

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- and -

MICHAEL ROBERT FRASER

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Transcript of the Oral Reasons for Sentence delivered  
by the Honourable Justice J.E. Richard, sitting at  
Yellowknife, in the Northwest Territories, on  
January 31st, A.D. 2007.

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APPEARANCES:

Mr. S. Hinkley: Counsel for the Crown  
Ms. S. Tkatch:

Mr. D. Rideout: Counsel for the Accused

(Charges under s. 149(1)(a), 465(1)(c) Criminal Code)

1 THE COURT: The offender before the Court  
2 is Michael Fraser, a 53-year-old, long-term  
3 resident of the Northwest Territories and a man  
4 with a long criminal record.  
5 Last month he completed his most recent  
6 sentence of imprisonment as a result of having  
7 committed an offence in January, 2005, the  
8 offence being possession of cocaine for the  
9 purpose of trafficking. He now pleads guilty to  
10 two other offences, both of them serious, both of  
11 them outstanding for some time.  
12 The first matter is an offence of so-called  
13 "public mischief" contrary to section 140 of the  
14 Criminal Code. That section of the Criminal Code  
15 states that it is an offence to, with intent to  
16 mislead, cause the police to enter into an  
17 investigation by reporting a non-existent crime.  
18 The charge is that in June and July of 2005,  
19 with intent to mislead the police, Mr. Fraser  
20 caused Inspector Fortin, the Officer in Charge of  
21 the Yellowknife Detachment of the RCMP, to enter  
22 into an investigation by making a false statement  
23 to the effect that certain members of the RCMP  
24 had sexually assaulted his female friend, Julie  
25 MacKeinzo.  
26 The background to this is that in January,  
27 2005 Mr. Fraser and his friend, Ms. MacKeinzo,

1 had been arrested by the RCMP and charged with  
2 unlawful possession of cocaine. While those  
3 charges were pending, Mr. Fraser and  
4 Ms. MacKeinzo attended at the RCMP Detachment to  
5 see Inspector Fortin and accused members of the  
6 RCMP of sexually assaulting Ms. MacKeinzo while  
7 she was detained at the detachment upon her  
8 arrest in January, 2005. The accusations were  
9 entirely false and Mr. Fraser knew that they were  
10 false.

11 Although the Criminal Code terms this  
12 offence "public mischief", that is really a  
13 misnomer, because the word "mischief" in the  
14 English language has the connotation of something  
15 minor, or wrongdoing that is merely annoying or  
16 irritating. It may be that some crimes of public  
17 mischief are minor, but this one is not. It is a  
18 serious offence against the administration of  
19 justice. As stated by the Alberta Court in the  
20 Ambrose case, the sting of this kind of crime is  
21 not so much causing the police to waste their  
22 time and resources, but, rather, the real harm  
23 done is the danger that innocent persons might be  
24 prosecuted and lose their reputations, their  
25 jobs, their livelihoods.

26 The accusations of Mr. Fraser and  
27 Ms. MacKeinzo were taken seriously by the police

1 authorities. These accusations were investigated  
2 promptly and thoroughly. The investigation  
3 concluded that nothing untoward had happened at  
4 all. Subsequently, Ms. MacKeinzo attended again  
5 at the RCMP Detachment and recanted her earlier  
6 accusations.

7 Mr. Fraser and Ms. MacKeinzo were both  
8 charged under the public mischief section of the  
9 Criminal Code. The Crown proceeded separately  
10 against each of them and proceeded by indictment.  
11 The maximum sentence is five years' imprisonment.

12 Mr. Fraser elected trial by Judge and jury.  
13 A Preliminary Inquiry was held in August, 2006  
14 and Mr. Fraser was committed to stand trial. A  
15 pre-trial conference was held in November, 2006,  
16 at which time Mr. Fraser indicated the trial was  
17 proceeding. Subpoenas were issued in December,  
18 2006 for 11 trial witnesses, including 10 police  
19 officers and detachment guards. Mr. Fraser's  
20 jury trial was scheduled for March 5th, five  
21 weeks from now.

