

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

LENA CLEARY

Transcript of the Reasons for Sentence given by The
Honourable Justice V.A. Schuler, sitting in Yellowknife, in
the Northwest Territories, on the 10th day of April,
A.D. 2002

APPEARANCES:

Mr. A. Slatkoff:	Counsel for the Crown
Mr. H. Latimer:	Counsel for the Defendant

(Charges under s. 334(a), 380(1)(a) and 122 of the
Criminal Code of Canada)

1 THE COURT: Lena Cleary has been found guilty
2 by a jury of one count of theft of over \$5,000 and one
3 count of fraud over \$5,000. It is now my difficult
4 duty to impose an appropriate sentence on her for
5 these offences.

6 On Count 1, the theft, the evidence was that
7 \$20,428 went missing from cash received for rent and
8 other payments by the local housing office
9 administering public housing for Dettah and N'dilo.
10 Ms. Cleary was the manager of that office, variously
11 referred to as Somba K'e Housing Authority, the Done
12 Naawo Society, and the Yellowknives Dene Band Housing
13 Division. Money that was recorded on receipts was not
14 posted in the receipts journal or deposited into the
15 bank account. The jury was clearly satisfied beyond a
16 reasonable doubt that Ms. Cleary, who had control of
17 the journal, took the money. She repaid \$220 of the
18 amount taken. So in terms of considering restitution
19 on that count, the amount would be \$20,208.

20 On Count 2, the fraud charge, the jury had a
21 number of transactions and allegations to deal with.
22 Because the jury verdict of guilty on that count does
23 not, and cannot, specify the acts that make up the
24 fraud and because counsel take different positions on
25 the extent of the fraud, I must determine what the
26 evidence proves, bearing in mind the criminal standard
27 of proof, which is proof beyond a reasonable doubt.

1 Dealing first with the building supplies. In my
2 view, the evidence proves beyond a reasonable doubt
3 that building supplies to a total value of \$10,400
4 were billed to the local housing office between August
5 1993 and December 1994 but were used in the renovation
6 to Ms. Cleary's house. Ms. Cleary admitted in her
7 evidence that she billed supplies for her own use to
8 the housing office and that she knew it was against
9 the rules. The only difference was that she said she
10 had billed only about \$2,000 worth. However, in my
11 view, she was not credible on this issue. She was
12 evasive and uncertain about the amount she had billed
13 and apparently considered as a loan to her from the
14 housing office. I am satisfied that she did defraud
15 the housing office of \$10,400 in relation to the
16 building supplies, but that she repaid the sum of \$200
17 through a payroll deduction. So in terms of
18 restitution, that would leave the sum of \$10,200.

19 Next, dealing with the vehicle allowance. The
20 evidence was clear that Ms. Cleary overpaid herself
21 the vehicle allowance in the amount of \$2,150. In
22 one instance, by taking three of the allowable \$150
23 per month allowances in one month. This occurred over
24 a period of two years, and then Ms. Cleary repaid some
25 of the money by taking less than she was entitled to
26 in a third year, thus repaying \$1,300. She therefore
27 defrauded the housing office of \$2,150, but only \$850

1 will be considered for purposes of restitution.

2 Then the gas. Despite receiving the monthly
3 vehicle allowance which was to compensate her for the
4 use of her vehicle and cover her gas expenses,
5 Ms. Cleary billed to the housing office gas purchases
6 for gas used by her and her husband to a total of
7 \$5,013, which she was not entitled to under the terms
8 of the vehicle allowance. She also billed gas for
9 other vehicles to a total of \$7,715. However, the
10 Crown seeks restitution of only \$1,738 of that amount
11 based on gas purchased on days when Ms. Cleary was not
12 working. In my view, the evidence gives rise to some
13 doubt as to whether she fraudulently billed the rest
14 of the gas because it was billed on business days when
15 she was apparently working. It was not for her
16 vehicle, which is what the allowance was for. Her
17 testimony about the gas being used for business
18 purposes is not unreasonable in those circumstances.
19 So I have some doubt on that issue. And Crown's
20 position regarding restitution simply confirms my view
21 in that regard. In other words, with respect to the
22 sum of \$7,715 alleged, I am not satisfied that the
23 evidence proves beyond a reasonable doubt that she
24 defrauded the housing office of the amount beyond
25 \$1,738. Therefore, I am satisfied that there was a
26 total amount for gas billed fraudulently of \$6,751,
27 being a total of the \$1,738 and \$5,013, and that is

1 also the amount to be considered for restitution.

