PROVINCIAL COURT OF NOVA SCOTIA
Citation: *R v AL*, 2018 NSPC 61

Date: 2018-12-11
Docket: 8189172, 8189175
Registry: Pictou

Between:

Her Majesty the Queen

v

AJL

SENTENCING DECISION

Judge:	The Honourable Judge Del W. Atwood
Heard:	2018: 10 September, 22 November, 11 December in Pictou, Nova Scotia
Summary oral decision rendered:	2018: 11 December
Written decision released:	2019: 9 April
Charge:	Subsection 5(2), *Controlled Drugs and Substances Act;* ¶ 270(1)(a*), Criminal Code*
Counsel:	Bronwyn Duffy for the Public Prosecution Service of Canada; T. William Gorman for the Nova Scotia Public Prosecution Service Andrew O'Blenis for AJL

By the Court:

Preamble

[1] Trials of alleged crimes require courts to weigh and assess competing theories of varying degrees of complexity, but leading almost always to binary outcomes: guilty or not guilty.

[2] Sentencing hearings, too, bring rival theories into play; however, the legal outcomes which a court may consider in imposing a sentence generally will be varied and nuanced. Even in cases caught by mandatory-minimum penalties, there will remain for sentencing courts significant degrees of discretion, described often as a "range of sentence": see, *eg*, *R v Nasogaluak*, 2010 SCC 6 at ¶ 44; *R v SDL*, 2017 NSCA 58 at ¶¶ 14-16; *R v Oickle*, 2015 NSCA 87 at ¶ 40; *R v Phinn*, 2015 NSCA 27 at ¶ 67; *R v Naugle*, 2011 NSCA 33 at ¶ 40-43.

[3] In *R v Macdonald*, 2014 NSCA 2014 at ¶ 131 (leave to appeal refused, [2014] SCCA No 570), the Nova Scotia Court of Appeal sought to explain the term:

> 131 It is important to recognize what is meant by the "range of sentence". It is not the available minimum and maximum sentences that could legitimately be imposed. As Bateman J.A. explained in *R. v. Cromwell*, 2005 NSCA 137, it has a much more nuanced meaning:
>
> > [26] Counsel for Ms. Cromwell says this joint submission is within the range. He broadly defines the range of sentence, in these circumstances, as

> all sentences that might be imposed for the crime of impaired driving causing bodily harm. I disagree. In my opinion the range is not the minimum to maximum possibilities for the offence but is narrowed by the context of the offence committed and the circumstances of the offender ("... sentences imposed upon similar offenders for similar offences committed in similar circumstances ..." per MacEachern, C.J.B.C. in *R. v. Mafi* (2000), 142 C.C.C. (3d) 449 (C.A.)). The actual punishment may vary on a continuum taking into account aggravating and mitigating factors, the remedial focus required for the particular offender and the need to protect the public. This variation creates the range.

[4] The Court offered a somewhat more compact analysis in R v AV, 2011 NSCA 21at ¶ 34:

> 34 Unless expressed in the *Code*, there is no universal range with fixed boundaries for all instances of an offence: *R. v. M.(C.A.)*, para. 92; R. v. McDonnell, para. 16; *R. v. L.M.*, para. 36. The range moves sympathetically with the circumstances, and is proportionate to the *Code's* sentencing principles that include fundamentally the offence's gravity and the offender's culpability.

[5] One might assume that this sort of analysis ought to bring advocated outcomes in a sentencing hearing toward some level of convergence. As will be evident shortly, that is not so in this case.

[6] AJL elected trial in this court and pleaded guilty to indictable counts of:

- possessing methamphetamine, a Schedule I substance, for the purpose of trafficking, contrary to sub-s 5(2) of the *Controlled Drugs and Substances Act* (*CDSA*) (case 8189172); and
- assaulting a peace officer, contrary to ¶ 270(1)(a) of the *Criminal Code* (case 8189175).

[7] The theory of the federal prosecutor is that possessing methamphetamine for the purpose of trafficking is a serious offence. Trafficking in a Schedule I substance endangers users because of the toxicity of substances caught by that schedule, and it promotes enabling crimes committed by those same users who need money to support drug habits. Further, there is a significant body of judicial authority supporting the imposition of significant terms of imprisonment for Schedule I-drug-trafficking crimes in order to denounce and deter their commission. The federal prosecutor seeks a sentence for the sub-s 5(2) *CDSA* charge in the range of eighteen-months' imprisonment, as well as a term of probation and ancillary orders. The provincial prosecutor seeks a short 30-day-consecutive term for the assault.[1]

[8] The theory of defence counsel is that Ms L poses a low risk of reoffending. She has been free of illegal-drug use for over fourteen months. She has been active in Narcotics Anonymous, and has enrolled and participated in appropriate counselling to help keep her clean. Defence counsel focusses on a developing line of jurisprudence that has seen persons involved in lower-level

[1] The Supreme Court of Canada issued a news release yesterday that judgments are to be rendered on 14 December 2018 in *R v Boudreault*, [2017] SCCA No 44 (granting leave to appeal from 2016 QCCA 1907), and in a number of related reserved cases having to do with s 12 *Charter*-grounds challenges to the victim-surcharge provisions of s 737 of the *Code*. In my view, it is not provident to adjourn my decision to await those outcomes, as surcharge constitutionality was not raised in this case; in any event, surcharges are the least of Ms L's worries.

drug trafficking—even in Schedule I substances—with biographical profiles similar to Ms L's given non-custodial and rehabilitative sentences. Defence counsel seeks a suspended sentence.

[9] There is no controversy among counsel about ancillary DNA, weapons-prohibition and contraband-forfeiture orders.

[10] The difference between the prosecution and defence submissions spans quite a range.

[11] For the reasons that follow, I am persuaded that a compelling case has been made out by defence counsel that Ms L is not implicated in violence and poses a low risk of reoffending; further, I am satisfied that the legal sentencing outcomes available to the court in this case will allow me to impose a non-custodial sentence that is at once rehabilitative and restorative, punitive and deterrent.

Circumstances of the offence

[12] The federal and provincial prosecutors provided the court with statements of facts in accordance with the provisions of ss 723-4 of the *Code*. These facts were admitted as correct by defence counsel. Facts which have been admitted formally are conclusive and require no further proof: *R v Castellani*, [1970]

SCR 310 at 317; *R v Curry* (1980), 38 NSR (2d) 575 at ¶ 26 (CA); *R v Falconer*, 2016 NSCA 22 at ¶ 45 (leave to appeal refused, [2016] SCCA No 241); *R v Hood*, 2016 NSPC 78 at ¶ 31 (affirmed on issues unrelated to this point, 2018 NSCA 18) ; *R v MacBeth*, 2017 NSPC 46 at ¶ 27.

[13] Mr MS and Ms L ran a delivery service in Pictou County. The business was struggling; Mr S convinced Ms L to get into the business of selling methamphetamine to try to stay afloat. Concurrently, Ms L was dealing with a substance-use problem that dated back to her teens.

[14] An undercover police investigator made contact with Ms L and Mr S. The officer arranged to have Ms L deliver liquor to a local hotel. The officer became aware of Ms L and Mr S dealing in controlled substances. As a result, police obtained a search warrant under s 11 of the *CDSA*.

[15] Police executed a search at the home of Ms L and Mr S on 15 January 2018. They found 11 methamphetamine pills in a small safe, a mortar and pestle with a single pill, and another 93 pills concealed in a can. The court was not given street-value or gram-measurement evidence.

[16] Police arrested Ms L and Mr S. Ms L admitted to trafficking in methamphetamine. When police questioned Mr S, he acknowledged it was he who had recruited Ms L into the business.

[17] While in police custody, Ms L encountered the undercover investigator She became enraged once she learned what he really did for a living and kicked a table in the interviewing room where she was being detained; the table struck the officer in the chest. There were no injuries.

[18] In a statement to the authorities, Ms L owned up to what she had done. She was brought to court on 16 January 2018 and released on a stringent recognizance.

Circumstances of Ms L

[19] The court has a presentence report prepared 5 September 2018 by Community and Correctional Services in New Brunswick.

[20] Ms L was 37 years old at the time of these offences. She does not have a criminal record. Her parents divorced when she was 10 years old, and she was raised by her father. She completed high school, and earned some post-secondary educational credits.

[21] Ms L got married in 2006; the marriage ended in 2010. Ms L met Mr S at some point, and they became common-law partners; they have two daughters who were taken into care by the Department of Community Services when the police carried out their search. This was a significant collateral consequence for Ms L which flowed from the commission of the offence, as comprehended in *R v Suter*, 2018 SCC 34 at ¶47. Ms L hopes to become reunited with her children once she has been sentenced.

[22] Ms L described to the author of the presentence report a significant controlled-substance history: she began using cannabis as a teen; this developed into hard-drug use at around age 29. Beginning about four years before her arrest, Ms L was a regular user of crack cocaine, LSD, methamphetamine and unprescribed opioids. About six months ago, Ms L sought treatment. She has attended—and continues to attend—substance-use programming in Nova Scotia and New Brunswick. She is in the methadone-maintenance-treatment program.

[23] The presentence report ends with what I consider to be a candid self concept offered by Ms L:

> [I]t was a desperate decision. The business was failing, income was disappearing, so it led to bad decision making. I am prepared to deal with the consequences in order to move forward in my life.

