

**PROVINCIAL COURT OF NOVA SCOTIA**

**Citation:** *R. v. Stokes*, 2021 NSPC 25

**Date:** 20210609

**Docket:** 8358882

**Registry:** Kentville

**Between:**

Her Majesty the Queen

v.

Angela Stokes

<b>Decision on Sentence</b>
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<b>Judge:</b>	The Honourable Judge Ronda van der Hoek
<b>Heard:</b>	Kentville, Nova Scotia
<b>Oral Decision:</b>	June 9, 2021
<b>Charge:</b>	Section 367 (Indictable), <i>Criminal Code of Canada</i>
<b>Counsel:</b>	Jim Fyfe for the Crown Ken Greer, QC, for the Defence

**By the Court:**

Overview

[1] Ms. Stokes was employed as an underwriter at an insurance company when, in June 2018, she completed and signed her sister's name on an application for a \$25,000.00 term life insurance policy with intent that the application be acted upon by the company, contrary to s. 367 of the *Criminal Code of Canada*. In doing so, Ms. Stokes provided false information about her sister's medical viability, designated herself as the primary beneficiary, with her sister's daughter as secondary beneficiary in the event Ms. Stokes could not take under the policy, and commenced to pay the monthly premiums.

[2] Ms. Stokes' sister, who considers herself uninsurable due to a serious pre-existing medical condition, was completely unaware the policy had been written until she received an October 2018 letter from the insurance company, along with a cheque for \$32.05, acknowledging her written request to cancel the policy. Not surprisingly, she contacted the company, returned the cheque, and requested a full accounting of her "file". The company complied and she received a copy of the initial application completed on June 5, 2018; the name of the agent who wrote the

policy- Ms. Stokes; the completed questionnaire containing incorrect medical information; an indication the policy premiums were drawn by pre-authorized payments from Ms. Stokes' bank account; and a letter dated October 11, 2018 seeking to cancel the policy.

[3] Ms. Stokes, unaware the scheme had been discovered, sent a text message to her sister on November 7, 2018 advising her to disregard any messages from the insurance company because they were experiencing address mix ups. Any such message was sent in error and Ms. Stokes should be told and she would "take care of it".

[4] Ms. Stokes' sister reported the situation to the police in May 2019. Ms. Stokes was charged with three indictable counts of forgery. She pled guilty to one charge and the matter has slowly wended its way toward this sentencing decision.

[5] Sentencing has been described by the Supreme Court of Canada as "one of the most delicate stages of the criminal justice process" involving "the exercise of a broad discretion by the courts in balancing all the relevant factors" to meet the myriad objectives of sentencing. (*R. v. Lacasse*, 2015 SCC 64 , at para 1)

[6] After discussing the facts, resolving an intended *Gardiner* hearing and a proposed s. 278 application, the matter can now finally be concluded, over 22

months after the charge was laid and Ms. Stokes entered her guilty plea. I am satisfied there is no need to consider, on my own motion, any s. 11(b) *Charter* delay.

*Position of the parties:*

[7] While not downplaying Ms. Stokes cancelled the policy on her own initiative leading to the inadvertent discovery of it by her sister, the Crown says a short period of incarceration is required. The case meets the criteria in s. 742 CC for a conditional sentence order (CSO) – while the Crown proceeded by indictment and the maximum available sentence is ten years, the offence is not subject to a mandatory minimum sentence, it will not endanger the safety of the public, and accords with the purposes and principles of sentencing. The Crown seeks a CSO for three months with house arrest for the entirety with exceptions to facilitate operation of Ms. Stokes' home-based business. A twelve-month reporting probation should follow with conditions including taking assessment and counselling for issues of a personal nature, having no contact with her sister [...], and performing 40 hours of community service work.

[8] The defence seeks a conditional discharge following a 15–18-month period of probation with, among other things, 100 hours of community service.

*Decision:*

[9] Having heard the submissions of the parties I accept the fit and proper recommendation of the Crown Attorney. It properly considers all the relevant circumstances and the applicable purposes and principles of sentencing.

*The presentence report and the circumstances of the offender:*

[10] Ms. Stokes pled guilty to the offence very early in this process. She has maintained acceptance of responsibility throughout and was cooperative with police and probation services.

[11] The presentence report, the parties agree, is positive. It speaks to Ms. Stokes' love for her sister and a recognized caring nature in the community. It does not understate the impact the offence has had on Ms. Stokes' sister, and includes, as I said, an acceptance of full responsibility for the offence. The report speaks of an exemplary individual who overcame some early life challenges.