2 Next, the vehicle repairs. The monthly vehicle
3 allowance was to cover vehicle repairs, but Ms. Cleary
4 billed \$5,760 to the housing office for repairs for
5 her own, her husband's, and other people's vehicles.
6 There is no basis in the evidence upon which to find
7 that the housing office would be paying to repair
8 people's vehicles, unlike paying for gas used for its
9 business purposes. I am satisfied that that amount
10 should be included in the fraud charge as well.

11 Next, with respect to vehicle rentals. The sum
12 of \$8,693 was billed to the housing office by
13 Ms. Cleary for vehicle rentals. In this case, the
14 Crown seeks restitution of only \$2,746 for rentals on
15 days when Ms. Cleary was not working. This, I think,
16 is fair in that in this instance, also, the evidence
17 was not clear that on business days the vehicles were
18 not used for business purposes. It does appear from
19 the evidence that at least some of the invoices for
20 those rentals were presented to the people signing the
21 cheques. I have some doubt as to whether the evidence
22 supports fraud, again bearing in mind the criminal
23 standard of proof with respect to the full amount, and
24 so I find the amount that is to be included in the
25 fraud charge for vehicle rentals is \$2,746.

26 Vacation travel allowance was the next category
27 included in the fraud charge. Ms. Cleary claimed

1 \$5,817 in vacation travel allowance to which she
2 agreed she was not entitled because her husband had
3 already claimed it as a government employee. Her
4 explanation that she and her husband never discussed
5 it and never discussed who would claim the allowance
6 or who was paying for what in relation to their
7 vacation expenses is not credible in my view. The sum
8 of \$5,817 will therefore be included in the fraud.

9 Next is the housing allowance. Ms. Cleary
10 collected the sum of \$5,381 as housing allowance in
11 1994. During some of that time, she lived at her
12 brother's in his subsidized housing. This would have
13 disentitled her from the housing allowance according
14 to the housing policy. The question really is how
15 long she was at her brother's. Was it two and a half
16 months as she testified, between one month and a year,
17 or maybe six months as Ms. Colin testified, or 12
18 months as the Crown alleges from the telephone
19 records? The telephone records prove only that her
20 telephone number was installed at her brother's house,
21 and that was for a period of one year. Ms. Cleary's
22 explanation for that was that he did not have a phone
23 and she wanted to keep her number while her house was
24 under renovation. The notes made on the telephone
25 records, which were in evidence, were made by some
26 unknown person whose source of knowledge is not known.
27 So they prove no more than what Ms. Cleary admitted.

1 In other words, that her phone was installed at her
2 brother's for approximately one year. She testified
3 that during that time she lived mostly at the house
4 that was being renovated and in a tent in the summer.

5 Considering all the evidence and the standard of
6 proof in a criminal case, I have a great deal of
7 difficulty with the evidence on this count and I'm not
8 satisfied that it proves anything more than that she
9 did live at her brother's, in his subsidized housing,
10 for two and a half months. She was not entitled to
11 the allowance for those months and she would, as the
12 housing manager, have known that. At the monthly
13 allowance of \$450, this amounts to fraud in the amount
14 of \$1,125. So the total under the fraud count,
15 therefore, that I find is \$55,177, of which \$1,720 has
16 been repaid. That leaves \$53,457 owing.

17 As I have noted, these offences were committed
18 when Ms. Cleary was the manager of the local housing
19 office or authority. The housing office was
20 government-funded and reported to the NWT Housing
21 Corporation until 1995, when it was taken over by the
22 Yellowknives Dene First Nation.

23 Insofar as her personal situation is concerned,
24 Ms. Cleary is 41 years old, married, with four
25 children. Three of those children, ages 18, 15, and
26 9, live with her and her husband. The eldest is
27 expecting a child of her own in the next couple of

1 months. Ms. Cleary has no criminal record.