22 Although he came before the Court this week  
23 and pleaded guilty and acknowledged that what he  
24 told the police commander in June, 2005 was false  
25 and although that plea and that acknowledgement  
26 act in mitigation of sentence, it cannot be said  
27 that this plea of guilty to that charge is made

1 by Mr. Fraser at the earliest reasonable  
2 opportunity.

3 One of the purposes of the sentencing  
4 process is to promote respect for the law. The  
5 principles of denunciation and deterrence are  
6 particularly important considerations in  
7 determining an appropriate sentence in this case,  
8 as is the principle of proportionality, in other  
9 words, the sentence ought to be proportionate to  
10 the gravity of the crime.

11 If I were to consider this offence as a  
12 stand alone offence, and taking into  
13 consideration all of the circumstances of this  
14 offence committed by this offender, including the  
15 circumstances of the plea to this offence and the  
16 criminal history of this offender, I would have  
17 imposed a sentence of 18 months' imprisonment.

18 I turn now to the other serious offence to  
19 which Mr. Fraser pleads guilty. He is charged in  
20 an indictment with conspiring with another man, a  
21 Mr. Wong, to commit the crime of trafficking in  
22 cocaine contrary to section 465 of the Criminal  
23 Code. The time frame in the indictment is July  
24 to October, 2005.

25 It is a notorious fact in our community that  
26 there has been a flourishing but illegal trade in  
27 cocaine in Yellowknife for a number of years. I

1 will repeat again what was said in another case  
2 in this courtroom a few months ago:

3 "The illegal trade in cocaine and  
4 crack cocaine in Yellowknife has had  
5 a devastating effect on the people  
6 and on the social life of our  
7 community. We know this because of  
8 the many cases that come before the  
9 courts where we see the snowball  
10 effect on the commission of crimes  
11 in this community. We see thefts,  
12 B & Es, assaults, domestic violence,  
13 and we have seen homicides, all  
14 related to cocaine addiction. We  
15 have seen broken families. We have  
16 seen destroyed lives. It has been  
17 said many times in this courtroom  
18 that the illegal cocaine trade is  
19 like a plague which has infested the  
20 social fabric of our community.  
21 Those who are involved in the supply  
22 and sale and trafficking of cocaine  
23 are like vultures or predators who  
24 are preying upon those weak members  
25 of the community who are addicted to  
26 this drug. The traffickers are  
27 presumably doing this for profit or

1 money. They apparently have no  
2 scruples about preying upon  
3 vulnerable people. For this reason  
4 alone, they ought to be punished.  
5 They are doing so even though there  
6 is a risk that they will end up in  
7 jail for a substantial period of  
8 time."

9 I will acknowledge here that it is said on  
10 behalf of Michael Fraser on this sentencing  
11 hearing that he was engaged in cocaine  
12 trafficking in our community, in part, to finance  
13 his own addiction to cocaine.

14 The RCMP in Yellowknife have devoted many  
15 resources to combatting the illegal cocaine trade  
16 in Yellowknife in recent years and have conducted  
17 major investigations. One such major  
18 investigation resulted in this charge against  
19 Mr. Fraser and many charges against other  
20 individuals.

21 One of the primary targets in the subject  
22 investigation was Mr. Wong. The RCMP obtained  
23 judicial authorization to intercept Mr. Wong's  
24 private communications, commonly known as wire  
25 taps. They intercepted Mr. Wong's telephone  
26 communications, and, also, by means of a  
27 recording device placed within his residence they

1 intercepted conversations taking place there. In  
2 this manner, the police learned of conversations  
3 between Mr. Wong and Mr. Fraser, and in-person  
4 meetings between Mr. Wong and Mr. Fraser, in  
5 which they discussed Mr. Wong supplying  
6 quantities of cocaine to Mr. Fraser for resale on  
7 the streets of Yellowknife.

