

CANADA / JUDGMENT

## R. v. Dahl

2023 BCCA 336

### COURT

British Columbia Court of Appeal

### DECIDED

22 August 2023

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2023 BCCA 336 R. v. Dahl

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Dahl,

2023 BCCA 336

Date: 20230822

Docket: CA48640

Between:

Rex

Appellant

And

Astrid Charlotte Dahl

Respondent

Before:

The Honourable Madam Justice Newbury

The Honourable Mr. Justice Hunter

The Honourable Mr. Justice Abrioux

On appeal from: An order of the Supreme Court of British Columbia,

dated September 29, 2022 (R. v. Dahl, 2022 BCSC 1792,

New Westminster Docket 83319).

Counsel for the Appellant:

C. Lusk

Counsel for the Respondent:

G. Orris, K.C.

F. Alamy

Place and Date of Hearing:

Vancouver, British Columbia

June 2, 2023

Place and Date of Judgment:

Vancouver, British Columbia

August 22, 2023

Written Reasons by:

The Honourable Mr. Justice Abrioux

Concurred in by:

The Honourable Madam Justice Newbury

The Honourable Mr. Justice Hunter

Summary:

This is a Crown appeal from a 12-month conditional sentence order which was imposed following the respondent's conviction for failing to provide the necessities of life contrary to s. 215(2)(b) of the Criminal Code. The Crown submits that the sentence imposed failed to give proper effect to deterrence and denunciation, and that it was demonstrably unfit in light of the gravity of the offence and the degree of responsibility of the offender. Held: Leave to appeal is granted; the appeal is allowed; the conditional sentence order is set aside; a conventional term of 15-months' imprisonment is imposed, with five months' credit to account for the remission the respondent would have earned on a 15-month conventional term had that been the form of sentence she initially received. The sentence of imprisonment is deemed to be served as of July 29, 2023. A probation period of 12-months on the same conditions as those ordered by the sentencing judge will follow. The sentencing judge failed to give proper effect to the principles of denunciation and deterrence, which resulted in a sentence that unreasonably departs from the fundamental principle of proportionality.

Reasons for Judgment of the Honourable Mr. Justice Abrioux:

## I. Overview

- [1] This is a Crown appeal from a 12-month conditional sentence order (CSO) followed by a 12-month probation order imposed upon the respondent Ms. Dahl. The appellant seeks the substitution of an 18-month conventional term of imprisonment.
- [2] On July 15, 2022, the respondent was convicted of failing to provide the necessities of life to Ms. Florence Girard, in contravention of s. 215(2)(b) of the Criminal Code R.S.C. 1985, c. C-46. Ms. Girard was a most vulnerable 55-year-old woman with Down Syndrome who slowly starved to death while under the respondent's care. When prosecuted by way of indictment, the offence carries a maximum term of imprisonment of five years: Criminal Code, s. 215(3) (a). The respondent was acquitted of criminal negligence causing Ms. Girard's death.
- [3] The circumstances giving rise to the offence, which include the loving and close relationship between the respondent and Ms. Girard that existed for many years, make this a most unusual and tragic case. It differs markedly from those where there was egregious abuse of the victim whether physical, mental, in their living conditions or a combination thereof by the person responsible for their care.
- [4] The Reasons for Judgment are indexed as 2022 BCSC 1387 ("Trial Reasons"); the Reasons for Sentence as 2022 BCSC 1792 ("RFS").
- [5] There is considerable overlap between the material errors alleged by the Crown which pertain to the issues of deterrence and denunciation, failing to properly consider the gravity of the offence, the degree of responsibility of the respondent, and those which pertain to the fitness of the sentence itself. Accordingly, I shall consider the alleged errors within the context of my analysis of the fitness of sentence.
- [6] For the reasons that follow I am of the view that the sentence imposed departs unreasonably from the fundamental principle of proportionality by failing to give proper effect to the principles of deterrence and denunciation. I would impose a 15-month conventional term of imprisonment to be followed by a period of 12 months' probation on the same conditions as ordered by the judge.
- [7] In the usual course, the 15-month term would have commenced as of the date of sentencing (September 29, 2022). However, I would grant Ms. Dahl five months' credit for the period of earned remission that she likely would have earned had a 15-month conventional term of imprisonment been imposed initially. The custodial term for her to serve as of the date of sentencing is therefore 10 months and it is deemed to have been served as of July 29, 2023. The period of 12 months' probation shall run from that date.

