jail. Lydia Saker and her husband subsequently divorced and this process was described as “horrible”. She

says that she now suffers from post traumatic stress disorder and has not had another close personal relationship since her divorce. Her support system comes from her daughters who are all close to her. She takes medication for anxiety and PTSD and has had various kinds of counselling following her divorce. Probation Services was unable to confirm her medical or treatment history but some of the records were made available to the court today. The records confirm a very turbulent and abusive marriage over an extended period, something that her daughters were exposed to as well during their critical formative years.

[17] I note a period hospitalization for mental health issues in 1997 and 1998. The reports indicate that Saker recovered well. There is no history of substance or addiction issues.

[18] A neighbour commented that Saker is a nice, kind hearted and a friendly person but doesn't socialize. A friend made similar comments adding that Saker loves her family and that the offences seem out of character. Another friend commented that Saker was a dedicated mother and grandmother in spite of having been involved in a terrible marriage. Others commented how difficult it was for Saker to endure her marriage and divorce "after her family turned their backs on her" over an inheritance dispute.

[19] Saker has a history in the cosmetology field but now says she is retired. She enjoys baking and spending time with her grandchildren. She reports a multitude of health issues, some related to past abuse or two car accidents. She is able to volunteer time to her daughter's cooking school and as a caregiver for her son-in-law's mother who has dementia. Saker described herself as a loyal and caring person who lives a quiet life. In terms of the offences, Saker says she is confused but says that she did nothing wrong and does not need to make any changes. The Probation Officer was of the view that personal counselling services may be of benefit.

*Nadia Saker*

[20] Lydia Saker's youngest child is Nadia Saker. She is 46 years old. She has a high school education. She is not employed although she reports wanting to return to the workforce. She has been married for three years and describes it as a strong marriage. She has no children. Her husband confirms a good marriage and reports his wife to be "a rock", down to earth, friendly, social, polite and respectful. He observed that Nadia was "very close" to her sisters and mother and talks to her father. He says that he will support his wife no matter the outcome of this matter.

[21] Saker reported that her parents' marriage was "troublesome" and "contained many issues". She remains close with all her family members, including her father, in spite of this history. She commented that in her formative years she enjoyed a family environment with things like family vacations but commented that her "parents loved us, but didn't love each other". She reported witnessing violence and abuse in the family home. After her parents divorced, she had a period of 9 years of no contact with her father but then resumed contact. Her father reports that they have been estranged again since December of 2021.

[22] Saker said that her physical and mental health are good and denied seeking any mental health support in the past. Today, she related a history of anxiety for which she takes medication. She has no addiction issues. She enjoys caring for her dog and spending time with her family. Friends describe her as a reliable, dependable and responsible person. She described herself as a "perfectionist" who is talented, loyal, hard working and trustworthy. She did not take responsibility for any part of the offences nor express remorse. She said she was confused by the matter but professed nonetheless to be taking it "very seriously".

*Angela MacDonald*

[23] Angela MacDonald is the middle child of Lydia and George Saker. She is 48 years old. She is separated from her husband and has a young daughter. She has high school and some post secondary education. She has been self-employed in the past in a number of business ventures. She reports that she is in good health. There are no addiction issues. In terms of her mental health, she reported “no concerns” to the Probation Officer and denied any past access to counseling or therapy. In contrast to this evidence was the brief report from her family physician confirming a diagnosis of PTSD. MacDonald reports that she has always enjoyed a variety of sports and now spends her time with her 9 year old daughter.

[24] MacDonald described her formative years as good, noting that both parents were actively involved in her activities and their home often has friends in it. She noted that her father was “sort of abusive” to her mother and reported both physical and verbal abuse resulting in her parents’ separation. After that she lived with her mother until she was 21 when she moved in with her sister until she met her husband at 26 and married in 2004 when she was 30 years old.