2 Ms. Cleary and her husband have both been well
3 employed over the years, but they do also spend time
4 on traditional pursuits.

5 It appears from the pre-sentence report and the
6 testimony presented in court that Ms. Cleary has
7 strong family ties and support from both her family
8 and her community. In commenting on the support, I do
9 bear in mind that although the local housing authority
10 is named as the victim of the theft and fraud in the
11 Indictment, in the end, it was the government who lost
12 the money because it had to make up the deficit.

13 The main aggravating factor is that Ms. Cleary
14 was in a position of trust in relation to the local
15 housing office as its manager. She had previously
16 held the same position with the Deline local housing
17 authority and she was certainly aware of her
18 responsibilities and that she was dealing with money
19 for which the housing office had to account to the NWT
20 Housing Corporation. She abused the trust placed in
21 her.

22 A significant factor in all cases like this is
23 that an individual of good character and background,
24 like Ms. Cleary, is able to get a position like this
25 one, a position of trust, and then to abuse and take
26 advantage of that trust precisely because they are
27 trusted. It is difficult for an employer to protect

1 itself from employees who steal because the employer
2 does not expect it to happen because they trust the
3 employee. That is why, in cases like this, the
4 employee is often able to get away with stealing or
5 defrauding the employer for a long time before they
6 are found out. As former Chief Sangris said in his
7 evidence at the trial, "you have to trust your
8 managers". Crimes like the ones Ms. Cleary committed
9 make it more difficult for people to do that.

10 The Crown submits that it was an aggravating
11 factor that Ms. Cleary was an elected band councillor
12 for much of the time over which the offences were
13 committed. In my view, that fact should not be
14 treated as a separate or additional aggravating factor
15 because she did not commit the offences in her
16 capacity as band councillor. However, I have no doubt
17 that her position as a band councillor was an
18 additional reason why she was trusted by people, why
19 people would rely on her to act honestly.

20 It is aggravating that the offences involve a
21 substantial amount of money and that they involve
22 repeated acts of theft and fraud over approximately
23 six years.

24 It was also submitted by the Crown that
25 Ms. Cleary took pains to falsify records. While it is
26 clear that she did not record the receipts in the
27 journal, there were few other instances of actual

1 falsification of records. It seems to me that these
2 offences, apart from the actual thefts, involved for
3 the most part a failure to tell those signing the
4 cheques what the cheques were actually for more so
5 than an actual deliberate falsification of records.
6 The evidence was not sufficient, in my view, to
7 establish that she forged Mr. Sangris's signature.
8 That having been said, there was evidence that she
9 tried to cover up what she had done; for example, by
10 not disclosing all the receipt books to the yearly
11 auditors and by misleading them as to the reason for
12 the payroll deduction rather than telling them it was
13 to repay the housing office for some of the personal
14 building supplies she had charged.

15 I am not satisfied that this was a calculated,
16 premeditated scheme from the outset. The evidence
17 instead suggests that because there were not strong
18 controls in place and because she was the ultimate
19 authority in the local office, Ms. Cleary was able to
20 get away with using the Housing Authority's money for
21 her own purposes and so kept on doing it when she did
22 not get caught.

23 From her own testimony at trial, it is clear to
24 me that Ms. Cleary had a rather inflated sense of her
25 authority. At one point she said, in answer to a
26 question about the gasoline purchases, that she didn't
27 know she had to answer to anyone, that she felt the

1 most important thing was that she had left results in
2 the community. And from all accounts, she did leave
3 good results in the community in the area of improved
4 housing. However, everyone who deals with money that
5 is not their own has to answer to the source of the
6 money, be it a band or a government or another person.
7 That is something that is so elementary to the
8 operation of business and society that it defies logic
9 that Ms. Cleary would claim it didn't apply to her.

10 I do not agree, as Crown counsel submitted, that
11 I should infer that Ms. Cleary's actions have damaged,
12 or will damage, the credibility of the First Nation in
13 its self-government negotiations. To draw that
14 inference, in my view, would be a generalization that
15 would not be reasonable and would be unfair to both
16 the First Nation and Ms. Cleary.

