

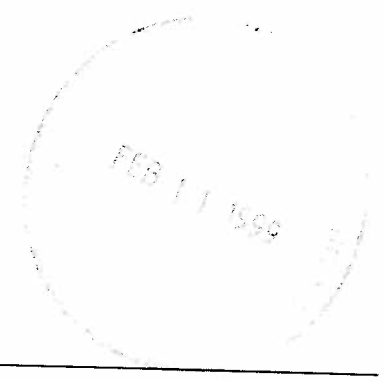
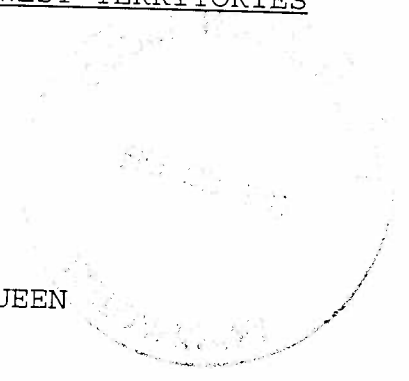
IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

YVES CHARBONNEAU



Transcript of the Reasons for Sentence
held by The Honourable Judge R. M. Bourassa,
sitting in Yellowknife, in the Northwest Territories,
on Wednesday, the 25th day of November, A.D., 1998.

APPEARANCES:

Mr. M. Scrivens: Counsel for the Crown
Mr. J. Brydon: Counsel for the Defence

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1 THE COURT: In this case, the contrast between
2 the offence and the offender, the act and the actor is
3 so sharp, so dramatic, that it causes one perhaps to go
4 right back to the basics of sentencing and refresh
5 one's mind on the principles and goals of sentencing.

6 Over the years, a body of law has been developed
7 to assist and directs Courts as to what principles
8 should apply when sentencing an individual for a
9 crime. Circumstances such as premeditation have to be
10 taken into account; the circumstances surrounding the
11 commission of the offence; the use of violence or
12 threats; the gravity of the crime; the attitude of the
13 offender; the existence or nonexistence of a previous
14 record; the accused's age, his mode of life, and his
15 character are all relevant.

16 The Court has to pay attention to any presentence
17 reports or special, extraordinary circumstances that
18 are involved in the crime. The Court should also take
19 heed of or address the incident of the crime in the
20 community as well as examining decisions from other
21 courts to determine what sentences have been imposed in
22 similar circumstances as well as what principles have
23 been applied in similar circumstances; and lastly, and
24 not often heard in this day and age, mercy.

25 The sentencing process is to achieve a goal. It
26 is not just an exercise in a vacuum. The Sentencing
27 Commission of Canada has indicated that the only real

1 goal in sentencing should be to encourage respect for
2 law. The other more traditional goals of sentencing
3 are to achieve general deterrence: In other words, to
4 make other individuals who think of embarking on such a
5 scheme to think twice before doing it and by sentencing
6 this accused to achieve that end; and specific
7 deterrence: A sentence to deter Mr. Charbonneau from
8 ever embarking on this kind of conduct again. Of
9 course, rehabilitation is a factor to be taken into
10 account as well.

11 The point of sentencing has been argued and
12 discussed by learned academics and theoreticians and
13 others for years. Cicero wrote: "Take care that the
14 punishment does not exceed the guilt." More recently,
15 Courts have articulated the proposition that an answer
16 should be found for the question: What should this
17 offender receive for this offence?

18 The factors that I have before me are a unique
19 combination. Every offender is different and every
20 case is different. That leads, of course, to disparity
21 in sentencing. It may very well be that someone else
22 will commit an offence similar to this and may receive
23 a sentence different than what I intend to impose.
24 Well, so be it. I make no apology for disparity. My
25 duty is to determine what sentence should be imposed
26 for Yves Charbonneau for this offence of attempted
27 extortion, no one else.

1 With respect to the offence: It is clear from the
2 case law that it is a terrible offence. By way of
3 example, reading from some of the authorities supplied
4 to me by counsel, in R. v. Hooper: "...the offence of
5 extortion is a crime of particular gravity...."

6 In R. v. Driscoll: "Attempted extortion of an
7 innocent victim was one of the most insidious and
8 contemptible of crimes and should attract a substantial
9 prison term by way of sentence."

10 All of the authorities dealing with extortion or
11 attempted extortion do not hesitate in condemning it as
12 a terrible crime. The very fact that the Criminal Code
13 now provides for life imprisonment for extortion is a
14 factor that should be taken into account. Consider
15 just for a moment the reactions of the other people
16 involved, employees at a bank having their lives
17 threatened, the RCM Police designating or allocating
18 substantial resources to deal with this matter, the
19 victim's employer providing psychiatric counselling and
20 rescue services, as it were, to try and assist him in
21 dealing with the crisis that he saw. The victim here
22 saw death or injury as a reality. The actions of the
23 accused held individuals and society hostage to his
24 threats to commit murder and those threats were taken
25 seriously. That is a terrible thing to do. The
26 effects, I do not doubt, will last for quite a long
27 time and certainly appears so with respect to the bank

1 manager.