CDSA provisions applicable to trafficking in a Schedule I substance

[24] Section 5 of the *CDSA* states:

> 5 (1) No person shall traffic in a substance included in Schedule I, II, III, IV or V or in any substance represented or held out by that person to be such a substance.
>
> . . . .
>
> (3) Every person who contravenes subsection (1) or (2)
>
> (a) if the subject matter of the offence is a substance included in Schedule I or II, is guilty of an indictable offence and liable to imprisonment for life . . . .

[25] Although the penalty provisions of sub-s 5(3) go on to provide for mandatory-minimum terms of imprisonment in specified cases, none is applicable here. Legal sentences would include a period of imprisonment up to a lifetime term, to which might be added a fine (s 734 of the *Code*), or a period of probation (¶ 731(1)(b)); trafficking in a Schedule I substance is not eligible for a conditional sentence, given sub-¶ 742.1(e)(ii), nor is it eligible for a discharge, given s 730 of the *Code*. However, it is eligible for a number of purely non-custodial sentences: a fine alone (s 734); a suspended sentence (¶ 731(1)(a)); a fine and probation (¶ 731(1)(b)). A weapons-prohibition order is mandatory under ¶ 109(1)(c) of the *Code*. Forfeiture of offence-related property is mandatory under s 16 of the *CDSA*. Trafficking in a Schedule I substance is a secondary-designated-DNA-collection offence under s 487.04 of the *Code*.

[26] Subsection 10(1) of the *CDSA* conforms to the general sentencing principles in s 718 of the *Code*; it shares in common with ¶ 718(d) of the *Code* the objective of rehabilitating offenders; significantly, it adds a requirement—augmented in sub-ss 10(4)-(5)—that serves to encourage the treatment of offenders in appropriate circumstances.

[27] Paragraphs 10(2)(a)-(c) of the *CDSA* identify a number of aggravating sentencing factors; counsel agree that none is applicable in Ms L's case.

Criminal Code provisions applicable to assault of a peace officer

[28] Section 270 of the *Code* states:

> 270 (1) Every one commits an offence who
>
> (a) assaults a public officer or peace officer engaged in the execution of his duty or a person acting in aid of such an officer . . . .
>
> (2) Every one who commits an offence under subsection (1) is guilty of
>
> (a) an indictable offence and is liable to imprisonment for a term not exceeding five years . . . .

[29] Section 718.02 of the *Code* states:

> 718.02 When a court imposes a sentence for an offence under subsection 270(1) … the court shall give primary consideration to the objectives of denunciation and deterrence of the conduct that forms the basis of the offence.

[30] The charge qualifies for the full array of sentencing outcomes under the *Code*, ranging from a discharge, up to a term of imprisonment of five years.

General sentencing principles

[31] In determining an appropriate penalty, it is important that the court recognize that sentencing is a highly individualized process: *R v M. (C.A.),* [1996] 1 SCR 500 at ¶ 80; *R v Nasogaluak*, 2010 SCC 6 at ¶ 43; *R v Ipeelee* 2012 SCC 13 at ¶ 38; *R v Scott*, 2013 NSCA 28 at ¶ 7; *R v Redden*, 2017 NSSC 172 at ¶ 28; *R v MacBeth*, 2017 NSPC 46 at ¶ 8. "Only if this is so can the public be satisfied that the offender 'deserved' the punishment he received and feel a confidence in the fairness and rationality of the system": *Re B.C. Motor Vehicle Act*, [1985] 2 SCR 486 at 533. The purposes and principles of sentencing in the *Code* are meant to take into account the correctional imperative of sentence individualisation: *R. v. Knott*, 2012 SCC 42 at ¶ 47.

[32] In determining a fit sentence, a court ought to take into account any relevant aggravating or mitigating circumstances. That is prescribed by ¶ 718.2(a) of the *Code*. The court must consider also objective and subjective factors related to the offender's personal circumstances and the facts pertaining to the particular case: *R v Pham* 2013 SCC 15 at ¶ 8.

[33] Assessing a person's moral culpability is an extremely important function in the determination of any sentence. This is because a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. That fundamental principle is set out in s 718.1 of the *Code*. In *Ipeelee, supra* at ¶ 37, the Supreme Court of Canada noted that proportionality is tied closely to the objective of denunciation. Proportionality promotes justice for victims, and proportionality seeks to ensure public confidence in the justice system.

[34] In *R v Lacasse* 2015 SCC 64 at ¶ 12, the Supreme Court of Canada confirmed that proportionality is a primary principle in considering the fitness of a sentence. The severity of a sentence depends upon the seriousness of the consequences of a crime and the moral blameworthiness of the individual offender. A consequential analysis requires the court to consider the harm caused by criminalised conduct. The Court recognized that determining proportionality is a delicate exercise, because both overly lenient and overly harsh sentences imposed upon an offender might have the effect of undermining public confidence in the administration of justice.

[35] Proportionality will be contextual and values based: *R v Alcantara*, 2017 ABCA 56 at ¶ 98; specifically, a sentencing court in a trafficking prosecution

will need to draw a distinction between mature offenders convicted of intentional, profit-motivated-major-enterprise crime, and, as in this case, lower-level, recruited petty retailing.

[36] In determining an appropriate sentence, this court is required to consider, pursuant to ¶ 718.2(b) of the *Code*, that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. This is the principle of sentencing parity. In *R v Christie*, 2004 ABCA 287 at ¶ 43, the reviewing court held that:

> [w]hat we must strive for is an approach to sentencing whereby sentences for similar offences committed by similar offenders in similar circumstances are understandable when viewed together . . . .

[37] This is the penalty analog of the principle of legality: not only must members of the public know what type of conduct is criminalised—see, *eg*, *R v Lohnes* [1992] 1 SCR 167 at ¶ 27; they must know also the penalties that might be imposed for engaging in that conduct. The theory is that knowledge of both the risk of liability and the extent of liability will help those contemplating illegal conduct to make informed choices. See Clayton C. Ruby, Gerald J. Chan & Nader R. Hasan, *Sentencing*, 9th ed (Markham: LexisNexis, 2017) at ¶ 1.25.

[38] The court must apply the principle that an offender not be deprived of liberty if less restrictive sanctions might be appropriate in the circumstances.

[39] Furthermore, the court must consider all available sanctions other than imprisonment that are reasonable in the circumstances. These principles of restraint are set out in ¶¶ 718.2 (d) and (e) of the *Code*.

[40] In *R v Gladue*, [1999] SCJ 19 at ¶¶ 31 to 33, and 36, the Supreme Court of Canada stated that the statutory requirement that sentencing courts consider all available sanctions other than imprisonment was more than merely a codification of existing law. Rather the provision was to be seen as a remedy whereby imprisonment was to be a sanction of last resort.

[41] Restraint is particularly important when dealing with first offenders, as in Ms L's case. Someone who does not have a history of criminal conduct is more likely to hold pro-social values than someone with an established record of offending conduct, and will be more likely to respond well to rehabilitative sentencing. A court should consider a period of custody for a first offender only if the offence were to be of such gravity that no other sentence would be fit and proper: *R v Stein*, [1974] OJ No 93 at ¶ 4 (CA). In *R v Priest*, [1996] OJ No 3369 (CA) at ¶ 20, the Court held:

> [20] The duty to explore other dispositions for a first offender before imposing a custodial sentence is not an empty formalism which can be avoided merely by invoking the objective of general deterrence. It should be clear from the record of the proceedings, preferably in the trial judge's reasons, why the circumstances of this particular case require that this first offender must receive a sentence of imprisonment.

[42] Still, in *R v LeBlanc*, 2012 NSSC 447 at ¶ 9, the Court observed that the guidance in *Priest* would seem to have greater application to cases of younger first offenders, which is not quite the case here.

[43] Further, the application of restraint criteria does not oust consideration of the other principles of sentencing in ss 718-718.2; there is no such thing as a restraint-at-all-costs principle: *R v Proulx*, 2000 SCC 5 at ¶ 96. Put another way, restraint and rehabilitation do not trump deterrence. All principles and objectives of sentencing must be considered by a sentencing court in arriving at a fit sentence: *R v Howell*, 2013 NSCA 67 at ¶ 16. However, the although all factors might be in play, it does not follow that each factor must be assigned equal weight; rather, a delicate balancing of the various sentencing principles and objectives is called for, in line with the overriding principle that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender: *R v Suter*, 2018 SCC 34 at ¶ 4.

[44] The principles of specific and general deterrence are addressed in ¶ 718(b) of the *Code*, as interpreted authoritatively in *R v BWP*, 2006 SCC 27 at ¶ 2.

[45] Specific deterrence seeks to discourage the person to be sentenced from ever offending again; it relies on that person making prospective and rational calculations about the risk of punishment.

[46] General deterrence is a broadcast principle that operates on the proposition that persons with traits similar to the person being sentenced will be discouraged from similar offending behaviour once they find out about sentencing outcomes. As the Court stated in *BWP, supra*:

> When general deterrence is factored in the determination of the sentence, the offender is punished more severely, not because he or she deserves it, but because the court decides to send a message to others who maybe inclined to engage in similar criminal activity.

[47] Questions have been raised about the integrity and efficacy of general deterrence.

