SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Cuvelier*, 2024 NSSC 28

Date: 20240123
Docket: CRH No. 523082
Registry: Halifax

Between:

His Majesty the King

v.

Jacob Thomas Cuvelier

SENTENCING DECISION

Judge:	The Honourable Justice Christa M. Brothers
Heard:	October 23, 24 and 25, November 8, 2023 and January 5, 2024, in Halifax, Nova Scotia
Oral Decision:	January 23, 2024
Written Decision:	January 25, 2024
Counsel:	Leonard MacKay, David Schermbrucker and Terri Lipton for the Crown Hanna Garson for Jacob Cuvelier

By the Court:

OVERVIEW

[1] For over 30 years, the courts in Nova Scotia have expressed their revulsion for the offence of trafficking in cocaine and, while sentencing for this offence, have rightfully emphasized denunciation, deterrence and protection of the public. The usual sentence where the offender is a low-mid level retailer has been a federal sentence of anywhere between two to seven years.

[2] Over the years, there have been some outliers to this range. These cases have involved younger offenders (18-19), petty retailers, offenders who trafficked to fund their own addictions, and those without a related criminal record. Provincial sentences of less than two years have been ordered. I acknowledge, however, that they are not the norm.

[3] Following amendments to the *Criminal Code* in November 2022, a Conditional Sentence Order ("CSO") is once again a legally permissible sentence for the offence of conspiracy to traffic in cocaine. Mr. Cuvelier's case requires this court to decide whether his mitigating circumstances and remarkable efforts at rehabilitation warrant consideration of a sentence of less than two years and, if so, whether that sentence can be served in the community.

[4] It has been said that sentencing, a highly individualized process, is one of the most difficult challenges faced by trial judges. Mr. Cuvelier's case has been an exceptionally challenging one.

BACKGROUND

[5] Mr. Cuvelier has pled guilty to the following two charges:

> 1. He did conspire together with [C.M.] and [C.D.] to commit the indictable offence of trafficking in a controlled substance, to wit, cocaine, a substance included in Schedule I of the *Controlled Drugs and Substances Act*, contrary to section 5(1) of the *Controlled Drugs and Substances Act*, an offence contrary to Section 465(1)(c) of the *Criminal Code*;

> 5. On or about December 9, 2020, at or near Halifax, in the Province of Nova Scotia, did have in his possession property, to wit: Canadian currency of a value exceeding five thousand dollars knowing that all or part of the property was obtained by the commission in Canada of an offence punishable by indictment, contrary to section 354(1)(a) of the *Criminal Code*;

[6] An Agreed Statement of Facts was entered into evidence. The Agreed Statement of Facts gave an overview of the RCMP Federal Serious and Organized Crime Unit's investigation of "mid-to-high level" cocaine trafficking in Halifax and surrounding areas. While Mr. Cuvelier was not an initial target of the investigation, he came to the attention of the investigators on September 1, 2020, after they were able to put a probe in his supplier's vehicle. Intercepted conversations revealed that Mr. Cuvelier and his supplier, "C.M.", considered themselves to be partners. According to the Agreed Statement of Facts, however, Mr. Cuvelier "was clearly lower in the conspiracy - at a low-mid rank of the broader organization targeted by the RCMP investigation". Intercepts from September 1 to December 4, 2020 demonstrate that Mr. Cuvelier, C.M. and C.D. conspired to traffic cocaine, with C.M. supplying the two others. A takedown occurred on December 9, 2020 with the police executing *Controlled Drugs and Substances Act* ("*CDSA*") Search Warrants.

[7] The Crown sought to call wiretap evidence to supplement the Agreed Statement of Facts. The Defence consented to the admission of most of the intercepts by way of a formal Admission of Wiretaps for Sentencing document dated November 8, 2023. The Defence objected, however, to the admission of four of the intercepts the Crown wished to rely on. On December 6, 2023, I rendered an oral decision admitting one of those intercepts, identified as session 1074.

[8] Not all of the amounts of cocaine trafficked can clearly be established by the intercepts, but it is agreed that the intercepts clearly demonstrate the conspiracy to traffic 700 grams of cocaine. This is not an insubstantial amount and certainly engages the principles of denunciation and deterrence.

[9] As a result of the takedown on December 9, 2020, the police seized the following items:

- $8,000 cash bundled in elastic bands found inside a handgun case;
- $800 in elastic bands in Christmas cards;
- An iPhone;

- A digital scale.

[10] A search of another Halifax location resulted in the seizure of:

- A safe found in a basement crawlspace that police accessed through a trap door, containing:
  - $30,400 cash;
  - Tupperware with a white substance;
  - a small electronic scale.
- Information related to a safety deposit box at the TD Bank which was later searched and found to contain $40,040 of Canadian currency and $20 in US funds.
- $325 cash and a cell phone found on Mr. Cuvelier's person.

Defence Position

[11] The Defence maintains that a 24-month (less a day) CSO is appropriate for conspiracy to traffic cocaine in the particular circumstances of this offence, and a 12-month CSO, running concurrently, for possessing the proceeds of crime. The 24-month less a day CSO would be followed by 24 months of probation.

[12] The Defence looks for what they characterize as “stringent” house arrest, with exceptions for employment and volunteering commitments, along with the usual exceptions for personal care and medical and legal appointments. The Defence also asks that Mr. Cuvelier be permitted to attend the birth of his second child.

[13] Given that Mr. Cuvelier lives with his common-law spouse, the Defence says it would be difficult to police people coming into the house and there should therefore be no restriction on visitors.

Crown Position

[14] The Crown rightly maintains that Mr. Cuvelier made a deliberate choice to traffic in cocaine and was motivated solely by profit. The offence was not an isolated incident or the product of a momentary lapse in judgment. Mr. Cuvelier was not

trafficking to feed his own addiction. Put simply, he was motivated by greed. Mr. Cuvelier was entrenched in trafficking and part of the conspiracy. The Crown also maintains, and I accept, that the offence is very serious, with Mr. Cuvelier conspiring to traffic and trafficking at least 700 grams of cocaine. His moral blameworthiness is high.

[15] In light of Mr. Cuvelier's circumstances, and taking into account his guilty plea, the Crown suggests that a four-year sentence is a fit and proper sentence for the conspiracy to traffic cocaine offence. With regard to the possession of proceeds of crime, the Crown maintains that a one-year sentence, consecutive to the sentence for conspiracy, is a fit and proper sentence. Applying the totality principle, the Crown submits that the sentence for conspiracy should be reduced to three years, resulting in a total sentence of four years.

[16] The Crown rejects the Defence's argument that this is an appropriate case for a CSO. The Crown distinguished the facts of Mr. Cuvelier's case from those in *R. v. Rushton,* 2017 NSPC 2, where an offender received a suspended sentence after pleading guilty to multiple drug-related offences, including possession of cocaine for the purpose of trafficking. The Crown noted that *Rushton* involved a youthful offender who fell within the "petty retailer" category and who was struggling with his own addiction issues. The Crown added that the offender in *Rushton* had turned his life around to an even greater degree than Mr. Cuvelier. The Crown submitted that if Mr. Cuvelier was a youthful offender with addiction issues who had made significant efforts to rehabilitate himself, a CSO would be appropriate. But those are not the facts.

[17] The Crown advised that it now participates in joint recommendations for CSOs in appropriate cases, but there is no room for a CSO in a case involving the conspiracy to traffic 700 grams of cocaine by a low-mid level retailer. In fact, the Crown says, the four-year sentence it is recommending would fall below the usual range established by the case law.

[18] The Crown fairly addressed the issues in this case. It acknowledged the challenge of fashioning an individualized sentence that gives proper effect to competing, and sometimes antagonistic, sentencing principles and objectives. It conceded that Mr. Cuvelier's case is a particularly difficult one and that he has "made a spectacular effort to reform himself." The Crown argued that the Court must concern itself with two things - the protection of the public and the need to

craft a fit and appropriate sentence for the circumstances of the offence and the offender.

Admission of Expert Evidence

[19] The Defence submits that I should admit and rely on the purported expert evidence of Dr. Anthony N. Doob, Professor Emeritus of Criminology at the University of Toronto. The Defence proposes to qualify Dr. Doob "to provide expert evidence with respect to the causal relationship between harsher sentences and general deterrence, and between carceral sentences and specific deterrence."

[20] There is no question that Dr. Doob is a respected expert in the field of criminology. In 1984, he was appointed by the Government of Canada to serve as a member of the Canadian Sentencing Commission. Although he described himself as "officially retired", Dr. Doob remains involved in several criminology-related activities, including as a member of a panel established by the Minister of Public Safety on the replacement of solitary confinement in federal penitentiaries.

[21] The Crown concedes that Dr. Doob has impressive qualifications in the area of criminology and sentencing policy. His research conclusions have been accepted in committee proceedings before Parliament and by the Supreme Court of Canada in relation to mandatory minimum sentences (*R. v. Nur*, 2015 SCC 15). In *Nur*, the majority held that the mandatory minimum sentences imposed by s. 95(2)(a)(i) and (ii) of the *Criminal Code* violated s. 12 of the *Charter*. As part of the section 1 analysis, the majority considered whether the mandatory minimum sentence provisions were rationally connected to the goals of denunciation, deterrence, and retribution. Citing Dr. Doob, the majority noted that "[t]he empirical evidence 'is clear: mandatory minimum sentences do not deter more than less harsh, proportionate, sentences'" (para. 114).

[22] The thrust of the evidence sought to be introduced by the Defence through Dr. Doob is as follows:

- Increasing the harshness of a sentence (e.g., imposing imprisonment where non-prison or community sanctions are an option) will not increase the deterrent impact of the sentence;

- Increasing the severity of the sentences will not reduce the likelihood that the person being sentenced will commit another offence. Some research

suggests that increasing severity of sentence (prison versus community sanction) increases the likelihood that a person will reoffend;

- There are collateral harmful impacts of imprisonment on offenders and their loved ones.

[23] For example, the abstract to Anthony N. Doob and Cheryl Marie Webster. "Sentence Severity and Crime: Accepting the Null Hypothesis" (2003), 30 Crime & Just. 143, states:

> The literature on the effects of sentence severity on crime levels has been reviewed numerous times in the past twenty-five years. Most reviews conclude that there is little or no consistent evidence that harsher sanctions reduce crime in Western populations. Nevertheless, most reviewers have been reluctant to conclude that variation in the severity of sentence does not have differential deterrent impacts. A reasonable assessment of the research to date - with a particular focus on studies conducted in the past decade - is that sentence severity has no effect on the level of crime in society. It is time to accept the null hypothesis.

[24] Essentially, Dr. Doob opines that the empirical research does not support the use of deterrence-based sentencing.

[25] The Nova Scotia Court of Appeal summarized the framework for admitting expert evidence in *R. v. Pearce*, 2021 NSCA 37, at para. 260:

> The framework for admitting expert evidence is set out in White Burgess. The threshold requirements to be met for the admission of D/Sgt. Isnor's evidence were: (1) relevance; (2) necessity; (3) absence of an exclusionary rule; and (4) a properly qualified expert.

[26] The Defence has established the third and fourth threshold requirements - Dr. Doob is a properly qualified expert and there is no exclusionary rule. But is his evidence relevant and necessary to assist the trier of fact?

[27] The Defence, at page 3 of its brief dated October 17, 2023, says Dr. Doob's evidence is relevant for the following reasons:

> Dr. Doob's expert opinion addresses the causal relationship between harsher sentences and general deterrence, and between carceral sentences and specific deterrence. The capacity of a sentence to achieve its intended purposes is a priority of this Honourable Court. Thus, that harsher and custodial sentences do not accomplish general, nor individual deterrence is a fact in issue. The proof or disproof of this fact, and understanding this proof or disproof, is indispensable to

> the central determination of what sentence will best accomplish the purposes and principles of sentencing in the case of Jacob Cuvelier, pursuant to section 718 of the *Criminal Code*. [Emphasis added]

[28] I cannot agree that whether harsher and custodial sentences accomplish general or specific deterrence is a fact in issue in this proceeding. The Court's task is to determine a fit sentence, taking into account the circumstances of the offence and this particular offender. In making that assessment, I am bound to apply the sentencing provisions of the *Criminal Code*, including s. 718, which recognizes general and specific deterrence as valid sentencing objectives. I am also bound by the directions of the Nova Scotia Court of Appeal, which has repeatedly emphasized that in sentencing for trafficking in cocaine, the primary considerations are denunciation and deterrence and that, in many cases, giving effect to these objectives requires a lengthy period of imprisonment. In other words, the Court of Appeal, through its sentencing decisions, has repeatedly accepted that harsh sentences have a generally deterrent effect. It is not open to this Court, in sentencing Mr. Cuvelier, to ignore these directions. That said, the Supreme Court of Canada and our Court of Appeal have previously acknowledged that "[t]he empirical evidence suggests that the deterrent effect of incarceration is uncertain" and that "[d]oubts concerning the effectiveness of incarceration as a deterrent have been longstanding" (*R. v. Proulx*, [2000] 1 S.C.R. 61, at para. 107; *R. v. Nur*, *supra*, at para. 113; *R. v. Anderson*, 2021 NSCA 62, at para. 151).

[29] For these reasons, I am not satisfied that Dr. Doob's evidence is relevant to the Court's task. It inevitably follows that Dr. Doob's evidence is not necessary to assist the trier of fact. The evidence is inadmissible.

[30] If I am wrong and the evidence should be admitted, it would not change the outcome of my decision. On cross-examination, Dr. Doob conceded that there is no empirical data on whether offenders who commit offences requiring significant planning and forethought, like white collar crimes or drug trafficking, are susceptible to general deterrence. I would therefore not feel comfortable applying Dr. Doob's null hypothesis in sentencing Mr. Cuvelier for conspiracy to traffic in cocaine.

Circumstances of the Offender/Pre-Sentence Report

[31] I turn to Mr. Cuvelier's circumstances which were canvassed in the Pre-Sentence Report prepared on November 4, 2023, as well as in a number of letters filed in support of Mr. Cuvelier.

[32] Mr. Cuvelier is now 30 years of age. He was 26 at the time of his arrest. He is currently in a relationship with Shavonte Parsons, with whom he shares a seven-year-old son. The couple are expecting another child in May 2024.

[33] Mr. Cuvelier has described having a normal and supportive upbringing. He has no siblings. Although his parents divorced when he was five years old, Mr. Cuvelier said he had a very good childhood and spent time between his mother's and father's respective households. He described them as having been very supportive and great parents to him. He said he was never subjected to physical discipline as a child. Mr. Cuvelier reported that his mother was not much of a disciplinarian and his father would discipline him by giving him a stern talking-to and taking away privileges.

[34] Growing up, Mr. Cuvelier was involved in a band and played sports. He said he was a good child and that his parents strived to raise him as a positive member of society.

[35] Mr. Cuvelier reported that his life took a negative turn in high school, when he was the victim of two random and significant acts of violence. These incidents led him to associate with negative influences as a means of protecting himself, which in turn led to him becoming involved in anti-social behaviours.

[36] In 2012, Mr. Cuvelier attended Acadia University. He described having anger management issues which he attributed to the violent incidents he experienced in high school. It was around this time that Mr. Cuvelier met Shavonte Parsons. The two began a relationship and had their son, who is now seven years of age. While the relationship ended for a period of time, they continued to stay close and co-parent together. They resumed their relationship a year and a half ago. They are expecting their second child and Mr. Cuvelier reported that Ms. Parsons is a very strong support system for him.

[37] Both of Mr. Cuvelier's parents were contacted and gave information for the Pre-Sentence Report. His mother, Mrs. MacGregor, said Mr. Cuvelier did not have any behavioural issues while growing up. She said he was bullied in junior high and high school, which she said "was awful." Around this time, Mrs. MacGregor noticed a change in Mr. Cuvelier's behaviour. She said he was frightened and began to surround himself with negative influences for protection. She believed that these individuals fed Mr. Cuvelier's ego in a negative way, which led him to make poor decisions. She also suspected that Mr. Cuvelier's lack of siblings left him searching for a sense of belonging. Mrs. MacGregor said Mr. Cuvelier became secretive and

vigilant and refused to listen to his parents' disapproval of his friend group. He was angry and reactive, which resulted in his having a "rough" relationship with his parents during high school and college. Ms. MacGregor reported that her relationship with Mr. Cuvelier has improved immensely; they speak often and enjoy a close and supportive relationship. Mrs. MacGregor is very supportive of her son and "admires him for the progress he has made as a father, partner, son and business man".

