

R.v. Bedard, 2000 NWTSC 73

SC-1-CR 000003818

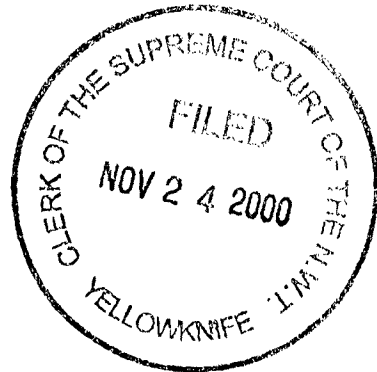
IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

DENIS GERARD BEDARD



Transcript of the Reasons for Sentence delivered by The Honourable Justice V.A. Schuler, sitting in Yellowknife, in the Northwest Territories, on the 17th day of November, A.D. 2000.

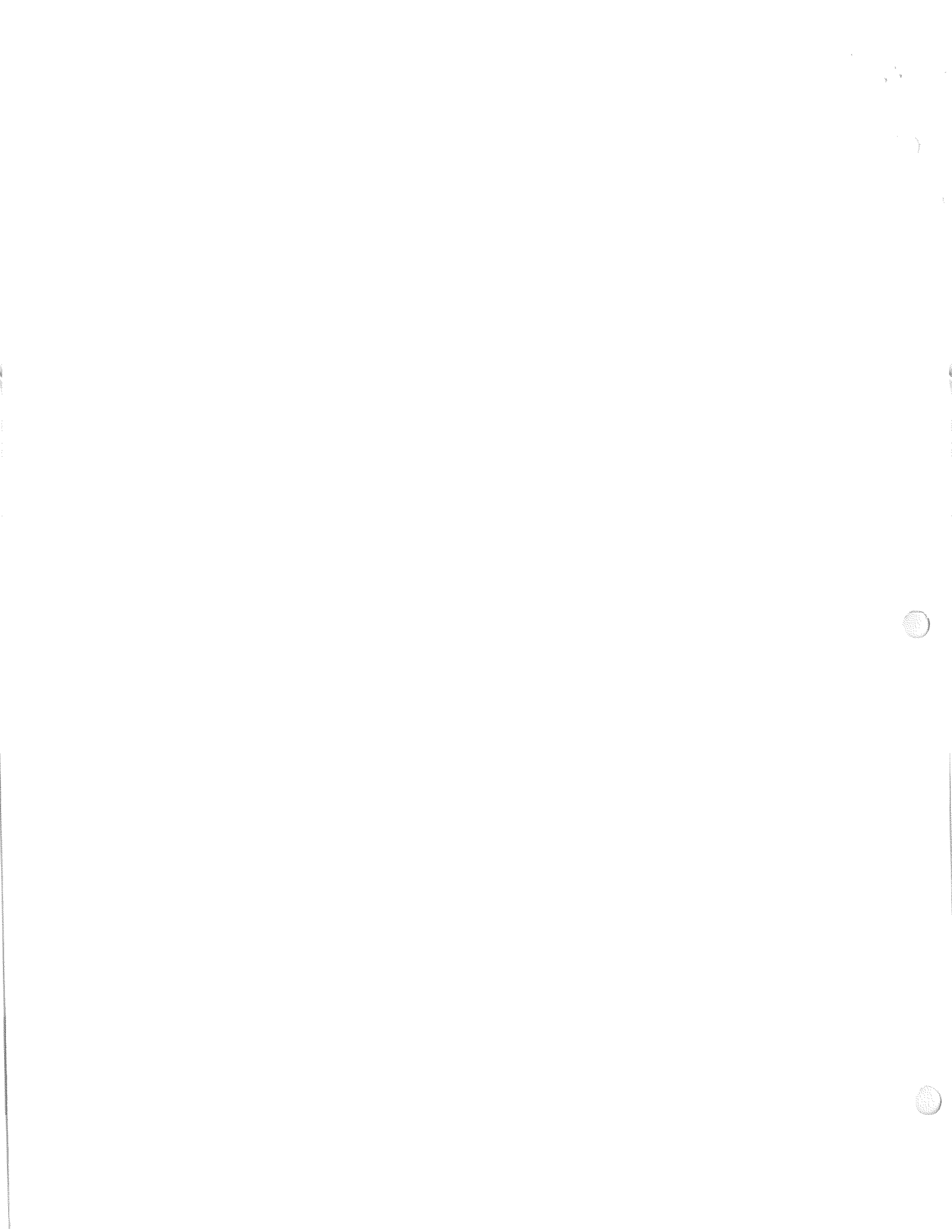
APPEARANCES:

Mr. J. O'Halloran:

Counsel for the Crown

Mr. W. Benkendorf:

Counsel for the Defence



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1 THE COURT: Mr. Denis Bedard has pleaded
2 guilty to two criminal charges for which I must
3 sentence him. The facts of these offences are set out
4 in Exhibit S1, the Agreed Statement of Facts. So I
5 will refer to them briefly for purposes of this
6 decision.

7 On Count 1, Mr. Bedard is convicted of breach of
8 trust in connection with the duties of his office,
9 contrary to Section 122 of the *Criminal Code*.

10 Mr. Bedard was the municipal planning engineer in the
11 Fort Simpson office of the Department of Municipal and
12 Community Affairs of the Government of the Northwest
13 Territories. In the summer of 1996, he prepared a
14 contract concerning a water filter system in Trout
15 Lake. The contract was awarded to the company of a
16 friend of Mr. Bedard. That company invoiced the
17 government and Mr. Bedard approved the invoice and
18 confirmed the work as done even though he knew that it
19 was not done. The company received the contract
20 monies of approximately \$21,000 and used them to buy
21 computer printers. One of those printers was retained
22 by Mr. Bedard at his home for approximately 18 months
23 and used by him for minor hockey business. It was
24 later turned over to the government.

25 On Count 3, the conviction is for defrauding the
26 Government of the Northwest Territories, contrary to
27 Section 380(1)(a) of the *Criminal Code*. This offence

1 occurred during the spring and summer of 1996.
2 Mr. Bedard recommended the awarding of an
3 environmental assessment contract for a waste site in
4 Wrigley to his friend's company. The contract was
5 awarded and the company invoiced the government for
6 \$20,000. Mr. Bedard endorsed it with his engineer's
7 stamp to say that the work had been done, the
8 government paid the \$20,000, and Mr. Bedard then
9 invoiced the company for \$15,000 for doing the work
10 under the contract. He was paid although no work was
11 done. The company has since repaid the \$20,000 to the
12 government.

13 These offences involved breach of the trust
14 placed by the public in the accused as a public
15 servant, and also breach of the trust an employer
16 places in an employee.

17 Mr. Bedard is 45 years old, divorced, the father
18 of three children. He obtained his engineering degree
19 in 1979 and worked teaching and as an engineer and
20 consultant in Ontario. In 1991 he came north and
21 worked as the municipal engineer for the Government of
22 the Northwest Territories in Cambridge Bay, and then,
23 from 1995, in Fort Simpson. After an audit revealed
24 these offences, he was suspended and then resigned
25 from that employment and worked for two years in
26 Iqaluit as the Town's Director of Public Works. In
27 April of this year, he resigned from that position and

1 is now the Director of Public Works for the Town of
2 Calabogie, near Ottawa.

3 The three character witnesses called by the
4 defence and the letter submitted from his supervisor
5 in Iqaluit all spoke well of Mr. Bedard and his work.
6 The witnesses knew of no problems in his work, they
7 knew of no personal problems. All spoke of his
8 commitment to minor hockey and the time and effort he
9 has spent on that community activity. He has been
10 involved in other volunteer activities and was a
11 volunteer member of the Fire Department in Cambridge
12 Bay, and, according to Mr. Crossley's evidence, on at
13 least one occasion exhibited determination and bravery
14 in trying to save the victims of a fire.

15 Mr. Bedard spoke from counsel table and
16 apologized to the Court and his colleagues for what he
17 has done. He said that he had used the printer for
18 minor hockey work, and that he had intended to do the
19 work on the Wrigley contract but never got to it. He
20 acknowledges that even if he had done the work, the
21 transaction was in breach of his obligations as a
22 government employee and the guidelines of his
23 profession.

24 Sometimes, in this type of case, there is a clear
25 motive or explanation for the offence. For example,
26 people steal from or defraud their employer to support
27 a lavish lifestyle or a gambling habit, or sometimes

1 there are alcohol or drug or other problems in the
2 background. The puzzling cases are the ones, as here,
3 where there is no obvious motive or explanation.