[48] In seeking to apply the principle of general deterrence, a sentencing court must keep in mind that sentencing is a highly individualized process; the sentencing judge in *R v Matheson*, 2007 NSPC 43 discussed the tension between general deterrence and individualization:

> 26 The Crown's submission that the right message needs to be sent by the sentence in this case essentially encapsulates what is intended by the concept of general deterrence. General deterrence supposes that others, with similar inclinations to the offender will be deterred, once they learn about the sentence, from committing a comparable offence. A sentence emphasizing general deterrence is intended to "deter those of like-mind who may be lured into the

> [drug] business with the hope of easy gain." (*R v. Butler*, [1987] N.S.J. No 237 (N.S.S.C., App. Div.).) The purpose of general deterrence is to "discourage potential offenders from becoming actual offenders." It has been referred to as the "punishment of the offender for what others might do." (*R v. McGinn* (1989), 49 C.C.C. (3d) 137 (Sask. C.A.).) Judges, such as Vancise J.A. in dissent in *McGinn*, have expressed serious reservations about the effectiveness of general deterrence. Vancise J.A. did so with the following comments at page 157:
>
> > Contending that longer sentences, for example, six months, would have a greater deterrent effect than a shorter sentence, for example one month, is to contend that: (1) the public will know of the sentence (a dubious proposition); (2) the potential offender will perceive the likelihood of apprehension (a more dubious proposition); and (3) the potential offender knowing he will likely be apprehended would commit the offence for the lower penalty of one month but not for the higher penalty of six months. Viewed in this way it is small wonder that an upward variation in sentences appears to have no effect on the crime rate.
>
> 27 The degree of publicity a case receives has also been remarked upon as relevant to the deterrent value of the sentence. Nunn J. in *R v. Clarke*, [1990] N.S.J. No 427 (N.S.SC), observed about Mr. Clarke's case: "If it receives no publicity then there is no general deterrence, other than the several people who may be in court at the time the sentence is given."

[49] This decision will deal with Ms L's conduct and its relationship to her moral culpability later on. Suffice it to say at this stage that valid questions might be raised about the general-deterrent effect of significant prison terms upon persons matching Ms L's profile who get themselves caught up in low-level dealing.

[50] To be sure, in light of the clear language of ¶ 718(b) of the *Code*, the court is obligated statutorily to consider the principle of general deterrence in fixing every sentence: see *R v Tran*, 2010 ABCA at ¶¶ 8-15. However, it is clear equally from the language of the preamble of the section—which requires a sentencing court to impose just sanctions that "have one or more of the

following objectives"—that there might be times when general deterrence might need to be attenuated.

Seriousness of the offences and the moral culpability of Ms L

[51] I would classify the assault on the police officer as being at a low level of seriousness. Ms L reacted impulsively, out of surprise; no one got hurt. While the court must emphasise denunciation and deterrence given the provisions of s 718.02 of the *Code*, this remains a low-level s 270 offence.

[52] The *CDSA* charge is more serious, and will require a more extensive analysis.

The context of legal history

[53] In my view, the factors of greatest moment in assessing the seriousness of the *CDSA* case are that Ms L possessed a controlled substance for the purpose of trafficking, and the substance—methamphetamine—fell under Schedule I of the *CDSA*, which situates it among the most potent and dangerous of the vast number of controlled substances interdicted in the statute. Trafficking in Schedule I substances has been characterised authoritatively as a serious offence: *R v Lloyd*, 2016 SCC 13 at ¶ 26, rev'g 2014 BCCA 224; *R v Greyeyes*,

[1997] 2 SCR 825 at ¶ 6; *Pushpanathan v Canada (Minister of Citizenship and Immigration)*, [1998] 1 SCR 982, at ¶ 80, in a minority opinion which dissented on an unrelated issue.

[54] As the Court observed in *R v Shand* (1976), 13 OR (2d) 65 at ¶ 18 (CA), history shows that Parliament took an increasingly serious view of the drug traffic. This continued as a steady public policy for decades. In *R v Malmo-Levine*, 2000 BCCA 335 at ¶ 96, aff'd 2003 SCC 74 the Court of Appeal stated:

> Narcotics legislation in Canada has taken many twists and turns during the last century, but the overarching goal of stamping out drug trafficking has remained somewhat constant. Indeed, the efforts of Parliament to stamp out this problem has only grown more intense over time.

[55] In reviewing the history of controlled-drugs-and-substances legislation in Canada, I found as a helpful reference an article by R. Solomon & M. Green, "The First Century: The History of Nonmedical Opiate Use and Control Policies in Canada, 1870-1970" (1982), 20 UWO L Rev 307; if my legislative-history analysis is in error in any way, the fault is mine, and not the authors'.

[56] The starting-point statute which penalised the use of narcotics for non-medical purposes was the *Opium Act*, SC 1908, c 50, which was repealed and replaced in 1911 by the *Opium and Drug Act*, SC 1911, c 17. Originally, the main focuses of the legislation were cocaine, morphine and opium; however,

the *Act* authorised the governor-in-council to make additions to the schedule of proscribed drugs if in the public interest.

[57] In 1923, Canada's drug legislation was consolidated and revised as the *Opium and Narcotic Drug Act*, SC 1923, c 22, which continued to criminalise simple possession and trafficking, but was silent as to possession for the purpose of trafficking.

[58] That changed in 1954, with SC 1954, c 38, s 3. The amending statute created a possession-for-the-purpose offence, and increased substantially the penalties for trafficking.

[59] The *Narcotic Control Act* was enacted as SC 1960-61, c 34. It upped the maximum penalties for trafficking and possession-for-the-purpose to life imprisonment.

[60] Possession and distribution of methamphetamine was banned for the first time in the *Food and Drugs Act* SC 1960-61, c 37, sub-ss 32(1)-(2), a law that was intended to deal with chemical drugs; the statute focussed mostly on LSD and thalidomide. Trafficking-related offences under the *FDA* were hybrid; the maximum penalty on summary conviction was 18-months' imprisonment, on indictment, ten years.

[61] The law was consolidated again and reorganised in its present form as the *Controlled Drugs and Substances Act*, SC 1996, c 19 in force 14 May 1997 by SI/97-47, (1997) C Gaz II.

[62] The trafficking-penalty provisions of s. 5 of the *CDSA* got ramped up in the *Safe Streets and Communities Act*, SC 2012, c 1, s 39, in force 9 August 2012 by SI/2012-48, to call for the imposition of mandatory-minimum prison terms for Schedule I and II offences committed under certain aggravating circumstances. At the time of second reading—than as Bill C-10—the Minister of Justice stated:

> We are also addressing the serious issue of drug crimes in this country, particularly those involving organized crime and those that target youth because we all know the impact that such crimes have on our communities.
>
> Part 2's proposals to address drug crime include amendments to the *Controlled Drugs and Substances Act* to impose mandatory minimum sentences of imprisonment for the offences of production, trafficking or possession for the purposes of trafficking or importing, and exporting or possession for the purpose of exporting of schedule I drugs, such as heroin, cocaine and methamphetamine, and schedule II drugs, such as marijuana.
>
> These mandatory minimum sentences would apply where there was an aggravating factor, including where the production of the drug constituted a potential security, health or safety hazard, or the offence was committed in or near a school.
>
> As well, it would double the maximum penalty for the production of schedule II drugs, such as marijuana, from 7 to 14 years and it would reschedule GHB and flunitrazepam, most commonly known as the date rape drugs, from schedule III to schedule I.
>
> As a result, these offences would now carry higher maximum penalties.

> The bill would also allow a court to delay sentencing while the addicted offender completed a treatment program approved by the province under the supervision of the court or a drug treatment court approved program and to impose a penalty other than the minimum sentence if the offender successfully completes the treatment program.

House of Commons Debates, 41st Parl, 1st Sess, No 017 (21 Sept 2011) at 1524-1525 (Hon R Nicholson).

[63] In *Lloyd*, *supra*, the *Safe-Streets* one-year mandatory-minimum for trafficking with a designated prior was found by the majority of the Court to be unconstitutionally cruel and unusual, in violation of s 12 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11; this outcome was based on an application of the penalty to hypothetical but reasonable light-end circumstances that were somewhat similar to Ms L's real life: see *Lloyd*, *supra*, at ¶ 33. See also: *R v Dickey*, 2016 BCCA 177, aff'g 2015 BCSC 1210: mandatory-minimum for trafficking near a former school held to be cruel and unusual given the particular circumstances of a young adult who had made significant rehabilitative progress; *R v Elliott*, 2017 BCCA 214, aff'g 2016 BCSC 1135, mandatory-minimum for cannabis cultivation ruled unconstitutional based on reasonable hypotheticals; and *R v Boudreau*, 2018 NSPC 19: 6-month mandatory-minimum for cannabis production held to be

cruel and unusual, based on the individual circumstances of a non-violent accommodator whose grow-op was for personal use and limited redistribution to friends.

[64] The *CDSA* contains five schedules of controlled substances; Schedule V was repealed fully on 18 May 2017 in virtue of SC 2017, c 7, s 50, so that only Schedules I-IV and VI remain in force.

[65] Schedule I includes some substances with no medical use (*eg*, cocaine and heroin) and that are well known as being highly toxic and addictive. Schedule II, III and IV substances are of lesser toxicity, which is reflected in lesser penalties for possessing or dealing in them. In *R v Bercier*, 2004 MBCA 51 at ¶ 26, the Court held that sentencing judges must give weight to the fact that Parliament has prescribed different maximum sentences for substances in different schedules; the fact that penalties vary by schedule reflects a legislative judgment about the levels of dangerousness of controlled substances.