17 The fact that Ms. Cleary pleaded not guilty and
18 exercised her right to a trial is not aggravating, nor
19 do I treat her apparent lack of remorse, except for
20 the way in which the publicity has affected her
21 family, as aggravating. All of this simply means, as
22 has been pointed out in other cases, that she does not
23 have the benefit of the usually mitigating effect of a
24 guilty plea and expression of remorse.

25 As the case law indicates, a good background is
26 not usually considered a mitigating factor because, as
27 I have already said, it is precisely because a person

1 has a good background that he or she is able to commit
2 this type of crime.

3 Other than the strong support Ms. Cleary has from
4 her family and the community, the only factor that I
5 think can be said to be in mitigation in this case is
6 the length of time that this matter has taken. In
7 written reasons filed on March 6th, 2002, I dismissed
8 Ms. Cleary's application for a stay of proceedings
9 based on pre-charge delay arising from the fact that
10 she was dismissed from her employment in March 1996
11 when it was discovered that there was a problem, the
12 auditors had completed their report by July of 1997,
13 but she was not charged until October 2000 essentially
14 because of lack of police resources. Although the
15 delay in charging her did not entitle her to a stay,
16 it is a circumstance that I do take into account in
17 mitigation of sentence because it means that she has
18 had the uncertainty of this matter hanging over her
19 for over four years. In that regard, I rely on the
20 *Leaver* and *Bosley* cases, from the Ontario Court of
21 Appeal, and the *McCauley* case, from the Alberta Court
22 of Appeal, cited in defence counsel's brief.

23 I have reviewed the cases submitted by both
24 counsel. Those cases emphasize, as do many others,
25 that deterrence and denunciation are of paramount
26 significance in cases of theft and fraud involving
27 breach of trust. Many of the cases were decided

1 before the conditional sentence regime was introduced
2 by Parliament and became law. So prior to that
3 happening in 1996, the general rule was that these
4 offences were dealt with by a term of imprisonment in
5 jail. Since the advent of the conditional sentence
6 regime, the Supreme Court of Canada has had the
7 opportunity to provide us with some guidance in cases
8 such as *Proulx* and *Bunn*, both decided in the year
9 2000. Cases which were decided before those must, I
10 think, be treated with some caution as a result. In
11 *Proulx*, the Supreme Court said that a conditional
12 sentence can provide a significant amount of
13 denunciation and that judges should be wary of placing
14 too much weight on deterrence when choosing between a
15 conditional sentence and incarceration.

16 Crown counsel conceded in his submissions that
17 Ms. Cleary is not a danger to the community, and
18 certainly there is no evidence that she is.

19 There is no minimum term of imprisonment for the
20 offences for which she has been convicted. Under
21 Section 742.1, if the Court impose a sentence of less
22 than two years and if the Court is satisfied that
23 serving the sentence in the community would be
24 consistent with the fundamental purpose and principles
25 of sentencing, then a conditional sentence (that is, a
26 sentence of imprisonment to be served in the
27 community) may be imposed.

1 In this case, the defence seeks a conditional
2 sentence. The Crown seeks a sentence of two to three
3 years in jail, not conditional. As I think that a
4 sentence in the area of two years for this first
5 offender would be appropriate, I have to consider
6 whether that sentence should be conditional.

7 In cases like this, the specific facts are very
8 important. While, in this case, the amount of money
9 was significant, it was also significantly less than
10 the sums in the *Fehr* case in the Saskatchewan Court of
11 Appeal and the *Grundy* case in the Alberta Court of
12 Appeal. Also in *Fehr*, where the Court of Appeal
13 overturned a conditional sentence, there were added
14 losses besides the money because of the loss of
15 reputation of the victim company and the fact that the
16 livelihood of many of its employees was jeopardized.