4 I do not put a lot of weight on Mr. Bedard's
5 intentions in this regard. He certainly knew that he
6 was not entitled to the printer and the money and that
7 he was doing wrong in endorsing as done work that was
8 not, in fact, done. He made a good salary; his child
9 and spousal support obligations were not out of the
10 ordinary; no personal or financial problems have been
11 identified. So I have to wonder: Was it just greed?
12 Was it perhaps a desire to see if he could just get
13 away with it that motivated him? And I find I really
14 can't answer those questions on the evidence before
15 me.

16 Mr. Bedard has no previous record. He has
17 pleaded guilty. Although there was a preliminary
18 inquiry and the guilty plea came on the eve of trial,
19 it does, in my view, indicate remorse and that he is
20 taking responsibility for what he did. It has also
21 saved the time and expense of a two-and-a-half-week
22 trial with 14 or more witnesses. As to the timing of
23 the guilty plea, I take into account, as submitted by
24 defence counsel, that there were other charges that
25 did not proceed, which may explain why it was not
26 entered earlier. So I give Mr. Bedard full credit for
27 the guilty plea as a mitigating factor.

1 Apart from the facts of the offences and the
2 breach of trust involved, no aggravating factors have
3 been suggested. Crown counsel did refer to the
4 victims of the offences as the taxpayers, the public,
5 and the residents of the community whose work did not
6 get done under the contract. The effect on those
7 communities is difficult to assess because there is no
8 specific information before me about that. But the
9 public is clearly the victim. The facts themselves do
10 have aggravating aspects in that these offences
11 obviously took some planning, they were thought-out,
12 they were breaches of professional obligations that
13 Mr. Bedard has; and certainly, in the case of the
14 printer, although one might consider that the less
15 serious of the two offences in some ways, I note that
16 the printer was kept for a lengthy period of time.

17 The maximum sentence for a conviction under
18 Section 122 is five years' imprisonment. The maximum
19 under Section 380(1)(a) is ten years' imprisonment.
20 There is no minimum prescribed for either offence.

21 Crown counsel takes the position that a sentence
22 of 15 to 18 months in a correctional facility should
23 be imposed. Defence counsel has submitted that a
24 sentence of one year imprisonment to be served in the
25 community, that is a conditional sentence, is
26 appropriate.

27 I think it is well recognized that prior to the

1 conditional sentence regime coming into effect in
2 September of 1996, offences like these here in the
3 Northwest Territories and elsewhere in Canada tended
4 to result in imprisonment, although exceptional
5 circumstances were often considered to justify a
6 non-custodial sentence. When Parliament introduced
7 the conditional sentencing regime, it did not restrict
8 conditional sentences to any particular offences or
9 offenders. Counsel in this case agree that Mr. Bedard
10 meets the criteria for a conditional sentence as set
11 out in Section 742.1 of the *Criminal Code* in that the
12 offences are not punishable by a minimum term of
13 imprisonment, a sentence of less than two years is
14 appropriate, and there is no evidence that allowing
15 Mr. Bedard to serve his sentence in the community
16 would endanger the safety of the community. So the
17 real question, and what counsel have focused on, is
18 whether a conditional sentence is appropriate and
19 consistent with the fundamental purpose and principles
20 of sentencing. Those principles are set out in
21 Sections 718 to 718.2 of the *Criminal Code* and they
22 include the following: 718.2(d) "An offender should
23 not be deprived of liberty, if less restrictive
24 sanctions may be appropriate in the circumstances,"
25 and 718.2(e) which says in part: "All available
26 sanctions other than imprisonment that are reasonable
27 in the circumstances should be considered for all

1 offenders..."

2 All of the principles of sentencing have to be
3 considered, not just the two I have just referred to.
4 But I do refer to them because, together with the
5 conditional sentence regime, they do indicate that
6 Parliament has sought, through this legislation, to
7 encourage the courts to impose sentences of other than
8 actual incarceration in appropriate cases. The
9 Supreme Court of Canada has much more eloquently
10 expressed and analyzed this in the *Proulx* case,
11 indicating, as it did, that where the statutory
12 prerequisites are met for a conditional sentence,
13 serious consideration should be given to imposing one.