[25] MacDonald said that her marriage was abusive and ended two years ago. She continues to live in the family home with her daughter and receives support from her former husband. Her mother reported witnessing abusive episodes in MacDonald’s marriage but described her daughter as an “excellent mother”, taking

good care of her granddaughter since the end of the marriage, taking her to activities and having friends over to play. MacDonald described herself as kind, fair and respectful, a good mother and loyal friend with “a great amount of integrity”. A friend reported MacDonald as a “bubbly, happy go lucky” person in the past but had little recent insight. The Probation Officer noted that MacDonald was guarded throughout the interview and provided only minimal collateral contacts.

*Georgette Young*

[26] Georgette Young is the eldest daughter of Lydia and George Saker. She is 50 years old and married with 2 children, now 14 and 15 years old. She graduated from high school in 1990. She obtained a Bachelor of Arts from Cape Breton University in 2012 and an Education Degree from the University in 2020. She aspires to obtain even more education in the teaching field. She is not employed. She did not discuss her business ventures when asked about past employment. She mentioned instead doing tutoring, voice lessons and cooking classes. She relies on her husband to meet their financial obligations.

[27] Young’s husband was contacted as a source for the Pre-Sentence Report. He confirmed that their relationship of 17 years and described his marriage as

wonderful and his wife as an “amazing women” and a “great mother” who was very involved with her children. He went on to say that she was caring, thoughtful, kind, generous and supportive. He said he was shocked by the offences but will support his wife. Others provided similar comments suggesting that the offences were out of character for someone they believed to be a good, caring and trustworthy person.

[28] Young described her formative years as “not always easy” but said that she was popular and social and active. She said her father committed adultery and was abusive to her mother resulting in a divorce and life became more challenging. She left home at 18 years to pursue her education. She has always maintained a close relationship with her mother and sisters. She has had extended periods of no contact with her father but reports a close relationship. She also has a close relationship with her father-in-law. She tends to her husband’s parents by cooking and cleaning for them.

[29] Young says that she is in good health with no addiction issues. She reports having counselling following her parent’s separation. She did not disclose any history of PTSD in her Pre-Sentence Report. She described herself as others did – kind, caring and generous – but added that she is not interested in material things and does not now have a “circle of people”.

*Submissions of the Offenders*

[30] The offenders provided a number of written and oral submissions for consideration. It was noted that these were a mixture of evidence and submissions and for this reason are in evidence as exhibits.

[31] The first of these dated May 24, 2022 reviewed the personal circumstances of each of the offenders and was largely consistent with the information available in the Pre-Sentence Report. The only mention of any history of PTSD in the initial submission in relation to Lydia Saker. All expressed apologies for “everything that has happened” and noted that they have suffered from embarrassment, humiliation, emotional damage and lost income as a result of the proceedings. They asked that these impacts be considered and asked to serve their sentences in the community.

[32] Subsequent written submissions were provided on June 3, 2022. In each case, the offenders offered more detail about their personal circumstances than they offered during the preparation of their Pre-Sentence Reports. In some instances, the new information conflicted with the Pre-Sentence Reports. For example, Georgette Young claimed to have had PTSD for “as long as she can remember” as a result of the “extreme abuse” her father inflicted on her mother. She was of the belief that PTSD gave her “poor and risky decision making”. She

added that she needed to be free to care for her children, her mother and her in-laws. She asked for a suspended sentence.

[33] Likewise, Nadia Saker had reported to Probation Services that she had good mental and physical health. However, in supplementary submission, she said that she had Crohn's disease and crippling arthritis and claimed to have PTSD as a result of a "very traumatic, abusive and violent childhood". She attributed her past circumstances to her poor decisions as an adult. Although her Pre-Sentence Report indicated that she lived in her family home until she was 21 years old, in her supplementary submission, she claimed that she was thrown out to the street at 15 years old and had to fend for herself. She asked for a suspended sentence to enable her to take care of her ailing father. However, the Pre-Sentence Report recorded her father as saying that they had a disagreement and had not had contact since December of 2021.

[34] Angela MacDonald had reported no concerns with her mental health when interviewed for her Pre-Sentence Report. In her supplementary submission, she said that she suffers from PTSD. The diagnosis was confirmed in a medical letter from her family doctor. MacDonald attributed the condition to the "extreme abuse" she witnessed in her childhood and teenage years. She claimed that this left

her with emotional scars and behaviour patterns that were beyond her control. She asked for a suspended sentence in order to continue to raise her daughter.