Regulatory impact analysis

[66] Methamphetamine started out in Schedule III of the *CDSA*, but was elevated to Schedule I on 10 August 2005 by s 60 of the *CDSA* and SOR/2005-235. The regulatory-impact-analysis statement (which accompanied publication of the order in council in (2005) 139:17 C Gaz II at 1827-1837) sought to explain the reclassification of methamphetamine in reference to its risk of harm to users and to the community:

> Methamphetamine can be produced domestically. Its low cost and ease of synthesis, along with a variety of possible administration routes, such as oral, intravenous, snorting or inhaling, make methamphetamine an attractive drug of abuse that is readily accessible in comparison to other illegal substances. Its popularity as a drug of abuse is increasing at an alarming rate. The number of seized methamphetamine samples analyzed by Health Canada has increased seven fold since 1999, tripled since 2000, and doubled since 2002. Thirty-nine clandestine labs were dismantled by the Royal Canadian Mounted Police (RCMP) in 2003 versus two in 1998. Greater numbers of clandestine lab seizures in Canada indicate that the industry is expanding. Such expansion increases supply, lowers prices further and leads to a larger number of users. In 2004, Drug Analysis Services reported methamphetamine as the 2nd most prevalent hard drug of abuse, behind cocaine, according to the number of exhibits analyzed. According to the Centre for Addiction and Mental Health Ontario Student Drug Use Survey, 2003, methamphetamine has been ranked the fourth most frequently used illegal substance (after cannabis, cocaine, and MDMA, or ecstasy) among students in Grades 7-12.

[67] The impact analysis identified also a number of environmental risks:

> . . . [M]ethamphetamine production involves chemicals that are poisonous, corrosive, flammable, explosive, or emit toxic vapours, and can cause health and safety problems at the production site and within the surrounding area. The toxic by products of methamphetamine production are often improperly disposed of outdoors in rivers, streams, and other dump areas, which cause serious

> environmental damage, endangering children and others who live, eat, play, or walk at or near the site. Normal cleaning may not remove all the methamphetamine or some of the chemicals used to produce it; dangerous by products generated from the ingredients pose environmental hazards that can persist in the soil and groundwater for years.

[68] I should note that my own imperfect research has not led me to any reported authorities that have decided, expressly and formally, whether regulatory-impact-analysis statements ought to be noticed judicially. A statutory instrument, itself, is required to be noticed judicially pursuant to sub-s 16(1) of the *Statutory Instruments Act*, RSC 1985, c S-22. However, a regulatory-impact-analysis statement is really nothing more than an executive-branch signing statement; and, although it will be found almost always in the *Canada Gazette* immediately following the subordinate legislation it purports to explain, it will be headed with a caveat: "This statement is not part of the Order." Nevertheless, I am satisfied that regulatory-impact-analysis statements have been accepted, at least informally, by a number of courts as conspicuous and reliable sources of information which describe the evidence and the policies behind the making of subordinate laws. They may be utilised by sentencing courts in interpreting statutes. See, *eg*, *R v Iverson*, 2006 BCSC 1684 at ¶ 18 (rev'd in part by 2007 BCCA 3), and *R v Copeland*, [2007] OJ No 3390 at ¶ 15 (SCJ): impact analysis accompanying rescheduling of methamphetamine considered in sentencing hearings. See also *Sfetkopoulos v Canada (Attorney*

General), 2008 FC 33 at ¶¶ 13-14, aff'd 2008 FCA 328, leave to appeal dismissed [2008] SCCA No 531, which referred to a regulatory-impact-analysis statement regarding medical-marihuana-access regulations in making a determination whether one of the regulations was compliant with s 7 of the *Charter*; and see *R v Mersey Seafoods*, 2008 NSCA 67 at ¶ 84, in which the Court referred to a regulatory-impact-analysis statement in confirming the legislative purpose of the *Canada Labour Code* in a federal-grounds review of the constitutionality of provincial occupational-health legislation. In my view, it would not be an undue extension of what was decided in these cases to utilise the regulatory-impact-analysis statement which accompanied the rescheduling of methamphetamine to help assess offence seriousness.

[69] In addition, sentencing courts in Canada have described methamphetamine consistently as a dangerous drug that may have significant damaging impact upon the health of users: *R v Dixon*, [2017] OJ No 3477 (OCJ); *R v Potts*, 2011 BCCA 9 at ¶ 19; *R v Pitvor*, 2010 ONCJ 29 at ¶¶ 25-29; *R v Punko*, 2010 BCCA 365, leave to appeal refused, [2010] SCCA No 361; it has been decided in the Province of Ontario that it not be treated any less seriously than cocaine: *Copeland, supra*, at ¶ 38; *R v Ramos*, 2014 ONSC 6822 at ¶ 63; see also *R v Cote*, 2002 BCCA 29 at ¶ 10.

[70] I recognize that I must be cautious in relying on findings of fact regarding drug risks made by other courts in other cases. For instance, in *R v Fead*, 2017 ABCA 222 at ¶¶ 15 and 24, a sentencing judge was found to have relied erroneously on expert testimony given in another case about the potency of methamphetamine; the Alberta Court of Appeal decided that a sentencing court ought not simply lift expert opinions from other cases, although it was careful to note that the prosecution need not prove the dangerousness or addictive qualities of drugs in every case. See also *R v Daley*, 2007 SCC 53 at ¶ 86.

[71] I remain mindful of the fact that there was no evidence before the court regarding the purity, weight or value of the controlled substance seized from Ms L.

[72] Further, individualisation and proportionality require a sentencing court to resist an analysis that would characterise any trafficking-related charge as an aggravating offence circumstance. A charge itself cannot be treated as an aggravating circumstance; if it were, it would be aggravating in all cases: *R v Johnston*, 2011 NLCA 56 at ¶¶ 18-20.

[73] Still, my review of the significant body of sentencing decisions dealing with trafficking-related crimes involving methamphetamine leads me to conclude

that the harmful effects of methamphetamine are so well known and notorious as to allow the court to take judicial notice of them. Proof of purity is not required: it is enough that the substance fall under Schedule I and that the person in possession know the nature of the substance, regardless of its quality: *R v Hamilton* (2004), OAC 90 at ¶ 151.

[74] Put simply, methamphetamine seems to be the new cocaine—to be replaced sooner or later by another substance, given the never-ending story of the war on drugs in Canada.

[75] Having made this finding, court must be careful not overweigh any one aggravating factor.

Seriousness of Ms L's conduct

[76] Although Ms L possessed methamphetamine for the purpose of trafficking, she was found with what appears to have been a small quantity of the drug. There is no evidence implicating her in violence or the use of weapons. Ms L, herself, was a meth user. It is a commonplace for the court to encounter persons with substance-use problems resorting to low-level dealing to support their consumption. Substance abuse and petty retailing become a cycle, not

easily broken. In *R v Preston*, [1990] BCJ No 2886 (CA) the Court addressed, at ¶ 25, the unrealistic concept of addiction "cure"; the Court went on to state:

> 29 However, the protection which society derives from a sentence of imprisonment, imposed upon a heroin addict for the purpose just described, is transitory at best. There is no credible basis for expecting that a term of imprisonment will rehabilitate the addict. Drugs of all sorts are readily available in our prisons and penitentiaries. Only the price varies, in kind and amount, from that which is exacted on the street. When the sentence is served, the addict who re-emerges from custody poses the same threat to society as before, and the whole cycle is ready to be repeated.
>
> . . . .
>
> 31 The object of the entire criminal justice system, of course, is the protection of society, and I say at once that if incarceration is the only way of protecting society from a particular offender then, transitory and expensive though it may be, that form of protection must be invoked. But where, as in this case, the danger to society results from the potential of the addict to commit offences to support her habit, and it appears to the court that there is a reasonable chance that she may succeed in an attempt to control her addiction, then it becomes necessary to consider the ultimate benefit to society if that chance becomes a reality.
>
> 32 With respect, that benefit seems obvious. If the chance for rehabilitation becomes a reality, society will be permanently protected from the danger which she otherwise presents in the fashion described above. As well, the cost associated with her frequent incarceration will be avoided.
>
> . . .
>
> 35 While I am content to accept, at least for the purposes of this case, that sentences of incarceration can have a deterrent effect in cases of trafficking and trafficking related offences, including importing, where the offender or potential offender is not an addict, I have grave doubts that the same can be said in cases of possession where the offender who is to be specifically deterred, or the potential offender who is to benefit from the so-called general deterrent effect of such a sentence, is addicted to the substance in question. Indeed, Mr. Purdy, in his thoughtful written presentation, conceded that:
>
> > To speak of deterrence, specific or general, in respect to persons physically and uncontrollably addicted to an illegal substance may not be entirely an exercise in logic.
>
> 36 That is not to say that the deterrent value of a sentence of imprisonment ought to be discounted altogether. It may be, as counsel suggested, that such sentences are effective in preventing some, who would otherwise experiment with

> such substances, from becoming addicted. But in my view the importance of deterrence, as a factor to be taken into consideration when sentencing an addicted heroin user, must be weighed in light of the illogic inherent in the notion itself.
>
> 37 What then is the proper approach for the court to take when sentencing in a case such as this? When the benefit to be derived to society as a whole, as a result of the successful rehabilitation of a heroin addict, is balanced against the ultimate futility of the short-term protection which the community enjoys from a sentence of incarceration, I believe it is right to conclude that the principle of deterrence should yield to any reasonable chance of rehabilitation which may show itself to the court imposing sentence. To give the offender a chance to successfully overcome his or her addiction, in such circumstances, is to risk little more than the possibility of failure, with the result that the cycle of addiction leading to crime leading to incarceration will resume, something that is inevitable, in any event, if the chance is not taken. On the other hand, as has already been pointed out, if the effort succeeds the result is fundamentally worthwhile to society as a whole.