14 I agree with the submission by defence counsel
15 that when looking at other cases, I have to consider
16 whether they were decided before the conditional
17 sentence provisions were enacted, and if they were
18 decided after that date, whether they were decided
19 before the Supreme Court of Canada handed down its
20 decisions in *Proulx* and *Bunn*. The usual justification
21 for a sentence of actual incarceration in breach of
22 trust property offences, whether involving public
23 servants or not, is denunciation and deterrence, and
24 those principles have to be given due weight in this
25 case. In *Proulx*, however, the Supreme Court of Canada
26 did say that a conditional sentence can provide a
27 significant amount of denunciation - that is, the

1 expression of society's condemnation of the offence -
2 and that judges should be wary of placing too much
3 weight on deterrence when choosing between a
4 conditional sentence and incarceration.

5 I have read all of the cases that were filed by
6 counsel. I will not go through them in this judgment.
7 Each case has different facts, although obviously
8 there are common elements in many of them. From all
9 accounts, Mr. Bedard is a man with a good professional
10 and volunteer service background. The evidence of
11 good character is neutral in the sense that these
12 offences are very often committed by persons of good
13 character because it is their good character and
14 background that gets them into the position they are
15 in and then allows them the opportunity to commit the
16 offences and quite often not to be detected for some
17 time. I do take into account that these offences
18 appear to be out of character for Mr. Bedard, that it
19 appears that, as his counsel said, he went off the
20 rails in Fort Simpson. What the evidence of good
21 character does do, however, is that it does provide
22 some assurance that if a conditional sentence were
23 imposed, Mr. Bedard would comply with the terms of it.

24 Crown counsel submitted that a sentence served in
25 the community would not have a restorative and
26 deterrent effect where, as here, the accused no longer
27 lives in the community where the offences were

1 committed. In *Proulx*, then Chief Justice Lamer said
2 that "A restorative approach seeks to address the
3 needs of the victim, the community, and of the
4 offender." Here, in my view, the victim and the
5 community are really one and the same; they are the
6 public.

7 I am not convinced that the community needs to be
8 the immediate community where the offence was
9 committed for there to be a restorative effect, nor do
10 I think that the Court, in *Proulx*, was restricting its
11 comments in that way. Certainly in some cases the
12 community directly affected by the offence will be of
13 greater concern. For example, where the effect on the
14 community is significant or is extremely detrimental.
15 I do think that it is quite likely that an individual
16 who is placed on conditions - for example, to report
17 to a supervisor, to remain under house arrest, to
18 perform community service - would find his liberty
19 sufficiently restricted, that questions would be asked
20 of him by others, and his status as an offender on a
21 conditional service order would come to be revealed,
22 and that is quite apart from any publicity that the
23 case may get in the media or through a professional
24 "grapevine". I think that Crown counsel has made some
25 good points in this regard, but having considered this
26 aspect, I do not view the fact that Mr. Bedard now
27 resides in Ontario as defeating the objectives of a

1 conditional sentence, and there is some precedent for
2 this view, cases which counsel did not come across.
3 One is a case that I decided, the case of Ronald
4 Tologanak. The date of that sentence was January 28,
5 1999, Case Number CR 03517. Mr. Tologanak was
6 convicted of theft of \$40,000 from his employer, the
7 Kitikmeot Hunter's and Trapper's Association. He held
8 that position in either Kugluktuk or Cambridge Bay.
9 In that case there was a joint submission by Crown and
10 defence, which I accepted, for a conditional sentence
11 of two years less a day and two years probation in
12 circumstances where Mr. Tologanak was going to be
13 living, for at least part of that time, in Edmonton
14 and in Yellowknife. There is also the case of Michael
15 Murphy, decided November 5, 1997, Case Number CR 3355,
16 a decision of Mr. Justice Richard. Mr. Murphy was, at
17 the time in question, on the Board of Directors of the
18 Pangnirtung Fisheries. He set fire to the fish plant
19 in Pangnirtung, causing extensive damage, and was
20 convicted of damaging property. Again that was a
21 joint submission, accepted by Mr. Justice Richard, for
22 a conditional sentence of six months. Mr. Murphy was
23 living, not in Pangnirtung, but in Ottawa at the time
24 of the sentence, and, in fact, there was a condition
25 of the conditional sentence that he not return to
26 Pangnirtung.