[35] All of the offenders argued that they had no prior criminal record, and that their apology and PTSD should be considered as a mitigating factors on sentence. They distinguished the cases cited by the Crown by saying that dividing the GST refunds paid between four people did not equate with a large scale fraud. They offered full cooperation to recover the money.

[36] It is troubling that significant inconsistencies exist between the information in the Pre-Sentence Reports and the subsequent information. The records received today confirm the turbulent and violent family history of domestic violence. It is a shared experience for them as a group that directly impacted Lydia Saker. The lack of disclosure about this personal background in the Pre-Sentence Reports is concerning. It demonstrates a reticence to share this information. I am not sure why except that it is deeply personal and traumatic.

[37] I had the opportunity to observe the offenders during the conduct of a lengthy trial. My observations, along with the findings at trial, suggest that they are all pleasant, polite, and intelligent women who have a persona that they share

with the world and a truth they only share with one another. This dichotomy seems to overwhelmingly permeate their lives.

### **The Sentencing Regime and Principles of Sentencing**

[38] I turn now to a discussion of the sentencing parameters and sentencing principles.

#### *Fraud Offences - Parameters*

[39] The first set of offences before the court for sentencing are under s. 380(1)(a) of the *Criminal Code*. The maximum sentence for fraud over \$5,000.00 is 14 years in prison. All of the individual offenders have been convicted of ten counts of fraud. These are counts 1 to 10 in the Indictment. Each of the counts relates to the activity of one of the corporate offenders.

[40] Section 380(1.1) of the *Criminal Code* imposes a mandatory minimum period of imprisonment of 2 years if the subject matter of the fraud exceeds \$1,000,000. This mandatory minimum punishment was enacted on March 23, 2011, subsequent to the commencement of the current offences (January 1, 2011 to July 31, 2015).

[41] Section 11(i) of the *Canadian Charter of Rights and Freedoms* gives an offender the benefit of a lesser sentence in certain circumstances:

11 Any person charged with an offence has the right

(i) if found guilty of the offence and if the punishment for the offence has been varied between the time of the commission and the time of sentencing, to the benefit of the lesser punishment.

[42] In its brief, the Crown canvassed two divergent lines of authority emerging from a situation where an ongoing offence straddles a legislative amendment that impacts the sentence that may be imposed. The matter has not yet been settled by the Supreme Court of Canada but recent decisions favour an approach permitting the right to benefit anyone whose offence dates began before the amendment (*Canada (Attorney General) v. Lalonde*, 2016 ONCA 923 and *R. v. Chicoine*, 2019 SKCA 104). Although this line of authority provides a potential sentencing benefit to the offenders in this case, I agree with the Crown submission that it is largely a moot consideration in the circumstances of this case.

*Excise Tax Act Offences – Parameters and Fines*

[43] The second set of offences before the court for sentence today are under the *Excise Tax Act*. These are the convictions on counts 12, 14, 16, 18, 20, 22, 24, 26, 28 and 30. The punishment for the offence of willfully obtaining or attempting to

obtain a refund under s. 327(1)(d) of the *ETA* is found in s. 327(2). On conviction by Indictment, every offender is liable to:

(a) a fine of not less than 100%, and not more than 200%, of the amount of tax or net tax that was sought to be evaded, or of the rebate or refund sought ...

(b) both a fine referred to in paragraph (a) and imprisonment for a term not exceeding five years.

[44] For these offences, the Crown provided a submission setting out the minimum fines that apply to each corporation and its director(s). These fines are imposed on each offender upon conviction. They are not restitution but punishment for the crime committed (*R. v. Dyck*, 2018 MBCA 33, *R. v. MacFarlane*, [1997] P.E.I.J. No. 116 (PEICA) and *R. v. Pham*, [2002] O.J. No. 2545 (ONCA)).

