

PROVINCIAL COURT OF NOVA SCOTIA

Citation: *R. v. Connors*, 2024 NSPC 6

Date: 20240123

Docket: 8658657

Registry: Kentville

Between:

His Majesty the King

v.

Mark Blair Connors

DECISION ON SENTENCE

Judge: The Honourable Judge Ronda van der Hoek

Decision January 17, 2024, in Kentville, Nova Scotia

Charges: Sections 380(1)(b) of the *Criminal Code of Canada*

Counsel: Nathan McLean, for the Provincial Crown
J. Kyle Williams, for the Defence

By the Court:

Overview

[1] Mr. Connors is not an engineer. Despite that fact, he held himself out as a member of the profession to unwitting members of the public and engaged in two projects for remuneration. One client contacted the regulatory body, Engineers Nova Scotia, sharing the engineering stamp and number Mr. Connors affixed to documents sent to Nova Scotia Power Ltd. They were false. Engineers Nova Scotia sent Mr. Connors a cease-and-desist letter.

[2] Mr. Connors accepted responsibility and entered a guilty plea to a single count of fraud under \$5,000.00 involving two proponents between September 8, 2021, and July 26, 2022, contrary to s. 380(1)(b) of *the Criminal Code of Canada* on a three count Information. The Crown proceeded summarily by consent of counsel.

Position of the parties:

[3] Mr. Connors seeks a conditional discharge following successful completion of a period of probation. He notes the work undertaken for the two proponents was not done to a poor standard, he is very familiar with the electrical codes, and was simply helping people in a climate where engineers are difficult to find. He made little money for the work.

[4] The Crown seeks a short sharp period of incarceration, three months, aimed at denouncing Mr. Connors' conduct and sending a firm message of deterrence to

those who would impersonate a professional thus placing the public at risk and diminishing trust in the professions. The Crown says the sentence should be served in the community and be followed by a 12-month period of probation. Finally, in response to the defence sentencing position, the Crown says it is contrary to the public interest that Mr. Connors receive a discharge.

[5] The parties agreed to include additional information related to the charges that will be withdrawn after decision on sentence. The Crown filed the following: (i) an eight-page letter dated September 29, 2023 from DS Mann, CD, P. Eng., ICD.D., Chief Executive Officer and Registrar of Engineers Nova Scotia, setting out a chronology of their involvement in the matter, (ii) a cover letter and resume prepared by Mr. Connors, dated July 12, 2022, for application to Nova Scotia Power Inc. for the position of Chief Electrical Inspector, and (iii) the *Engineering Profession Act* R.S., 148, s. 1.

The engineering profession:

[6] Mr. Kris Dove, the Chief Operating Officer of Engineers Nova Scotia testified at the sentencing hearing. He explained the role of the regulator to ensure only properly qualified engineers hold the designation in the province. Relevant portions of the aforementioned letter read as follows:

It is in the public interest that the presiding judge understand how Mr. Connors' decisions and actions affected public safety and the public interest. ... Like medicine, law, accounting, and numerous other professions, the government of Nova Scotia has legislation that sets the requirements for licensure to practice the

profession. Engineers Nova Scotia is the licensing and regulatory body for the 8700 professional engineers and engineers-in-training practicing in Nova Scotia or on Nova Scotia projects. Guided by the Engineering Profession Act, Engineers Nova Scotia licenses registrants who are qualified and competent, assisting them to fulfill their obligations to practice engineering in the best interest of the public. Only those with an acceptable academic foundation and acceptable experience are granted a license to practice and the title professional engineer and permitted to practice engineering as defined in the act.

[7] The educational requirements for professional engineers are set out in the letter as follows: an undergraduate degree in engineering accredited by the Canadian engineering accreditation board (CEAB), an undergraduate degree in engineering accredited by the accreditation body of a country which is part of a Mutual Recognition Agreement with Canada, and an unaccredited undergraduate degree in engineering or science from a school college or university recognized by Council and successful completion of assigned examinations.