8 In one conversation between the two of them  
9 on September 16th, 2005 Mr. Fraser is heard to  
10 say that he wanted to get going again with his  
11 trafficking in cocaine. I pause here to note  
12 that this would have been at a point in time when  
13 he was on bail awaiting trial on a cocaine  
14 possession for the purpose charge stemming from  
15 January, 2005 for which he was later convicted  
16 and sentenced.

17 The transactions which Mr. Wong and Mr.  
18 Fraser were discussing and on which they made  
19 agreements generally involved quantities of one  
20 ounce or less, although Mr. Fraser is heard to  
21 request three or four ounces at a time. The  
22 recorded conversations also give an indication  
23 that Mr. Fraser had many customers, and perhaps  
24 also one or more street dealers working for him.

25 Mr. Fraser was arrested and charged in  
26 connection with this cocaine trafficking matter  
27 in October, 2005 and released on bail. A few



1 months later he was arrested on the public  
2 mischief charge. Although he has been in custody  
3 since December, 2005, counsel on this sentencing  
4 hearing are in agreement that because of other  
5 matters, including being a serving prisoner, that  
6 he has only been in remand, in effect, on the  
7 matters for which he is being sentenced today  
8 since December 24th, 2006, or one month ago.

9 Mr. Fraser elected trial by Judge and jury  
10 on the drug conspiracy charge. The Preliminary  
11 Inquiry was concluded in late October, 2006 and  
12 Mr. Fraser was committed to stand trial. The  
13 trial date had not yet been set when Mr. Fraser  
14 appeared in court this week to plead guilty to  
15 this charge.

16 Crown counsel concedes that had the trial of  
17 the charge against Mr. Fraser proceeded, it would  
18 have likely required a lot of time and resources,  
19 given the anticipated challenges to the validity  
20 of the wire tap authorizations and, in any event,  
21 the sheer quantity or length of the wire tap  
22 evidence. Crown counsel acknowledges, then, that  
23 Mr. Fraser's plea of guilty operates in  
24 mitigation of sentence on this drug conspiracy  
25 charge for that reason.

26 Once again, denunciation and deterrence,  
27 both general and specific, are important

1 principles in determining the appropriate  
2 sentence for this drug conspiracy charge. To  
3 these I would add the principle of parity. That  
4 is, the law requires that any sentence imposed be  
5 similar to sentences imposed on similar offenders  
6 for the commission of a similar offence. Sadly,  
7 we have had lots of similar offences and similar  
8 offenders in Yellowknife in recent years.

9 Mr. Fraser's guilty plea is a mitigating  
10 feature in the determination of an appropriate  
11 sentence on the drug conspiracy charge. An  
12 aggravating feature of this crime is the fact  
13 that he was engaged in this illegal activity  
14 while on bail and awaiting his trial for a  
15 similar offence.

16 His past life of criminal behaviour is also  
17 an aggravating factor. He has a horrendous  
18 criminal record. That record is mainly one of  
19 property offences, but also includes many crimes  
20 of violence, and drug offences. He has been  
21 sentenced to a penitentiary term on four separate  
22 occasions in the last 20 years. He has four  
23 prior convictions for drug offences, including  
24 three in the past five years. Indeed, we are  
25 instructed by Parliament in section 10 of the  
26 Controlled Drugs and Substances Act that his  
27 similar convictions in the year 2002 and the year

1           2006 constitute an aggravating factor in this  
2           sentencing determination.

3           If I were to consider this drug conspiracy  
4           offence as a stand alone offence, and taking into  
5           consideration all of the circumstances of this  
6           offence and this offender, including the guilty  
7           plea, I would have imposed a sentence of two  
8           years' imprisonment.

9           These two offences of which Mr. Fraser is  
10          convicted today are separate and unrelated.  
11          There is no connection between the two. The only  
12          element they have in common is that both were  
13          committed within the same three or four-month  
14          time frame here in Yellowknife.