[45] The Crown asks that the minimum fines be imposed and those fines shall be imposed as part of the sentence. At this point, I confirm the following fines flow from the convictions under s. 327(1)(d):

Count 12 – Latatia Advertising and Georgette Young shall each be fined the amount of \$40,638.00;

Count 14 – 25132004 Inc. and Georgette Young shall each be fined the amount of \$125,467.00;

Count 16 – 25132002 Inc. and Georgette Young shall each be fined the amount of \$315,324.00;

Count 18 – Kishk Inc. and Georgette Young shall each be fined the amount of \$1,220,133.00;

Count 20 - Maddie & Bella’s Children’s Clothing Inc. and Georgette Young shall each be fined the amount of \$243,139.00;

Count 22 – Artisan Hair Loss Therapy and Lydia Saker shall each be fined the amount of \$282,199.00;

Count 24 – Housewives in Heels Inc. and Nadia Saker shall each be fined the amount of \$440,720.00;

Count 26 – Juliette & John Inc. and Angela MacDonald shall each be fined the amount of \$585,345.00;

Count 28 – New & Chic Inc. and Angela MacDonald shall each be fined the amount of \$322,941.00; and

Count 30 – The Spaghetti Benders Ltd. and Georgette Young, Lydia Saker, Nadia Saker and Angela MacDonald shall each be fined the amount of \$52,900.00.

[46] The total fine imposed on Georgette Young shall be \$1,997,601, on Lydia Saker shall be \$335,099, on Nadia Saker shall be \$493,620, and on Angela MacDonald shall be \$961,186.

*The Sentencing Principles*

[47] I now move from discussion of the sentencing parameters and mandatory fines to the principles of sentencing. These principles will guide the remaining

sentences being imposed and are outlined in ss. 718, 718.1 and 718.2 of the *Criminal Code*.

[48] The offenders here will have read these sections of the *Criminal Code* which provide:

718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (e) to provide reparations for harm done to victims or to the community; and
- (d) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community.

718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or decreased to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender ...

- (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
- (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
- (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders ...

[49] In addition to these principles, s. 380.1(1) and (1.1) of the *Code* provide that certain circumstances shall be aggravating on sentencing. These include the magnitude, complexity, duration, or degree of planning of the fraud committed, and the fact that the value of the fraud committed exceeded one million dollars. Although the offenders contest that these sections apply to their offences, I find that they do.

*The Sentencing Objectives for Fraud*

[50] It bears repeating that the present case involves an actual loss suffered by the public of \$357,359, of which the offenders obtained \$275,960.04 while another \$81,399.61 was allocated to existing corporate tax debt. But for the work of diligent public servants, the loss would have been much higher. The evidence at trial established that the offenders, through the various companies, had claimed a

further \$3,271,444.62. There can be no doubt that this was a large scale, organized, flagrant, and prolonged fraud upon the Canadian public. It is in this context that the sentencing principles are considered.

[51] Canadian courts have repeatedly pronounced that denunciation and deterrence are the primary objectives in sentencing for frauds involving government funds – and particularly in instances of tax fraud. Sentences imposed for offences of this kind must express society’s condemnation of such conduct. For this reason, restorative objectives must bow to the need to achieve sentences that prioritize denunciation and deterrence. Overwhelmingly, this results in custodial sentences for these offences.

[52] The Crown cited numerous examples of the application of the sentencing principles in cases of fraud. A few bear mention here. In *R. v. Cromwell*, 2015 NSPC 99, Judge Derrick (as she then was) expressed that “the essence of tax evasion is blatant dishonesty and the pillaging of the public purse”. The primary sentencing principles were denunciation and general deterrence.

[53] In *R. v. Wilm*, 2017 ONCJ 97, the offender was convicted of a “major-scale tax evasion” of approximately \$500,000. The court recognized the need to emphasize deterrence and denunciation because the crime of “tax evasion can be

very hard to detect and very lucrative”. For this reason, “custodial sentences are the norm in major fraud and tax evasion cases”.