[77] *Preston* is not a binding authority in Nova Scotia, the case was decided almost thirty years ago, and the facts considered by the Court are not in evidence here; however, the everyday experience of this court—particularly in dealing with cases out of the local correctional institution—would suggest that the findings in *Preston* are not stale-dated or limited geographically to the Province of British Columbia only. Even if not binding, the case is instructive.

[78] In *R v H (CN)*, [2002] OJ No 4918 at ¶ 31 (CA), a case which dealt with a drug profiteer who did not merit rehabilitative leniency, the Court stated nevertheless that the sentencing provisions of the *CDSA* were intended to recognize the complexity of trafficking, in that, in many cases, persons convicted of drug offences are themselves victims of the drug culture,

dependent upon drugs as addicts or users, and are in need of rehabilitative treatment.

[79] This makes sense.

[80] First of all, it may be easy for vulnerable people to become exposed to illicit drugs. It is within the regular experience of the court that difficulties encountered in accessing primary health care will lead some to resort to self-medication in search of the analgesic, sedative and euphoric effects that drugs may offer. Persons who start out as users of illegal drugs will find it hard to escape that gravity well, as any effort to seek professional medical- or mental-health services will require necessarily that the user admit to committing a crime, which may operate as a psychological barrier to finding help. Further, as I am reminded frequently by provincial prosecutors in curative-discharge hearings which have been held in this court under sub-s 255(5) of the *Code*, addiction-services resources in this part of the province are pressed to the limit, so that even if one were to try for an appointment, there would be a long waiting list to overcome.

[81] Consider also that users are vulnerable to getting caught up in street selling: low-level dealing will give them access to the substances they need; it will also

ensnare them in trafficking as they become obligated to those who are higher up the distribution chain in a business model that measures sales targets and evaluates performance using metrics and methods not found in the Harvard Business Review.

[82] All this would help situate Ms L's offence at the petty-level-retail level of trafficking, as classified in *R v Fifield*, [1978] NSJ No 42 at ¶ 10 (AD). She was not involved in an organised-distribution market; she was at the very bottom of the pyramid. Furthermore, none of the aggravating principles of sentencing set out in sub-s 10(2) of the *CDSA* is applicable in this case. Finally, Mr S admitted that he had recruited Ms L into the business; he was the prime mover, and her role was lesser. Enlisting Ms L was made easier because of her substance-use disorder; I am able to infer reasonably that this affected her judgment.

[83] There is no evidence of Ms L using violence in the drug trade; there is no evidence she used weapons. Weapons and violence are regarded properly as aggravating circumstances in drug-supply cases: *R v Oickle*, 2015 NSCA 87 at ¶ 24; *R v Greencorn*, 2014 NSPC 10 at ¶ 6. Persons well entrenched in the trade will fortify themselves with illegal armouries to guard against rip-offs and other risks. None of that is in evidence here.

[84] I would rank the seriousness of this offence as the lower end of the range of cases involving trafficking/possession for the purposes of trafficking in a Schedule I substance.

Moral responsibility

[85] Moral responsibility will implicate typically a wide range of biographical factors unique to each person who is to be sentenced.

[86] Courts will take into account at sentencing hearings factors pertaining to:

- Marital/partner status: *Criminal Code*, sub-¶ 718.2(a)(ii); *R v C.V.M.*, 2003 NSCA 36.

- Age: *R v Colley* (1991), 100 NSR (2d) 447; *R v Deyoung*, 2016 NSPC 67 at ¶ 88, leave to appeal refused, 2017 NSCA 13.

- Race—but seemingly with a degree of caution that may not account fully for the reality of racial injustice that is so conspicuous in Canada as to be undeniable : *R v Borde* (2003), 186 O.A.C. 317; *R v Hamilton* (2004), 189 O.A.C. 90; *but see* Jin Hee Lee & Sherrilyn A. Ifill, "Do Black Lives Matter to the Courts?" in Angela J. Davis ed., *Policing the Black Man* (New

York: Pantheon Books, 2017) at 255-293 and *R v Gabriel*, 2017 NSSC 90 at ¶ 45-49.

- Health and life expectancy: *R v M.(C.A.)*, [1996] SCJ No 28 at ¶ 74; *R v Stewart*, 2013 NSPC 64 at ¶¶ 15-16, varied 2016 NSCA 12.

- First-nation's status: *R v Gladue*, [1999] SCJ No 19; *R v Ipeelee*, 2012 SCC 13.

- Gender identity was held to be a factor admissible in warranting a community-based sentence in a cannabis-production case: *R v MacDonald*, 2013 NSSC 255 at ¶ 16.

[87] In a penal system that recognizes the importance of individualised punishment, it is clear that equal justice does not mean identical justice. Accordingly, the gender of a person to be sentenced is not a neutral factor, insofar as it may have a bearing on moral culpability, the need for deterrence, and the impact of punishment.

[88] Gender may distort the sentencing process in appalling ways. A recent extreme example of this is *United States v Creel*, No CR-16-189-002-F (WDOkla 16 June 2017); a female with a methamphetamine dependency, who was before the court for sentencing on a number of false-pretense related

charges, was offered by the presiding judge the prospect of a reduced sentence were she to undergo reproductive sterilization.

[89] I must be cautious not to assemble a straw-man argument out of what is clearly an outlier case; but the fact is that even sentences that might be said to fall within the normal ranges of proportionality and legality often will impact women disproportionately because of the risks of family disintegration, housing insecurity, employment insecurity, and other social vulnerabilities. Furthermore, certain biographical characteristics will make women much more likely to encounter the criminal-justice system: family dysfunction, intimate-partner pressure, mental-health history, and, indeed, substance abuse, are all related directly to offending behaviour.

[90] There is abundant social-science research supporting these conclusions: *see, e.g.,* Vicki Chartrand, "Inalienable, Universal, and the Right to Punish: Women, Prison and the Practice of Freedom" in Jennifer M. Kilty, ed., *Within the Confines: Women and the Law in Canada* (Toronto: Women's Press, 2014) at 14-34; Smita Vir Tyagi, “Victimization, Adversity and Survival in the Lives of Women Offenders” (2006) 25 Canadian Woman Studies 133-134; Tina Hotton Mahony, “Women and the Criminal Justice System” in *Women in Canada 2011: A gender based statistical report, 6th ed Catalogue No 89-503-X*

(Ottawa: Minister of Industry, 2011) at 19-32; Randolph R. Myers & Sara Wakefield, "Sex, Gender and Imprisonment", in Rosemary Gartner & Bill McCarthy eds, *The Oxford Handbook of Gender, Sex and Crime* (New York: Oxford University Press, 2014) at 580-588; Canadian Human Rights Commission, *Protecting Their Rights: A Systemic Review of Human Rights in Correctional Services for Federally Sentenced Women* (Ottawa: Canadian Human Rights Commission, 2003), online at: http://www.chrc-ccdp.ca/sites/default/files/fswen.pdf.

[91] However, it is not necessary for me to rely on this information, as the court encounters regularly these sorts of profiles in cases involving women who are to be sentenced. Ms L's biography, as contained in the presentence report, aligns very unhappily with the type: early-onset drug use which escalated to a highly toxic level; mental-health history; relationship failure; financial insecurity; negative peers; intimate-partner pressure.

[92] This court has had to deal only rarely with cases involving females charged with trafficking-related offences. Ms L is a member of a very small profile of offender. Furthermore, the facts before the court prove that Ms L played a lesser role in this enterprise than her partner.

[93] Ms L has no criminal record. She pleaded guilty fairly early on in the process. She has been subject to stringent terms of bail for almost a year: included in her recognizance is a house-arrest condition. Compliance with restrictive bail may be treated as a mitigating factor: *R v LP*, [2003] OJ No 251 at ¶ 26 (CA), and *R v Spencer*, [2004] OJ No 3262 at ¶ 43 (CA).

[94] The assault upon the police officer was a spontaneous acting out by Ms L, once she discovered that her customer was an undercover police officer; she did it when confined in the police station, so that it was not a stealthy revenge attack.

[95] These factors lead me to situate Ms L's moral culpability toward the lower end of the spectrum.

Sentence parity

[96] The federal prosecutor is undoubtedly correct that trafficking-related offences in Schedule I substances have attracted lengthy custodial terms, and the prosecution has martialled in a thorough submission a representative array of cases supporting this proposition. However, the court must be careful not to confuse repetition with persuasion, and never lose sight of the fact that sentencing is a highly individualized process.

[97] Early sentencing cases in which trafficking in methamphetamine was implicated saw the imposition of fairly stiff prison and penitentiary sentences, even upon first offenders: see, *eg*, *R v Vautour*, (1969) NBR (2d) 735 at 741 (AD) (3.5-year federal term); *R v Turcotte*, [1970] SCR 843, aff'g 8 CRNS 147 (eighteen-month determinate, followed by an indeterminate term not to exceed 2 years). Even simple-possession penalties could be quite eye-opening: see, *eg*, *R v Sutherland*, [1971] OJ No 406 at ¶ 5 (CA) (eighteen-month prison term followed by probation). However, in *R v Serroul*, [1990] NSJ No 169 (CA), the Court dismissed an appeal by the prosecution from a sentence of five-months' imprisonment on nine counts of trafficking involving five sales of up to six grams of methamphetamine.

[98] The federal prosecutor provided the court with a comprehensive review of present-day sentencing decisions from Nova Scotia for Schedule-I-trafficking cases.