27 Now, I do acknowledge that in both those cases,

1 *Tologanak and Murphy*, there was an order for
2 restitution, and in this case, no such order is
3 requested or needed.

4 I do take into account that in this case
5 Mr. Bedard does not appear to have, as in some of the
6 cases referred to, suffered ruin and humiliation. Or
7 does not appear to be in disgrace, at least from the
8 colleagues who testified here before me. I do note
9 that he still has to deal with discipline proceedings
10 with his professional associations and that he may
11 well incur sanctions imposed by them. These sanctions
12 may hinder or even prevent him from working in his
13 chosen profession. I do consider that for someone of
14 Mr. Bedard's otherwise good character and background,
15 the very fact of being charged, the humiliation of
16 coming before the Court, being in the public eye in
17 these circumstances, and now have having a criminal
18 record, is likely to have a deterrent effect on him
19 and on other persons similarly situated.

20 I note that although these offences are serious
21 and they do damage to the trust we place in public
22 servants, this is not a case where the victim faces
23 ruin or devastation or trauma such as one could find,
24 for example, in a case where an old-age pensioner has
25 their life savings taken by a financial advisor. It's
26 not, obviously, a crime of violence.

27 I do hesitate somewhat in concluding that -- or

1 from concluding, rather, that this type of offence is
2 so prevalent in the Northwest Territories that only
3 actual incarceration can address it appropriately.
4 Some concrete statistics which are not before me might
5 prove otherwise, and I do take note of the fact that
6 in 1994, in the *Shott* case, Judge Bruser, of the
7 Territorial Court, referred to a steady stream of
8 crimes involving breach of trust in the Northwest
9 Territories. However, I cannot say that in the last
10 five years these are offences that regularly come
11 before me as a judge of this court, in contrast, for
12 example, to sexual offences, some involving breach of
13 trust. I do acknowledge the *Hashem* decision of the
14 Alberta Court of Appeal, but I note that it was
15 decided before the Supreme Court of Canada decisions
16 in *Proulx* and *Bunn*, which I do think have provided
17 some new direction on sentencing in these matters.

18 The sentence does have to be proportionate to the
19 gravity of the offence, and I bear that in mind. I
20 find that Mr. Bedard does meet the qualifications for
21 a conditional sentence, and, all considered, I do not
22 believe that either Mr. Bedard or the facts of this
23 case are such that a term of actual incarceration is
24 required based on any of the principles of sentencing.
25 In my view, and to echo what Mr. Justice Taliano said
26 in the *Gross* case, this is probably the type of
27 situation that Parliament had in mind when it enacted

1 the conditional sentence provision.

2 Stand up, please, Mr. Bedard. Mr. Bedard, I
3 sentence you as follows: On Count 1 of the
4 Indictment, you will serve a term of 15 months'
5 imprisonment to be served in the community. On Count
6 3 of the Indictment, you will serve a term of 15
7 months' imprisonment to be served in the community and
8 that will be concurrent. The conditions are as
9 follows: You will keep the peace and be of good
10 behaviour. These are the statutory conditions. You
11 will appear before the Court when required to do so by
12 the Court. You will report to a conditional sentence
13 supervisor within three working days of today, here in
14 Yellowknife, and thereafter when required by the
15 supervisor and in the manner directed by the
16 supervisor. You will remain within the jurisdiction
17 of the Northwest Territories or the province of
18 Ontario unless written permission to go outside those
19 jurisdictions is obtained from the Court or the
20 supervisor. You will notify the Court or the
21 supervisor in advance of any change of name or address
22 and promptly notify the Court or the supervisor of any
23 change in employment or occupation. The additional
24 conditions are that you will perform 200 hours of
25 community service. You will provide for the support
26 of your dependents. You will confine yourself to your
27 home between the hours of 6 o'clock p.m. and 7 o'clock

1 a.m. except for the performance of community service,
2 your employment, medical emergencies, and dealing with
3 your professional associations. You will cooperate
4 fully with random checks by telephone and in person by
5 your supervisor or the police to verify your
6 compliance with this conditional sentence. In
7 accordance with -- first of all, do you understand
8 those condition, Mr. Bedard?