[54] More recently, the Nova Scotia and Ontario courts of appeal have rendered important decisions in fraud cases. In *R. v. Plange*, 2019 ONCA 646, the offender had attempted to redirect GST refunds from corporate to personal bank accounts. His attempt involved \$41 million dollars in refunds but he only obtained \$15,000. The Ontario Court of Appeal found the sentence imposed at trial of 13 months and 18 days unfit when compared to other large scale frauds. A fit sentence was three years. Absent a impressive array of mitigating factors including a guilty plea, the small loss to CRA, full restitution, the offender’s youth and first offender status, a significantly longer sentence would have been necessary.

[55] In *R. v. Dawson; R v. Ross*, 2021 NSCA 29, the offenders defrauded the federal government by monopolizing a contracting process for the supply of goods to a Canadian Forces base. The value of the fraud was difficult to quantify but was found to be approximately \$2 million dollars. At trial, conditional sentences had been imposed. On appeal these sentences were found unfit as they did not properly express the objectives of denunciation and deterrence. The Court of Appeal had this to say:

[71] In cases of large-scale premeditated fraud, denunciation and general deterrence are the most important sentencing objectives (*Potter and Colpitts*, at para. 837). ...

#### Denunciation and Deterrence

...

[73] The role of denunciation and deterrence was eloquently described by Ross, P.C.J. in *R. v. Wilson*, 2008 NSPC 68, a sentencing for an over \$5000 fraud case:

[16] ... Sentences have an [exemplary] aspect. They serve in part to fix the seriousness of the crime in the mind of the public. They serve as public pronouncement of just how wrong certain behaviours are. Law makers intend that a court should in passing sentence give voice to the thinking of reasonable and upright people to reflect to some degree how they would view the conduct in question. The public look to criminal sentences for authoritative pronouncements on what is right and what is wrong. Certainly they have many other sources for their values but the justice system is an important source. By doing so a sentence may properly brand certain conduct as reprehensible and in doing so reinforce the morally correct behaviour of the vast majority of citizens ...

[74] The emphasis in serious fraud sentencing on denunciation and deterrence is long-standing. Large scale, premeditated frauds involving a breach of trust are most often perpetrated by offenders who “are likely to be affected by a general deterrent effect” (*R. v. J.W.*, 1997 CanLII 3294 (ONCA), [1997] 33 O.R. (3d) 225 (ONCA), at para. 50; see also: *R. v. Gray*, 195 CanLII 18 (ONCA), at para. 32 (Leave to appeal refused: [1995] S.C.C.A. No. 116). This Court in *Potter* endorsed the views of the sentencing judge in *Pavao*:

[23] The *Criminal Code* requires that the principles of denunciation, deterrence and rehabilitation be considered

in sentencing. There is considerable legitimate debate as to whether significant sentences imposed on offenders truly have a deterrent effect, either for the individual offender or for others who might be tempted to commit similar crimes. **However, it is well recognized that if deterrence is relevant at all, it is particularly so for crimes of this nature, involving individuals who are intelligent and who deliberately set out to plan and execute sophisticated frauds. It is important that such individuals be aware that the significant risk of a long jail term outweighs any benefit or financial reward they may obtain from the fraud. This is relevant to the individual offender, and also to others in the community who are tempted towards such crimes.** (emphasis added) (*Potter*, at para. 918)

[75] The conditional sentencing regime was intended to emphasize the laudable goals of restorative justice (*Proulx*, at para. 19). By introducing conditional sentencing, Parliament was mandating the “expanded use ...of restorative principles in sentencing as a result of the general failure of incarceration to rehabilitate offenders and reintegrate them into society” (*Proulx*, at para. 20).

[76] In large-scale protracted frauds, such as those perpetrated by Messrs. Dawson and Ross, rehabilitation and reintegration must not be allowed to overshadow the objectives of denunciation and general deterrence. *Proulx* made the point that where the prevailing emphasis must be on denunciation and deterrence, these objectives will, in general, be most appropriately achieved through incarceration:

Where punitive objectives such as denunciation and deterrence are particularly pressing, such as cases where there are aggravating circumstances, incarceration will generally be the preferable sanction. This may be so notwithstanding the fact that restorative goals might be achieved by a conditional sentence ... (at para. 114)

[77] I find there are no restorative objectives that need to be addressed in Mr. Dawson's or Mr. Ross' case. They each know how to be law-abiding and they continue to be integrated within their families and communities. Mr. Ross is retired and Mr. Dawson is familiar with lawful business practices, having operated a legitimate company prior to these crimes.