The Court also reviewed the publicly available website www.engineerscanada.ca, which included a helpful section entitled *Characteristics of the Professions*, which reads as follows:

A profession is a learned calling which requires advanced knowledge, understanding, and abilities gained from intensive and specialized education, training, and practical experience. Members of a profession limit their activities to their areas of knowledge and experience, doing so out of commitment to serve and protect the public. Professional practitioners also ensure that their competence is maintained throughout their careers. Professions tend to be characterized by high levels of organization and regulation, yet their members participate in activities which are varied rather than routine, and typically require the exercise of discretion and judgment.

Professions adopt distinctive codes of ethics which deal with their members' relationships with the public, colleagues, employers, employees, and clients. Adherence to a code of ethics ensures an adequate standard of competence and conduct based on a relationship of responsibility and trust between the profession

and the public, while maintaining respect, integrity, and confidentiality between practitioner, employer, and client. But the highest obligation of a profession is to society, which it serves: the members of a profession shall protect the interests of society in the areas of the profession's specialized expertise. This obligation rises above all others when there are conflicting responsibilities. As part of this "social contract", the recognized professions in Canada have been given the authority and responsibility to be self-regulating under their respective provincial or territorial legislation, and to ensure that only qualified professionals are licensed to practice.

[8] Canada Engineers also specifically defined the practice of engineering:

The "practice of engineering" means any act of planning, designing, composing, evaluating, advising, reporting, directing or supervising, or managing any of the foregoing, that requires the application of engineering principles and that concerns the safeguarding of life, health, property, economic interests, the public welfare or the environment.

[9] The Court is satisfied that the evidence from Mr. Dove accords with the statement of Engineers Canada regarding the professional integrity of the profession and the need to ensure the protection of the public.

[10] The Engineers Nova Scotia letter also explains that, unlike other provinces where there is a statutory right of injunction against anyone contravening the *Act*, for example Ontario and Alberta, Engineers Nova Scotia's powers are restrained. The Nova Scotia legislation does not provide explicit authority for Engineers Nova Scotia to enforce the *Act* outside of its disciplinary powers against members. As a result, should an individual, such as Mr. Connors who is not a registrant under the *Act*, fraudulently represent himself as an engineer, Engineers Nova Scotia's ability to intervene is restricted. This is not the case for all regulated occupations in Nova Scotia. The College of Paramedics and the Real Estate Commission, for example, have both filed injunctions in the past four years against individuals lacking

authorization to practice those respective occupations. Their legislation specifically authorizes the regulatory bodies to apply for an injunction. As a result, Engineers Nova Scotia, bound by its legislation, was only able to send a cease-and-desist letter to Mr. Connors and contact RCMP.

Facts:

[11] On July 27, 2022, a member of the public alerted Engineers Nova Scotia to Mr. Connors' unauthorized use of an engineer seal and number. The regulatory body approached the RCMP who began an investigation. Police obtained a Production Order and viewed Mr. Connors' social media, emails, LinkedIn profile, and plans he submitted to Nova Scotia Power Inc. between 2013 and 2022.

[12] In the 2013 submissions Mr. Connors identified himself as a licensed electrician. Between 2019 and 2022 he made submissions to Nova Scotia Power Inc. on behalf of MC Engineering Ltd. identifying himself variously as a certified systems engineer, a certified engineer, and also a professional engineer.

[13] In 2021 and 2022 Mr. Connors sealed documents with an engineering stamp and signed off on plans as an engineer. In his statement to police, he explained how he created the stamp using his computer to modify a real engineering stamp and also made up a number. The deceptive stamp was used to signal Mr. Connors is a Nova Scotia engineer with a number issued by the regulatory body. By happenstance, the

fictitious number Mr. Connors used actually belongs to a real engineer who had no knowledge of Mr. Connors' actions.

[14] Mr. Connors pled guilty to committing the single count of fraud between 2021 and 2022 in work undertaken for two proponents: (1) Steven Boyd and (2) Matthew MacKay.

The MacKay project:

[15] Mr. MacKay explained to investigators that people in the trade were familiar with Mr. Connors' work as an electrical engineer. He explained that Mr. Connors would take the calculated electrical load required for a new building and determine the service requirements necessary for Nova Scotia Power Inc. to connect electricity to a building. He was involved in the electrical work and ensured the safety of electrical hookups in new buildings. The work required a person be an engineer.