[38] Ms. Parsons was contacted for the Pre-Sentence Report. She confirmed that she and Mr. Cuvelier have been back together for over a year and described it as being a "good, healthy, simple" relationship. She noted that Mr. Cuvelier has shown significant growth as a partner and father to their son. He no longer has issues with substance abuse or anger management. Ms. Parsons confirmed that Mr. Cuvelier addressed his anger through counselling and has shown great improvement in his communication. Ms. Parsons has witnessed Mr. Cuvelier's positive relationship with his parents. She noted that she "is very worried about the subject being incarcerated as Mr. Cuvelier has made efforts to no longer associate with negative influences and she believes being surrounded by negative influences may impact Mr. Cuvelier's growth."

[39] Mr. Cuvelier graduated from Acadia University in 2017 with a Bachelor of Arts in Political Science. Currently, Mr. Cuvelier owns Cuv's Cookin', a meal prepping service. The business began as a pop-up kitchen over two years ago. Mr. Cuvelier had previously been employed by reachAbility, but he was let go due to his criminal charges. As a result of losing his employment, he decided to pivot the business from a pop-up kitchen to a meal prepping service. His business has been registered since January 2023 and serves roughly 500-600 meals per week to 60-70 clients. Mr. Cuvelier reported employing seven employees: three cooks and four drivers. Mr. Cuvelier said he takes home between $11,000 to $14,000 per month after taxes. In his Pre-Sentence Report, Mr. Cuvelier is noted to have said:

> I can't stress enough how crucial this business has been to our family's stability. It started as just an outlet for me to stay out of trouble, now it is literally the financial engine that powers our family unit, it allows my son's mother to focus solely on school and could be something I pass down to my son …

[40] Mr. Cuvelier was previously employed as a program coordinator at reachAbility from June 2020 until June 2021. Mr. Cuvelier started off by attending an anger management program and was offered a position as a coordinator. He created a program called "Hello Reach", in which he taught cooking skills to people

with disabilities and other barriers. Before working with reachAbility, Mr. Cuvelier was employed as an Admissions Recruiter at Maritime Business College from July 2019 to May 2020 but was laid off as a result of COVID.

[41] Mr. Dicks, an employee of Cuv's Cookin', provided information to the probation officer for the Pre-Sentence Report. He has been employed by Mr. Cuvelier for one and a half years as a sous chef. They have been friends for 25 years. Mr. Dicks described Mr. Cuvelier as "a very good friend and employer who treats everyone with respect."

[42] While Mr. Cuvelier does not have any formal mental health diagnosis, he said his current therapist believes he may have post-traumatic stress disorder connected to the two assaults he suffered while he was in high school and the subsequent violent deaths of some of his friends.

[43] Mr. Cuvelier has past substance abuse issues. He advised that after two of his closest friends were murdered, he developed heavy drinking and marijuana smoking habits. He advised that he has neither consumed alcohol nor smoked cannabis since 2021.

[44] Mr. Cuvelier is in weekly counselling with Robert Payne and attends a 7th Step Society for two hours every Tuesday evening. He advised that the 7th Step Society has been very helpful for him to take accountability for his actions. It has helped him to humanize people with addictions and have remorse towards others. Through his participation in the program, he has witnessed the harm that drug trafficking and addiction wreaks on the lives of real people. He plans to stay involved with the community long-term. He has been learning and taking responsibility in these meetings. He has been provided with support and given support to others.

[45] Mr. Cuvelier's current therapist, Mr. Payne, was contacted by Probation Services for the Pre-Sentence Report. Mr. Cuvelier has attended virtual counselling sessions since February 1, 2023. Mr. Payne explained that he and Mr. Cuvelier have spoken extensively about how Mr. Cuvelier has been affected by bullying and his gravitation toward "tough guys" as a form of validation. He noted that he believes Mr. Cuvelier is suffering from post-traumatic stress disorder.

[46] Mr. Cuvelier has been involved in volunteer work and plans to continue his involvement going forward. He has been invited to speak and has spoken at multiple schools, connecting with 300 children in the last year through the 7th Step Society. He also volunteers by sitting down one-on-one with young offenders to speak to

them about his past in an effort to share the lessons he has learned from his own trauma. He has been invited to speak at Woodlawn, Halifax West, Citadel and Sackville high schools and to speak to a first-year class at the Schulich School of Law. He has cooked and provided meals for the homeless, as well as for kids at the IWK in partnership with Blue Olive restaurant owner Jimmy Zelios. He recently began volunteering with the Youth Advocate Program where he hopes to create programming for at-risk youth to help them learn skills relating to cooking, boxing, and anger management.

[47] The Executive Director of the 7th Step Society, Steven Deveau, reported that Mr. Cuvelier has been attending the 7th Step Program for approximately two years. He is a very active and consistent member who is highly regarded and respected. Mr. Deveau indicated that Mr. Cuvelier has been a positive asset to the peer support meetings as he is very open and honest about his own actions and struggles. Mr. Deveau confirmed that Mr. Cuvelier is a good public speaker who regularly speaks to junior high and high school students as a representative of the 7th Step Society. Mr. Deveau noted that Mr. Cuvelier is currently a contributing member of the community and is living a pro-social life.

[48] Jimmy Zelios has known Mr. Cuvelier for 18 years. He confirmed that Mr. Cuvelier volunteers with him to provide meals to the IWK pediatric hospital and the Oxford School on occasion. Mr. Zelios described Mr. Cuvelier as a "good kid" who has made mistakes in the past but is trying to give back to the community now.

[49] The Pre-Sentence Report contained the following "offender profile":

> Mr. Cuvelier presented himself in a very mature, polite and personable manner when reporting for his Pre-sentence Report and was very co-operative. Mr. Cuvelier appears to be confident and noted he believes his strengths are being a great father, being a leader and public speaking. Regarding his weaknesses, Mr. Cuvelier noted he can be very self-critical and anxious.
>
> Mr. Cuvelier does accept responsibility for the offence and stated at the time he wanted money and wanted to be a part of something which would make him feel "respected and tough." Mr. Cuvelier stated he did not believe he could be financially successful elsewhere and stated in retrospect, he was mainly influenced by his own greed. Mr. Cuvelier noted he is very upset at the impact his offences has had on his family as well as feeling a great deal of remorse for the community. The subject stated participating in the 7 Steps Program has opened his eyes to the impact which addiction has on others and he is very remorseful for contributing to the issue. Mr. Cuvelier does appear to be genuine in his comments.

[50] This was a robust report with many people being contacted to provide information on Mr. Cuvelier's current circumstances.

Mitigating Factors

[51] It is without question that Mr. Cuvelier's Pre-Sentence Report is extremely positive. He has held full-time employment with a successful entrepreneurial venture for the last year and a half. He has strong relationships with his common-law partner, his son and his parents. He also enjoys a tremendous amount of support from the community, including members of the 7th Step Society. I found the level of support for Mr. Cuvelier to be impactful and noteworthy. There were many letters of support prepared and submitted by community members. From the 7th Step Society, these included the Executive Director and three volunteer core group members. There were also letters from multiple teachers who attested to the impact of Mr. Cuvelier's public speaking at various high schools. These 13 letters of support were all exhibited on the sentencing. I will not be able to review them all in great detail in this decision; however, I will highlight several relevant portions.

[52] One of the support letters is from Sarah Coley, Manager of the Youth Advocate Program ("YAP"). She described YAP as a municipal crime prevention program that works with youth aged 9 through 15, who are engaging in or at high risk of engaging in criminal activity. YAP's goal is to increase the capabilities of youth, families and communities through advocacy, connections to community resources, and service provision. YAP offers intensive and integrated interventions to prevent youth from being charged with future crimes.

[53] One of the interventions offered to youth through YAP is education around the negative impacts of engaging in anti-social behaviour. The following is an excerpt from Ms. Coley's letter:

> We have connected with Jacob through his community work in schools and through the 7th Step Society of Nova Scotia. His passion and commitment to mentoring young people is clear and his willingness to share his lived experience is an asset to the community. I believe that the youth in our program would benefit from connecting with a mentor like Jacob.
>
> In conversation with Jacob, it became clear that he had various skills to offer in addition to his willingness to share his story. We are developing programming in collaboration with our staff team to offer opportunities for youth to engage in pro-social, employment, and recreational programs though which Jacob could connect with the youth. Our hope is that these programs would start in the new year and be

> offered across HRM. Each of these programs would be offered in multiple locations and Jacob has committed to volunteering his time to support these sessions. There is a need in the community for youth to engage with positive role models who can connect them to pro-social life skills and who can educate them on the negative impacts of anti-social behaviour.

[54] The programming that YAP intends to develop with Mr. Cuvelier includes an introduction to boxing, cooking classes, as well as anger management support. These programs would provide meaningful support and connection for youth in their time of need and hopefully prevent any future involvement with the criminal justice system.

[55] The letter of support from Robert Payne, the licensed counselor and social worker who has been working with Mr. Cuvelier, provides additional detail about the circumstances which led to Mr. Cuvelier becoming involved in an anti-social lifestyle:

> Mr. Cuvelier and I have discussed the impact on him of being small for his age. Bullying and physical intimidation followed him from elementary school to junior high. This caused what is best described as a "reaction formation." This is a defense mechanism to cover anxiety and feelings of inadequacy. He sought out the tough guys in high school to feel protected, accepted and hide his fear.
>
> At age 16 he was attacked, robbed and stabbed by a group. In another incident, his best friend died in his arms after being shot.
>
> All these events resulted in Mr. Cuvelier developing Post Traumatic Stress Disorder, PTSD. Mr. Cuvelier still exhibits some of the classic symptoms of PTSD: hypervigilance, difficulty sleeping and is easily startled.
>
> In the ten months we have been working together, Mr. Cuvelier has made significant progress addressing these issues.

[56] Another letter of support is from Felix A. Cacchione, in his capacity as a volunteer core group member of the 7th Steps Society of Nova Scotia. Mr. Cacchione has been a core group member of the Society since 2018 and has known Mr. Cuvelier since 2022, when Mr. Cuvelier first began attending the Society's weekly meetings.

[57] In his letter, Mr. Cacchione explained that the 7th Step Society is composed of ex-offenders and volunteers who help connect offenders with pro-social ex-offenders and volunteers in order to learn coping mechanisms and different

perspectives. As a peer support group, the Society helps fulfill the need for friendship, trust building and emotional support.

[58] Mr. Cacchione noted that Mr. Cuvelier has regularly attended weekly meetings since 2022 and has become a core group member. He has assisted in making presentations to high school students about how his pro-social life went off the rails, his conflicts with the law, the results of those conflicts, what led him to change and how the Society has assisted him in his return to a pro-social lifestyle.

[59] Mr. Cacchione described the impact of one of Mr. Cuvelier's presentations to high school students, which he witnessed firsthand:

> I witnessed firsthand the impact of Jacob's presentation on students when we both were making a presentation to a class at Sackville High School. A student was so moved by Jacob's presentation that he began to cry and left the classroom before the presentation ended. Jacob and I found the student afterward and Jacob spoke to the student for a long time pointing out various resources that could help him with the difficulties he was facing. The student left this conversation with a healthier and more positive outlook.

[60] Mr. Cacchione went on to add:

> Through private conversations with Jacob and things he has spoken about during the Society's weekly meetings, I have come to believe that Jacob is committed and motivated to continue living a prosocial life. This motivation stems from a combination of various factors; the acknowledgement of the damage done to family, friends and others caused by his previous lifestyle, his daily involvement in the life of his young son, his role as a father and supportive common law partner of his son's mother, the pending arrival of their second child, his continuing contact with a therapist, the establishment and growth of a successful legitimate meal preparation/catering business and his continued [sic] with the Society. These factors, in my opinion, point to Jacob being invested in establishing a prosocial identity and being a contributing member of society.

[61] Steven Deveau, Executive Director of the 7th Step Society of Nova Scotia, also wrote a letter of support. He described the 7th Step Society, its meetings, the underpinning of the Society's work, and its community engagement. Mr. Deveau first met with Mr. Cuvelier in November 2022 and said Mr. Cuvelier has attended weekly meetings ever since. Mr. Deveau indicated that Mr. Cuvelier committed himself to eight school visits per semester and that, according to the teachers and students, he has been a huge asset to the classroom. Mr. Deveau stated the following in his letter:

> I understand that establishing prosocial bonds to conventional society (e.g., healthy intimate relationships, legitimate employment, prosocial peer network) is critical for criminal desistance. It is clear to me that Jacob has worked incredibly hard at creating a positive social role and establishing a prosocial identity. He is invested in his recovery as well as being a contributing member of society. His commitment to helping others and making amends is demonstrated when he shares his story with students at schools and supports 7th Step Society members who may be struggling. Jacob is a role model who inspires hope in others who are similarly situated. This writer believes that Jacob is an asset to both the community and the 7th Step Society.

[62] Dr. Alexa Dodge, an Associate Professor in the Department of Criminology at Saint Mary's University, also provided a support letter. She too is a volunteer at the 7th Step Society and has engaged with Mr. Cuvelier through its meetings. She indicated that she has witnessed a great deal of growth in Mr. Cuvelier and described his efforts to help others avoid making the same mistakes that he made.

[63] High school teachers from Citadel High School, Woodlawn High School, and Halifax West High School also provided letters of support. All spoke to the work that Mr. Cuvelier does in speaking to young students. One teacher wrote:

> … I am writing to express my since admiration and gratitude for the impactful contributions of Jacob Cuvelier to my classes … As a seasoned educator with over 16 years of experience, I have had the privilege of witnessing numerous guest speakers, but Jacob's presentations stand out as exceptionally insightful and beneficial for our students.
>
> I first had the pleasure of meeting Jacob approximately two years ago through a colleague, who recommended him as a speaker. After meeting him, he informed me of the work that he does with the 7th Step Society of Nova Scotia program. He meticulously walked me through his journey, with every care taken not to leave anything out. Since then, Jacob has become a valued guest in my classes, particularly in the Law 12 cohort.
>
> Jacob's journey, shared with our students, has proven to be both compelling and inspiring. His ability to connect with students on a personal level, coupled with his genuine sincerity, has left a lasting impact. …
>
> The effect of Jacob's story on the students was evident in the engagement during the Q&A session and the subsequent discussions that followed. Many of our students, particularly the young men who could relate to his journey, found resonance in his words and were motivated to reconsider their paths. So profound was his message that what was supposed to have been a 15-minute Q&A session, turned into a 30-minute that continued well after the closing bell.

[Emphasis added]

[64] Another teacher wrote:

> Students rarely have the opportunity to listen and talk with someone like Jacob. Jacob lays plain the consequences of his decisions; he does not blame but takes full responsibility. High school students are just beginning to make decisions for themselves. Jacob's life is a case study for decision making. The students he presents to certainly recognize the value of what he has to share and appreciate his humble, no nonsense approach. What better way to offer guidance than to lay bare your life's path as a lesson for others?
>
> …
>
> [Jacob] has demonstrated through his actions of the past two years that he not only knows how to earn a living the right way but he is unashamed to share his life lessons for the benefit of the next generation.

[65] A third teacher wrote:

> My observation was that Jacob sincerely wanted to help my students avoid making similar choices, and he stressed that they seek support if they were feeling vulnerable in that regard. He was especially encouraging of the boys in the classes to let go of the kind of "masculinity" that negatively affects their lives and others.
>
> I found my students to be very frank in the questions they asked of Jacob, and I appreciated that he responded to all of them in a way that was equally direct. In my debrief with the students the next day, many revealed that they were quite moved by Jacob's story and they wondered what kinds of consequences are appropriate for someone who is trying so hard to improve and build his life.
>
> I feel we all benefited from Jacob's visit that day. It helped students become aware that good people can make poor choices. When I later asked the students to articulate their thoughts in writing, some shared that after meeting Jacob, they resolved to be more reflective in their thoughts and deliberate in their actions.

[Emphasis added]

[66] All of these reports demonstrate that Mr. Cuvelier is highly committed to his own person growth and rehabilitation and has dedicated considerable time and effort to deterring others from making the same mistakes.