[12] She is a 50-year-old first offender. Not surprisingly, Ms. Stokes lost her license to write insurance policies and was fired when her employer became aware of the matter. Her employer described her as an excellent employee, reliable, hard-

working, and good at her job. But for the offence, she would have benefitted from job security with them well into the future.

[13] Ms. Stokes' husband was shocked when he heard about the offence. He maintains support for her. These sentiments are shared by her friends.

[14] Ms. Stokes and her sister have been estranged for quite some time. This, despite the fact Ms. Stokes donated a kidney to her sister through the kidney matching program. That was done in 2013 and the kidney her sister received was rejected a few years later. Ms. Stokes wishes for a close relationship with her sister.

[15] Ms. Stokes is currently operating a business from her home providing dog grooming services in the community. I am told she has had trouble obtaining other employment since her position with the insurance company was terminated.

*Allocution:*

[16] Ms. Stokes, in an emotional allocution, offered a sincere apology, saying it was not her intent to cause grief, she was trying to help. She realizes forgery was an inappropriate way to do so.

*Victim impact:*

[17] It is clear the victim of Ms. Stokes' offence is the insurance company that was induced to write a policy on the life of an uninsurable person, to the benefit of Ms. Stokes. Offences of this nature committed in a work environment also have impact on the employees left behind. Despite the fact there were no victim impact statements filed by the insurance company, I can certainly consider the shock and disappointment felt by the people employed in that workplace. As is often said, insurance fraud costs us all. When offences occur in a workplace, measures are often put in place to ensure such things do not happen again. These measures engage staff as well as money.

[18] But Ms. Stokes' sister is also a victim of the offence. In her victim impact statement she expressed anger, hurt, and stress arising from finding out what her sister had done. She is frail in any event and this matter served to exacerbate her anxiety level. Ms. Stokes' sister was also concerned for her daughter and even concerned that her sister wished her death. It appears the niece, and secondary designated beneficiary, shared her mother's fear. While there is no evidence Ms. Stokes was looking toward her sister's death, the suggestion is certainly sound, and Ms. Stokes' actions have served to sever all hope these family members will ever benefit from a close relationship in future.

*The Principles of Sentencing:*

[19] The Code sets out the statutory considerations applicable at sentencing.

Sections 718 to 718.2 list the applicable principles which include imposing a sentence that serves to protect the public and contribute to respect for the law and the maintenance of a safe society.

[20] Section 718 directs the Court to impose a just sanction that has, as its goal, one or more of the following: denunciation; general and specific deterrence; separation from society where necessary; rehabilitation of the offender; promotion of responsibility in offenders; and acknowledgment of the harm done to victims and to the community.

[21] Section 718.1 requires application of the proportionality principle, noting it is a fundamental principle of sentencing that a sentence be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[22] Section 718.2 requires a court to consider any aggravating and mitigating factors relating to the offence and to the offender, apply the principles of parity and proportionality, and directs that an offender not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances. As a result, the Court is to consider all available sanctions, other than imprisonment, that are reasonable



in the circumstances and consistent with the harm done to victims or to the community.

*Applying the purposes and principles of sentencing:*

[23] The Crown correctly characterized the offence as serious. It requires an emphasis on general and specific deterrence and denunciation. Deterrence and denunciation “are particularly relevant to offences that might be committed by ordinary law-abiding people” because they “will be sensitive to harsh sentences”. (*Lacasse, supra*, at para. 73) Employees in positions of trust cannot abuse such positions for personal gain.

[24] The forgery represented a breach of the trust Ms. Stokes’ employer placed in her to perform her duties in accordance with her insurance licence. Ms. Stokes took advantage of an opportunity she had as a result of holding that position of trust to commit the offence. That she was the designated beneficiary of the \$25,000 policy also supports the serious characterization. Despite her stated good intention to fund her sister’s eventual funeral, her actions were intended to deprive an organization that manages risk from being able to appropriately undertake that task. As I said before, insurance fraud affects us all through an increase in premiums. Businesses such as insurance companies must trust their employees to carry out their business

operations ethically and accurately, with due regard to assessing risk when writing policies. Ms. Stokes stood to benefit financially should this policy have been paid out. There was always the chance that would have occurred during the three months when the policy was in effect.

[25] Ms. Stokes made the decision, free and clear, to engage in the forgery. She was not driven by addiction, gambling, or drugs, she was not compelled by another person to write the policy. As a result, her level of responsibility is high. Even tempered by the concern for her sister, there were other ways to deal with pending funeral costs, such as saving her own money or taking out a loan. To place her employer at risk for such a large amount of money was not her only option.

[26] Having determined that the offence committed by Ms. Stokes was serious, I also find that her level of responsibility for engaging in the forgery was very high indeed. It is important that the public, tempted to commit such an offence, understand the very real risk of facing a period of incarceration that should outweigh the benefit of committing the offence.