17 In this case there is no evidence of any loss
18 other than the money. There is specifically no
19 evidence that the community lost out in the sense of
20 having to do without housing because of Ms. Cleary's
21 actions. Now, obviously that would seem to be because
22 the NWT Housing Corporation made up the deficits which
23 resulted to the local housing office from Ms. Cleary's
24 crime. It is, however, somewhat ironic that the
25 letter filed on sentencing from Chiefs Edjericon and
26 Liske attributes the fact that N'dilo and Dettah were
27 awarded the Most Improved Community Award by the

1 government in 1994 as being due in large part to
2 Ms. Cleary's work in assisting people to move from
3 substandard housing. Now, again, I bear in mind that
4 her good work also explains in part how she was
5 trusted and able to get away with these offences for
6 so long. In the end, obviously the community in the
7 larger sense does suffer because, in the end, it will
8 be the taxpayers who bear the cost.

9 It is difficult to know from the evidence what
10 Ms. Cleary's motive was in committing these crimes.
11 There is no evidence that she led a lavish lifestyle
12 or that she needed money for gambling or had personal
13 financial problems as we sometimes see in these cases.
14 The only motive that does appear from the evidence is
15 greed, which again is not out of the ordinary in these
16 cases.

17 One of the principles of sentencing enshrined in
18 Section 718.2(b) of the *Criminal Code* is that a
19 sentence should be similar to sentences imposed on
20 similar offenders for similar offences committed in
21 similar circumstances.

22 I wish to refer briefly to some other cases from
23 this Court that were not cited by counsel.

24 In 1997, in the case of *R. v. Murphy*, [1997]
25 N.W.T.J. No. 87, Mr. Justice Richard, on a joint
26 submission, imposed a six-month conditional sentence
27 where the accused, a member of the board of directors

1 of Pangnirtung Fisheries started a fire at the fish
2 plant. He was charged with mischief. He did not
3 plead guilty but did not contest the Crown's evidence.
4 He had a minor criminal record. The loss suffered by
5 the fish plant was \$40,000. This was a breach of
6 trust situation, which, although it involved only one
7 act, involved an act which could have caused harm to
8 people.

9 In *R. v. Tologanak*, [1997] N.W.T.J. No. 16, a
10 case which I heard, the accused pleaded guilty to
11 stealing \$40,000 from the Kitikmeot Hunter's and
12 Trapper's Association, of which he was the executive
13 director. He had a dated record for theft and had
14 tried to make restitution. I accepted the joint
15 submission by counsel for a conditional sentence of
16 two years less a day with two years' probation to
17 follow and restitution.

18 In *R. v. Bedard*, (2000) NWTSC 73, there was a
19 guilty plea to breach of trust and fraud. The
20 accused, a government employee, had obtained \$15,000
21 and a computer printer by falsely certifying that
22 certain work had been done for the government. I
23 imposed a 15-month conditional sentence. He had
24 already made restitution in that case.

25 Now, obviously there are some significant
26 differences between these cases and Ms. Cleary's case,
27 but they all involve breach of trust, taking or

1 causing loss to an employer's or an organization's
2 property.

3 I must also have regard to Section 718.2(e) of
4 the *Criminal Code* which says:

5 "All available sanctions other than
6 imprisonment that are reasonable in the
7 circumstances should be considered for
8 all offenders, with particular attention
9 to the circumstances of aboriginal
10 offenders."

11 I conclude from that section, along with the
12 conditional sentence regime, that Parliament has
13 sought, by these legislative provisions, to encourage
14 the courts to impose sentences of other than actual
15 incarceration in appropriate cases. I think the
16 Supreme Court of Canada has reinforced that in the
17 cases of *Proulx*, *Bunn*, and *Gladue*.

18 Having given it some consideration, I do not
19 conclude that the amount of money involved in this
20 case, the number of transactions, or the period of
21 time over which the offences took place, make a
22 conditional sentence inappropriate.

23 Although Ms. Cleary's good background is not a
24 mitigating factor when it comes to sentence, it does
25 provide some assurance that she would comply with the
26 terms of a conditional sentence if one were imposed.
27 I draw the same conclusion from the letter from her
employer for the past four years since the commission
of the offences. In that letter, she is referred to

1 as a capable and dependable employee who is committed
2 to her family and dedicated to her community.

3 One factor that has caused me some concern is the
4 lack of remorse, but, as I have already noted, that is
5 not an aggravating factor and I am not prepared to
6 give it more weight than the factors I have just
7 mentioned in assessing Ms. Cleary's suitability for a
8 conditional sentence.