- *R v Steeves*, 2007 NSCA 130 Conditional sentence increased to 2.5-year penitentiary term for possession of cocaine and ecstasy for the purpose of trafficking.

- *R v Knickle*, 2009 NSCA 59 Conditional sentence increased to 3.5-year penitentiary term. No criminal record. Accused found in possession of $27,000 worth of cocaine and 19 firearms. In identifying a starting point for higher-level dealers in cocaine, the Court stated:

> [28] In this case the sentencing judge erred in principle by imposing a conditional sentence to be served in the community. The range of sentencing for a higher level retailer of cocaine starts at two years in penitentiary. It does not include two years less a day or any other sentence that is available to be served in the community. The judge erred in excluding the penitentiary term in the first stage and it was not necessary to consider the second stage of the *Proulx* analysis. There are no extraordinary or exceptional circumstances in this case that deserve any consideration of the possibility of deviation from the normal range of sentence. The sentence is excessively lenient and demonstrably unfit. It was, as mentioned above, also an illegal sentence because conditional sentences are only available for sentences of less than two years.

Significantly, Ms L is not a higher-level retailer.

- *R v Conway*, 2009 NSCA; conditional-sentence term of two years less a day increased to 30-month penitentiary term; respondent ran a dial-a-dope operation, and was found in possession of over $10K worth of cocaine.

- *R v Butt*, 2010 NSCA 56 3.5-year sentence increased to 5 years. Mid-level trafficker who took delivery of 2 kgs of cocaine; lengthy record and a drug-related prior.

The criminality of Ms L's conduct is far less serious than in *Conway* and *Butt.*

- *R v Scott*, 2013 NSCA 28 Youthful first offender, low-level trafficker in cocaine. Conditional sentence and probation affirmed. As I stated earlier in this decision, the *CDSA* charge against Ms L is not eligible for a conditional sentence; that option was removed in the *Safe Streets and Communities Act*, SC 2012 c 1 s 34, in force 20 Nov 2012 by SI/2012-48. The charge in *Scott* predated that amendment.

- *R v Howell*, 2013 NSCA 67. Two-year conditional sentence affirmed for low-level street dealer who was supporting a drug habit found in possession of 1 g of cocaine. Offender was committed to staying clean and had commenced counselling. Rehabilitation more important.

- *R v Oickle*, 2015 NSCA 87 Suspended sentence increased notionally to two-years' imprisonment for possession for trafficking cocaine (11g) and morphine (23 tablets); police seized drug paraphernalia, a dagger and a replica handgun; varied sentence stayed as the original sentence nearly had been completed; in its reasons, the Court held:

> [61] . . . .[I]t would be the rare case that would not justify a period of incarceration, even for first offenders, who traffic in, or possess Schedule 1 narcotics for the purpose of trafficking, especially with the presence of weapons as in this case. That is the message that should be sent to those who choose to traffic in such dangerous drugs.

There is no allegation of weapons' use in Ms L's case.

[99] There is also *R v S*, (7 Feb 2018), Pictou 8194260, 8189168, 8189163, 8189162, 8189161 (Prov Ct), which dealt with Ms L's accomplice ; sentenced to 2 years and 6 months on a joint recommendation for three counts of trafficking, one count of possessing a prohibited weapon, and one count of violating bail; Mr S admitted to police that it was mostly his operation.

Alternatives of custody and reasons for considering them

[100] I found highly persuasive the sentencing decision in *R v Rushton*, 2017 NSPC 2 at ¶ 78, in which a youthful, remorseful petty retailer who possessed cocaine, methamphetamine and cannabis for the purposes of trafficking was placed on a three-year suspended sentence. According to the reasons of the sentencing judge:

> [78] *Oickle* (*supra*), Scanlan, J.A. questions whether addiction is properly considered a mitigating factor on sentencing for drug trafficking offences. He comments that the consequences of drug trafficking to individuals and communities is the same whether the trafficker is motivated by profit or addiction. This is of course correct. However, Scanlan, J.A. does not address addiction as a factor which diminishes moral responsibility. In my view, it does. An addiction certainly doesn't excuse criminal behaviour but it is well recognized as a factor which, when proven, can have a mitigating effect on sentence. In this regard, Justice Hill of the Ontario Superior Court of Justice in *R. v. Andrews*, [2005] OJ No 5708, provides a useful summary of the legal precedent and philosophy behind this approach:
>
> > 36 As a general rule, heroin and cocaine trafficking are properly seen as grave offences with a high degree of moral blameworthiness. Most often, these are planned crimes carried out for profit by individuals apparently philosophically opposed to holding gainful and lawful employment as opposed to simply conducting illicit drug sales. Not surprisingly then, the

overarching principles of sentencing in these cases have been denunciation and general deterrence.

37 That said, the law has tended to treat the addict who trafficks [sic] to support her habit somewhat differently - the profiteering for greed element is absent, a serious health issue emerges as context, and many question the efficacy of general deterrence in controlling the actions of one who is ill.

38 In *R. v. Smith*, (1987) 34 C.C.C. (3d) 97 (SCC.), Justice Lamer, speaking in the context of a drug importing case, stated, at page 124:

> The direct cause of the hardship cast upon their victims and their families, these importers must also be made to bear their fair share of the guilt for the innumerable serious crimes of all sorts committed by addicts in order to feed their demand for drugs. Such persons with few exceptions (as an example, the guilt of addicts who import not only to meet but also to finance their needs is not necessarily the same in degree as that of cold-blooded non-users), should, upon conviction, in my respectful view, be sentenced to and actually serve long periods of penal servitude.

39 In a possession of heroin for the purpose of trafficking case, *R. v. Pimentel*, [2004] OJ No 5780 (SCJ), at paragraph 20, I stated:

> The gravity of the circumstances of an offender's involvement in marketing heroin may be mitigated in some measure by the existence of any of the following factors:
>
> The offender is addicted to heroin. The onus is upon the offender to establish not only the addiction but also "a causal connection" between his or her addiction and the unlawful activity involving the drug in the sense that the addiction was at least a materially contributing cause for the criminality: *R. v. Holt* (1983), 4 C.C.C. (3d) 32 (Ont. C.A.) at 51. Where the evidence is "sketchy", the onus is not discharged: *R. v. Bahari*, [1994] OJ No 2625 (C.A.) at para 4. Where the matters are proven: The courts have always distinguished between a drug addict who is trafficking for the purpose of supplying his habit and the non-addict who is trafficking purely out of motives of greed. (*R. v. Mete*, [1980] OJ No 1438 (C.A.) at para 12). See also: *R. v. Wright*, [1976] OJ No 1096 (C.A.) at para 2; *R. v. McCarthy*, [1990] OJ No 2163 (C.A.) at paras 2 and 3; *R. v. Bell*, [1976] OJ No 585 (C.A.) at para 2; *R. v. Richards*, (1979) 49 C.C.C. (2d) 517 (Ont. C.A.) at 524-5; *R. v. Nguyen*, [1996] OJ No 2593 (C.A.) at para 5; *R. v. Wood*, [1979] OJ No 855 (C.A.) at para 5; *R. v. Zamini*, [1999] OJ No 3780 (C.A.) at para 2."

40 In *R. v. Reid*, [2003] P.E.I.J. No 118 (C.A.), at paragraph 19, the Court stated:

> While the addiction is not an excuse, it becomes relevant when a sentencing decision is made because of the potential for protecting the public in the long term by ordering the addictions issues to be treated as part of the sentence.

[101] *Rushton* has been followed or cited with approval in a number of recent trafficking-related cases:

- *R v Casey*, 2017 NSPC 55 at ¶ 54. Youthful, remorseful offender, trafficked in a small quantity of crack cocaine; good prospects for rehabilitation; limited prior record. Three-year suspended sentence imposed.

- *R v Christmas*, 2017 NSPC 48 at ¶ 55. Middle-aged First-Nation's male; remorseful; possessed hydromorphone (a Schedule I substance) and Percocet (an oxycodone compound, also a Schedule I substance) for low-level trafficking. Three-year suspended sentence imposed.

- *R v Masters*, 2017 NSPC 75 at ¶ 56. Youthful, first offender in possession of small quantity of methamphetamine for purposes of trafficking.

- *R v Halliday* (5 Feb 2018), Pictou 8034037 (NSPC). Suspended sentence and a two-year term of probation for possessing a small quantity of methamphetamine for the purpose of trafficking; no prior drug offences;

limited record; offender had been introduced to drugs by a violent and abusive former partner.

- *R v Saldanha*, 2018 NSSC 169: Counts of trafficking in cocaine and possession for the purpose; "a delivery person . . . catering more to his own personal consumption habit"; university student; supportive family; passing of sentence suspended; three-year term of probation imposed. It was pointed out to me that *Saldanha*, albeit a decision of the Supreme Court, was an original-jurisdiction sentence, not a review on appeal, so that the case should not be treated as binding. This was a pertinent point. Although I dismissed this argument in *R v MacDonald*, 2018 NSPC 25 at ¶ 54-58, I could well have been in error in my analysis; *MacDonald* is now under appeal, so that, if I made a mistake, it might get fixed. Still, I remain of the view that, even if original-jurisdiction sentencing cases out of the Supreme Court of Nova Scotia might not be binding on this court in the *stare-decisis* sense, they are binding in the statutory sense. This is because ¶ 718.2(b) of the *Code* states that a sentencing court shall take into account the principle that a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances, without reference to the level of judicature. I should add that, since rendering my decision in

MacDonald, I have found one scholarly reference which would support the proposition that this court would be bound by decisions of the Supreme Court of Nova Scotia, even when that court is not exercising an appellate jurisdiction: Rupert Cross and J. W. Harris, *Precedent in English Law*, 4th ed (Oxford: Clarendon Press, 1991) at 123, where the authors discuss the binding effect of High Court judgments under the hierarchy of the courts of England and Wales.