[67] Mr. Cuvelier’s guilty plea, his acceptance of responsibility, and his deep remorse are significant mitigating factors. Mr. Cuvelier addressed the Court at the sentencing hearing on January 5, 2024. He acknowledged the damage that he has

done to his family, friends and the community. He has maintained continuous weekly contact with his therapist. Mr. Cuvelier has established and grown a successful, legitimate meal preparation and catering business which supports his family and provides an income for several employees. He continues to volunteer with the 7th Step Society and intends to create programming for the YAP. He regularly speaks to students in schools. To date, I have not seen such impressive rehabilitative efforts from any other offender who has come before me for sentencing. Nor have I read any comparable cases. Even the Crown acknowledged that Mr. Cuvelier has put forth nothing short of a "spectacular" effort. I agree.

[68] While I have considered all of Mr. Cuvelier's allocution, I wish to highlight the following portions:

> I wanna start by saying that the depiction that the - the Crown gave of who I was is fair. I appreciate not - I appreciate they're not being like an unfair, sort of villainizing. It just - it was what it was. That's what I was doing and I appreciate it and I'm more so today wanting to give you sort of a - a look at who I am now 'cuz that is a very very different individual before you but the remorse is - is deep and there is a community level of remorse that comes from being a Core group member of the 7th Step program. When I'm there I'm in a room of people who have suffered from addiction for years and I feel that. It humanizes it for me. I - I feel culpable of being a part of that machine that - that would have created certain addictions similar to - to theirs. The obvious remorse and the one that hits me the deepest is my - how this affects my child, my son.
>
> …. He - he deserves better. He deserves better than my actions, my choices and my decisions and that's what - that's what got me here was my choices. There's no way around it. There is factors that my therapist who - God, do I ever appreciate him and am I ever a - I champion therapy whenever I go to these schools and talk to these kids because it's - it's commonly stigmatized within the - especially males and it's helped me immensely come to terms with a lot with the accountability and remorse factor as well as sort of self-forgiveness. But he talks about in his letter I do believe the incidents that happened to me at a young age. Now they were serious and they were traumatizing of course. I mean my life was almost taken from me and it happened at time where I was that prototypical good kid.
>
> … These things are understandable as to why I might have gone a certain way but they're not excusable at all. That's why I in my Pre-Sentence Report took full accountability and just - just sort of inserted those as contexts but not explanations as to why I made said decision because I made said decision consciously to do what I did. And December 9, 2020 was most certainly rock bottom for me. I know that. I felt it. No one to blame but myself and I lost a great job that day. I had a great job with reachAbility, man but that, you know, that's where I developed my love

> for cooking - for reachAbility. I was teaching the disabled, members of the disabled community how to cook and how to - and how to shop and how to budget. That set the stage for where I'm at now with Cuv's Cookin'. But that was rock bottom. I lost my job, I lost - rightfully so I lost access to my child 'cuz at that point I was not a fit father.
>
> … Being with the 7th Step program, going to the schools has been huge and when I - when I talk to these kids as - as Ms. Garson reflected on, you know the - the inevitability of apprehend ability is - is - is what I push also the effect that it's had on - on people around me and I do feel like I give these students also - also a unique look at somebody who has really hit that bottom but - but has effectively turned a lot of things around and you know my Cuv's Cookin' business is such a contrasting lifestyle to what I would have been living 2020 and - and before you know. I can't stress it enough.
>
> … a wise man, Steve Deveau, my man, Director of 7th Steps, he told me people, places and things most important - is - and - and I've lived by that. Who you're with, where you are and what you're doing, what you're consuming directly impacts what your life is gonna be. Now, I've - I've made a drastic drastic and it's hard to even properly reflect on paper the change of who I surround myself with. I've alienated myself from a lot of people, well everyone who's in that life and it wasn't as hard as I thought it would be. I thought it was gonna be harder than what it was because I - I just - when you decide that something's a right thing to do everything just kinda falls into place. It's creating a better life for my son to not be around these influences and who you're around is of course a direct reflection of - of who you are and who you - who you become and the places. I mean my life is quite simple now.
>
> … It's a life that I never would have deemed possible and when you're around certain bad influences and I think people back here can - can agree you're - you're almost brainwashed into thinking that being in the position I'm in right now and being arrested, being imprisoned like - it's this - like this badge of honour that they brainwash you into thinking it creates and the irony in it all is that there's nothing more dishonorable in the world than that life that I'm speaking on and I couldn't be more happy that I've - that I've landed where I've landed.

[69] In summary, the many mitigating factors present in this case include:

- Guilty plea
- "Relative" or "somewhat" youthfulness (26 years old at the time of the offences) (*R. v. Waterhouse*, 2021 NSCA 23)
- Remorse and acceptance of responsibility

- Significant efforts at rehabilitation
- High level of community support
- Demonstrated commitment to making reparations to the community through engagement with youth
- Viable business that supports his family and employs others
- Abided by bail conditions and no other charges for over three years

Aggravating Factors

[70] The substance being trafficked - cocaine - is itself an aggravating factor. Cocaine has been described by the Court of Appeal as a "deadly and devastating drug that ravages lives" (*R. v. Butt*, 2010 NSCA 56, at para. 13) that "is ruinous to our communities" (*R. v. Scott*, 2013 NSCA 28, at para. 94). The substantial quantity of the drug identified in the conspiracy - almost 700 grams - is also aggravating. While the Agreed Statement of Facts indicates that Mr. Cuvelier was at a lower end of the organization, this amount of cocaine takes Mr. Cuvelier's involvement outside the "petty retailer" category described in *R. v. Fifield*, [1978] N.S.J. No. 42 (C.A).

[71] In addition, the nature of the offence of conspiracy to traffic in cocaine is aggravating because it requires forethought and planning (*R. v. Masters*, 2017 NSPC 75). Mr. Cuvelier did not shy away from this reality in his address to the Court, conceding that he was motivated by profit and that he made a conscious choice to conspire to traffic in cocaine.

[72] While Mr. Cuvelier has a prior criminal record, it does not contain any offences for trafficking. Mr. Cuvelier's *CDSA* conviction in 2019 involved a search warrant executed at his residence at the time in Wolfville and the seizure of 1.4 grams of cocaine, $2,810 and a digital scale. He was charged with possession.

[73] Mr. Cuvelier does not have a related trafficking criminal record and has not been charged nor convicted of similar offences since.

[74] Another aggravating factor is the evidence from the admissible wiretaps. The intercepts demonstrate that Mr. Cuvelier was earning significant profits. He discussed prices and purity of the product, as well as how much to cut the cocaine in order to have a good product. He spoke about fronting product, as well as

obtaining new phones and discussing who may have spoken to police in relation to customers who were arrested. Mr. Cuvelier also participated in discussions about how to best satisfy customers, including those who wanted to purchase crack cocaine, as opposed to powder cocaine.

LAW AND ANALYSIS

Availability of a Conditional Sentence

[75] Mr. Cuvelier asks the Court to impose a conditional sentence.

[76] Conditional sentences were introduced in September 1996 when Parliament passed the *Act to amend the Criminal Code (sentencing) and other Acts in consequence thereof,* S.C. 1995, c. 22 ("Bill C-41"). As the Supreme Court of Canda noted in *R. v. Proulx*, [2000] 1 S.C.R. 61, Bill C-41 "substantially reformed Part XXIII of the Code, and introduced, inter alia, an express statement of the purposes and principles of sentencing, provisions for alternative measures for adult offenders and a new type of sanction, the conditional sentence of imprisonment" (para. 14). Chief Justice Lamer stated that by passing Bill C-41, "Parliament has sent a clear message to all Canadian judges that too many people are being sent to prison" (para. 1).

[77] The Supreme Court of Canada in *Proulx*, *supra*, rejected the notion that the proportionality principle presumptively excludes certain offences from the conditional sentencing regime:

> 79 Section 742.1 does not exclude any offences from the conditional sentencing regime except those with a minimum term of imprisonment. Parliament could have easily excluded specific offences in addition to those with a mandatory minimum term of imprisonment but chose not to. …
>
> Thus, a conditional sentence is available in principle for <u>all</u> offences in which the statutory prerequisites are satisfied.
>
> [Emphasis in original]

[78] The Chief Justice added at para. 81:

> Offence-specific presumptions introduce unwarranted rigidity in the determination of whether a conditional sentence is a just and appropriate sanction. Such presumptions do not accord with the principle of proportionality set out in s. 718.1 and the value of individualization in sentencing, nor are they necessary to achieve

> the important objectives of uniformity and consistency in the use of conditional sentences.

[79] In November 2012, there were significant changes to sentencing provisions in both the *Criminal Code* and the *CDSA* with the implementation of the *Safe Streets and Communities Act*, S.C. 2012, c. 1. Section 742.1 eliminated conditional sentences as an option in relation to s. 5(2) of the *CDSA* offences.

[80] On November 17, 2022, *An Act to amend the Criminal Code and the Controlled Drug and Substances Act*, S.C. 2022, c. 15, came into force upon receiving Royal Assent. The summary to the Act states:

> This enactment amends the *Criminal Code* and the *Controlled Drugs and Substances Act* to, among other things, repeal certain mandatory minimum penalties, allow for a greater use of conditional sentences and establish diversion measures for simple drug possession offences.

[81] As a result of these amendments, a CSO is once again a possible sentence for the offence of conspiracy to traffic in cocaine.

[82] Section 742(1) of the *Criminal Code* governs the availability of conditional sentences. The section sets out the requirements that must be satisfied for a conditional sentence to be available:

1. the sentence is less than two years in duration;
2. the safety of the community would not be endangered;
3. the sentence upholds the objectives and principles articulated in s. 718-718.2 of the *Criminal Code*;
4. the offence does not carry a mandatory minimum sentence of imprisonment; and
5. the offence does not fall within the offences articulated in s. 742.1(c)-(d).

[83] Section 742.1 states:

> **Imposing of conditional sentence**
>
> 742.1 If a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the

> sentence in the community, subject to the conditions imposed under section 742.3, if
>
> > (a) the court is satisfied that the service of the sentence in the community would not endanger the safety of the community and would be consistent with the fundamental purpose and principles of sentencing set out in sections 718 to 718.2;
> >
> > (b) the offence is not an offence punishable by a minimum term of imprisonment;
> >
> > (c) the offence is not an offence under any of the following provisions:
> >
> > > (i) section 239, for which a sentence is imposed under paragraph 239(1)(b) (attempt to commit murder),
> > >
> > > (ii) section 269.1 (torture), or
> > >
> > > (iii) section 318 (advocating genocide); and
> >
> > (d) the offence is not a terrorism offence, or a criminal organization offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 10 years or more.
> >
> > (e) [Repealed, 2022, c. 15, s. 14]
> >
> > (f) [Repealed, 2022, c. 15, s. 14]

[84] In *Proulx*, *supra*, Lamer C.J. said the following about the nature of a conditional sentence:

> 22. The conditional sentence incorporates some elements of non-custodial measures and some others of incarceration. Because it is served in the community, it will generally be more effective than incarceration at achieving the restorative objectives of rehabilitation, reparations to the victim and community, and the promotion of a sense of responsibility in the offender. However, <u>it is also a punitive sanction capable of achieving the objectives of denunciation and deterrence</u>. It is this punitive aspect that distinguishes the conditional sentence from probation, and it is to this issue that I now turn.
>
> [Emphasis in original]

[85] Lamer C.J. went on to summarize the proper approach for determining whether a conditional sentence is available:

> [58] ... In my view, the requirement that the court must impose a sentence of imprisonment of less than two years can be fulfilled by a preliminary determination of the appropriate range of available sentences. Thus, the approach I suggest still requires the judge to proceed in two stages. However, the judge need not impose a term of imprisonment of a fixed duration at the first stage of the analysis. Rather, at this stage, the judge simply has to exclude two possibilities: (a) probationary measures; and (b) a penitentiary term. If either of these sentences is appropriate, then a conditional sentence should not be imposed.
>
> [59] In making this preliminary determination, the judge need only consider the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2 to the extent necessary to narrow the range of sentence for the offender. ...
>
> [60] Once that preliminary determination is made, and assuming the other statutory prerequisites are met, the judge should then proceed to the second stage of the analysis: determining whether a conditional sentence would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2. Unlike the first stage, the principles of sentencing are now considered comprehensively. Further, it is at the second stage that the duration and venue of the sentence should be determined, and, if a conditional sentence, the conditions to be imposed.

[86] In *R. v. R.B.W.*, 2023 NSCA 58, Derrick J.A., for the majority, summarized the *Proulx* analysis as follows:

> [53] It is helpful at this stage to set out the Proulx framework a sentencing judge is required to follow before a conditional sentence can be imposed.
>
> - In a preliminary determination, a penitentiary term and probation must be rejected as inappropriate.
>
> - Having determined that the appropriate range of sentence is a term of imprisonment of less than two years, the judge should then consider if it is appropriate for the offender to serve their sentence in the community.
>
> - It is a condition precedent to the imposition of a conditional sentence that the judge must be satisfied the safety of the community will not be endangered by the offender serving their sentence in the community. Two factors must be taken into account: (1) the risk of the offender reoffending; and (2) the gravity of the damage were the offender to reoffend.

[87] At the first stage of the analysis, and considering the purposes and principles of sentencing, I must determine whether probationary measures or a penitentiary term can be excluded as appropriate sentences in this case. If either is appropriate, a conditional sentence is not available.

[88] There has been no suggestion that probation is an appropriate sentence in this case. The relevant question, then, is whether the appropriate range of sentence for Mr. Cuvelier is a term of imprisonment of less than two years. If so, then I must consider whether a conditional sentence would be consistent with the purposes and principles of sentencing.

First Stage

[89] Mr. Cuvelier has pled guilty to conspiracy to traffic in cocaine contrary to s. 5(1) of the *Controlled Drugs and Substances Act* and contrary to s. 465(1)(c) of the *Criminal Code*. He has also pled guilty to having in his possession Canadian currency of a value exceeding $5,000 knowing that all or part of the property obtained was by the commission of an offence punishable by indictment contrary to s. 354(1)(a) of the *Criminal Code*.

[90] The serious nature of the offence of conspiracy to traffic in cocaine, a Schedule I drug, is reflected in the potential maximum sentence of life in prison.

[91] I will begin by reviewing the sentencing principles contained in the *CDSA* and the *Criminal Code*. The *CDSA* contains the following guidance for sentencing judges:

> **Purpose of sentencing**
>
> **10 (1)** Without restricting the generality of the Criminal Code, the fundamental purpose of any sentence for an offence under this Part is to contribute to the respect for the law and the maintenance of a just, peaceful and safe society while encouraging rehabilitation, and treatment in appropriate circumstances, of offenders and acknowledging the harm done to victims and to the community.
>
> **Factors to take into consideration**
>
> **(2)** If a person is convicted of a designated substance offence, the court imposing sentence on the person shall consider any relevant aggravating factors including that the person
>
> (a) in relation to the commission of the offence,
>
> (i) carried, used or threatened to use a weapon,
>
> (ii) used or threatened to use violence,

> (iii) trafficked in a substance included in Schedule I, II, III, IV or V, or possessed such a substance for the purpose of trafficking, in or near a school, on or near school grounds or in or near any other public place usually frequented by persons under the age of 18 years, or
>
> (iv) trafficked in a substance included in Schedule I, II, III, IV or V, or possessed such a substance for the purpose of trafficking, to a person under the age of 18 years;
>
> (b) was previously convicted of a designated substance offence, as defined in subsection 2(1) of this Act, or a designated offence, as defined in subsection 2(1) of the *Cannabis Act*;
>
> (c) used the services of a person under the age of eighteen years to commit, or involved such a person in the commission of, the offence.

[92] A designated offence is defined as follows:

> 2 (1) In this Act,
>
> **designated substance offence** means
>
> (a) an offence under Part I, except subsection 4(1), or
>
> (b) a conspiracy or an attempt to commit, being an accessory after the fact in relation to, or any counselling in relation to, an offence referred to in paragraph (a); (*infraction désignée*)

[93] Section 4(1) states:

> **Possession of substance**
>
> 4 (1) Except as authorized under the regulations, no person shall possess a substance included in Schedule I, II or III.

[94] Mr. Cuvelier has not been previously convicted of a designated substance offence.