## II. Circumstances of the Offence

- [8] For many years Ms. Gerard had been provided care through a variety of group homes which included one where the respondent was employed.

- [9] In and around 2010, arrangements were made for the respondent to provide care to Ms. Girard in a shared living arrangement, and she began living with the respondent and her family in their home. This care arrangement was facilitated through annual contracts entered into between Kinsight Community Society and the respondent, with a Kinsight representative attending at the respondent's home over the years at various times to monitor the care provided to Ms. Girard.
- [10] In the Trial Reasons, the judge referred to the respondent as "the accused", and the accused's mother, Patricia Dahl, as "Ms. Dahl."
- [11] The Trial Reasons outline some of the respondent's evidence:
- [145] The accused said that as she observed Ms. Girard become thinner and more frail, she recalled Ms. Dahl and Ms. McGrath telling her that this is what happens to people with Down syndrome as they age. The accused testified that she attributed Ms. Girard's decline to aging and dementia, based on what she had been told by Ms. Dahl--that is, in Ms. Dahl's view, such a decline is an indication of early onset of dementia and this is what happened to people with Down syndrome.
- [146] The accused said she noticed Ms. Girard was losing weight in the summer of 2018.
- [147] She also testified that while Ms. Girard was feeding herself with help and encouragement from the accused, at one point in the summer of 2018, Ms. Girard had "less interest" in food.
- [148] However, the accused ultimately conceded she first noticed Ms. Girard's lack of interest in food in April 2018. The accused also said she was concerned about Ms. Girard's declining health in August and September of 2018 and that she had wanted to meet with a representative of Kinsight to discuss Ms. Girard's circumstances.
- [149] The accused also provided evidence that although the entire household was ill with the flu in August 2018, Ms. Girard was "back to her old self" afterwards.
- [150] Upon being asked about her evidence concerning Ms. Girard aging, she testified that Ms. Dahl told her "this was typical". She said Ms. Dahl also told her that in the past, persons with Down syndrome in a group home received palliative care. The accused testified that she thought if this was to be the end of Ms. Girard's life, she wanted to make Ms. Girard as comfortable as possible and to be there with her. Palliative care, the accused stated, would be a "disservice" to Ms. Girard and she testified that she couldn't live with herself if she put Ms. Girard into care.
- [151] The accused was asked why, given the decline in health and loss of weight that eventually led [to] Ms. Girard's death, she never asked Ms. Girard if she wanted to go to the doctor. The accused responded that it was because she knew what Ms. Girard's answer would be. The accused also testified that, in any event, Ms. Girard "had the right" to say no.

- [152] The accused testified she did not consider taking Ms. Girard to a doctor in the last week or so of her life to determine what was medically occurring with Ms. Girard because it would have been traumatic for Ms. Girard. In addition, the accused said Ms. Girard wouldn't have wanted to go, and, the fact was, Ms. Girard was already failing. The accused also said that Ms. Girard, when she could communicate, kept saying that she was fine.
- [153] The accused testified that "Ms. Girard's relationship with food" in the last month of her life was very different than most of her life. According to the accused, in the last few days of her life, Ms. Girard was just spitting out the Ensure or allowing it to dribble out of her mouth.
- [154] The accused was asked why, in the last days, she did not call for an ambulance. The accused said, "I know what she'd go through and concluded she'd want to stay".
- [155] The accused also stated, rhetorically, "how would I get her to a doctor?".
- [156] The accused conceded that she considered calling 911 a couple of days before Ms. Girard died, but ultimately thought, "what are they going to do--she might as well be at home".
- [157] The accused conceded that what she said in her statement to police--that is, that the accused thought Ms. Girard was "pretty good" and had a "good appetite" in the last week of her life, and that Ms. Girard was "good" in the last three days of her life--was different from what she was testifying to at trial, but she also noted that she "did her best" at the time of the statement.
- [158] The accused testified that while she knew Ms. Girard was dying, she had tried to get fluids into Ms. Girard, even to the last minute. She testified that as much as she did not like the circumstances of Ms. Girard's last few days, she decided to not take her to a doctor because that would mean that Ms. Girard would die in the hospital. According to the accused, the hospital was not an appropriate place to send loved ones when they are dying. The accused again testified Ms. Girard would not have wanted that, although she also testified that she didn't ask Ms. Girard for her direction.
- [159] The accused then testified that on Ms. Girard's last day alive, Ms. Girard communicated to her that she was "okay".
- [12] The judge observed that he accepted "a good deal of the accused's evidence": Trial Reasons at para. 170. He went on to conclude:
- [200] In my view, the evidence demonstrates that the accused chose to make decisions that resulted in Ms. Girard failing to receive any medical attention during the relevant time. Not only did the accused fail to provide Ms. Girard with any, let alone regular, medical attention, but she also failed to provide Ms. Girard with any medical attention while Ms. Girard's condition deteriorated over the course of a few months. The accused did not take Ms. Girard to see a medical professional to confirm whether there was anything medically that could be done to prevent Ms. Girard's downward health trajectory, whatever the cause