[78] The Supreme Court of Canada recognized in *Proulx* that "Inadequate sanctions undermine respect for the law" (at para. 30).  
...

[79] Promoting respect for the law is a fundamental purpose of sentencing (s. 718, *Criminal Code*). The conditional sentences imposed on Mr. Dawson and Mr. Ross cannot be viewed as serving this purpose.

[56] The decision in *R. v. Ross, R. v. Dawson* is guiding authority and I am bound to apply it here. It underscores the established sentencing priorities and is the most recent statement from our court of appeal on the appropriate range of sentence.

### **Sentencing Decision**

[57] Having reviewed the circumstances of the offence and the offenders as well as the sentencing parameters and principles, I turn to the application in the present case. The question to be answered is what sentence is fit and just for each offender. The answer lies in the guiding principles and in the exercise of discretion

that comes with balancing all of the relevant factors in order to attain the objectives of the particular sentencing exercise.

[58] The objectives of denunciation and deterrence will have priority here (**R. v. Ross, R. v. Dawson**). But any sentence imposed must be proportionate to the gravity of the offence and the degree of responsibility of the offender. The gravity of the offence and the degree of responsibility are separate and distinct inquiries.

### *Gravity*

[59] In terms of gravity, I am dealing with two sets of offences here. The first is fraud over \$5,000. This is a serious offence demonstrated by its penalty (**R. v. Ross; R. v. Dawson**). The Crown notes that the maximum penalty available is the second highest available in our justice system. The 2004 increase in the penalty for this offence signals Parliament's intent that the offence be punished more harshly than it had been previously (**R. v. Lacasse**, 2015 SCC 64). The second offence is the offence of obtaining a refund to which a person is not entitled. This offence is objectively less serious when one considers the available maximum penalty of 5 years on Indictment. I note however, that the assessment is not a relative one. Obtaining a unlawful refund is serious due to its impact on honest taxpayers and the integrity of the tax system.

[60] The assessment of gravity includes consideration of the magnitude of the offence, the duration, the sophistication and complexity, the amount of the loss, the number of victims and the impact and other characteristics or consequences of the offence (*R .v. Bogart*, 2002 CanLII 41073 (ONCA) at para. 22-24; *R. v. Whiten*, 2002 ONSC 4151, at para. 33; and *R. v. Pavao*, 2018 ONSC 4889, at para. 43;).

[61] I consider that the amount of the fraud in this case is over \$3 million dollars, the amount of the loss is \$357,359, none of the funds have been recovered, the scheme was complex and involved persistent dishonesty, misguided creativity and intelligent adaptability in order to convince public servants that refunds should be paid in spite of increasing scrutiny. The offences occurred over a four and a half year period and endured due to its level of planning, coordination, deliberation and ingenuity. The Crown has characterizes the offences as “a sustained and escalating assault on Canadian taxpayer’s funds”. I agree.

[62] There are two further points to consider here. First, although these offences are not a classic breach of trust, they involve an analogous breach of a public duty characterized by a brazen abuse of the self-reporting nature of our tax system. Public funds must be available for the good of all Canadians and distributed in a manner consistent with law and government policy and not to those who find it easy to cheat the system for personal gain. Second, and related to the first, is that

the conduct of the offenders made a mockery of the tax system, both at the time that they committed the offences and as they defended the charges. Repeatedly, in various ways, the offenders demonstrated that they viewed the offences and their own conduct as amusing – and in a very public way treated the tax and justice systems with complete and utter disrespect.

[63] All of the behaviour must attract a very high degree of condemnation. All of these considerations result in the offences being very grave.