[95] The general purpose and principles of sentencing are found in s. 718 of the *Criminal Code*:

> **718.** The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance

of a just, peaceful, and safe society by imposing just sanctions that have one or more of the following objectives:

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

…

Fundamental principle

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

Other sentencing principles

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

> **(a)** a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
>
> > **(i)** evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,
> >
> > **(ii)** evidence that the offender, in committing the offence, abused the offender's intimate partner or a member of the victim or the offender's family,
> >
> > **(ii.1)** evidence that the offender, in committing the offence, abused a person under the age of eighteen years,

> **(iii)** evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
>
> **(iii.1)** evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,
>
> **(iii.2)** evidence that the offence was committed against a person who, in the performance of their duties and functions, was providing health services, including personal care services,
>
> **(iv)** evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,
>
> **(v)** evidence that the offence was a terrorism offence,
>
> **(vi)** evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or released on parole, statutory release or unescorted temporary absence under the *Corrections and Conditional Release Act*, and
>
> **(vii)** evidence that the commission of the offence had the effect of impeding another person from obtaining health services, including personal care services,
>
> shall be deemed to be aggravating circumstances;
>
> (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
>
> (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
>
> (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
>
> (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[96] Section 718.2 identifies other specific sentencing principles which must be considered, including the following:

1. The sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender (s. 718.2(a));
2. The sentence should be similar to sentences imposed on similar offenders for similar offences, committed in similar circumstances (s. 718.2(b));
3. An offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances (s. 718.2(d)); and,
4. All available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders (s. 718.2(e)).

[97] Over the last 30 years, our Court of Appeal "has consistently and repeatedly emphasized that protection of the public, denunciation and deterrence are the paramount sentencing objectives in cases involving trafficking in Schedule I drugs" (*R. v. Kleykens*, 2020 NSCA 49, at para. 66). In *Kleykens*, *supra*, at para. 67, Saunders J.A. adopted the following summary of the Court of Appeal's approach to sentencing in drug cases:

> 53. To adequately address these primary sentencing objectives, this Court has emphasized that "even minor traffickers" should expect significant periods of incarceration.
>
> 54. Beginning with *R. v. Byers*, 1989 CanLII 200 (NS CA) the Court has consistently warned of the "severe penalties" that will be imposed for cocaine trafficking, even when relatively small amounts of the drug are involved. In *R. v. Huskins*, 1990 CanLII 2399, the Court stated, "Rare indeed will be the case where less than federal time should be considered as a proper sanction for such offence." In *R. v. Dawe*, 2002 NSCA 147, Justice Hamilton noted that, "Possession of cocaine for the purposes of trafficking typically results in sentences of two years or more..." In *R. v. Steeves*, 2007 NSCA 130 the Court stated that "time served in a federal penitentiary is the norm..." In *R. v. Butt*, 2010 NSCA 56, the Court underlined that "Involvement in the cocaine trade, *at any level*, attracts substantial penalties." (emphasis added)
>
> 55. In *R. v. Oickle*, 2015 NSCA 87, the Court reaffirmed that trafficking cocaine will "consistently attract sentences of imprisonment in the range of two years even for first time offenders." More recently in *R. v. Chase*, 2019 NSCA 36 the Court reiterated that "nothing has changed this Court's repeated and consistent warning

> that deterrence and denunciation will continue to be the primary objectives" and that cocaine trafficking "will normally attract a federal prison term."
>
> 56. Both *Chase* (6g cocaine) and *Oickle* (11g cocaine, 23 morphine pills) were "petty retailers". As outlined previously, the established sentencing range for offenders who traffick cocaine, marihuana or, as in the Respondent's case, both, at a higher level is broadly between 2 and 7 years imprisonment. …

[98] In *R. v. Livingstone*; *R. v. Lungal*; *R. v. Terris*, 2020 NSCA 5, Farrar J.A. noted:

> [8] The range of sentence in Nova Scotia for Schedule I trafficking offences is typically a custodial sentence of two years or more: (*R. v. Butt*, 2010 NSCA 56; *R. v. Conway*, 2009 NSCA 95; *R. v. Knickle*, 2009 NSCA 59; *R. v. Steeves*, 2007 NSCA 130; and *R. v. Dawe*, 2002 NSCA 147).

[99] In *Kleykens*, *supra*, the Crown appealed from an intermittent sentence of 90 days' imprisonment and three years' probation for possession of cocaine, marihuana, and cannabis resin for the purpose of trafficking. Police found eight kilograms of marihuana, 144.5 grams of cocaine and 56.6 grams of cannabis resin in Mr. Kleykens' home and seized almost $6,000 in cash. Police also seized a scoresheet, a digital scale and a money counter. Mr. Kleykens was 28 years old, with no prior record. He pled guilty. He was gainfully employed, earning a significant annual income. The judge referred to the offender as nothing more than a petty retailer. The Crown argued the trial judge's analysis was fundamentally flawed by his failure to properly address proportionality by considering the gravity of the offence and the offender's culpability in its commission, as well as his failure to address parity by considering sentences in comparable circumstances.

[100] In allowing the appeal, Saunders J.A. explained how trial judges are to address proportionality in sentencing for drug offences:

> [34] In satisfying their obligation to address the "fundamental principle" of proportionality, trial judges must ensure that the sentence be proportionate to the gravity of the crime and the offender's culpability in committing it. The gravity of the offence and its consequences will be informed by the range of sentence prescribed in the applicable legislation. In drug cases, the dangerousness of the particular drug, as well as the quantity of drugs seized, will also be important considerations when addressing both gravity and moral culpability (*White*, ¶ 32).
>
> [35] It is obvious that in order to be "proportionate", a sentence must be based upon an accurate assessment of the seriousness of the offence and the offender's degree of culpability. In my view, by any measure, Mr. Kleykens' crimes were extremely

> serious and his degree of responsibility was very high. However, as I will explain, in sentencing the respondent, the judge mischaracterized and diminished the seriousness of his offences and his degree of responsibility, in a number of ways.
>
> [36] In *R. v. Fifield*, 1978 CanLII 812 (NSCA), this Court described the general categories of drug traffickers as "the isolated accommodator of a friend, the petty retailer, the large retailer or small wholesaler or the big-time operator". Those falling within the "large retailer or small wholesaler" category "must be punished and, hopefully deterred by materially larger sentences than those imposed on the petty retailers".
>
> [37] In *R. v. Knickle*, 2009 NSCA 59, Roscoe, J.A. observed at ¶17:
>
> > [17] ... this Court has consistently categorized drug traffickers, based on the type and amount of drug involved and the level of involvement in the drug business, to assist in placing them within the range.
>
> [38] Rather than properly reflecting upon the danger, type and quantity of drugs seized from Mr. Kleykens and then comparing those very serious circumstances to a host of binding and comparable decisions of this Court, the trial judge instead began his analysis by citing his own decisions which have subsequently been overturned by this Court. …

[101] The Court of Appeal went on to provide the following helpful summary of cases where, as in Mr. Cuvelier's case, the offence went beyond "petty retailing":

> [50] Compounding the judge's failure to properly situate the respondent's offences in the hierarchy of drug trafficking crimes was his failure to consider any number of leading cases in Nova Scotia involving offenders whose trafficking crimes went beyond "petty retailing" and fell within the "larger retailer or small wholesaler" category. Simply to illustrate the point I refer to:
>
> - *R. v. Fifield*, 1978 CanLII 812 - 7 pounds of hashish, 8 pounds of marihuana - wholesaler or large retailer - related prior record - 2 months increased to 2 years imprisonment;
>
> - *R. v. Carvery*, 1991 CanLII 2475 (NSCA) - 6.5 ounces/184g of cocaine - high level retailer - no prior record - 3 years increased to 5 years imprisonment;
>
> - *R. v. O'Toole*, 1992 CanLII 2610 (NS CA)- 2043g cannabis resin (estimated street value $140,000) - "quantity of cannabis resin seized is far in excess of that which would classify the respondent as a petty retailer. The quantity bespeaks that of a wholesaler or a retailer on a large scale…" - no prior record - 12 month sentence increased to 2 years imprisonment;

- *R. v. Smith*, 1992 NSCA 73 - 28.75g crack cocaine, 372g powder cocaine - "upper end of the scale as a retailer" - minor unrelated prior record - 2.5 years increased to 5 years imprisonment;

- *R. v. Stokes*, 1993 NSCA 195 - sold approximately 6 ounces of cocaine to undercover officers - "more than a petty retailer" - lengthy prior record - 7 years imprisonment;

- *R. v. McCurdy*, 2002 NSCA 132 - 500 plant marihuana grow-op - "commercial distributor" - dated unrelated prior record - 18 month conditional sentence increased to 3 years imprisonment;

- *R. v. Jones*, 2003 NSCA 48 - 4.6 kg marihuana - large retailer or small wholesaler - "the typical range of sentences for small wholesalers or large retailers, the people on the third of the four rungs of the ladder identified in Fifield, is two to five years' incarceration." - related prior record - 18 month conditional sentence increased to 3 years imprisonment;

- *R. v. Steeves*, 2007 NSCA 130 - 77g cocaine, 100 ecstasy pills - "amounts in his possession were …. sufficient to take him outside the lower categories of drug traffickers described in R. v. Fifield" - minor unrelated prior record - 2 year conditional sentence increased to 2.5 years imprisonment;

- *R. v.* Knickle, 2009 NSCA 59 - approximately 11 ounces of cocaine - "placed in the higher retail level of the Fifield categories" - no prior record - 2 year conditional sentence increased to 3.5 years imprisonment;

- *R. v. Conway*, 2009 NSCA 95 - 103g crack cocaine, 264g marihuana - "mid to high level retailer" - 65 year old with no prior record - 2 year conditional sentence increased to 2.5 years incarceration;

- *R. v. Leblanc*, 2019 NSSC 192 - 210g (7 ounces) cocaine - street value of between $16,800 - $21,000, over $6,000 cash seized - "firmly "within category 3 Fifield (large retailer) - related prior record - 5 years imprisonment;

- *R. v. White*, *supra* - mid-level drug trafficker - lengthy prior record - combined weight of cocaine and crack cocaine was 6.5 ounces - four years for cocaine possession increased to 5 years imprisonment (and 6 years for the fentanyl conviction increased to 8 years, to be served concurrently).

[102] On the issue of parity, Saunders J.A. wrote:

> [74] In conclusion, the judge's mischaracterization of the seriousness of the respondent's offences; the undue weight he gave to the respondent's chances for

> rehabilitation; his failure to account for the type, quantity and dangerousness of the drugs seized; his unjustified depreciation of their devastating societal impact; and his over reliance upon his perception of the extent of the problem in his particular community, necessarily distorted the application of the parity principle. As a result of these errors, the applicable sentencing range of 2-7 years' imprisonment for comparable drug retailers was never properly considered.
>
> [75] As noted by Wagner, J. at ¶58 of *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....
>
> Judge Atwood made no finding of any unique circumstances as justification for the sentence imposed, nor would such a finding have been sustainable. On the record here, there is nothing about the respondent's crimes, his motives for committing them, or his personal circumstances, which would be capable of justifying such an extraordinarily lenient sentence.
>
> [Emphasis added]

[103] The Court of Appeal went on to sentence the offender to two years' imprisonment:

> [84] The respondent deliberately engaged in a business which leads to destroyed lives. The discrepancy between his sentence and those imposed on similar offenders for similar offences is simply too large to ignore. In my view, a proper application of the paramount principles and objectives of sentencing required a federal penitentiary sentence. I accept the Crown's submission that a sentence of two years' imprisonment -- while at the lowest end of the range of sentences based on the level of the respondent's trafficking operations -- would remain proportionate to the gravity of his crimes and his high degree of moral culpability in their commission.

[104] In *R. v. Butt*, *supra*, the Crown appealed from a 3.5-year sentence imposed after a guilty plea to one count of possession of cocaine for the purpose of trafficking. Mr. Butt was found in possession of two single kilogram bricks of cocaine. The 35-year-old offender had previous convictions spanning 20 years, resulting in both custodial and non-custodial sentences.

[105] In allowing the appeal and imposing a five-year sentence, the Court of Appeal took the following circumstances into account:

1. The drug involved was cocaine;

2. The substantial amount of the drug (two kilograms);
3. Mr. Butt's lengthy prior record, including drug convictions; and,
4. The need for specific and general deterrence.

[106] The bulk value of the cocaine in *R. v. Butt*, *supra*, was between $70,000 and $100,000 and had a street value of twice that amount. This case establishes that the trafficking of cocaine in excess of one kilogram can result in a five-year federal sentence.

[107] In *R. v. Heickert*, 2020 NSPC 9, Judge Hoskins (as he then was) sentenced Mr. Heickert to five years in custody for his role in selling four kilograms of cocaine to an undercover officer (three transactions in total over several months; one kilogram; one kilogram; and two kilograms). Mr. Heickert had a minor and unrelated record. Judge Hoskins agreed that the established range for trafficking of single-digit kilograms of cocaine is four to eight years. There were several significant mitigating factors in Mr. Heickert's case, including his guilty plea, his meritorious desire to care for his disabled son, his acceptance of responsibility and the fact that he sustained serious personal injury which would cause additional hardship during his incarceration. Judge Hoskins concluded that although these factors did not warrant a departure from the established range of sentencing, they did justify a sentence at the lower end of the range. But for the significant mitigating factors, Judge Hoskins would have imposed a much higher sentence.

[108] In *R. v. Chevrefils*, 2019 NSPC 16, Judge Buckle reviewed a plethora of caselaw and noted that sentences involving trafficking and possession of cocaine for the purposes of trafficking at the kilogram or single digit multikilogram level are typically in the range of four to eight years.

[109] In *R. v. Boudreau*, 2023 NSSC 13, Mr. Boudreau was convicted of possessing 775 grams of cocaine for the purpose of trafficking, in addition to a significant amount of other controlled substances. The offender made no efforts at rehabilitation nor any investment in the community before sentencing. He received a sentence of four years' imprisonment.

[110] In *R. v. Chaisson*, 2024 NSCA 11, the Court of Appeal upheld a five-year sentence for a single count of possession of cocaine for the purpose of trafficking. While executing a search warrant at the appellant's home, police located a number of items consistent with drug trafficking, including two chunks of cocaine (31 grams and 102 grams respectively), a plastic bag containing 12 grams of cocaine, digital

scales on which traces of cocaine were later detected, $400 in cash, a number of small baggies and multiple cellphones. The appellant had two previous convictions for trafficking in cocaine. The appellant appealed from both the conviction and sentence. In upholding the sentence, the Court of Appeal stated:

> [69] Having reviewed the record, and considered the submissions of the parties, I am satisfied the appellant has failed to establish the judge's reasons demonstrate an error in principle. I am further satisfied the sentence of 5 years in the circumstances of this case does not give rise to a demonstrably unfit sentence. In reaching this conclusion, I note:
>
> - In *R. v. Fifield*, [1978] 25 N.S.R. (2d) 407, this Court described the general categories of drug traffickers "as the isolated accommodator of a friend, the petty retailer, the large retailer or small wholesaler, or the big-time operator";
>
> - There was evidence, accepted by the judge, that would place the appellant beyond the category of a petty retailer and firmly within the third Fifield category. A sentence of 5 years would fall within the range of sentences for offenders in this category;
>
> - The nature of the drug here, cocaine, is one which attracts a significant term of incarceration given the well-known negative societal impacts of its distribution; and
>
> - The appellant has two previous convictions for trafficking in cocaine which are statutorily aggravating in terms of crafting a fit sentence.