may have been.

- [201] According to Dr. Doyle, who testified the cause of Ms. Girard's death was severe malnutrition, her appearance indicated a slow process of starvation. He also testified that careful medical attention can reverse the mechanism of starvation, and that malnutrition in patients unable, or refusing, to eat can be addressed with intravenous fluids or force-feeding.
- [202] There is no cogent evidence to support the accused's assertion that Ms. Girard had consciously or unconsciously decided not to take food or water because she had accepted that the end of her life had come. However, even if there was evidence to support such a suggestion, it is clear on the evidence that it remained the accused's duty to provide Ms. Girard with some form of medical attention during this time--medical attention that Ms. Girard clearly needed and the accused was capable of arranging during the relevant time.
- [13] In finding the respondent not guilty on count 1, criminal negligence causing death, the judge said:
- [221] I find the evidence is overwhelming that a reasonable person in these circumstances would have provided Ms. Girard with some attention from a medical professional between October 13, 2014 and October 13, 2018, particularly during the weeks leading up to Ms. Girard's death.
- [222] As Ms. Girard's live-in care provider, the accused regularly saw and interacted with Ms. Girard. At the very least, such a reasonable person would have observed Ms. Girard's deteriorating health and would have sought some form of medical assistance in the last few weeks of her life. Yet, the accused did little or nothing in that regard.
- [223] However, the accused is neither a medical professional, nor a medically trained caregiver. In cases where the accused is not a medical professional, yet the activity is failing to provide medical attention, the applicable standard is not what a medical professional would have done, but what a reasonable person in the circumstances of the accused would have done: Stephan at para. 229.
- [224] While the accused has worked as a caregiver for almost 30 years it appears her experience is narrow. Based on the evidence, particularly considering the impact that Ms. Dahl's advice seems to have had on the accused, the accused has little experience with persons with Down syndrome other than Ms. Girard.
- [225] The evidence shows that the accused was endeavouring to exercise her best judgment based on her limited experience and knowledge. While it is so that proof of intent or malice is not required as an element of this offence, it must be observed that there is no suggestion of mala fides on the part of the accused. While it is clear that her conduct falls well below the standard of a reasonably prudent person in her circumstances, I am not persuaded the Crown has established the conduct of the accused reached the significant level of wanton or reckless disregard for the life of Mr. Girard. I do not consider her

conduct reaches the degree of moral blameworthiness or turpitude necessary to find proof beyond a reasonable doubt of the offence of criminal negligence causing death.

[Emphasis added.]

[14] In convicting the respondent on count 2, failing to provide the necessities of life, the judge stated:

[232] I have already found that the accused's conduct was below that of a reasonably prudent person in the accused's circumstances. The remaining question is whether the Crown has proven beyond a reasonable doubt that the accused's conduct represented a marked departure of that of the reasonable person in the circumstances, and if so, whether that failure endangered the life of Ms. Girard or was likely to cause the health of Mr. Girard to be injured permanently.

[233] I find that the Crown has so proven these elements.