2 In reading the decisions supplied to me by
3 counsel, I note that the Alberta Court of Appeal
4 indicated a starting point of five years for crimes of
5 extortion. That was prior to the Supreme Court of
6 Canada's decision indicating that starting points are
7 not appropriate; however, it remains as an indication
8 of how serious this crime is considered by our Court of
9 Appeal.

10 I have to fashion the sentence to fit the accused --
11 this offender, and this offender is unique. I am
12 reminded of the case of R. v. Betty Louise Pearson of
13 the Yukon Territorial Court where my colleague Judge
14 Stuart made some effort to point out that the
15 obligation is to sentence an individual before the
16 Court.

17 It is clear on the material before me, over 30
18 letters of recommendation, that the accused has much
19 support and many people that think good things of him.
20 Many people have profited personally by knowing him. I
21 think I can sum them all up best by referring to one
22 letter in particular:

23 I have known Yves Charbonneau for
24 approximately ten years. I have only
25 known him to be a kind, soft-spoken,
26 caring person with a big heart. During
27 these ten years, I have never heard him
even so much as raise his voice in
anger. I see him with his children,
and I know they mean the world to him.
Something must have gone very wrong for
him to do what he has done. I still

1 have a hard time believing this is the
2 same person as it is so out of
3 character. Even throughout this whole
4 ordeal, I have not heard anyone say a
5 bad word about him. This, in itself,
6 is a reflection of the kindness he has
7 shown others.

8 To me that letter seems to crystallize a lot of other
9 people's opinions about the accused and in particular,
10 underlines what I find to be an important feature in
11 this crime with respect to this accused: That is, that
12 the crime is out of character.

13 It appears that the accused believed himself to be
14 irretrievably in debt and unable or unwilling to talk
15 to anyone or go to anyone to resolve the problems which
16 brought about a self-induced state of desperation.
17 Clearly his conduct, as despicable as it is, is not his
18 normal conduct. It was out of character brought on by
19 his perception of severe financial problems with
20 nothing, nowhere to turn to, and no other way to
21 resolve them. Clearly, he was not thinking rightly,
22 and I think that is an important consideration.

23 I do not believe for a minute that this Court is
24 dealing with a master criminal. I am, from everything
25 that is before me, dealing with an individual who has
26 much to commend him to anyone and who in a crisis has
27 acted in a criminal fashion. Even so, there are some
elements of the crime that are pathetic: A million
dollars in 20-dollar bills? I am no expert, but I do
not think it would fit in a backpack.

1 In any event, I find that the crime was one that
2 is out of character, and that is an important
3 consideration. The accused's good character is
4 something that can be taken into account. From
5 everything that is before me, he has done well in his
6 life. He has had his ups and downs like everyone does,
7 but he has been honest, hard working. He seems to be a
8 caring individual. Everyone refers to his honesty.
9 Everyone refers to his connection to his children, and
10 everyone refers to his desire to give and his
11 generosity.

12 With respect to the decisions that counsel
13 provided me to consider, I am not going to try and
14 distinguish the ones that in my view are inapplicable,
15 but I will refer to a few. In the Gillespie case, a
16 decision of the Northwest Territories Supreme Court in
17 Inuvik, Justice Boilard dealt with an individual who
18 was on the lam as it were, owing money as a result of
19 some drug dealings or nefarious dealings and threats
20 were uttered both to him and to a totally innocent
21 individual, his wife. Mr. Justice Boilard wrote:

22 "Young Mrs. Cuerrier was terribly
23 upset and very concerned about her own
24 safety, that of her unborn child and
25 also her husband's well-being. She was
26 desperate. While working as a security
27 guard at the local airport, she was
constantly on the lookout for some
unfamiliar faces coming from Ontario to
execute their nefarious deed here at
Inuvik."

1 Mr. Justice Boilard canvassed a number of decisions,
2 some of which I will refer to, and ultimately
3 determined to impose a sentence of 15 months.

4 The case of Lasenby, a decision of the Alberta
5 Court of Appeal in June of 1993: The Court in
6 considering the circumstances of the case of a
7 conviction for extortion and a term of imprisonment of
8 five months and 18 months' probation, the Court
9 observed there was "...no threat of personal injury..."
10 "...and there was no personal injury." "...the
11 Appellant is mature and has the support of his family,
12 and appears to be self-employed, the penalty assessed
13 by the learned Trial Judge was excessive. We would,
14 accordingly, substitute for the five months, a sentence
15 of ninety days to be served intermittently, and a fine
16 of \$2,000.00."