[27] While rehabilitation remains an important sentencing objective, there is no need to consider it in the circumstances before the Court. Ms. Stokes made a conscious decision to offend, reconsidered her decision and there are no reasons

for doing so that require the attention of probation services. She has none of the factors frequently seen in cases that come before the Court. In particular, she is not addicted to any substance, she does not gamble, she is not in financial distress. Instead, she committed the offence over months, took advantage of her position in the insurance company to write a policy contrary to the business practice of her employer and thereby created a possibility of an undeserving payout. Ms. Stokes completed the questionnaire in a manner that supported eligibility where there was none. She designated herself the beneficiary of a \$25,000 payout. While she submitted the money was intended to pay funeral costs for a family that would struggle with same, it seems to me that was an overly inflated amount to pay for a funeral – but I have no information before the Court that this family requires such an amount to support a grieving period. The fact Ms. Stokes was estranged from her sister renders her actions either very generous or suspect. Having no evidence to the contrary, I will accept a generosity of spirit that, in part, motivated the offending behaviour.

[28] At this point it makes sense to also consider the aggravating and mitigating factors.

[29] Mitigating is the early guilty plea, somewhat attenuated by the overwhelming evidence of Ms. Stokes' guilt – the signed paperwork completed by

her and the personal designation as beneficiary, the expression of remorse and the favourable presentence report. Ms. Stokes also benefits from the lack of a criminal record and the offence resulted in the loss of her insurance license as well as her long-term employment situation. Aggravating factors include the breach of trust, a statutorily aggravating factor (section 718.2 (a)(iii)), the impact on her sister as well as her niece. I am reminded that I can consider the impact on those close to a victim per *R. v. JB*, 2015 QCCQ 1884, at paragraph 59.

[30] In weighing the aggravating and mitigating factors, I conclude the latter far outweigh the former. This was not a momentary loss of judgment but was instead sustained over three months while she paid premiums and decided not to walk back her actions.

*Parity:*

[31] Neither the Crown nor the defence provided any reported decisions that were in any way similar to the case before this Court. The Court Appeal in *R. v. Cromwell*, 2021 NSCA 36, at para 35 and 97 recently commented on the challenge faced by sentencing courts when there are little to no relevant reported decisions to consider in addressing parity. As a result, I will consider the principles of sentencing in reaching a fit and proper sentence for this offence and this offender.

[32] Defence counsel did say Ms. Stokes' situation reminds him of two unreported decisions. One from Potts J., *R. v. Behmer*, which I was unable to locate on the Courts of Nova Scotia database or elsewhere, saw the offender turn himself in to police following a crisis of conscience regarding sexual touching of a child on two occasions. While the Crown sought a then available CSO, defence argued this is exactly what we want people to do – stop offending behaviours, and the Court sentenced Mr. Behmer to an 18-month period of probation after which he was discharged due to his positive PSR and the admission. I am told the sentencing Court wanted to send the message that taking steps before someone is really harmed, will be considered on sentence.

[33] While defence counsel says Ms. Stokes' case is somewhat similar to *Behmer*, I must disagree. First, I could not locate the decision and as result cannot consider Judge Potts' reasoning in reaching her conclusion. Second, it is very different to turn oneself into police to protect a child from ongoing sexual abuse as compared to cancelling an insurance policy that was in place for three months. Ms. Stokes did not confess to her employer or to her sister, she was caught out by the employer's letter writing protocol. If the *Behmer* decision is also meant to suggest that Ms. Stokes' offence is less serious and therefore deserves similar treatment in the form of a discharge, that argument I find unsupportable. Without more, I

cannot fathom how sexual assault committed twice upon a child, without more information, could warrant a discharge. The harm, I would suggest, was already done.

[34] I was also asked to consider *R. v. Colley*, an unreported decision of Justice Cacchione. Defence counsel recalled a conditional discharge following a contested hearing for forgery involving an insurance policy that Mr. Colley tried to undo and return commissions. I was also unable to locate this decision said to involve an indictable forgery charge and a positive PSR. Once again, the absence of contextual information makes it difficult for the Court to assess the reasons for sentence.

[35] I prefer to consider *R. v. Alakija*, 2007 ABPC 234, aptly summarized in *R. v. Ludwig*, 2011 ABPC 122, at paras. 4-5:

[4] In *R. v. Alakija*, 2007 ABPC 234, the offender was the manager of a pet store who took 49 deposits totalling \$58,829.93. Prior to a complaint being made Mr. Alakija attended the Calgary Police Service and confessed to his actions. Like most individuals who face these types of offences, he had no prior criminal record. His actions were as a result of Mr. Alakija developing a pathological gambling disorder. At the time of sentencing no restitution had been made. Mr. Alakija received an 18-month Conditional Sentence Order.