15          Separate offences merit separate punishment.  
16          In the normal course, then, consecutive sentences  
17          ought to be imposed. In that regard, I am then  
18          required by law to consider the principle of  
19          totality, as Parliament has provided a direction  
20          to sentencing Judges in section 718.2 of the  
21          Criminal Code that where consecutive sentences  
22          are to be imposed, the combined sentence should  
23          not be unduly long or harsh.

24          If I imposed the two individual sentences  
25          that I have mentioned and made them consecutive,  
26          the global sentence would be three and a half  
27          years' imprisonment. Upon careful consideration,

1 I cannot say that such a combined sentence would  
2 be either harsh or unduly long in the  
3 circumstances before me.

4 However, I have been given by two Crown  
5 counsel and defence counsel for Mr. Fraser a  
6 joint recommendation or a joint submission for a  
7 global sentence for Mr. Fraser of two and a half  
8 years' imprisonment.

9 Although a joint submission from counsel in  
10 the case is not binding on me as sentencing  
11 Judge, I am required by law to give it serious  
12 consideration. Previous decisions of this Court  
13 and of the Court of Appeal indicate that a  
14 sentencing Judge should depart from the joint  
15 submission only if there are cogent reasons for  
16 doing so; for example, if the sentence being  
17 recommended is unfit or unreasonable or contrary  
18 to the public interest.

19 So I have considered that question, as I am  
20 required to do so: Is a global sentence of two  
21 and a half years for these two crimes unfit or  
22 unreasonable? In my view, it is light, or on the  
23 lenient side, and, although I might disagree with  
24 it, upon reflection I am unable to say that it is  
25 unfit or unreasonable.

26 It is in the public interest that reasonable  
27 plea bargains be encouraged, as well as joint

1           submissions on sentencing, so that trials do not  
2           have to be held in every case, so that witnesses  
3           do not have to be further inconvenienced, so that  
4           the workload or the backlog of cases before the  
5           Court can be dealt with in a more expedient way;  
6           always, though, with the proviso that the  
7           ultimate sentence is in the Court's discretion in  
8           the final analysis.

9           Again, on reflection, I cannot say that a  
10          global sentence of two and a half years'  
11          imprisonment for Mr. Fraser for these two crimes  
12          is contrary to the public interest.

13          In some other cases, the Court has not  
14          hesitated to depart from a joint submission when  
15          the proposed sentence is unreasonable, but, after  
16          careful deliberation, I find that this is not one  
17          of those cases.

18          So, after much deliberation, I have decided  
19          to accept counsels' joint recommendation on an  
20          appropriate global sentence.

21          I decline to make any recommendation or  
22          endorsement about where Mr. Fraser might serve  
23          his term of imprisonment. I know nothing about  
24          William Head Institution at Victoria, B.C. or the  
25          programs or resources available there, and it  
26          would be irresponsible of me to make any such  
27          recommendation. The corrections authorities, I

1 am certain, are familiar with Michael Fraser, and  
2 it is for them to decide where Mr. Fraser should  
3 appropriately serve his sentence.

4 Please stand, Mr. Fraser. Michael Fraser,  
5 for the two crimes that you have been convicted  
6 of, the sentence of the Court is as follows: For  
7 the offence of conspiring to traffic in cocaine  
8 contrary to section 465 of the Criminal Code, the  
9 sentence is two and a half years' imprisonment.  
10 For the offence of public mischief contrary to  
11 section 140 of the Criminal Code, the sentence is  
12 two and a half years' imprisonment concurrent.

13 In the circumstances, there will be no  
14 victim fine surcharge.

15 You may sit. Now, counsel, is there  
16 anything further on this case?

17 MR. HINKLEY: Not from the Crown, Your  
18 Honour, no.

19 MR. RIDEOUT: Nothing further, Your Honour.

20 THE COURT: Fine. Thank you. We will  
21 close court.

22 Certified to be a true and  
23 accurate transcript pursuant  
24 to Rules 723 and 724 of the  
25 Supreme Court Rules.

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Jill MacDonald, CSR(A), RPR  
Court Reporter