[111] Although federal sentences are considered the norm for cocaine trafficking offences, CSOs have been ordered in some cases. In *R. v. Provo,* 2001 NSSC 189, the offender was convicted of trafficking in crack cocaine. He was 25 years of age, with 16 previous offences. The offender sold .67 grams of crack cocaine to an undercover officer. The offender was not involved in trafficking to support an addiction. The transaction was purely for monetary gain. There was a very positive Pre-Sentence Report. During the previous few years, the offender had been operating his own business, had solid family support and was living in a stable relationship. The Court was focused on the Pre-Sentence Report and the likely loss of his business through a period of federal incarceration. The Court stated:

> [10] With that background and in light of the very positive pre-sentence report, the Court as is often the case, is faced with a dilemma. If the Court orders federal time under the direction of *Huskins, supra* then I find from the facts that clearly Mr. Provo will lose his business which will not only affect him directly, it will affect

> his dependants, his common-law spouse and will very seriously jeopardize the positive steps he has taken in the past couple of years to turn his life around.
>
> [11] Thus, if he loses his business through a period of federal incarceration, then the risk becomes very real that he will re-engage in the type of criminal activity that he was engaged in prior to two years ago. This may provide indirectly a very serious risk to the public. On that basis this case may very well be considered an exception to the Huskins case as was determined in numerous other cases since *Huskins* including *R. v. Talbot* (unreported, judgment of Kelly, J. released May 28, 1999, Cr. 146445) and *R. v. Robins*, [1993] N.S.J. No. 152.
>
> [12] At the same time if a term of federal incarceration is not imposed, then the danger will be that the community will receive the wrong message *vis à vis* general deterrence.
>
> [13] I resolve this dilemma by directing a community sentence that will contain strict punitive terms; terms that will reflect as much as possible a period of institutional incarceration while at the same time allowing Mr. Provo to keep his business and hopefully to continue to be a positive member of the community.
>
> [14] I have reached this conclusion because the appropriate disposition, in light of the pre-sentence report and in light of Mr. Provo's business, is a sentence of less than two years.
>
> [Emphasis added]

[112] Other cases where conditional sentences have been given are *R. v. Messervey*, [2004] N.S.J. No. 520 (Prov. Ct.), and *R. v. Coombs*, [2005] N.S.J. No. 158 (S.C.). These decisions are summarized in *R. v. Knickle*, as follows:

> [21] The accused in **Messervey** was 21 years old, had no prior record, and over a period of four days acted as a courier delivering small amounts of cocaine for which he received no share in the profit. In the two years between the date of the offence and the sentencing he had abided by the terms of his release and commenced an employment training course, all of which led the sentencing judge to conclude that there were exceptional circumstances justifying a two-year less a day conditional sentence.
>
> [22] In **Coombs** the 29 year old defendant pled guilty to trafficking in 50 grams of crack cocaine. The judge found that he was a "middle-man" in the transaction who had been approached by a police agent who sought to purchase cocaine in order to get closer to the target of a drug investigation. Mr. Coombs had a very positive pre-sentence report and the offence was found to be out of character. He was remorseful and had been subject to strict conditions of release including house arrest for 2 ½ years pending sentencing.

[113] Like the offender in *Provo*, *supra*, Mr. Cuvelier's Pre-Sentence Report is very positive. If he receives a federal penitentiary sentence, it is likely that he will lose his currently successful business, which supports his family and several employees. A prison sentence could also result in a return to the anti-social lifestyle he has worked so hard to escape. That said, the amount of cocaine in Mr. Cuvelier's case far exceeds the amounts in all three of the cases where CSOs have been ordered. Mr. Cuvelier's role in the drug trafficking enterprise was also far more serious than acting as a courier or "middleman".

[114] Taking all things into consideration, the typical sentencing range in a case involving the trafficking of 700 grams of cocaine would be two to seven years in custody. In most cases, a penitentiary sentence of this duration would be necessary to properly give effect to the objectives of deterrence, denunciation and protection of the public. However, as the Supreme Court of Canada recognized in *R. v. Lacasse*, [2015] 3 S.C.R. 1089, due to the profoundly contextual nature of sentencing, a sentence which falls outside the normal range will not necessarily be unfit:

> …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 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 they 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 in the specific circumstances of each case…

[115] In *R. v. Scott*, *supra*, the Court of Appeal, per Beveridge J.A., reiterated that "[i]t is certainly common for sentences of federal incarceration to be imposed where the offender has a significant prior record, or there are aggravating features such as larger quantities of the drug, involvement beyond a mere petty retailer, or the offence occurred in relation to a prison facility" (para. 20). However, Beveridge J.A. rejected the notion that a federal sentence is mandatory absent proof of "exceptional circumstances":

> [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".

…

[59] As already explained, it is the selection of any sentence of less than two years that the Crown says is simply not allowed in this case because of what this Court, as interpreted by the Crown, has said in previous decisions about the mandated sentence for all cocaine traffickers. My colleague has accepted this premise. However, even if one accepts that two years is the minimum starting point for all who traffic or possess cocaine for the purpose of trafficking, the selection of a lesser sentence is not *per se* legal error. This was clearly explained by Sopinka J. in McDonnell. Deviation from starting point sentences set by an appellate court is not an error in principle. Sopinka J. wrote as follows:

> [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.

[60] Justice Sopinka was careful not to suggest that appellate courts may not set out starting point sentences as a guide to lower courts. He explained:

> [43] I add that I do not disagree with McLachlin J. that appellate courts may set out starting-point sentences as guides to lower courts. Moreover, the starting point may well be a factor to consider in determining whether a sentence is demonstrably unfit. If there is a wide disparity between the starting point for the offence and the sentence imposed, then, assuming that the Court of Appeal has set a reasonable starting point, the starting point certainly suggests, but is not determinative of, unfitness. In my view, however, the approach taken by McLachlin J. in the present case places too great an emphasis on the effect of deviation from the starting point. Unless there otherwise is a reason under *Shropshire* or *M. (C.A.)* to interfere with the sentence, a sentence cannot be altered on appeal, notwithstanding deviation from a starting point. Deviation from a starting point may be a

> factor in considering demonstrable unfitness but does not have the significance McLachlin J. gives it.

[61] This fundamental concept was repeated by LeBel J. in *R. v. Nasogaluak*, supra. I earlier set out a lengthy quote from that decision (infra, ¶10). For ease of reference, I will repeat one of those paragraphs:

> [44] The wide discretion granted to sentencing judges has limits. It is fettered in part by the case law that has set down, in some circumstances, general ranges of sentences for particular offences, to encourage greater consistency between sentencing decisions in accordance with the principle of parity enshrined in the Code. But it must be remembered that, while courts should pay heed to these ranges, they are guidelines rather than hard and fast rules. 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.
>
> [Emphasis added]

[116] More recently, in *R. v. Livingstone*; *R. v. Lungal*; *R. v. Terris, supra*, Farrar J.A. stated:

> [8] The range of sentence in Nova Scotia for Schedule I trafficking offences is typically a custodial sentence of two years or more: (*R. v. Butt*, 2010 NSCA 56; *R. v. Conway*, 2009 NSCA 95; *R. v. Knickle*, 2009 NSCA 59; *R. v. Steeves*, 2007 NSCA 130; and *R. v. Dawe*, 2002 NSCA 147).
>
> [9] A deviation from a sentencing range is not an error in principle unless it "departs significantly and for no reason from the contemplated" range (*R. c. Lacasse*, 2015 SCC 64, ¶67). In other words, as succinctly stated by Green, J. of the Ontario Court of Justice in *R. v. McGill*, 2016 ONCJ 138:
>
> > [46] The weight of appellate authority clearly favours sentences of incarceration, and often lengthy ones, for cocaine trafficking. Non-custodial dispositions represent a departure from this general rule. Accordingly, and independent of any statutory direction, a court bears a common law obligation to demonstrate, through its reasons, that a community-supervised sentence honours the recognized purposes and principles of sentencing in the individual case
> >
> > [Underlining by Farrar J.A.]

[117] While proof of exceptional circumstances is clearly not required for a court to depart from the normal range of sentence, I am satisfied that exceptional circumstances do exist here. In *R. v. Espinosa Ribadeneira*, 2019 NSCA 7, the Court of Appeal explained the concept of "exceptional circumstances" as follows:

> [59] The concept of "exceptional circumstances" is a common-law sentencing principle. Its practical effect is that "it acts as a safety valve for the justice system in the 'rare case' where the circumstances are 'above and beyond the norm'." See *R. v. Burnett*, 2017 MBCA 122 at 22 and *R. v. Voong*, 2015 BCCA 285 at 59. While both *Burnett* and *Voong* relate to sentencing ranges rather than to exceptional circumstances in the context here, in my view the same considerations would apply.
>
> [60] In Burnett, the judge found exceptional circumstances and imposed a 90-day intermittent sentence followed by two years of probation for breaking, entering and stealing a firearm. In allowing the appeal, Mainella, J.A. wrote:
>
> > 30 Where there is an arguable case of exceptional circumstances, two themes are common in the case law that sentencing courts focus on: has the accused concretely demonstrated that he or she has turned his or her life around since his or her arrest, and would the fundamental purpose of sentencing (see section 718 of the *Code*) be better served by a custodial or non-custodial sentence for someone who has proven to have turned his or her life around since his or her arrest (see *Peters* at para 28).
>
> He cautioned at ¶33 that sentencing courts must not conflate "sympathetic circumstances" with "exceptional circumstances", as the two are distinct in legal effect.
>
> [61] In *Voong*, Bennett, J.A. writing for the British Columbia Court of Appeal provided this explanation and description of exceptional circumstances:
>
> > 45 The exceptional circumstances must engage principles of sentencing to a degree sufficient to overcome the application of the main principles of deterrence and denunciation by way of a prison sentence.
> >
> > …
> >
> > 59 … Exceptional circumstances may include a combination of no criminal record, significant and objectively identifiable steps towards rehabilitation for the drug addict, gainful employment, remorse and acknowledgement of the harm done to society as a result of the offences, as opposed to harm done to the offender as a result of being caught. This is a non-exhaustive list, but at the end of the day, there must be circumstances that are above and beyond the norm to justify a non-custodial sentence. There must be something that would lead a sentencing judge to conclude

> that the offender had truly turned his or her life around, and that the protection of the public was subsequently better served by a non-custodial sentence. …
>
> [Emphasis added]

[118] One example of exceptional circumstances is *R v. Bratzer*, 2001 NSCA 166. Mr. Bratzer robbed three gas stations, brandishing a weapon each time to take money in the early hours of the morning from the sole employee on duty. He was 18 years old and pled guilty upon appearing for trial. He had a record of minor previous offences but the trial judge found that he had made significant progress while awaiting trial, having completed his grade 12 equivalency, performed volunteer work and undergone counselling. He had significant family support and was a good candidate for a career in the Armed Forces. Considering these improvements and Mr. Bratzer's youth, the trial judge sentenced him to a conditional sentence of two years less a day on each offence, all to be served concurrently. The Crown appealed, arguing that the sentence was manifestly inadequate and disproportionate to the gravity of the offences.

[119] After acknowledging that a single count of armed robbery typically attracted a minimum sentence in the two-to-three-year range, the Court of Appeal stated:

> [38] The Crown quite properly emphasizes the aggravating circumstances of these offences: this was not a single robbery, but a series; Mr. Bratzer was masked and armed; the crimes were planned; Mr. Bratzer appeared to be the leader; he targeted businesses in communities in which he was not known; in his post arrest interview he said that he enjoyed the "rush' of committing the robberies and trying to outwit the police; and that he expressed no remorse. The Crown says the judge did not sufficiently emphasize these ingredients. In his sentencing remarks, however, the judge referred in some detail to these aggravating factors.
>
> [39] Clearly central to this disposition were Mr. Bratzer's youth and, quite unique to this case, the very considerable evidence led as to his substantial progress while on interim release. In this regard the judge identified several relevant factors: Mr. Bratzer was not plagued by alcohol or drug addiction which so often defeats an offender's attempt at reformation; he was a person with identified potential who had attracted the confidence of his superiors; he had a longstanding and attainable career objective; he had a good relationship with a loving and very supportive family; his family was prepared to supervise him if on conditional release and had a demonstrated ability to provide effective oversight; he was a youthful offender without a serious or longstanding past record; he had received psychiatric counseling to address his feelings of anger and inadequacy and, in that regard, had received a positive report from his doctor; he had successfully completed his Grade

12 equivalency; perhaps most importantly, he had displayed a willingness and an ability to abide by stringent conditions over the 13 months of interim release.

[40] There is ample authority for the proposition that sentences for youthful offenders should be directed at rehabilitation and reformation, not general deterrence. (**R. v. Leask** [1996] M.J. No. 587 (Q.L.)(C.A.); **R. v. Demeter and Whitmore** (1976), 32 C.C.C. (2d) 379 (Ont.C.A.); **R. v. Casey**, [1977] O.J. No. 214 (Q.L.)(Ont.C.A.)) This is common sense. A youthful offender, particularly one such as Mr. Bratzer, who has an interest in a vocation and can be equipped with the tools to earn an honest living, is more likely to be diverted from a life of crime than would a career criminal.

[41] In **R. v. Quesnel** (1984), 14 C.C.C. (3d) 254; O.J. No. 133 (Q.L.) (Ont. C.A.) the Crown appealed from the sentences imposed on two offenders following their conviction for the breaking and entering of commercial premises, and for the offence of mischief arising out of the smashing of the windows of the police cruiser in which the offenders had been placed following their apprehension. For the break and enter offences, the respondents were each sentenced to three months and for the mischief offence, sentence in each case was suspended with the respondents being placed on probation for one year. On appeal the sentences were varied to one year on the break and enters. The court concluded that the sentences did not address the need for general deterrence. In so doing, however, the court confirmed that there is a place for leniency in the sentencing process. It must, however, be based upon information that underpins a reasoned belief that such leniency will serve the goal of protection of the public through reformation and rehabilitation of the offender. At p. 255 (C.C.C.) (per Thorson J.A.):

> In sentencing the respondents as he did, the trial judge acknowledged that the sentences "will undoubtedly be considered lenient in the circumstances". After indicating that he was not satisfied that the respondents were incorrigible, the trial judge explained that he was proceeding on the basis that "a chance for rehabilitation remains" and in "the hope that something good" could come of the sentences thus imposed. Clearly he regarded the sentences as a last chance being offered to the respondents to turn their lives around.
>
> There can, of course, be no quarrel with the proposition that from time to time a judge sentencing a convicted person, particularly a youthful one as in this case, should indeed "take a chance" on such person by exercising leniency in circumstances where leniency might not otherwise appear to be called for. In our opinion, however, there must be some factor present in the case before the sentencing judge that is sufficient to warrant a reasonable belief on his part, going beyond a mere hope, that the leniency proposed to

> be extended holds some prospect of succeeding where other dispositions available to him may fail.
>
> Whether the factor present is an indication of remorse, a glimpsed change in attitude on the part of the convicted person, or some other sign or signal that the convicted person may have learned something beneficial from his or her past and present encounters with the criminal justice system, there must be something positive weighing in his or her favour which can be looked to to support the judge's chosen course of action.
>
> [Emphasis added]
>
> [42] Unlike the circumstances in Quesnel, here, the many positive factors identified by the judge, coupled with Mr. Bratzer's youth supported a lenient sentence directed at rehabilitation.
>
> [43] It is difficult to imagine what more Jesse Bratzer could have done to turn his life around in the time available to him before sentence. All information supported the judge's conclusion that he was not the callous and brazen offender revealed in the interview immediately following his arrest.

[120] The Court of Appeal rejected the Crown's argument that the interests of denunciation and general deterrence required a sentence of imprisonment:

> [46] Although having found no need for specific deterrence and accepting that Jesse Bratzer would not re-offend, the Crown says the judge should have imposed a sentence of imprisonment in the interests of denunciation and general deterrence.
>
> [47] As noted above, with the implementation of the revisions to Part XXIII of the **Criminal Code**, all reasonable, available sanctions are to be considered as an alternative to imprisonment and an offender is only to be deprived of liberty if less restrictive measures are not appropriate (**Criminal Code**, s.718.2(d) and (e)). Institutional imprisonment is no longer considered the only means of expressing denunciation and effecting general deterrence. In **R. v. Wismayer** (1997), 115 C.C.C. (3d) 18; O.J. No.1380 (Q.L.)(C.A.), Rosenberg, J.A., writing for a unanimous court, referred to the negative impact of imprisonment, particularly upon youthful or first time offenders (at p. 25). He cited a number of studies, as summarized in the *Report of the Canadian Sentencing Commission*, 1987 (The Archambault Report) which concluded that instead of deterring criminals, institutional incarceration often has the effect of reinforcing criminal inclinations. Reasonable alternatives to incarceration must be considered when the sole purpose of imprisonment would be general deterrence. This was, in large part, the reason for the development of the conditional sentence.
>
> [48] It is the Crown's position that a conditional sentence was not appropriate for these offences. In **R. v. Proulx**, [2000] 1 S.C.R. 61; S.C.J. No. 6 (Q.L.), the

Supreme Court of Canada confirmed that the considerable deference granted to trial judges on sentencing extends equally to the discretionary decision to order a conditional sentence of imprisonment:

> [124] Several provisions of Part XXIII confirm that Parliament intended to confer a wide discretion upon the sentencing judge. As a general rule, ss. 718.3(1) and 718.3 (2) provide that the degree and kind of punishment to be imposed is left to the discretion of the sentencing judge. Moreover, the opening words of s. 718 specify that the sentencing judge must seek to achieve the fundamental purpose of sentencing "by imposing just sanctions that have one or more of the following objectives" (emphasis added). In the context of the conditional sentence, s. 742.1 provides that the judge "may" impose a conditional sentence and enjoys a wide discretion in the drafting of the appropriate conditions, pursuant to s. 742.3(2).
>
> [125] Although an appellate court might entertain a different opinion as to what objectives should be pursued and the best way to do so, that difference will generally not constitute an error of law justifying interference. Further, minor errors in the sequence of application of s. 742.1 may not warrant intervention by appellate courts. Again, I stress that appellate courts should not second guess sentencing judges unless the sentence imposed is demonstrably unfit.

