

NOVA SCOTIA COURT OF APPEAL

[Cite as: R. v. Johnston, 2000 NSCA 29]

Freeman, Bateman and Cromwell, JJ.A.

BETWEEN:

MICHAEL GORDON JOHNSTON)	Lance W. Scaravelli
)	for the appellant
Appellant)	
)	
- and -)	
)	
HER MAJESTY THE QUEEN)	Dana Giovannetti, Q.C.
)	for the respondent
Respondent)	
)	
)	
)	Appeal Heard:
)	February 8, 2000
)	
)	Judgment Delivered:
)	February 8, 2000
)	
)	

THE COURT: Leave to appeal is granted but the appeal is dismissed, as per oral reasons for judgment of Bateman, J.A., Freeman and Cromwell, JJ.A., concurring.

Bateman, J.A.: (Orally)

[1] The appellant was sentenced by Judge Fran Potts of the Provincial Court to a total of 19 months imprisonment, having pleaded guilty to five fraud related counts. He appeals.

[2] Absent an error in principle, failure to consider a relevant factor, or an overemphasis of the appropriate factors, we may only intervene to vary a sentence imposed at trial if the sentence is demonstrably unfit. (**R. v. M. (C.A.)**, [1996] 1 S.C.R. 500, per Lamer, C.J.)

[3] Having reviewed the recent Supreme Court of Canada analysis of the conditional sentencing regime in **R. v. Proulx**, ([2000] S.C.J. No. 6) and its companion cases, we are satisfied that Judge Potts made no error in declining the appellant's request for a conditional disposition.

[4] While leave is granted the appeal is dismissed.

Bateman, J.A.

Concurred:

Freeman, J.A.

Cromwell, J.A.