*Degree of Responsibility*

[64] In terms of the degree of responsibility of the offenders, I must consider factors impacting each offender's culpability. These include the offenders personal circumstances, mental capacity, or motive for involvement in the crime. I find each offender's responsibility to be high but not equally high. As found at para. 245 of the trial decision:

[245] In terms of knowledge and participation, I find that Young was the coordinator and perhaps the creator of the scheme. She was without question the manager of the operation, controlling the mixing and mingling of the related companies as necessary to accomplish the end goal. But Young was not alone in her efforts. I accept the evidence offered by the Crown that all of the individual defendants knew that the claims filed were false and understood that they would benefit by their participation to the detriment of the Government of Canada and, ultimately, the public.

[65] The offenders here operated as would a crime family. They are a close knit and loyal group. They all participated but had their own roles, some more significant than others. They shared in the proceeds of the scheme. All had a protracted opportunity to discontinue their fraud but chose to continue. When confronted with reviews and later audits, they again turned to falsehood. When interviewed by auditor Power, and asked pointed questions, they all repeatedly lied about the veracity of their business activity. And throughout, there existed an undertone of amusement at their success and mode of operation.

[66] What I know about the offender's personal circumstances comes from the trial evidence, the Pre-Sentence Reports, the offenders' various submissions and the evidence received today by consent. Each of them argued that they suffered from post traumatic stress disorder from exposure to domestic violence. Although I accept that they share a turbulent personal history and may even suffer from varying degrees of anxiety and post traumatic stress, I do not accept this as a basis to reduce the offenders degree of responsibility for the present offences, at least not in any material way. There is reason to hope that these aspects of their shared past will be fully assessed and addressed as part of their sentence.

*Parity*

[67] In the context of these findings, I must consider parity. This principle requires similar sentences for similar offenders who commit similar offences. Here I am dealing with co-offenders who have all been convicted of the same offences. This is a large scale protracted and systematic fraud that continued until charges were laid. All offenders are members of a close knit family group. They have support in both their immediate and extended family and are well known in their community through their various business ventures and volunteer work. None have a prior criminal record.

[68] I have found that not all of the offenders had the same level participation in the fraud scheme. There are other differences which impact the application of the parity principle (*R. v. Terry*, 2015 NLCA 23; *R. v. Beauchamp*, 2015 ONCA 260). The Crown acknowledges this in their sentencing recommendation but maintains that custodial sentences are required for all offenders to give effect to the requirement for parity.

[69] The most recent authority on the appropriate range of sentence for similar offences is the decision of our court of appeal in *R. v. Dawson; R. v. Ross*. In that case, the offenders committed a large scale “systematic and protracted” fraud in the amount of \$1.9 million dollars over a period of four years. The amount of the loss was somewhat less but could not be precisely calculated. At trial, the offenders

received a conditional sentence order. The Crown appealed. A unanimous court found the sentence imposed unfit. The conditional sentence orders failed to properly express the objectives of deterrence and denunciation and the principles of proportionality and parity. Dawson was sentenced to 42 months and Ross 36 months.

[70] After canvassing decisions with comparable circumstances, the court of appeal concluded that “sentences in Nova Scotia for significant s. 380(1) frauds have typically fallen between two to five years imprisonment” (at para. 80). In setting aside the conditional sentence orders, the reasons of Justice Campbell in *R. v. Clarke*, 2016 NSSC 101 were endorsed (at para. 95):

[55] There are also circumstances when a sentence must simply serve as punishment. If it deterred no one it wouldn't matter. When a person cheats at a high level there have to be serious consequences. A system that incarcerates people who commit street level crime cannot cringe at the prospect of punishing people who commit their crimes in boardrooms and office towers.

[71] And so it is here, except that the crimes were committed at various kitchen tables. Assuming that I could impose a conditional sentence order, I would not find it appropriate to do so given the range for similar offences in Nova Scotia and the absence of key mitigating factors (*R. v. Pavao*, 2018 ONSC 4889).

[72] The only case relied upon by the offenders is *R. v. Julien* (an unreported decision of Begin, J. (NSPC)). I find this case distinguishable from present circumstances. I note that the cases cited by the Crown, in addition to *R. v. Ross*; *R. v. Dawson*, were of assistance (*R. v. Canlas*, 2020 ONSC 5879; *R. v. Witen*, 2012 ONSC 4151; *R. v. Bogart*, 2002 CanLII 41073, *R. v. Dieckmann*, 2014 ONSC 717, *R. v. Pavao*, *supra*, *R. v. Plange*, 2019 ONCA 646; and *R. v. MacDonnell*, 2021 NSPC 57).