- In *R v Zachar*, 2018 ONCJ 631, the Court imposed a two-year term of probation on a young adult found guilty of trafficking in small amounts of cocaine and heroin, and cited a number of cases from across the country in which courts had imposed suspended sentences for trafficking in Schedule I substances.

[102] How, then to assess the applicability of a custodial starting point for trafficking offences involving Schedule I controlled substances?

[103] The majority of the Supreme Court of Canada concluded in *R v M(TE)*, [1997] 1 SCR 948 at ¶¶ 43-78 that starting-point sentences may well have the effect of making sentences more uniform, and appellate courts may establish them as guides to assist sentencing courts; moreover, the starting point may

well be a factor to consider in determining whether a sentence is demonstrably unfit. However, the Court rejected the idea that appellate courts could categorize offences and create, through judicial review, minimum sentences for specific types of offences. The Court relied instead on the principle of deference in these terms:

> 32 In any event, in my view it can never be an error in principle in itself to fail to place a particular offence within a judicially created category of assault for the purposes of sentencing. There are two main reasons for this conclusion. First, *Shropshire* and *M. (C.A.)*, two recent and unanimous decisions of this Court, clearly indicate that deference should be shown to a lower court's sentencing decision. If an appellate court could simply create reviewable principles by creating categories of offences, deference is diminished in a manner that is inconsistent with *Shropshire* and *M. (C.A.).* In order to circumvent deference and to enable appellate review of a particular sentence, a court may simply create a category of offence and a "starting point" for that offence, and treat as an error in principle any deviation in sentencing from the category so created. Indeed, that is what the Court of Appeal in Alberta has done in the present case. If the categories are defined narrowly, and deviations from the categorization are generally reversed, the discretion that should be left in the hands of the trial and sentencing judges is shifted considerably to the appellate courts.
>
> 33 Second, there is no legal basis for the judicial creation of a category of offence within a statutory offence for the purposes of sentencing. As has been true since *Frey v. Fedoruk*, [1950] SCR 517 (SCC.), it is not for judges to create criminal offences, but rather for the legislature to enact such offences. By creating a species of sexual assault known as a "major sexual assault", and by basing sentencing decisions on such a categorization, the Alberta Court of Appeal has effectively created an offence, at least for the purposes of sentencing, contrary to the spirit if not the letter of *Frey*.

[104] As the Court said later on in *Lacasse*, *supra*:

> 58 There will always be situations that call for a sentence outside a particular range: although ensuring parity in sentencing is in itself a desirable objective, the fact that each crime is committed in unique circumstances by an offender with a unique profile cannot be disregarded. The determination of a just and appropriate sentence is a highly individualized exercise that goes beyond a purely

> mathematical calculation. It involves a variety of factors that are [page1119] difficult to define with precision. This is why it may happen that a sentence that, on its face, falls outside a particular range, and that may never have been imposed in the past for a similar crime, is not demonstrably unfit. Once again, everything depends on the gravity of the offence, the offender's degree of responsibility and the specific circumstances of each case. LeBel J. commented as follows on this subject:
>
> A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. Regard must be had to all the circumstances of the offence and the offender, and to the needs of the community in which the offence occurred.
>
> (Nasogaluak, at para 44)

[105] As the Court in *Oickle, supra*, conceded:

> 40 . . . [I]t is not appropriate to set a bottom range or a top range for a particular offence without regard for the offender or other sentencing principles. As noted by Justice Farrar in *R. v. Phinn*, 2015 NSCA 27 where he refers to *R. v. A.N.*, 2011 NSCA 21:
>
> > [34] Unless expressed in the *Code*, there is no universal range with fixed boundaries for all instances of an offence: [Authorities omitted]. The range moves sympathetically with the circumstances, and is proportionate to the *Code's* sentencing principles that include fundamentally the offence's gravity and the offender's culpability. ...

[106] See also *Howell*, *supra*, at ¶ 9.

[107] Still, in order to ensure accountability, it would seem reasonable that, when a court decides to depart markedly from the customary or prescriptive sentence imposed ordinarily for a particular class of offence, the court should explain, in a meaningful way, the distinguishing features that led to the divergence from

the normal starting point: *R v Maroti*, 2010 MBCA 54 at ¶ 8; *R v Blacksmith*, 2018 MBCA 81 at ¶ 19. However, it is not necessary in range-departure cases that the circumstances of the offence and the offender be found exceptional; this was underscored by the majority opinion in *Scott, supra*, at ¶ 53:

> [53] There is no question that this Court has long stressed the need to emphasize deterrence and denunciation for those that traffic in cocaine, and depending on the circumstances of the offence and of the offender, may well mean that a sentence of federal incarceration is called for. With all due respect, what I cannot accept is that these or any other cases make a federal prison term mandatory - to be avoided only if an offender can demonstrate "exceptional circumstances".

[108] Sentencing has been described as an art: *Scott, supra*, at ¶ 95. In *R v CAM*, [1996] 1 SCR 500 at ¶ 91, the Court stated:

> A sentencing judge still enjoys a position of advantage over an appellate judge in being able to directly assess the sentencing submissions of both the Crown and the offender. A sentencing judge also possesses the unique qualifications of experience and judgment from having served on the front lines of our criminal justice system. Perhaps most importantly, the sentencing judge will normally preside near or within the community which has suffered the consequences of the offender's crime. As such, the sentencing judge will have a strong sense of the particular blend of sentencing goals that will be "just and appropriate" for the protection of that community. *The determination of a just and appropriate sentence is a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community*. The discretion of a sentencing judge should thus not be interfered with lightly. (emphasis added)

[109] But perhaps not entirely an art. The making of a sentence might be described as artistic as it is not a calculus with precise values, other than being

bound by ranges of penalty prescribed by statute or judicial precedent, or when governed by mandatory minimums.

[110] In contrast to the speculation involved in making a sentence is the measurability of sentence aftermaths.

[111] The sentence begins to be served. Outcomes can be observed. Some results might be specific to the person serving the sentence: Did restitution or fine orders get paid? Was community-service work finished? Did the person get paroled or receive earned remission? What were the results of counselling? Did the person who was sentenced reoffend?

[112] However, a sentence is intended to have an effect on more than the one person being sentenced for the one case before the court. A sentence is intended to deter others; it is supposed to contribute to respect for the law; it should help maintain a just, peaceful and safe society—section 718 of the *Code* says so. These are high-ranking objectives of sentencing.

[113] Accordingly, in addition to inquiring whether a contemplated sentence would be in line with sentences imposed in similar cases, I should think that a court ought to try to find out whether a defined sentencing range has fulfilled these post-sentence objectives. How does one judge that? What should

decision-makers expect to see if a forensic sentencing policy is succeeding? After effects were considered carefully by the Court in *Preston*, *supra*.

[114] A reasonable hypothesis about the effectiveness of a sentencing range in deterring a particular type of crime and promoting community safety would be that, if sentences imposed by courts are succeeding in achieving lawful objectives, the incidence and prevalence of that crime ought to drop. Persons contemplating illegal conduct are being deterred. Persons already caught and punished have been corrected. Respect for the law is enhanced. Justice, peace and safety are, if not flourishing, at least improving.

[115] Unfortunately, Canadian courts do not have direct access to sentencing data that might confirm whether these outcomes are being achieved; this is in contrast to, for example, the United States Sentencing Commission, a judicially managed, independent agency which gathers up, analyses and distributes to the federal bench information on sentencing practices and outcomes: see United States Sentencing Commission, *U.S. Sentencing Sourcebook of Federal Sentencing Statistics 2017*, accessed online at www.ussc.gov/sites/default/files/pdf/research-and-publications/annual-reports-and-sourcebooks/2017/2017SB_Full.pdf. Augmenting the *Sourcebook* is the National Inventory of Collateral Consequences of Conviction, as authorized in

the *Court Security Improvement Act of 2007*, Pub L. 110-177 § 510, 121 Stat. 2534, 2544). The Inventory was established in recognition of the myriad adverse consequences that flow from criminal convictions.

[116] Those sorts of resources are not available directly to judges in the country.

[117] If the quality of a judgment is no better than the judge's knowledge, it would seem that courts should try to acquire some knowledge, by some means, about the broad effects of sentencing. Information will not provide all answers, and its reception might be constrained by principles of judicial notice; however acquired, outcome-effectiveness information might lead to the asking of appropriate questions. The objective is to avoid the situation described by Justice Louis D. Brandeis who observed: "The greatest dangers to liberty lurk in the insidious encroachment by men of zeal, well meaning but without understanding." *Olmstead v. U.S.* (1928), 277 US 438 at 479. And while it is true that judges get to decide difficult cases in virtue of "our commissions, not our competence" (*Dames & Moore v. Regan* (1981), 453 US 654 at 661) it would seem that some effort by the judiciary to socially inform itself is desirable. Mindful of the limits of contextualized judging as delineated in *R v RDS*, [1997] SCJ No 84 at ¶¶. 28, 42-44, 121-127, I hope what follows will be permissible.

[118] And so what information is available publicly about the effectiveness of penalties in controlled-substance cases?