[5] In paragraph 12 of *R. v. Alakija*, *supra*, this court referred to a number of Alberta Court of Appeal decisions which dealt directly with the issue of theft from an employer. Additionally, in *R. v. Gabel*, 2008 ABPC 90, at paragraph 6 this court referred to a number of other Appellate decisions, Queen's Bench decisions and Provincial Court decisions. As I note in *R. v. Alakija*, *supra*, a review of the Alberta Court of Appeal decisions, involving trust thefts and

Conditional Sentence Orders, brings me to the conclusion that each case is decided on its own set of aggravating and mitigating factors. For instance, *a sophisticated scheme to defraud an employer which involves the commission of other offences such as forgery is particularly aggravating*. An addiction to drugs or gambling is not mitigating, but a factor to be taken into consideration when we discuss rehabilitation. The treatment of such afflictions is often best suited in the community rather than in a custodial setting.

[36] In the absence of similar cases, I must balance the other principles and purposes of sentencing to reach a fit and proper one. What is clear, fraud sentences which are somewhat similar to forgery, have recently been addressed by our Court of Appeal that supported the appropriateness of periods of incarceration as well as conditional sentence orders in deserving cases. (See: *R. v. Dawson*; *R. v. Ross* 2021 NSCA 29)

[37] The Supreme Court of Canada said of CSOs in *R. v. Proulx*, 2000 SCC 5, it is “a punitive sanction capable of achieving the objectives of denunciation and deterrence.” I find on all the information before the Court, that a period of incarceration is an appropriate sentence for a serious event such as this committed on an employer. That said, I must also consider the position of the defence.

[38] Counsel says Ms. Stokes suffered a crisis of conscience when she cancelled the policy in the third month. She never intended to benefit from it, and the money was intended to pay her sister’s funeral costs that the family had not set aside. She

has no relationship with her sister despite donating a kidney in 2013 and says nobody was harmed by her actions but herself.

*The availability of probation and a discharge:*

[39] The Crown argues while Ms. Stokes made the right choice to cancel the policy, it was in effect for a number of months and probation alone is not a fit and proper sentence. In addition, she does not meet the test for a conditional discharge.

[40] I will say that I do not impose discharges, conditional or absolute, without careful consideration of the two-step test – is it in the interest of the offender and not contrary to the public interest to grant the discharge. On this case, the defence has not moved the needle on the first or second step. Ms. Stokes has lost her licence to sell insurance and her position, but she has started a home-based business that I do not accept will be impacted by members of the community becoming aware of a criminal record. Members of the community may surely already be aware of Ms. Stokes' offence. There is no indication she would not be able to continue her current work if she has a criminal record. It is also useful to say what information is not before the Court in support of the discharge. Hers is not a situation where a current employer requires travel across borders, a bondable status, or an ability to pass a criminal record check to maintain employment or



employability. She does not require a discharge to continue volunteer work in a school or other place. She does not require a discharge to enter an education program. Instead, I find, a criminal record *might* result in her inability to obtain future more lucrative employment where trust is required by an employer. But speculative possibilities are not the foundation for the test. And, paradoxically, the very reason a criminal record is required in these circumstances serves to protect the public and support respect for the law.

[41] The positive PSR, her love for her sister, her caring nature in the community, understanding the impact the offence has had on her sister, and her acceptance of full responsibility, do not overcome the hurdle of meeting the test for a discharge.

[42] That said, I am also not convinced a period of probation alone is a sufficient disposition. Offences of this nature are serious, Ms. Stokes' knew better and was of previous good character. While the Court has great sympathy for Ms. Stokes' situation, and her act of forgery may have been a momentary lapse in judgement, the effect was sustained over three months of paid premiums representing nothing less than a sustained effort over time to perpetrate this breach of her employer's trust. I frequently impose a sentence of probation for theft offences, mischief etc. but this situation is quite removed from such cases. It requires a sentence with a

deterrent effect that will serve to remind the public that even those without record who commit forgery in the workplace will pay a heavy price. For that reason, I am imposing a conditional sentence of three months with house arrest and the conditions sought by the Crown. I am also imposing a period of probation to follow that allows the Court to impose community service work in the public interest and aid Ms. Stokes' sister in knowing she will not have contact with Ms. Stokes without her explicit consent for a period of 12 months. I add "without her explicit consent" in the event her sister reconsiders her position should she approach death and wish to reconcile. The other conditions recommended by Crown counsel will be included in the Orders.

Judgment accordingly.

van der Hoek J.