9 I need not rely on the *Gladue* case because the
10 sentence I am going to impose would, I believe, be
11 appropriate in this case even if Ms. Cleary was not an
12 aboriginal person. The principles set out in *Gladue*
13 simply reinforce my view that such a sentence is
14 appropriate in this case.

15 Another of the fundamental principles of
16 sentencing is that a sentence must be proportionate to
17 the gravity of the offence and the degree of
18 responsibility of the offender. When I consider all
19 the circumstances, I do not believe that this is a
20 case that requires a term of actual imprisonment,
21 notwithstanding that it is a very serious offence and
22 that Ms. Cleary bears a high degree of responsibility.
23 I would repeat what I said in the *Bedard* case and what
24 was said by Mr. Justice Taliano of the Ontario Court
25 in the case called *Gross*, cited in *Bedard*, that this
26 is probably the type of situation that Parliament had
27 in mind when it enacted the conditional sentence

1 regime. In other words, a non-violent crime, a crime
2 of property, and an offender of otherwise good
3 character. I think it is also important that
4 Ms. Cleary get back on track to becoming the
5 productive member of her community that she has been
6 in the past and at the same time face the community
7 whose trust, and I use that in the broadest sense, she
8 has not lived up to by committing these crimes.

9 I have considered the issue of supervision of the
10 sentence in Dettah where Ms. Cleary lives. Dettah is
11 not all that far from Yellowknife. And the
12 pre-sentence report, which does say that she would be
13 a suitable candidate for a community-based
14 disposition, does not identify any problems with
15 supervision. In my view, it would not be appropriate
16 to deny someone who is otherwise suitable the benefit
17 of a conditional sentence simple because it may be
18 more difficult to supervise.

19 The order I make includes a form of house arrest,
20 but I have made allowance for Ms. Cleary to attend
21 work if she becomes employed and under other
22 circumstances, and I do that because she has a family
23 to help support, she will have a debt to repay, and I
24 think it is more productive and still consistent with
25 the principles of sentencing to have her start at that
26 now rather than later if she is able to obtain
27 employment.

1 A conditional sentence must include a punitive
2 element and there is no real doubt in my mind that
3 being confined to her house for substantial periods of
4 time carries a punitive aspect, perhaps in particular
5 for someone living in a small, close-knit community in
6 which being out in the community and being out on the
7 land is a significant activity.

8 Stand, please, Ms. Cleary.

9 In all the circumstances and having regard to all
10 the principles of sentencing, I have decided that an
11 appropriate sentence is two years less one day to be
12 served in the community. That will be the total
13 sentence for both counts.

14 The conditions of the sentence are as follows:
15 Number one, you will keep the peace and be of good
16 behaviour. Number two, you will appear before the
17 Court when required to do so by the Court. Number
18 three, you will report to a conditional sentence
19 supervisor within three working days of today here in
20 Yellowknife, and, thereafter, when and where required
21 by the supervisor and in the manner directed by the
22 supervisor. Four, you will remain within the
23 Northwest Territories unless written permission to go
24 outside the Northwest Territories is obtained from
25 this Court or the supervisor. Five, you will notify
26 this Court or the supervisor in advance of any change
27 of name or address and promptly notify the Court or

1 the supervisor of any change in employment or
2 occupation. Six, you will perform 200 hours of
3 community service at the direction of the supervisor
4 within the first 18 months of the conditional
5 sentence. Seven, for the full term of the conditional
6 sentence order, you will remain indoors at your place
7 of residence, 24 hours a day, except for the
8 following: (a) to complete the 200 hours of community
9 service as directed by the supervisor; (b) to go to,
10 attend at, and return home from employment should you
11 obtain employment, in which case you must first notify
12 the supervisor of your employer's name and address and
13 your hours of work; (c) to obtain emergency medical
14 attention for yourself, your husband, or a child
15 residing with you; (d) for one period per week, of not
16 more than four hours, to obtain groceries and other
17 necessities. Condition number eight, you will
18 cooperate fully with random checks by telephone and in
19 person by your supervisor or the police to verify your
20 compliance with this conditional sentence.