[49] In both **Proulx**, **supra** and **R. v. Gladue**, [1999] 1 S.C.R. 688; S.C.J. No. 19 (Q.L.)(S.C.C.) the Court acknowledged that Bill C-41 was Parliament's response to over-incarceration in Canada and reflected a desire to lessen its use. (see **Proulx** at para. 16; **Gladue** at para. 40).

…

[51] A properly crafted conditional sentence has a significant punitive element (**Proulx** at para. 35). The punitive impact is effected through conditions attached to the sentence (such as house arrest or strict curfews) which restrict the offender's liberty (**Proulx** at paras. 36 and 37). A conditional sentence can also achieve the objectives of general deterrence and denunciation. (**Proulx** at para. 66).

[Emphasis added]

[121] In response to the Crown's argument that a conditional sentence did not give sufficient weight to general deterrence, the Court again cited *Proulx*:

> [53] As to the Crown's complaint that the sentencing judge, in imposing a conditional disposition, did not give sufficient weight to general deterrence, Lamer, C.J.C. said in **Proulx**:

> [107] Incarceration, which is ordinarily a harsher sanction, may provide more deterrence than a conditional sentence. Judges should be wary, however, of placing too much weight on deterrence when choosing between a conditional sentence and incarceration: see *Wismayer*, *supra*, at p. 36. The empirical evidence suggests that the deterrent effect of incarceration is uncertain: see generally Sentencing Reform: A Canadian Approach: Report of the Canadian Sentencing Commission (1987) at pp. 136 37. Moreover, a conditional sentence can provide significant deterrence if sufficiently punitive conditions are imposed and the public is made aware of the severity of these sentences. There is also the possibility of deterrence through the use of community service orders, including those in which the offender may be obliged to speak to members of the community about the evils of the particular criminal conduct in which he or she engaged, assuming the offender were amenable to such a condition. Nevertheless, there may be circumstances in which the need for deterrence will warrant incarceration. This will depend in part on whether the offence is one in which the effects of incarceration are likely to have a real deterrent effect, as well as on the circumstances of the community in which the offences were committed.
>
> . . .
>
> [109] While incarceration may provide for more denunciation and deterrence than a conditional sentence, a conditional sentence is generally better suited to achieving the restorative objectives of rehabilitation, reparations, and promotion of a sense of responsibility in the offender. As this Court held in Gladue, supra, at para. 43, "[r]estorative sentencing goals do not usually correlate with the use of prison as a sanction". The importance of these goals is not to be underestimated, as they are primarily responsible for lowering the rate of recidivism. Consequently, when the objectives of rehabilitation, reparation, and promotion of a sense of responsibility may realistically be achieved in the case of a particular offender, a conditional sentence will likely be the appropriate sanction, subject to the denunciation and deterrence considerations outlined above.

[54] Neither did the Court rule out a conditional sentence even where aggravating circumstances call out for denunciation and deterrence:

> [116] Sentencing judges will frequently be confronted with situations in which some objectives militate in favour of a conditional sentence, whereas others favour incarceration. In those cases, the trial judge will be called upon to weigh the various objectives in fashioning a fit sentence. As La Forest J. stated in *R. v. Lyons*, [1987] 2 S.C.R. 309, at p. 329, "[i]n a rational system of sentencing, the respective importance of prevention, deterrence, retribution and rehabilitation will vary according to the nature of the crime and the circumstances of the offender". There is no easy test or formula that

> the judge can apply in weighing these factors. Much will depend on the good judgment and wisdom of sentencing judges, whom Parliament vested with considerable discretion in making these determinations pursuant to s. 718.3.
>
> …
>
> [130] I hasten to add that these comments should not be taken as a directive that conditional sentences can never be imposed for offences such as dangerous driving or impaired driving. In fact, were I a trial judge, I might have found that a conditional sentence would have been appropriate in this case. The respondent is still very young, he had no prior record and no convictions since the accident, he seems completely rehabilitated, he wants to go back to school, he has already suffered a lot by causing the death of a friend and was himself in a coma for some time. To make sure that the objectives of denunciation and general deterrence would have been sufficiently addressed, I might have imposed conditions such as house arrest and a community service order requiring the offender to speak to designated groups about the consequences of dangerous driving, as was the case in Parker, supra, at p. 239, and R. v. Hollinsky, (1995) 103 C.C.C. (3d) 472 (Ont. C.A.).
>
> [Emphasis added]

> [55] Here, the conditions attached to Mr. Bratzer's sentence were clearly intended to provide ongoing significant control upon his liberty. In addition to the statutory requirements, the judge ordered that Mr. Bratzer was to continue to reside with his family in Quebec under house arrest for the first eight months of the sentence, then subject to a curfew from 11 p.m. to 6 a.m. for the remaining term. He was entitled to leave the residence only for the purpose of education, employment or counseling. He was not permitted contact with named individuals thought to have been involved in these offences nor to associate with anyone with a youth court or criminal record.
>
> [56] While admittedly a troubling case, I am not persuaded that this conditional sentence is demonstrably unfit or reflective of error in principle.

[122] In Mr. Cuvelier's case, I find there are exceptional circumstances that make the appropriate range of sentence a term of imprisonment of less than two years. A sentence of less than two years is a proportionate sentence in the unique circumstances of this case, notwithstanding the extremely serious nature of the offence and Mr. Cuvelier's high degree of responsibility. As the Supreme Court of Canada noted in *Lacasse, supra*, "[t]he principle of parity of sentences … is secondary to the fundamental principle of proportionality" (para. 54). In *Chase,*

supra, Saunders J.A. observed (at para. 40) that, "The parity principle is not a straitjacket forcing trial judges to conduct a pointless search for a perfect facsimile or uniform sentence. Parity does not require that sentences handed down to persons who committed the same crime always be the same."

[123] As in *Bratzer*, *supra*, the Crown concedes there is no need for specific deterrence in this case. Its argument for a federal custodial sentence is based entirely on the need for denunciation and general deterrence. While our Court of Appeal has emphasized that denunciation and deterrence must be the primary sentencing objectives in cocaine trafficking cases in order to protect the public, I find that the exceptional circumstances of this case "engage principles of sentencing to a degree sufficient to overcome the application of the main principles of deterrence and denunciation by way of a prison sentence" (*Espinosa Ribadeneira*, *supra*, at para. 61). Put simply, I cannot conclude, in the unique circumstances of this case, that the fundamental principles and purposes of sentencing, including the protection of the public, are best served by sentencing Mr. Cuvelier to a lengthy period of incarceration.

[124] Although Mr. Cuvelier was older than Mr. Bratzer at the time of his offences, he was still relatively youthful, at the age of 26, and rehabilitation is an important factor (although not to the same extent as for offenders aged 18 or 19). In saying this, I recognize that in *Kleykens*, *supra*, the Court of Appeal noted that an offender's prospects for rehabilitation, while always a factor in sentencing, "will have a reduced impact in sentencing those participating in the trafficking of 'hard drugs'" (para. 66).

[125] To say that Mr. Cuvelier has turned his life around in the years since the offences is an understatement. Although he was employed at the time of his offences, he struggled with managing his anger and abused alcohol and marijuana to cope with the violent deaths of two close friends. He continued to socialize with negative influences, an inclination that began in high school when he felt that he needed protection after suffering "awful" incidents of bullying. Mr. Cuvelier wanted more money and to be part of something that made him feel "respected and tough". He did not believe that he could achieve the level of financial success he wanted without breaking the law and his greed compelled him to participate in the extremely serious offence of conspiring to traffic in cocaine.

[126] Since his arrest, Mr. Cuvelier's acceptance of responsibility and his rehabilitative efforts have been extraordinary. He has participated in weekly counselling sessions that have helped him to identify and address the underlying

factors that contributed to his becoming involved in a criminal lifestyle and making such harmful, negative choices. He began boxing and weight training to help manage his anger and relieve stress. He reunited with Ms. Parsons and has taken an active role in raising his son.

[127] After losing his job as a result of his criminal charges, Mr. Cuvelier started his own business, which supports his family and, as of the date of his Pre-Sentence Report, also provided income to seven employees. His counsel noted in her brief that there are now nine employees (two full-time and seven part-time). Through building this business, Mr. Cuvelier has gained a sense of purpose and pride. He has realized that he can be successful on his own merit, which has significantly increased his confidence.

[128] In addition to building his business, Mr. Cuvelier began regularly attending the 7th Step Society and has become a core group member. His participation in the 7th Step Society has opened his eyes to the devastating impacts of addiction and he has expressed sincere remorse for the role he played in the drug trade. He recognizes the harm that cocaine represents for his community, and he is ashamed of his previous involvement with it.

[129] Mr. Cuvelier's personal rehabilitation and deep remorse are not necessarily enough, on their own, to make his situation exceptional. Nor does the fact that Mr. Cuvelier has full-time employment that allows him to support his family entitle him to leniency. As Saunders J.A. observed in *Chase, supra*:

> [37] In its submissions the Crown says Mr. Chase's personal circumstances are insufficient to qualify for leniency and attract a soft sentence. I agree that finding a job and providing some financial support for a pregnant girlfriend are, in and of themselves, hardly enough to entitle a convicted cocaine trafficker to a "break" on sentence. Such efforts, while laudable, should be expected.

[130] In my view, while Mr. Cuvelier's efforts to turn his life around have been extraordinary, it is his commitment to making reparations to the community through sharing his story with young people, and the dedication, sincerity and vulnerability with which he does it, that elevates his circumstances from remarkable to "exceptional".

[131] Since his arrest, Mr. Cuvelier has actively sought out opportunities to visit high school classrooms and describe the experiences, flawed thinking and poor decision-making that led him to participate in these offences, along with the work

he has done to change the course of his life. He encourages young people to seek out emotional support when they are struggling and strongly endorses the use of therapy.

[132] While other offenders might share Mr. Cuvelier's desire to denounce their past conduct and help deter young people from making similar mistakes, not everyone is capable of delivering their message in a meaningful and engaging way. It is abundantly clear, based on the support letters before the Court, that Mr. Cuvelier has a natural and unique talent for public speaking and for connecting with young people one-on-one. The support letters attest to the positive impacts that Mr. Cuvelier's presentations have already had on local students. Moreover, if given the opportunity, Mr. Cuvelier intends to expand his volunteer efforts by developing programming with the YAP aimed at helping young people develop necessary life skills. Both in terms of ability and intentions, he shows exceptional promise as a difference-maker in the community, and this is not only notional - the evidence before the Court is that he is already doing it.

[133] Mr. Cuvelier poses no risk to public safety. As noted earlier, the Crown concedes that there is no need for specific deterrence in Mr. Cuvelier's case. With respect to denunciation and general deterrence, I am not satisfied that these important objectives are best honoured through the imposition of a lengthy period of incarceration.

[134] In *R. v. Anderson*, *supra*, the Court of Appeal explained denunciation as follows:

> 149 Denunciation in sentencing seeks to express condemnation of transgressive conduct. It is "communicative and educative" and "reflects the fact that Canadian criminal law is a "'system of values'". It condemns the offender's encroachment on society's shared values.

[135] Conspiring to traffic in cocaine clearly warrants denunciation and there is no doubt that a lengthy sentence of imprisonment would express the Court's condemnation of Mr. Cuvelier's conduct. In the circumstances of this case, however, separating Mr. Cuvelier from society for two to seven years as a means of denouncing his conduct would do less to protect the public than would imposing a shorter sentence.

[136] By sharing his story with over 300 students so far, Mr. Cuvelier has already begun denouncing his conduct and deterring others in a meaningful way. In the unique circumstances of this case, I conclude that the broader purposes and

principles of sentencing can more effectively be achieved by a shorter sentence of imprisonment. To insist on a longer prison sentence simply as an expression of denunciation in isolation would be to allow that sentencing principle to outweigh all other considerations and would be counter-productive here.

[137] I find that in the exceptional circumstances of this case, the mitigating factors outweigh the aggravating ones, and the fundamental purpose and principles of sentencing are best served by the imposition of a sentence of less than two years' imprisonment.

[138] Let me be clear. In finding that a sentence of less than two years' imprisonment is appropriate here, I recognize the degree to which I am departing from the usual sentence for a case involving 700 grams of cocaine. In *R. v. Chase*, *supra*, the Crown appealed from a 90-day intermittent jail sentence imposed after the offender pled guilty to possession of six grams of cocaine for the purpose of trafficking. The Court upheld the sentence but described it as a "close call" (para. 27). In dismissing the appeal, the Court of Appeal again reiterated that convictions for trafficking in cocaine will normally attract a federal prison term:

> [48] From all of this it can be said with certainty that nothing has changed this Court's repeated and consistent warning that deterrence and denunciation will continue to be the primary objectives when sentencing persons who choose to traffic in cocaine, and that convictions will normally attract a federal prison term. However, that does not mean that in an appropriate case, depending upon the particular circumstances of the offence and the offender, a lesser sentence cannot be imposed.

[139] Unlike Mr. Cuvelier, Mr. Chase had Aboriginal ancestry and a detailed Gladue report was filed and considered. The Court summarized Mr. Chase's circumstances as follows:

> [7] At the time of sentencing, Mr. Chase was 28 years of age. He had 13 prior convictions, which included violent offences and breaches of court orders. The most serious prior conviction was for robbery in 2009 for which he received a sentence of three years' imprisonment in a federal penitentiary. His most recent convictions were for assaulting a peace officer and breach of undertaking in October 2013, for which he received a four month conditional sentence plus two years' probation.
>
> [8] When interviewed for a PSR, Mr. Chase indicated that at the time of the offence he had reunited with a negative peer group and decided to engage in selling drugs for "fast cash" but that he only wanted to do so until he could obtain full-time

> employment. He said, "I tried to take the easy way out, I got lazy, because I couldn't find a job".
>
> [9] The PSR also detailed Mr. Chase's family background and personal history. It described a difficult childhood, where the respondent spent time in foster care. Judge Murphy accepted that the respondent had a "dysfunctional and abusive upbringing". Mr. Chase acknowledged having had alcohol abuse problems, but said he had been sober for five years at the time the PSR was prepared.
>
> [10] Mr. Chase has Aboriginal ancestry on his father's side. His paternal grandparents are both Aboriginal from New Brunswick. He became aware of his Aboriginal lineage in 2015 and was unsure of the designation or status of his grandparents' heritage. He did not self-identify as being Aboriginal. As a result of his heritage, a Gladue Report was prepared, which described him as a "non-status off reserve Aboriginal male" and identified a number of "Gladue factors" for consideration.
>
> [11] At the time of sentencing, Mr. Chase had full-time employment with Green For Life (GFL), a garbage disposal company, where he has worked as a residential helper since July 2017.
>
> [12] He was living in a stable relationship with his girlfriend, who was pregnant. She and other friends or family provided letters attesting to the considerable progress Mr. Chase had achieved in turning his life around.
>
> [13] At the sentencing hearing the Crown recommended a sentence of two years in a federal penitentiary. Mr. Chase's counsel asked for a suspended sentence with three years' probation.
>
> [14] After considering the evidence, the submissions and the jurisprudence, Judge Murphy imposed a 90 day jail sentence to be served intermittently followed by three years' probation. As noted in ¶4 above, the Probation Order included a night time curfew but no other substantial restrictions on Mr. Chase's liberty.