17 The decision of the Ontario Court of Appeal in
18 Hooper: At the time of the offence, the accused was 27
19 years old. He was married with two children, had an
20 exemplary character. He found some photographs which
21 shocked him because they indicated a relationship
22 between his mother and the victim that angered him. He
23 armed himself with a gun and attempted to extort
24 \$10,000 from the victim. Again, the Court indicated,
25 as I referred to earlier, after stating that the
26 offence was a despicable one, that there would have to
27 be exceptional circumstances to justify a sentence

1 other than a substantial custodial sentence. In this
2 case, the accused had an exemplary character. His
3 relationship with his family was good, and they were
4 also willing to support him and as I understand it, he
5 received two years less a day.

6 The Newfoundland Court of Appeal in 1984 in its
7 decision in the Driscoll matter described extortion or
8 attempted extortion as an insidious and contemptible
9 crime which "...should attract a substantial prison
10 term." It found no error in a sentence imposed on an
11 immigration officer of 15 months in jail.

12 In R. v. Le, a decision of the Alberta Court of
13 Appeal in 1992, the Alberta Court of Appeal indicated
14 that there were significant aggravating factors in
15 weighing their decision to increase a sentence to three
16 years' imprisonment. There was a threat of violence
17 and there had been actual violence on an earlier
18 occasion that the accused profited from when he came to
19 threaten the victim. It was apparently gang related,
20 attempt to extort from a store owner, a shopkeeper.

21 Then finally in McDonald and Tondu, the Alberta
22 Court of Appeal decision in 1981, a term of 18 months'
23 imprisonment was imposed. In describing Tondu, the
24 Court of Appeal described someone who shared many
25 characteristics with the accused. The Court of Appeal
26 stated:

27 "Turning to the matter of sentence, it
should first be stated that the crime

1 of extortion is a serious one, and it
2 should in most cases attract a
3 substantial term of imprisonment. The
4 learned trial judge imposed a sentence
5 of 18 months' imprisonment on both
6 accused."

7 "Tondu is 39 years of age." "She appears to be
8 industrious, and, above all, she is described as being
9 capable of great kindness and love, especially towards
10 her children." "The people who know her described her
11 as a good mother whose home and children are neat and
12 clean. She is said to be a kindly person who will go
13 out of her way to help others who appear to need her
14 assistance." The Court dismissed the appeal and, in
15 effect, upheld the sentence of 18 months in jail.

16 Those are the principles to be applied and
17 invariably when there is a chasm between the nature of
18 the offence and the nature of the offender, it becomes
19 more and more difficult and the tug between the two
20 makes it more difficult to determine what a fair
21 balance would be by way of sentence.

22 The Crown attorney is seeking three years'
23 imprisonment. I do not think there can be any argument
24 in principle with the penitentiary term for those
25 convicted of extortion. It is a terrible crime. Lives
26 are changed forever. People are held hostage by
27 threats.

There are, in my view, exceptional circumstances
here. The accused is not a master criminal or even a

1 minor criminal prior to this matter. The conduct I am
2 dealing with is out of character. The accused has
3 pleaded guilty. It may be facile to say while he gave
4 a video walk-through and a complete confession,
5 notwithstanding that, I note in the witness impact
6 statement that the victim was terrified of coming to
7 court and having to go through it all again. The
8 accused spared everyone. He has recognized that what
9 he has done is wrong. He is remorseful and I believe
10 he is remorseful and pleaded guilty at virtually the
11 first instance.

12 I do not think specific deterrence is a factor
13 here. I do not believe that Mr. Charbonneau is a
14 threat to society once he is released or that he is at
15 the doorway of a life of crime by any means. General
16 deterrence is more problematic so far as the defence is
17 concerned. This Court has to have a concern for
18 general deterrence. People cannot do this kind of
19 thing. It is a crime. It is wrong. Lives are
20 destroyed or badly harmed because of it, so the tug
21 between one side and the other side are very strong,
22 and it becomes very difficult to try and achieve a
23 balance.

24 I have considered the matter carefully, and I have
25 tried to arrive at a balance of the competing interests
26 involved that will both assert that the law has to be
27 respected and this kind of conduct is criminal and will

1 be condemned and at the same time recognize the
2 extraordinary circumstances that the Court is presented
3 with in the person of the accused.

4 Stand up, please, Mr. Charbonneau. I am going to
5 sentence you to 12 months' imprisonment. If you mind
6 yourself and behave while you are in custody, there are
7 provisions for early release and you can be at liberty
8 as soon as or within three months, possibly four
9 months. I hope you work hard at this, and I hope you
10 get this over and past. You have a lot of support.
11 You have a lot of friends, and you are quite wrong when
12 you say have you lost everything. Consider yourself
13 fortunate. That is all.

14 MR. BRYDON: Thank you, Sir.

15
16 Certified pursuant to Practice
17 Direction #20 dated December 28, 1987.

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23 Tara Taylor, CSR(A), Court Reporter

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