21 In accordance with Section 742.3(3) of the
22 *Criminal Code*, I direct that a copy of the conditional
23 sentence order be given to Ms. Cleary and that the
24 clerk, with the assistance of defence counsel, explain
25 to Ms. Cleary the substance of Section 742.4 and 742.6
26 and the procedure for applying under 742.4 for changes
27 to the optional conditions.

1 I bring to your attention, Ms. Cleary, and this
2 is very important, that if you breach any of the terms
3 of your conditional sentence order, if you breach any
4 of the conditions that I have just listed, you may be
5 brought back before this court and the Court may order
6 that you serve any of the unexpired portion of the
7 sentence in jail.

8 There will also be a restitution order under
9 Section 738 of the *Criminal Code* in the amount of
10 \$53,457 in favour of the NWT Housing Corporation as
11 stipulated in the letter marked Exhibit S4. I have
12 not made it part of the conditional sentence order
13 because of the uncertainty as to Ms. Cleary's
14 financial situation since she is not presently
15 working. So it will be open to the Crown to enforce
16 the order under Section 741. I would just say that I
17 would hope some arrangements would be made as between
18 Ms. Cleary and the Housing Corporation to start
19 repayment and to work out something suitable in that
20 regard.

21 You may have a seat, Ms. Cleary. Is there
22 anything further, Counsel, that I need to deal with?

23 MR. SLATKOFF: Your Honour, I'm wondering if it
24 might be appropriate as a further condition of the
25 24-hour condition that Ms. Cleary remain indoors that
26 there be no visitors past a certain hour, and this is
27 simply to add an additional punitive element to it.

1 If she were incarcerated in jail facilities, she would
2 have restricted visiting hours, and I submit it may be
3 appropriate in these circumstances as well. And, as
4 well, I wish that it -- I ask that it be made clear to
5 Ms. Cleary as to what the condition is to go to,
6 attend, and return from employment, that -- whether
7 she can run errands on the way or pick up her children
8 from school on the way to and from work. I believe
9 that should be made clear as well, whether she is to
10 proceed directly to work or if she's permitted to run
11 other errands while she's in town.

12 THE COURT: Well, I think it's clear from the
13 condition about going to work that she is to go to,
14 attend at, and return home from employment. Now, I'm
15 not going to impose a condition that she can't pick up
16 her children. She's living in a small community and
17 if her children are somewhere that they need to be to
18 be picked up, it seems to me to be a little bit
19 extreme to say she can't pick them up. But I think it
20 is clear, and I will make it clear, that she is to
21 proceed directly to work and home from work other than
22 making what I would consider a necessary stop. Now, I
23 can't predict what might happen, Mr. Slatkoff. I
24 think that that is as much as -- I would say at this
25 point she has the four hours to attend to necessities,
26 so that will not be part of going to and coming back
27 from work. But in terms of picking up her children, I

1 don't want to say that she cannot do that. I think
2 that is a little unreasonable.

3 As far as people not coming to her home past a
4 certain hour, there are other people living in her
5 home. I think it may be restricting their lives,
6 which I don't think I'm entitled to do under a
7 conditional sentence. I appreciate that the case law
8 has said that there is -- obviously, house arrest is
9 house arrest. But I don't think it means in all ways
10 turning her home into a jail. So I'm not going to
11 make that condition. I don't think, in the
12 circumstances, it is reasonable.

13 MR. SLATKOFF: The only other item I had, Your
14 Honour, I ask for an order returning exhibits when the
15 appeal period is expired.

16 THE COURT: Yes, there will be an order for
17 the return of the exhibits at the expiry of the appeal
18 period or once an appeal is determined, if an appeal
19 is taken. Is there anything from the defence then?

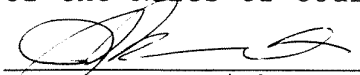
20 MR. LATIMER: No. No, thank you, Your Honour.

21 THE COURT: All right. Thank you. We will
22 close court.

23 **(PROCEEDINGS CONCLUDED)**

24

25 Certified Pursuant to Rule 723
26 of the Rules of Court

27 
Jane Romanowich, CSR(A), RPR
Court Reporter