[140] In its decision, the Court of Appeal cited extensively from the trial judge’s reasons:

> [34] Then, as the law required, Judge Murphy went on to closely consider the particular circumstances of this offence and this offender. In crafting a proper sentence for Mr. Chase it is obvious the trial judge was impressed by the remarkable changes he had made in his life and his strong prospects for rehabilitation. For example, Judge Murphy referred to a number of letters filed by relatives and friends who supported Mr. Chase which spoke of "a very positive change" in his life; to the PSR which described him as a "very engaged parent", and to the facts that Mr. Chase had secured "full employment, with the possibility of advancement", was "in

a stable and supportive relationship, with concrete plans for his future … and [was] a significant contributor to his household, financially".

[35] In a thoughtful and thorough analysis of the evidence, Judge Murphy contrasted these laudable changes with the very difficult upbringing Mr. Chase had experienced as a youth. She then went on to give further consideration to other sentencing principles that were particularly relevant to Mr. Chase and the crime to which he pleaded guilty:

> …Mr. Chase began living independently from his parents at the age of 15. Prior to this, his home life was one with lack of support, stability, and he experienced a great deal of the negativity that results from addiction for both his mother, and his stepfather.
>
> Not surprisingly, he engaged in criminal activity at an early age, and was addicted to alcohol, himself. As a result of the other -- as well as the other principles of sentencing, I am mindful, and do consider that the restraint principle, and more specifically how it's manifested in the sad life principle, has a role in the case before the Court.
>
> The sad life principle is premised on the principle of restraint, and, thus, often considered in cases where the offender has demonstrated a genuine interest in rehabilitation. These cases often involve offenders who have been victims of sexual, or physical abuse, or have experienced a horrific upbringing. In this case, I'm satisfied that Mr. Chase did suffer a dysfunctional, and abusive upbringing.
>
> A sentencing judge must -- to consider all of the offender's personal antecedents and put the present offences into that context in crafting a sentence which underscores the principle of restraint. This approach usually underscores a reluctance to re-incarcerate an offender, or to impose a lengthy period of incarceration, where one would otherwise have been imposed. In these situations, the objective is to fashion a sentence that will promote self-rehabilitation, and thus, protect the public in the long term.
>
> In this instance, I accept that Mr. Chase has expressed a genuine interest in rehabilitation. In fact, unfortunately for him, that desire, or fortunately, I guess, for him, that desire was expressed in text messages while this offence was taking place.
>
> Currently, he appears to have a good handle on his addiction. He has been five years sober. He is in a committed and loving, stable relationship which has been very supportive, and no doubt instrumental in him committing to a law-abiding lifestyle. In addition to assuming responsibility for a parenting role with his girlfriend's five-year-old son, he is enthusiastically planning for the birth of their child. Ms. [Rayner's] and

his relationship with her is unquestionably, it has been a positive influence on Mr. Chase's life.

It is clear, from collateral sources, which have been presented through letters, and through the two reports that were prepared, that Mr. Chase's change has been noted by other people in his life. Truly, they do say glowing things about him. Most do speak to the change in his attitude and lifestyle that has occurred, and Mr. Chase clearly has the support of many friends and family.

In addition to these very important improvements in his personal life, Mr. Chase has obtained good employment which provides a good income for him, and his family, and provides him with a sense of pride, and purpose, and provides him with hope for advancement in his future. For someone like Mr. Chase, with his particular background, this is a very momentous thing.

I also appreciate what Mr. [Lichti] had said in relation to Mr. Chase's newfound recognition of his Aboriginal heritage. Mr. Chase has not suffered all of his life's disadvantages as a result of his Aboriginal heritage. It does seem that his non-Aboriginal parent did suffer from a great deal of things, which are factors which may normally consider -- come up in the Gladue context, however, and it does appear that his paternal Aboriginal line has provided him more support.

I think the cases are clear that Gladue factors are often generational, passed down through a systemic injury which has plagued the Aboriginal community since colonization. It is, no doubt, difficult in certain situations to extract what factors have a discreet source (sic) these systemic issues.

Regardless, it is a factor that the Court considers, but perhaps not -- doesn't give it the same weight as one would if there were -- was a clear, or bright line to the Gladue factors, but there has been, certainly, a loss of cultural linkage by Mr. Chase as a result of the breakdown of his parents' relationship, and the fact that his mother had kept his father out of his life for a great number of years.

And it does appear that Mr. Chase was buoyed when he did re-connect with his father and did appear to -- that it did appear to contribute significantly to a rehabilitation. Obviously, this offence occurred after that, and it -- but it did appear that that support was important.

Mr. Chase has expressed remorse, and I conclude that the remorse is genuine remorse.

[36] These and other conclusions evident in the judge's reasons led her to find that leniency was justified and warranted a departure from the traditional punishment of incarceration in a federal institution. She said:

> Having considered all of the aggravating, mitigating, and other factors identified in this case, as well as the seriousness of the offence for which Mr. Chase is being sentenced, and recognizing that the normal range of sentence is a sentence of two years, or more, I am of the view that a custodial sentence is warranted, followed by a significant period of probation, which acknowledges that Mr. Chase's circumstances, given the mitigating factors, in my view, are exceptional. In his specific circumstances. in the view of the Court, the cumulative [weight of] all of Mr. Chase's circumstances justify a degree of leniency in the imposition of a custodial disposition, but given the aggravating factors that are present, in my view, do not merit the sentence be suspended.
>
> As stated by Judge Hoskins in the Masters case, the case law does not clearly define, or delineate factors to consider in determining when a case is exceptional towards the sentence, outside of the usual range. In Masters, Judge Hoskins considered the nature and quantity of the illicit substance, the offender's involvement, and motivation to commit the offence, the age of the offender, more particularly how it relates to real potential for a successful rehabilitation, and a significant, remarkable change in circumstances since the commission of the offence.
>
> In this instance, I am satisfied that for the mitigating factors that are present, and very specifically, Mr. Chase's still rather youthful age, his significant potential for successful rehabilitation, a significant and remarkable change in circumstances since the commission of the offence, that a sentence of 90 days is warranted, followed by three years probation.

[37] In its submissions the Crown says Mr. Chase's personal circumstances are insufficient to qualify for leniency and attract a soft sentence. I agree that finding a job and providing some financial support for a pregnant girlfriend are, in and of themselves, hardly enough to entitle a convicted cocaine trafficker to a "break" on sentence. Such efforts, while laudable, should be expected.

[38] But there was more to Mr. Chase's situation than that. The combination of many mitigating factors described in detail by Judge Murphy obviously impressed her and gave her confidence that upon his release, Mr. Chase's prospects for rehabilitation and becoming a successful and productive member of his community were high. She concluded that the primary objectives of deterrence, denunciation, and protecting society could be achieved by an intermittent period of incarceration followed by a lengthy period of probation. On this record I am not prepared to second guess her judgment.

[141] Unlike Mr. Chase, Mr. Cuvelier had a happy childhood. Unfortunately, he could not be shielded or protected from the bullying that he would begin to endure in junior high and which worsened in high school. According to his parents' letters of support, this bullying in school changed the course of Mr. Cuvelier's life. He became friends with negative influences who promised to "have his back". Maintaining these friendships, however, meant participating in his new friends' antisocial lifestyle. When he was 16 years old, Mr. Cuvelier was attacked, robbed and stabbed. He then experienced the death of two close friends, with one dying in his arms after being shot. While none of these experiences excuse Mr. Cuvelier's involvement in conspiring to traffic cocaine, or reduce his moral blameworthiness, they certainly make it easier to understand how he ended up where he did.

[142] At the time of sentencing, Mr. Cuvelier, like Mr. Chase, is gainfully employed, living in a stable relationship, with a child on the way. Like Mr. Chase, he enjoys the tremendous support of his family and friends, who have attested to how he has turned his life around. What is unique about Mr. Cuvelier's case, however, is the degree to which he has contributed to his community, both as a business owner and as an individual attempting to make amends for his offences. In these unusual circumstances, his lengthy incarceration would actually have a negative impact on the community.

[143] I acknowledge that some might argue that when an offender has made the decision to conspire to traffic 700 grams of cocaine, there can be no "exceptional circumstances" justifying anything less than a significant term of imprisonment and that the degree to which the offender has turned their life around is completely irrelevant. I cannot agree. While it will indeed be a very rare case where the lengthy incarceration of a person who has trafficked large amounts of cocaine will be contrary to the public interest, I find that it is possible, and that Mr. Cuvelier's is that very rare case.

Second Stage

[144] At the second stage of the *Proulx* analysis, I must consider if it is appropriate for Mr. Cuvelier to serve his sentence in the community. Before a conditional sentence can be ordered, I must be satisfied that the safety of the community will not be endangered by Mr. Cuvelier serving his sentence in the community. Two factors must be taken into account: (1) the risk of the offender re-offending and (2) the gravity of the damage that could ensue in the event of re-offence. As noted in *Proulx*, *supra*, at para. 69:

> If the judge finds that there is a real risk of re-offence, incarceration should be imposed. Of course, there is always some risk that an offender may re-offend. If the judge thinks this risk is minimal, the gravity of the damage that could follow were the offender to re-offend should also be taken into consideration. In certain cases, the minimal risk of re-offending will be offset by the possibility of a great prejudice, thereby precluding a conditional sentence.

[145] I have no difficulty concluding that the risk of Mr. Cuvelier re-offending is virtually non-existent. Mr. Cuvelier no longer associates with those who were involved in his former criminal lifestyle and, over the last three years, he has dedicated himself to being a productive member of society. If Mr. Cuvelier were to re-offend and conspire to traffic cocaine, it would obviously cause serious harm to the community. I am not satisfied, however, that the possibility of that harm offsets the exceedingly minimal risk of his re-offending.

[146] I must now consider whether a CSO would be consistent with the fundamental purpose and principles of sentencing set out in ss. 718 to 718.2.

[147] With respect to the principles of denunciation and general deterrence, the Supreme Court of Canada recognized in *Proulx*, *supra*, that a properly crafted conditional sentence can provide significant denunciation and deterrence:

> 41 This is not to say that the conditional sentence is a lenient punishment or that it does not provide significant denunciation and deterrence, or that a conditional sentence can never be as harsh as incarceration. As this Court stated in Gladue, supra, at para. 72,
>
> > … in our view, a sentence focussed on restorative justice is not necessarily a "lighter" punishment. Some proponents of restorative justice argue that when it is combined with probationary conditions, it may in some circumstances impose a greater burden on the offender than a custodial sentence.
>
> A conditional sentence may be as onerous as, or perhaps even more onerous than, a jail term, particularly in circumstances where the offender is forced to take responsibility for his or her actions and make reparations to both the victim and the community, all the while living in the community under tight controls.

[148] The Court in *Proulx*, *supra*, further noted:

> [100] ... a conditional sentence can achieve both punitive and restorative objectives. To the extent that both punitive and restorative objectives can be achieved in a given case, a conditional sentence is likely a better sanction than incarceration.

> Where the need for punishment is particularly pressing, and there is little opportunity to achieve any restorative objectives, incarceration will likely be the more attractive sanction. However, even where restorative objectives cannot be readily satisfied, a conditional sentence will be preferable to incarceration in cases where a conditional sentence can achieve the objectives of denunciation and deterrence as effectively as incarceration. This follows from the principle of restraint in s. 718.2(*d*) and (*e*), which militates in favour of alternatives to incarceration where appropriate in the circumstances.

[149] In Mr. Cuvelier's unique situation, I find that a CSO of two years less a day with onerous conditions, followed by three years' probation, would achieve the objectives of denunciation and deterrence as effectively as incarceration. Not only will the conditions significantly restrict Mr. Cuvelier's liberty, but the CSO will also further the objectives of denunciation and deterrence by permitting Mr. Cuvelier to continue his efforts to denounce his own conduct and deter young people from making the same mistakes he has made. I am satisfied that Mr. Cuvelier's own words will be a greater source of general deterrence than would his incarceration.

[150] A CSO is also consistent with the rehabilitation of offenders, which remains an important sentencing objective notwithstanding the need to emphasize denunciation and deterrence. In *Rushton, supra*, Judge Buckle stated:

> [65] Rehabilitation continues to be a relevant objective, even in cases requiring that denunciation and deterrence be emphasized. This was recently confirmed by the Supreme Court of Canada in Lacasse (supra) where, in the context of a sentence appeal for the offence of dangerous driving causing death, Wagner, J., writing for a majority, said:
>
> > One of the main objectives of Canadian criminal law is the rehabilitation of offenders. Rehabilitation is one of the fundamental moral values that distinguish Canadian society from the societies of many other nations in the world, and it helps the courts impose sentences that are just and appropriate. (at para. 4)

[151] Rehabilitation is key to the protection of the public, which is the fundamental purpose of sentencing. In *R. v. Parker*, [1997] N.S.J. No. 194 (C.A.), the Court of Appeal observed:

> 45 The challenge for the sentencing judge is, as it always has been, to balance the objectives of sentencing - this is not a new problem. It is worthy of note, however, that the judge is directed, in s. 718, to impose a just sanction that has "one or more" of the enumerated objectives. This, in my view, recognizes the irreconcilability of certain of the objectives and leaves to the court a reasonable latitude in choosing

> the appropriate emphasis for this offence and this offender. Protection of the public - "the maintenance of a just, peaceful and safe society" - remains, as always, the overarching goal of sentencing. Rehabilitation of the offender, where achievable, is key to public protection.

[152] As the Supreme Court of Canada noted in *Proulx*, *supra*, "a conditional sentence is generally better suited to achieving the restorative objectives of rehabilitation, reparations, and promotion of a sense of responsibility in the offender" (para. 109).

[153] In Mr. Cuvelier's case, he has engaged in significant rehabilitative efforts. The degree of these efforts, in both the time invested and the level of dedication, is unusual and demonstrates his commitment to being a contributor - a good partner, father, son and member of society at large.

[154] In *R. v. Smith*, 2022 NSPC 11, the accused pled guilty to trafficking in cocaine (87 grams). Between arrest and sentence, Mr. Smith had abstained from drugs and made progress in rehabilitation. He received counselling and was offence-free in the interim. The Court determined that a period of imprisonment "would negatively impact the offender's rehabilitation prospects" (para. 56). The same is true here. Incarcerating Mr. Cuvelier will do nothing to support his significant rehabilitative prospects and will interfere with or prevent him from continuing his weekly therapy, his intensive engagement in the 7th Step Society, his high school presentations and his volunteer efforts with YAP. It would also negatively impact his family and his growing business.

[155] A CSO is also consistent with the principle of restraint. Sections 718.2(d) and (e) of the *Criminal Code* instruct the court that custodial sentences should not be ordered if other, less restrictive sanctions are appropriate in the circumstances. In *R. v. Gladue*, [1999] 1 S.C.R. 688, the Supreme Court of Canada emphasized that prison is a sanction of last resort:

> 40 It is true that there is ample jurisprudence supporting the principle that prison should be used as a sanction of last resort. It is equally true, though, that the sentencing amendments which came into force in 1996 as the new Part XXIII have changed the range of available penal sanctions in a significant way. The availability of the conditional sentence of imprisonment, in particular, alters the sentencing landscape in a manner which gives an entirely new meaning to the principle that imprisonment should be resorted to only where no other sentencing option is reasonable in the circumstances. The creation of the conditional sentence suggests, on its face, a desire to lessen the use of incarceration. The general principle expressed in s. 718.2(e) must be construed and applied in this light.

[156] In Mr. Cuvelier's case, a CSO would be consistent with the fundamental purpose and principles of sentencing. The public interest is best served by crafting a sentence that will allow Mr. Cuvelier to continue to focus on his reparations to the community at large. This can be accomplished most effectively through a conditional sentence with sufficiently onerous restrictions on Mr. Cuvelier's liberty to provide for significant denunciation and deterrence.

[157] In ordering a CSO, I am mindful of the Court of Appeal's statement in *Knickle, supra*, that it "has never approved or endorsed a conditional sentence on charges of possession of cocaine for the purpose of trafficking" (para. 18). However, as I noted earlier, I find that in this exceptional and rare case, a CSO is a fit sentence.

Sentencing Multiple Offences

Possession of the proceeds of crime

[158] When sentencing an offender with more than one conviction, the Court first fixes a sentence for each offence, then determines whether the sentences should be served consecutively or concurrently (*R. v. Adams*, 2010 NSCA 42; *R. v. Skinner*, 2016 NSCA 54).