9 THE ACCUSED: Yes.

10 THE COURT: In accordance with Section
11 742.3(3), I direct that a copy of the conditional
12 sentence order be given to Mr. Bedard and that the
13 clerk, with the assistance of defence counsel,
14 Mr. Benkendorf, explain to Mr. Bedard the substance of
15 Sections 742.4 and 742.6 and the procedure for
16 applying under Section 742.4 for changes to the
17 optional conditions.

18 I do caution you, Mr. Bedard, that under Section
19 742.6(9), if you breach the terms of the conditional
20 sentence order, this Court may order you to serve any
21 unexpired portion of the sentence in custody. So you
22 must be aware of that. Thank you. You may sit down.

23 Counsel, is there anything I haven't addressed or
24 that you feel should be dealt with?

25 MR. O'HALLORAN: First, two questions. Number
26 one, are you considering a probationary period?

27 Number two, consideration of the time to complete the

1 community service or a rate at which the community
2 service order should be completed?

3 THE COURT: Well, my intention was not to
4 impose any term of probation. As far as the timing of
5 the work, the way the order is worded and what I do
6 intend is that Mr. Bedard has the 15 months to
7 complete it. Do either of you want to address -- I
8 hadn't really intended to require that it be done at a
9 certain rate. If you want to address that, I'll hear
10 from you.

11 MR. O'HALLORAN: Here's why I bring that to the
12 Court's attention. I'm not saying that this is going
13 to happen, but I'm saying in the event this is a
14 possibility where an offender who's sentenced to a
15 conditional sentence, for example, for 15 months, has
16 15 months to complete 200 hours of community service,
17 technically speaking, would never be in breach of not
18 performing any of the hours of community service until
19 the 15 months had expired. At that point in time,
20 there is no additional jail sanction for the accused
21 for the non-completion of the hours. My point is, for
22 example, if you allow him to have the 15 months and
23 say you'll complete it within 15 months but don't
24 specify a time, if the gentleman doesn't complete the
25 200 hours at all, it would only be, if I can use the
26 expression, an actionable breach when the 15 months
27 have expired. At that point in time, there is no

1 additional conditional sentence sanction. There could
2 be, I suppose, a breach after the fact, but that
3 wouldn't have the same weight, for example, as it
4 would if you had suggested you will complete your
5 community service hours at a certain rate per month.

6 THE COURT: All right, I understand what
7 you're saying. I take it, though, that if he was
8 breached after the sentence had expired, he could be
9 subject to a jail sentence at that time for that
10 breach?

11 MR. O'HALLORAN: But he wouldn't be subject to
12 spending the rest of his conditional sentence in jail.

13 THE COURT: No.

14 MR. O'HALLORAN: And that's the main sanction of a
15 conditional sentence is that actual jail sentence
16 hanging over your head. That's why I suggest that to
17 the Court.

18 THE COURT: I understand. Mr. Benkendorf.

19 MR. BENKENDORF: My Lady, I think that two points
20 need to be considered in looking at that possibility.
21 One is that Mr. Bedard will be reporting regularly to
22 his supervisor, so I expect the supervisor will be
23 monitoring that. Second, as given, the evidence we
24 heard about Mr. Bedard's record of community service
25 and the amount of time he spent with minor hockey, I
26 would expect that he will well exceed the 200 hours
27 without any problem whatsoever.

1 THE COURT: Certainly, from reviewing the
2 other cases, it doesn't appear that the rate of the
3 work is always specified. In this case, I'm content
4 to leave it as is and simply require that it be done
5 within the 15 months. I think, Mr. Benkendorf, your
6 point is well taken that the supervisor, I'm sure,
7 will be monitoring that and taking that into account
8 in terms of the reporting that is requested of
9 Mr. Bedard.

10 Now, is there anything else, Counsel, that I
11 haven't considered that I should?

12 MR. O'HALLORAN: I can't think of it at this time
13 if there is.

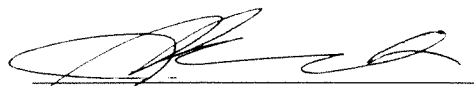
14 MR. BENKENDORF: No, My Lady.

15 THE COURT: Thank you very much for your
16 submissions. Mr. Bedard, I certainly hope that you
17 will successfully complete this sentence and that you
18 will not again come before the Court. We'll close
19 court.

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Certified Pursuant to Rule 723
of the Rules of Court



Jane Romanowich, CSR(A)
Court Reporter