[119] The information available from reliable public sources suggests that the expected outcome of offence-prevalence-and-incidence reduction is not happening.

[120] Since peaking in 1991, the police-reported overall crime rate has decreased by half; however, over the same period, the rate of police-reported drug offences has increased over 52 percent: Canada, Statistics Canada, *Drug-related offences in Canada, 2013*, by Adam Cotter, Jacob Greenland & Maisie Karam, Catalogue No 85-002x (Ottawa: Statistics Canada, 25 June 2015) at 5. Cannabis accounts for a majority of police-reported drug offences: *id*, at 6. This is followed by cocaine: *id*, at 7. Later statistics show that the combined rate of possession, trafficking, production and importation or exportation of drugs other than cannabis and cocaine has been increasing since 2010; between 2016 and 2017, the most notable increases were reported for possession (an increase of 13 per cent) and trafficking, production or importation/exportation (a jump of 11 per cent) of methamphetamine/ecstasy: Canada, Statistics Canada, *Police-reported crime statistics in Canada, 2017*, by Mary Allen, Catalogue No 85-002x (Ottawa: Statistics Canada, 23 July 2018) at 26-27.

[121] These data accord with trends which I have observed in this judicial centre. Sentencing courts are permitted to take notice of the prevalence of particular offences in the community: *R v Prasad*, 2006 BCCA 470 at ¶ 12; *R v Gibbon*, 2006 BCCA 219 at ¶¶ 21-26: *R v Nguyen*, 2013 ONCA 51 at ¶ 4; and see *R v Sears*, [1978] OJ No 435 at ¶ 2 (CA).

[122] I am mindful that a sentencing court should not consider extrinsic research unless it has been put before the court properly by the parties: *R v CNT [BMS]*, 2016 NSCA 35 at ¶ 17 (although an exception for raw statistics in *Juristat* might be justifiable: *R v Denny*, 2016 NSPC 83 at ¶ 15). Furthermore, statistics evincing an increase in reported crime might arise from an increase in or reallocation of detection-and-enforcement efforts and might not support very strongly conclusions about whether court-imposed punishments are, in fact, having a deterrent effect. Relying on statistics can be perilous, as any data can be tortured until it confesses, to quote Ronald Coase.

[123] Finally, I should not place too much weight on local trends, as they are statistically insignificant: the plural of "anecdote" is not "data".

[124] However, I am unable simply to unlearn what I have come to know. I subscribe to a public-domain justice-statistics distribution service run by

Statistics Canada, and I review criminal-justice data from that service very regularly.

[125] In any event, surely it is not a repudiation of the law of notice for a court to conclude from data gathered by a reputable government agency that controlled-substance offending remains persistent and stubbornly resistance to traditional criminal-justice methods to curtail it. This ought to surprise no one: illegal-substance use operates in a system that is obviously chaotic and not subject to linear predictability.

[126] If one were to harbour doubt about whether traditional criminal-justice measures for drug-distribution offences might be said to be "succeeding", what could account for the lack of success?

[127] One answer might be that persons who fit the profile of the petty retailer—and it is they who make up the bulk of the network, not the few El-Chapo kingpins—are the ones who, because of personal vulnerabilities, get caught up most easily in the business. They are also the ones most readily replaced if caught.

[128] Could imprisonment itself then expose those who have been convicted under the *CDSA* to cultures and networks that might make it harder to remain free of the business following release?

[129] Might a more effective strategy, for low-level, non-violent traffickers, such as Ms L, involve community-based, rehabilitative sentences, ones that establish pro-social contacts with others who seek better lives for themselves? Sub-ss 10(4)-(5) of the *CDSA* admits of such considerations. Sentencing hearings ought to try to distinguish the reconcilable from the irreconcilable, and ought also to try to figure out whether someone on a socially or personally destructive course can get directed to a safe offramp and get reintegrated into society. Ms L seems to have steered herself to safety.

[130] To be sure, there are no easy fixes. Meaningful change—to a person's life, and to society at large—will often follow a succession of small steps, each seeking to make incremental improvements upon the last.

[131] The benefits inherent in small steps are recognized in the *CDSA*, specifically in the accommodation of users at supervised-consumption sites under s. 56.1. Approved facilities offer access to health care, counselling, overdose protection, substance testing and other services. Significantly, they may allow on-site use

of controlled substances—which assumes necessarily that those substances will continue to get bought and sold in black markets. Following the decision of the Supreme Court of Canada in *PHS Community Services Society v Canada (Attorney General)*, 2011 SCC 44, supervised consumption was authorised expressly in the *Respect for Communities Act*, SC 2015, c 22, s 5, but subject to very stringent approval criteria; these were relaxed significantly in SC 2017, c 7, s 42, introduced in Parliament as Bill C-37. In explaining the policy of the bill at second reading, the Minister of Health described controlled-substance misuse as a public-health crisis, observed that it afflicts people of all ages and all socio-economic groups, and noted the need for multifaceted approaches to achieve harm reduction: *House of Commons Debates*, 42nd Parl, 1 Sess, Vol 148 No 130 130 (31 Jan 2017) at 8203-8206 (Hon Jane Philpott). This is well aligned with Canada's obligations under the *Convention on the Rights of Persons with Disabilities*, 13 December 2006, 2515 UNTS 3, Can TS 2010 No 8 (entered into force 3 May 2008, ratified with reservations by Canada 11 March 2010) (*CRPD*). The preamble to the *CRPD* recognizes that disability is an evolving concept; disabilities arise from the collision between persons who have physical or mental challenges encountering attitudinal and environmental barriers. Disabilities hinder people's full and effective participation in society

on an equal basis with others. This describes well our expanding understanding of persons who use controlled drugs and substances illegally. It is a dynamic and complex environment, not amenable to simplistic carrot-and-stick resolutions. There is little predictability, and crises can come from out of nowhere: consider how quickly the availability of prescription opioids developed into a major public-health problem in North America, as improvident commercial and public-health decisions allowed medical substances to be diverted from therapeutic uses and end up being abused.

[132] The implementation of supervised consumption as a public policy offers an effective rebuttal to the binary argument that drug users are either morally corrupt and deserve punishment, or are so impaired in their judgment that they require substitute decision-makers to micromanage their lives. To the contrary, as has been pointed out by organizations such as the Pivot Legal Society, when appropriate public-health and other supports are available in the community, users can make good choices to move themselves into better places.

[133] As I pointed out earlier, Ms L has made those sorts of choices since her arrest; she is motivated strongly to do so in order to get reunited with her children and preserve her wellness.

[134] Imprisonment would disrupt these successes these Ms L has achieved.

[135] To be sure, imprisonment would segregate Ms L from the community for a definite period of time and would constrain her physically from resuming dealing in methamphetamine, although it is clear that she has no present desire to do so and harbours a strong motivation not to do it.

[136] Based on my earlier analysis, I am unpersuaded that imprisoning her would, as a matter of fact, deter others.

[137] However, imposing a sentence that would allow Ms L to remain in the community would have a number of positive effects: it would allow her to continue with her progress; it would offer her the prospect of being reunited with her children more quickly (the effects of separating children from their parents should not be ignored; courts witness the aftermath of it regularly); and it would offer to those who might be caught up in the petty-retail business—or contemplating it—a role model of someone who, through agency and appropriate community-based supports, brought herself to a better place.

[138] I am satisfied that allowing Ms L to serve her sentence in the community would be consistent with the fundamental purposes and principles of sentencing and would not endanger public safety.

[139] The court imposes a s 16 *CDSA* order of forfeiture in relation to case 8189169.

[140] There will be a secondary-designated offence DNA order in relation to that case.

[141] There will be a 10-year/lifetime s 109 order under the *Code* in relation to that case.

[142] In relation to both charges, the court imposes the mandatory-minimum victim surcharge amount of $200 per charge, and will allow Ms L six months to pay those amounts.

[143] The court suspends the passing of sentence in relation to both charges and places Ms L on probation for a period of 36 months, beginning immediately, with conditions:

- Keep the peace and be of good behaviour;
- Appear before the court when required;
- Notify the court or the probation officer, in advance, of any change of name, address, employment or occupation;

- Report to a probation officer at the community corrections office in New Glasgow no later than 4:00 p.m., 13 December 2018, which may be by telephone, and they are able to transfer supervision to New Brunswick;

- Not possess, take or consume any controlled substance as defined in the *CDSA* except in accordance with a physician's prescription for you;

- Complete 100 hours of community-service work within the first 24 months of probation;

- Attend for substance use, assessment and counselling as directed by the probation officer;

- Attend for any other assessment, counselling or programming directed by the probation officer;

- Participate in and cooperate with any assessment, counselling or programming directed by the probation officer, and you must report immediately to the probation officer any missed assessment or counselling appointments;

- Comply immediately with any demand for urinalysis made of you by a peace officer or probation officer in accordance with the terms of ¶¶ 732.1(3)(c.1) and (c.2) of the *Code*;

- Sign immediately all consents for release of information required by your probation officer to arrange services;

- Be subject to a daily 10:00 p.m. to 7:00 a.m. curfew and the court will allow exceptions set out in the checklist;

- Not be at any place where alcohol is the primary product of sale, including liquor stores, agencies of liquor stores, taverns, loungers, bars, pool halls, show bars or cabarets. I am not imposing a consumption prohibition. However, these sorts of venues sometimes are places where improvident transactions take place.

[144] All ancillary orders—particularly the DNA-collection order—will refer to the offence and the substance involved to ensure proper reception and processing of collected DNA.

JPC