[159] The Crown and the Defence agree that a one-year sentence for the offence of possession of the proceeds of crime is fit and appropriate. The Crown says the sentence should run consecutively to the sentence for conspiracy to traffic in cocaine, while the Defence says it should run concurrently.

[160] In *R. v. T.E.H.*, 2011 NSCA 117, the Court explained the proper approach for determining whether to impose concurrent or consecutive sentences:

> 37 When deciding whether sentences should be concurrent or consecutive, a judge should consider the time frame within which the offences occurred, the similarity of the offences, whether a new intent or impulse initiated each of the offences and whether the total sentence is fit and proper under the circumstances; *R. v. W. (G.A.)* (1993), 125 N.S.R. (2d) 312 (N.S. C.A.); *R. v. Naugle*, 2011 NSCA 33 (N.S. C.A.). …

[161] Consecutive sentences are to be imposed unless there is a reasonably close nexus between the offences in time and place as part of one continuing criminal operation or transaction (*R. v. Daye*, 2010 NBCA 53.)

[162] In *R. v. Hatch*, [1979] N.S.J. No. 520 (C.A.), the Nova Scotia Court of Appeal commented:

> 6 We have frequently noted that the Code seems to require consecutive sentences unless there is a reasonably close nexus between the offences in time and place as part of one continuing criminal operation or transaction: *R. v. Osachie* (1973), 6 N.S.R.(2d) 524. This does not mean, however, that we should slavishly impose consecutive sentences merely because offences are, for example, committed on different days. It seems to me that we must use common sense in determining what is a "reasonably close" nexus, and not fear to impose concurrent sentences if the offences have been committed as part of a continuing criminal operation in a relatively short period of time. …
>
> 7 The choice of consecutive versus concurrent sentences does not matter very much in practice so long as the total sentence is appropriate. Use of the consecutive technique, when in doubt as to the closeness of the nexus, ensures in many cases that the total sentence is more likely to be fit than if concurrent sentences alone are used. Conversely, unthinking use of concurrent sentences may obscure the cumulative seriousness of multiple offences.

[163] While some courts have held that the sentence for possession of the proceeds of crime arising from drug trafficking should be served concurrently to the sentence for drug trafficking, others have strongly disagreed. In *R. v. MacLean* [1996] N.B.J. No. 138 (Q.B.), aff'd [1996] N.B.J. No. 597 (C.A.), the Court concluded that if a sentence for proceeds of crime is concurrent to the drug trafficking sentence, it would be "meaningless" (para. 20).

[164] Likewise, in *R. v. Williams*, 2020 NBCA 59, the Court stated:

> 21 Separate offences require separate punishments. In my opinion, different societal interests are being protected by the drug trafficking charges and the proceeds of crime and money laundering charges. To find otherwise would render somewhat meaningless pursuing a convicted drug trafficker for a proceeds of crime offence, in the sense that imposing any additional consequences upon the offender in terms of incarceration would not be available to the courts. …

[165] However, in *R. v. Battista*, 2011 ONSC 6394, the Court sentenced possession of proceeds of crime concurrent to the conspiracy to traffic charge:

> 31 In my view, Defence counsel is correct that the offence of conspiracy to launder money and the offences of conspiracy to traffic, trafficking and possession for the purpose of trafficking all arise out of the same set of circumstances. Much of the same evidence was elicited at both trials; the events occurred in the same

> time period, and the money that was laundered came from the very drug transactions that underpin Battista's convictions on this trial. As noted in R. v. Dass:
>
> > ... The general principle is that where there is a reasonably close nexus between the offences in time and place, and where they appear to be part of "one continuing crime operation", the sentences should be concurrent.
>
> 32 In this case, there is a nexus in time, place and subject-matter. Therefore, it is more appropriate for the sentences to run concurrently.

[166] In *R. v. McKay*, 2018 SKPC 51, var'd 2019 SKCA 129, Mr. McKay pled guilty to three offences:

1. (1) possession of a controlled substance for the purpose of trafficking contrary to s. 5(2) of the *CDSA*;
2. (2) possession of property obtained by crime contrary to s. 354(1)(a) and s. 355(a) of the *Criminal Code*; and
3. (3) laundering proceeds of crime contrary to s. 462.31(2) of the *Criminal Code*.

[167] In sentencing Mr. McKay to concurrent sentences, the trial judge stated at para. 58:

> … While counts (2) and (3) involve the violation of distinct legally protected interests, I am satisfied that they are derivative from and concomitant to Mr. McKay's trafficking activities.

This issue was not considered on appeal.

[168] In this case, the offences took place during the same time period. The first offence is conspiracy to traffic while the second is possession of the proceeds arising from that conspiracy. While different and distinct offences, the commission of the first inevitably led to the second. It cannot be said that a new intent or impulse initiated each of the offences. The intent or impulse for both was the pursuit of profit - or, to put it more bluntly, greed. Both offences were tied to the same ongoing enterprise, which took place over a relatively short period of time – a few months as noted in the agreed statement of facts.

[169] In Mr. Cuvelier's case, the proceeds offence clearly arises from and is derivative of the conspiracy to traffic offence. The ongoing enterprise to conspire with others to traffic in cocaine resulted in the proceeds as found on December 9,

2020. This was all a part on one continuing operation. For this reason, a concurrent sentence is appropriate in the circumstances.

[170] As for the proceeds offence being served as a CSO, for the reasons previously canvassed in relation to the first offence, I conclude a 12 month CSO for this offence is appropriate. I adopt and reiterate the reasoning for this offence.

CONCLUSION

[171] A fit and appropriate sentence for Mr. Cuvelier for the offence of conspiring to traffic in cocaine is 24 months less a day or a 729-day CSO running concurrent to a 12-month CSO for the offence of possession of proceeds of crime. Additionally, I order the 729-day CSO to be followed by 36 months of probation.

[172] In section 742.3 (1) the Court shall prescribe, as conditions of a conditional sentence order, that the offender do all of the following:

> (a) keep the peace and be of good behaviour;
>
> (b) appear before the court when required to do so by the court;
>
> (c) report to a supervisor
>
> > (i) within two working days, or such longer period as the court directs, after the making of the conditional sentence order, and
> >
> > (ii) thereafter, when required by the supervisor and in the manner directed by the supervisor;
>
> (d) remain within the jurisdiction of the court unless written permission to go outside that jurisdiction is obtained from the court or the supervisor; and
>
> (e) notify the court or the supervisor in advance of any change of name or address, and promptly notify the court or the supervisor of any change of employment or occupation.

[173] Section 742.3(2) indicates what the Court "may" prescribe.

> (2) The court may prescribe, as additional conditions of a conditional sentence order, that the offender do one or more of the following:
>
> (a) abstain from
>
> > (i) the consumption of alcohol or other intoxicating substances, or

> (ii) the consumption of drugs except in accordance with a medical prescription;
>
> (b) abstain from owning, possessing or carrying a weapon;
>
> (c) provide for the support or care of dependants;
>
> (d) perform up to 240 hours of community service over a period not exceeding eighteen months;
>
> (e) attend a treatment program approved by the province; and
>
> (f) comply with such other reasonable conditions as the court considers desirable, subject to any regulations made under subsection 738(2), for securing the good conduct of the offender and for preventing a repetition by the offender of the same offence or the commission of other offences.

[174] In addition to the mandatory conditions contained in s. 742.3 (1), I have placed additional restrictions on Mr. Cuvelier while he is subject to the CSO. These are attached as an appendix to this decision.

[175] I have also attached as another appendix the conditions of probation.

Ancillary Orders

[176] The Crown has requested the following ancillary orders:

- Lifetime weapons prohibition pursuant to section 109 of the *Criminal Code*;
- DNA Order pursuant to section 487.05 of the *Criminal Code*; and,
- Forfeiture order for the various items seized.

[177] The Defence has not contested any of these ancillary orders.

[178] Bearing in mind the previous ten-year ban placed on Mr. Cuvelier and given the submissions of counsel, I have no difficulty in granting all of the ancillary orders.

[179] Mr. Cuvelier, in one of the support letters, a high school teacher recounted that her students were moved by your story and they "wondered what kinds of consequences are appropriate for someone who is trying so hard to improve and build his life." I struggled with that question, too. This has not been an easy decision. Sentencing is an individualized exercise, so it really should not be easy.

In the end, your dedicated efforts to share your story, engage in community programming and to deter others from becoming involved in the criminal justice system have convinced me that the community would most benefit from you continuing to do this valuable work. I am expecting a lot from you, and I am confident that you will deliver.

[180] You will now be subject to the Court's control for five years, between the CSO and probation. This is not designed to be easy. This sentence is designed to protect society over the long term. It may be "lenient" but it is not easy. You have been given an extremely rare opportunity. You are avoiding federal incarceration. I have given you leniency because of all of the circumstances I have reviewed in this decision.

[181] You have an abundance of people supporting you. Do not let down your parents, your common-law spouse and your son. Do not let down all of these people who have written letters to the Court and have showed up for you today. Most importantly of all, do not let yourself down.

[182] If you fail to comply with the restrictions, you may serve the remainder of your sentence in jail. Please do not squander this chance you have before you - continue to live a pro-social life. You have worked over the last three years to develop a life of family, community, legitimate employment and a purpose greater than greed. It is a much better life than the one you left behind after you were arrested. While there may be difficult days ahead, do not be deterred from the current path you are on. I wish you the best as you go forward.

Brothers, J.

JACOB THOMAS CUVELIER
CONDITIONS OF THE CONDITIONAL SENTENCE ORDER

THE COURT

(a) sentences you to imprisonment for 2 years, less a day (less than two years) and concurrent sentence of 12 months; and

(b) is satisfied that your serving the sentence in the community will not endanger its safety.

YOU SHALL serve this sentence in the community under the following conditions:

1. keep the peace and be of good behaviour;

2. appear before the Court when required to do so by the Court;

3. report to a supervisor at 1256 Barrington Street, Suite 200, Halifax, Nova Scotia on or before January 26, 2024 and as required and in the manner directed by the supervisor or someone acting in his/her stead;

4. remain within the Province of Nova Scotia unless written permission to go outside the Province is obtained from the Court or the supervisor; and

5. notify promptly the Court or the supervisor in advance of any change of name or address, and promptly notify the Court or the supervisor of any change of employment or occupation;

AND IN ADDITION, YOU SHALL

(a) report to a conditional sentence supervisor at 1256 Barrington Street, Suite 200, Halifax, Nova Scotia on or before Friday, January 26, 2024 and thereafter as directed by your supervisor.

(b) reside at X, Halifax, Nova Scotia unless permission to reside elsewhere is obtained from the court.

(c) do not possess, take or consume alcohol or other intoxicating substances.

(d) do not possess, take or consume a controlled substance as defined in the *Controlled Drugs and Substances Act* except in accordance with a physician's prescription for you or a legal authorization.

(e) not to have in your possession any firearm, cross-bow, prohibited weapon, restricted weapon, prohibited device, ammunition or explosive substance.

(f) complete 100 hours of community service work within the next 24 months (less a day) as directed by your supervisor, which can include speaking presentations for youth in conjunction with the 7th Step Society and the Youth Advocate Program.

Case Number 8510820 100 hours to be completed by January 20, 2026

(g) participate in your ongoing therapy or a program as directed by your supervisor.

(h) attend for mental health assessment and counselling as directed by your supervisor.

(i) attend for substance abuse assessment and counseling as directed by your supervisor officer.

(j) attend for assessment and counselling in anger management as direct by your supervisor.

(k) attend for assessment, counselling or a program directed by your supervisor.

(i) participate in and co-operate with any assessment, counselling or program directed by your supervisor.

(m) submit for urinalysis or other alcohol or controlled substances screening as directed by supervisor.

(n) have no direct or indirect contact or communication with C. M., C.D., or G. B.

(o) **House Arrest**: only immediate family members and additionally friends of your son, XX, are allowed to be in the home. In the event that others are present, you are to separate yourself from those people immediately.

For the first 20 months you are to remain in your residence at all times except:

(a) from 9:00 am to 5:00 pm for the purposes of employment which your supervisor knows about, and travelling to and from that employment by a direct route;

(b) when dealing with a medical emergency or medical appointment involving you or a member of your household and travelling to and from it by a direct route;

(c) when attending a scheduled appointment with your lawyer, your supervisor or a probation officer, and travelling to and from the appointment by a direct route;

(d) when attending court at a scheduled appearance or under subpoena, and travelling to and from court by a direct route;

(e) when attending a counselling appointment, a treatment program, as approved by your supervisor or a meeting of 7th Step Society as approved by the Court, and travelling to and from that appointment, program or meeting, by a direct route;

(f) for not more than 4 hours per week on Saturday for the purpose of attending to personal needs between the hours of 12pm and 4pm;

(g) when performing community service work arranged with your supervisor, and travelling to and from the location by a direct route (as approved and referred to by the Court in its sentencing decision including for the 7th Step Society and the Youth Advocate Program and other suitable community work as approved by your supervisor);

(h) you may attend the birth of your child. Within 24 hours of the delivery, you must return to your residence unless of a medical emergency with your spouse or your newborn arises. If so, you are to report this to your supervisor;

(i) for the purpose of physical exercise/ fitness program, not more than 3 times per week for a period of 2 hours each time and approved by your supervisor and you are to travel from your residence at X, Halifax, Nova Scotia to 1565 South Park Street, Queenberry Rules Boxing Studio, Halifax, Nova Scotia, by a direct route.

(p) prove compliance with the house arrest condition by presenting yourself at the entrance of your residence should your supervisor or a peace officer attend there to check compliance.

(q) **Curfew**: for the remaining 4 months less a day you are subject to a curfew and must be in your residence by 8:00 pm until 8:00 am everyday except:

(a) when at regularly scheduled employment, which your supervisor knows about, and travelling to and from that employment by a direct route;

(b) when dealing with a medical emergency or medical appointment involving you or a member of your household and travelling to and from it by a direct route;

(c) when attending a scheduled appointment with your lawyer, your supervisor or a probation officer, and travelling to and from the appointment by a direct route;

(d) when attending court at a scheduled appearance or under subpoena, and travelling to and from court by a direct route;

(e) when attending a counselling appointment, a treatment program or a meeting of 7th Step Society as approved by the court, and travelling to and from that appointment, program or meeting, by a direct route;

(f) when performing community service work arranged with your supervisor and travelling to and from the location by a direct route (as approved and referred to by the court in its sentencing decision including for the 7th Step Society and the Youth Advocate Program and other suitable community work as approved by your supervisor).

(r) prove compliance with the curfew condition by presenting yourself at the entrance of your residence should your supervisor or a peace officer attend there to check compliance.

(s) have only one cell phone and one number, which number will be given to your conditional sentencing supervisor.

JACOB THOMAS CUVELIER
CONDITIONS OF THE PROBATION ORDER

THE COURT ORDERS THAT:

(A) You serve a term of imprisonment under a Conditional Sentence Order for a period of 2 years, less a day.

AND THAT YOU COMPLY WITH THE FOLLOWING TERMS AND CONDITIONS:

upon the expiration of the sentence of imprisonment imposed on you pursuant to paragraph (A) above for the period of 3 years:

1. keep the peace and be of good behaviour;

2. appear before the Court when required to do so by the Court; and

3. notify the Court or the Probation Officer in advance of any changes of name or address, and promptly notify the Court or the Probation Officer of any changes of employment or occupation.

AND IN ADDITION, YOU SHALL:

(a) report to a probation officer at 1256 Barrington Street, Suite 200, Halifax, Nova Scotia within 2 days from the date of expiration of your conditional sentence and thereafter as directed by your probation officer.

(b) remain within the province of Nova Scotia unless you receive written permission from your probation officer.

(c) reside at X, Halifax, Nova Scotia, unless permission to reside elsewhere is obtained from the court.

(d) have no direct or indirect contact or communication with C.M., C.D. or G. B.

(e) do not possess any firearm as defined by section 2 of the *Criminal Code*.

(f) do not possess any firearm or ammunition.

(g) do not possess, use or consume alcoholic beverages.

(h) do not possess, use or consume a controlled substance as defined in the *Controlled Drugs and Substances Act* except in accordance with a physician's prescription for you or a legal authorization.

(i) complete 100 hours of community service work within the first 18 months of your probationary term.

Case Number 8510820 - 100 hours to be completed by June 20, 2027.