[16] Mr. MacKay knew Mr. Connors was the manager of a local store he frequented for supplies. He approached Mr. Connors asking if he would do the drawings for a planned new clothing outlet. As background, the general contractor engaged in the MacKay project was working with an electrician, but Nova Scotia Power Inc. advised the project required an engineer to sign off on the electrical plans for the new build. Mr. Connors accepted the work, prepared electrical drawings, submitted them to Nova Scotia Power Inc. using the fraudulent stamp and number, and was paid \$2,500.00 through his company, MC Engineering.

The Boyd project:

[17] Mr. Mahaney was involved in the Boyd chicken barn project. He required an engineer, so he approached Nova Scotia Power Inc. seeking a recommendation for someone familiar with the project type. Nova Scotia Power Inc. recommended Mr. Connors as a person whose work was familiar to them. Mr. Mahaney had met Mr. Connors years before and was also familiar with his work.

[18] Mr. Mahaney contacted Mr. Connors to discuss the job, and Mr. Connors priced it at \$2,400.00. When Mr. Mahaney expressed concern about the cost, Mr. Connors offered to do the work for \$1,200.00 cash. Mr. Mahaney accepted the terms and paid Mr. Connors \$1,200.00 cash for a review of the paperwork on which Mr. Connors placed the fraudulent engineering stamp and number.

[19] Things did not sit right with Mr. Mahaney because Mr. Connors' work was not covered by insurance and the type of job usually costs in the \$6,000.00 range. He called Engineers Nova Scotia after unsuccessfully trying to locate Mr. Connors' name on their list of engineers. The regulator reviewed the stamped documents and advised Mr. Mahaney that Mr. Connors' stamp was false, and he was not an engineer.

[20] The company under which Mr. Connors conducted work and submitted drawings to Nova Scotia Power Inc., MC Engineering, is not a registered company

in the province of Nova Scotia. It may be a legitimate company operating in another province but has no association to Mr. Connors.

[21] Defence tempered the facts by adding that while Mr. Connors held himself out as an engineer, the MacKay job did not actually require an engineers' stamp because that building was not characterized as a hazardous work in the *2021 Canadian Electrical Code*. The Boyd job did, however, require an engineer to submit the plan, and the false stamp was used in both submissions to Nova Scotia Power Inc.

[22] On cross examination Mr. Dove referenced the *2021 Canadian Electrical Code* noting barns were not added as hazardous locations until May 1, 2021. As such, he accepted that Mr. Connors was not precluded from submitting drawings. That said, Mr. Dove, pointed out that Mr. Connors held himself out as an engineer by choosing to submit drawings using the false stamp and number. In doing so he misled the public.

[23] Mr. Dove would not concede to defence counsel's argument that the work was not done poorly, adding he did not review the work and, once again, Mr. Connors is not an engineer. Mr. Dove says he understands Nova Scotia Power Inc. intended to investigate any projects involving Mr. Connors.

[24] Mr. Dove also explained that placing qualifying terms around the word engineer such as "POS", "systems", "software", etc. is to hold oneself out as an

engineer. Any use of the term is a violation of the *Engineering Profession Act*, as it risks leading the public to believe a person is an engineer entitled to practice engineering in the province and is contrary to s. 20(b) of the *Act* which prohibits use of the word engineer if one is not an engineer. Doing so verbally or in any other manner may lead a member of the public to believe a person is a member of the profession.

Additional investigative steps:

[25] As part of the investigation police spoke to Nova Scotia Power, Field Supervisor for Electrical Inspectors. After being advised Mr. Connors had been claiming to be an engineer for some time, police collected a resume and cover letter submitted by Mr. Connors seeking employment with the company as Chief Electrical Inspector. In the resume, Mr. Connors claimed false credentials, purporting to have an engineering degree from Mohawk College. That college in Ontario is not an engineering degree granting institution. He also indicated that he was the Owner/Engineer of Subtotal POS Systems Ltd. from 1999 to 2006 and the business was described as involved in, among other things, the installation of new electrical equipment. Under the Training and Certifications section of the resume, Mr. Connors listed himself as an Electrical Engineer since 1992 with an Electrical Engineering Degree from Mohawk College.