#### *Mitigating and Aggravating Factors*

[73] The final point I touch on before imposing sentence is significant – a consideration of the mitigating and aggravating factors. On the issue of mitigation, Justice Baltman in *R. v. Dieckman* had this to say at paras. 39-40:

[39] I also recognize there are fraud cases in which a conditional sentence has been imposed. However, those cases had important mitigating or differentiating factors that are not present here, including a guilty plea, vastly lower amounts, or highly unusual personal circumstances.

[40] In my view, of all of those mitigating factors, the one most likely to move a sentence out of the usual range is a guilty plea. ... neither of the defendants before me now did so, despite the Crown having amassed an overwhelming case long before the trial began. Obviously their choice to proceed to trial cannot be an aggravating factor on sentencing, in any manner. However, it removes from their grasp what would have been a powerful mitigating feature, especially in a long, labour intense trial such as this. In that regard,

the words of the Ontario Court of Appeal in the recent decision of *R. v. Drabinsky* are apt:

[T]he investigation and prosecution of crimes like this is difficult and expensive. It places significant stress on the limited resources available to the police and prosecution. An early guilty plea coupled with full cooperation with the police and regulators and bona fide efforts to compensate those harmed by the frauds has considerable value to the administration of justice. The presence of those factors, depending on the other circumstances, may merit sentences outside the range.

[74] In the present case, there have been no guilty pleas. There has been no money recovered. There is no expression of remorse and no acceptance of responsibility. There was an apology for the trouble of having a trial. There is an absence of the kind of mitigating factors that could take the sentences here outside the established range. I consider that none of the offenders has a criminal record. Their presentence reports were generally positive, although I do note that each relied on the others as collateral contacts which impacts the weight I would otherwise give to the reports. But it does appear that each of the offenders has positive attributes that should not be overlooked. I am satisfied that they already have strong family connections and reintegration to society and community is not a concern. There are obviously intelligent and creative and industrious. One hopes these gifts are better directed in the future.

[75] I note that Georgette Young and Angela MacDonald are parents of young children and there is evidence that Nadia Saker is called upon to look after her father. However, the obligation to care for dependants is not a mitigating factor. Neither is the existence of a turbulent family history in the absence of any link to the offending conduct. That said, I am certain that each of the offenders would benefit from mental health intervention and I would recommend that assessments be carried out and that the offenders robustly engage in any counselling or therapy that can be offered.

[76] The aggravating circumstances are considerable. This was a significant fraud of extended duration. It was organized and brazen. It was sophisticated and intentionally designed to be difficult to detect. At its core is a flagrant breach of a fundamental public duty that strikes at the heart of the operation of the tax system. As noted in the trial decision the magnitude of the fiction here is breathtaking. The hubris of it is shocking. For this reason, all of the sentences I impose will be within the established range of custodial sentences for large scale tax fraud.

### **Sentences**

[77] For the reasons given, I impose the following sentences in addition to the fines already imposed:

[78] Lydia Saker, on count 1 - I impose a sentence of 24 months custody. On each of counts 2 through 10, I also impose a sentence of 24 months custody to be served concurrently with the sentence imposed on count 1.

[79] Nadia Saker, please stand - on count 1 – I impose a sentence of 36 months custody. On each of counts 2 through 10, I also impose a sentence of 36 months custody to be served concurrently.

[80] Angela MacDonald, please stand - on count 1 – I impose a sentence 36 months custody. On each of counts 2 through 10, I impose a sentence of 36 months custody to be served concurrently.

[81] Georgette Young, please stand – on count 1, I impose a sentence of 48 months custody. On each of counts 2 through 10, I impose a sentence of 48 months to be served concurrently.

[82] All of the offenders shall now be taken into custody to serve their sentences.

Gogan, J.