[26] The Court was told that at the beginning stage of building projects, a review for hazardous operations such as barns, requires plans be submitted to Nova Scotia Power Inc. for review before electricity would be supplied to a building. Since May of 2021 most of Mr. Connors' work was said to involve chicken and cattle barns, and "not many engineers were working on that type of project". Nova Scotia Power Inc. relied on the regulatory body's stamps and numbers as an assurance they were dealing with an actual engineer. Fraud of this nature is, I am told, exceedingly rare in this part of the country.

[27] Mr. Connors was cooperative on arrest and advised police he had received a July 2022 cease and desist email from the regulatory body and offered an apology. He explained the purpose of engaging in the offence was his effort to help people because contractors were having trouble locating engineers, and he knows the "codes", so he stamped the work. Mr. Connors also confirmed that he had prepared and submitted the resume containing false credentials. Mr. Connors explained that he altered a stamp and made up the number "to help contractors". Most of his work was commercial construction, he did not make a lot of money, and did not charge for some work. He also confirmed that he is not an engineer.

[28] The Court reviewed Mr. Connors presentence report. It can best be described as positive. He is in a long-term marriage, and he and his wife support a disabled adult son which represents a financial hardship for his family. Mr. Connors is

employed full time and has been for some time. He is an avid volunteer in the local Kinsman club and his friends stated surprise that he was involved in this matter before the Court. That is because Mr. Connors is known as someone who is helpful to people and a people pleaser. Mr. Connors expressed remorse, apologized to Engineers Nova Scotia, explained to them his objective to help people, and paid back some of the money that he charged for the two projects.

[29] As previously stated, the Crown seeks a short sharp period of custody, but given the fact a conditional sentence is available and Mr. Connors meets the test for same, asks that he be sentenced to three months followed by twelve months of probation.

[30] The Crown emphasizes the need for public confidence in the engineering profession and describes the offence as serious. The projects involved new construction, and one was captured by the hazardous locations descriptor set out in the *Electrical Inspection Bulletin 2015* which reads as follows: “plans and related specifications shall be submitted where electrical wiring or electrical equipment is installed in a hazardous location, as defined in sections 18 and 20 of the *Canadian Electrical Code, Part One* for the following: requirements for drawings to be designed and stamped by a Professional Engineer are outlined in the Nova Scotia Department of Labour and Advanced Education Bulletin 2020- 01- requirements to submit drawings for hazardous locations.”

[31] The fundamental principle of sentencing, expressed in section 718 of the *Code*, directs punishment should be proportionate to the gravity of the offence and the degree of responsibility of the offender. Defence suggests the offence was not particularly serious, but I reject that contention based on the following concerning behaviours: creation of a false engineering company, wearing the engineer's ring, accepting engineering work for payment, and submitting an application to Nova Scotia Power Inc., as well as drawings, while purporting to be an engineer and using the fraudulent stamp and number in aid. Despite the fact that Mr. Connors', I am told, finds the work interesting and engaging, and enjoys preparing the drawings, these tasks are not to be undertaken by non-engineers for personal satisfaction or good deeds. It is not dissimilar to a citizen diagnosing a medical condition when they are not a doctor. The best one can do is direct people in need to qualified professionals.

[32] The fundamental purpose of sentencing, expressed in section 718 of the *Criminal Code*, is to protect society and contribute to respect for the law, the maintenance of a just, peaceful and safe society by imposing just sanctions which have one or more of the objectives of denunciation, deterrence, separating offenders from society where necessary, assisting in the rehabilitation of offenders, providing reparation for harm done to victims or to the community, and promoting a sense of

responsibility in offenders and an acknowledgment of the harm done to victims and to the community.

[33] This matter requires focus on general and specific deterrence. I am told this type of fraud is exceedingly rare in this part of Canada, and the Court acknowledges that we are becoming an increasingly complex society. As a result, it is important that the public understand that proper qualifications and education are required before a person can hold themselves out as a member of one of the professions.

[34] Aggravating and mitigating circumstances of the offence and the offender must also be considered. Under aggravating I list the following: (i) the work was conducted without benefit of insurance, (ii) payment was accepted, (iii) the resume was submitted to Nova Scotia Power Inc. during the timeframe of these offences and supports their belief in the fraud, (iv) Nova Scotia Power Inc. was misled as to Mr. Connor's qualifications such that they unwittingly recommended him to one of the proponents, and Mr. Connors did not attend Mohawk College, (v) engineering is a heavily regulated profession, (vi) Mr. Connors' actions impact the public trust and came with inherent risk, (vii) his actions occurred over time and involved a level of planning, (viii) he wore an engineer ring on the baby finger that signifies membership in the profession, (ix) he used a false company with the name Engineering to collect payment for work, and (x) while financially motivated, he was motivated by a personal interest in the regulated subject matter.

[35] Mitigating circumstances include: (i) a guilty plea that is somewhat attenuated by the overwhelming evidence of guilt, (ii) ceasing activity after receiving the cease-and-desist letter from the regulator, (iii) cooperative and forthcoming with police, a signal of remorse, (iv) without criminal record, (v) fully employed, (vi) financial challenges supporting his family which includes an adult child with a disability, (vii) supportive family and friends, and (viii) active volunteer in the community.

[36] As they say, “word gets around in a small town”, and that is both aggravating and mitigating for Mr. Connors. Aggravating because that is how people came to believe he was an engineer, and mitigating because he has no doubt been publicly embarrassed by his actions.

[37] Defence counsel asks the Court to consider that one of the projects did not actually require the work to be signed off by an engineer. I think this is to confuse the issue, Mr. Connors held himself out as an engineer to obtain the work in the first place and did in fact apply the stamp and number to the documents that he was paid to submit to Nova Scotia Power Inc, thus committing the offence of fraud.

[38] In weighing the aggravating and mitigating factors, I conclude the former far outweigh the latter. This was not a momentary loss of judgment, but a sustained and involved effort undertaken over time.

[39] The Court must also consider parity, similar cases involving similar offenders. The parties did not provide any case law for my consideration. Our Court of Appeal

in *R. v. Cromwell*, 2021 NSCA 36, at para 35 and 97 commented on the challenge faced by sentencing courts when there are little to no relevant reported decisions to consider in addressing parity. I did consider my decision in *R. v. Stokes*, 2021 NSPC 25, where the parties sought the same sentences, I am asked to consider here - a conditional sentence order vs. a conditional discharge. I sentenced Ms. Stokes, an insurance agent, to a three-month conditional sentence order for writing a life insurance policy in her sister's name, naming herself as beneficiary, without her sister's knowledge, while aware the sister could never qualify for such insurance. Ms. Stokes lost her job and can no longer practice in the insurance field. In passing sentence, I concluded as follows at paras. 40-42:

[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.

Conclusion:

[40] It is clearly in Mr. Connors interest to receive a discharge. He says his life has been torn apart for the last year and a half, he loved helping people in the community, knows he crossed a line, feels badly and quite sick about what has happened. He says the contractors were stuck and had nowhere else to go. He says there are no words to describe just how sorry he is. I accept that he is very sorry about this situation. He fears he may well lose his job if he has a criminal record. That said, I find it is contrary to the public interest that he be discharged. The need to protect the public from those who would hold themselves out as a professional is simply too pressing and important. This was not a one off. Mr. Connors' actions were persistently carried out overtime and for profit. Engineering is not simply stamping drawings, and I am not convinced Mr. Connors realizes just how much he has impacted the public trust and risked the safety of the public that had cause to rely on him. Nova Scotia Power Inc. must be able to accept that paperwork submitted by engineers working for proponents is valid and such engineers are supported by

regulatory oversight. Society has to be able to trust that an engineering stamp means something. Just as a person who consults a doctor relies on advice that a mole is not skin cancer, the source of advice from all professionals is backed by knowledge, skill, training, and oversight by a trusted regulator - in the public interest.

[41] Considering all the purposes and principles of sentencing, I sentence Mr. Connors to a short sharp period of custody, but find he meets the test for a conditional sentence in the community in accord with the Crown's recommendation. It will be followed by a period of probation with the conditions recommended by the Crown.

[42] Judgment accordingly.

van der Hoek PCJ.