[234] I find that it was patently obvious to the accused, or ought to have been, and certainly objectively foreseeable to a reasonable person regardless of medical training in the circumstances, that the failure to seek medical attention for Ms. Girard, particularly over the last weeks of Ms. Girard's life, would lead to a risk of danger to her life, or a risk of permanent endangerment to her health.

[235] Indeed, on the evidence of the accused, the accused knew or clearly suspected that by the last week of Ms. Girard's life, Ms. Girard was dying. Yet, the accused decided not to seek medical attention. By then, Ms. Girard had completely, or almost completely, stopped taking food and fluids as well as stopped communicating. Ms. Girard had also lost, over the course of the preceding two or three months, a shocking amount of weight. The photo of Ms. Girard taken on the morning of October 13, 2018, is bracing.

[236] There is no doubt that the conduct of the accused represented a marked departure from the conduct expected of a reasonably prudent person in charge of the welfare of Ms. Girard in the circumstances. The whole of the evidence, including, most profoundly, the statements and evidence of the accused, do not raise a reasonable doubt concerning any elements of this offence.

[237] The position of the accused appears to be that her conduct was informed by her view that Ms. Girard's decline was typical as a result of aging and perhaps dementia. As such, Ms. Girard ought to be nursed to her death by the accused out of a sense of inevitability and compassion. In my view, this does not temper, in the least, the clear obligations that fell upon the accused in the circumstances. As mentioned above, the foresight of a reasonable person is not what the accused knew or intended, but rather what the accused ought to have foreseen: J.F. at para. 7.

[238] To be clear, I find that the accused's failure to meet these obligations in the circumstances demonstrates a marked departure from that of a reasonably prudent person in the circumstances. In my view, this failure demonstrated a breathtaking lack of judgment. I also find that this departure endangered Ms. Girard's life and was likely to cause Ms. Girard's health to be injured permanently.

[Emphasis added.]

### III. Circumstances of the Respondent

[15] In the RFS, the judge remarked that there was not a great deal of information provided concerning the respondent's background and circumstances.

[16] She was 54 years of age at the date of sentencing. She moved to Canada with her parents from England in 1981 and graduated from high school in 1986. By 1990 she was working part time in a group home in Surrey for individuals with schizophrenia. It does not appear she had any particular training for this position.

[17] The respondent was working part time at a group home in 1991 when she first met Ms. Girard, stayed in this employ for a number of years and eventually held the position of assistant manager. In 2010 Ms. Girard moved to live with the respondent, her husband and son. Ms. Dahl and her husband then underwent a difficult separation with her husband left the residence. Her son continued to reside in the home at the time of Ms. Girard's death.

[18] At the time of sentencing the respondent was living with her parents. She was unemployed and undergoing psychiatric counselling once a month. Counsel advised the judge that Ms. Dahl was on a regime of medications for anxiety, manic depression, schizoid affective disorder, and for sleep. Since March 2020 she had attended the Royal Columbian Hospital on three occasions as a result of what were described as mental breakdowns. She had expressed deep sadness concerning what she described as 'her loss'; and expressed that she was sorry for what she has put everyone through. She told the judge that she did not know she was breaking the law, but that she accepted full responsibility for her actions.

### IV. Reasons of the Sentencing Judge

[19] The Crown sought a custodial sentence of 18 to 36 months, while the defence sought a suspended sentence or, in the alternative, a CSO to be followed by probation.

[20] After reviewing the circumstances of the offence and those of the respondent, the judge referred to the victim impact statement of Ms. Girard's sister.

- [21] He then referred to portions of the sentencing objectives set out in ss. 718.1 and 718.2 of the Criminal Code and observed that achieving a proportionate sentence was a case-specific determination which required a multifactorial analysis tailored to the individual circumstances of the offence and the offender: RFS at paras. 25-26. He then expounded on the principle of proportionality:
- [27] At the centre of the application of these principles is the concept and principle of proportionality. It informs, in my view, the sentencing process as a whole. This was emphasized in *R. v. Gladue*, [1999] 1 S.C.R. 688, and more than a decade later by the Supreme Court of Canada in *R. v. Ipeelee*, 2012 SCC 13; in particular at [para.] 37:

The fundamental principle of sentencing (i.e., proportionality) is intimately tied to the fundamental purpose of sentencing -- the maintenance of a just, peaceful and safe society through the imposition of just sanctions. Whatever weight a judge may wish to accord to the various objectives and other principles listed in the Code, the resulting sentence must respect the fundamental principle of proportionality. Proportionality is the sine qua non of a just sanction. First, the principle ensures that a sentence reflects the gravity of the offence. This is closely tied to the objective of denunciation. It promotes justice for victims and ensures public confidence in the justice system. As Wilson J. expressed in her concurring judgment in *Re B.C. Motor Vehicle Act*, 1985 CanLII 81 (SCC), [1985] 2 S.C.R. 486, at p. 533:

It is basic to any theory of punishment that the sentence imposed bear some relationship to the offence; it must be a "fit" sentence proportionate to the seriousness of the offence. Only if this is so can the public be satisfied that the offender "deserved" the punishment he received and feel a confidence in the fairness and rationality of the system.

Second, the principle of proportionality ensures that a sentence does not exceed what is appropriate, given the moral blameworthiness of the offender. In this sense, the principle serves a limiting or restraining function and ensures justice for the offender. In the Canadian criminal justice system, a just sanction is one that reflects both perspectives on proportionality and does not elevate one at the expense of the other.

- [22] The judge reviewed certain authorities including *R. v. O.*, 2012 BCCA 129; *R. v. Davy*, [2015] O.J. No. 939 (Ont. S.C.J.); *R. v. Lis*, 2020 ONCA 551 and *R. v. Brush*, 2022 BCSC 1194, to which I shall return later in these reasons.
- [23] The judge observed the "significance and importance of the trust relationship" created by the respondent when she invited Ms. Girard to live in her home. The breach of this trust, he noted, was aggravated by the fact that Ms. Girard died when access to timely and proper medical care could well have prevented her death. The judge concluded that the respondent's conduct and the consequences of such "were serious violations of the bond of belief and faith solicited by Ms. Dahl and surrendered by Ms. Girard": RFS at para. 48. The judge did not specifically refer to s. 718.2(a)(iii) of the Code, which provides that evidence of an offender abusing a position of trust or authority in relation to a victim should be treated as an aggravating factor.

- [24] The judge rejected the suggestion that the respondent's conduct was reflective of a course of action either chosen by Ms. Girard or one she would have chosen had she been able to communicate:
- [49] In my view it is artificial in the extreme to suggest there is a rational conclusion available on the evidence that Ms. Girard would have chosen to stay in the home and starve, rather than being medically cared for; regardless of her reluctance, some years before, to attend for medical and dental care.
- [50] To the extent there remains an implicit characterization that Ms. Dahl's conduct was in aid of assisting Ms. Girard with Ms. Girard's desire to end her life rather than seek medical attention, it is a view not available on the evidence. The conduct in fact was endangering the life of Ms. Girard who, in fact, remained a silent and helpless bystander.
- [25] The judge re-affirmed that Ms. Girard died as a result of starvation. Regarding the lack of medical evidence as to the cause of Ms. Girard's change in eating habits, the judge said this:
- [51] There is no medical evidence that whatever was causing Ms. Girard's lack of appetite, and increasing difficulty in ingesting food and liquid, was somehow going to lead inevitably to her death. There is a lack of evidence in this regard because Ms. Dahl chose not to have Ms. Girard medically assessed or cared for. Ms. Dahl found herself dealing with the ever-increasing endangerment to the life of Ms. Girard because she failed to properly act upon the obvious evidence of deterioration. Whatever 'plan' that was developed to oversee the life and death of Ms. Girard, it was a plan unilaterally created, imposed, and abetted by Ms. Dahl; not Ms. Girard.
- [26] The judge quoted from the Trial Reasons as to the respondent's view " that Ms. Girard's decline was typical as a result of aging and perhaps dementia", thus resulting in the respondent's assumption that " Ms. Girard ought to be nursed to her death by the accused out of a sense of inevitability and compassion". In no way did this view "temper" the respondent's obligations to Ms. Girard: RFS at para. 52, citing Trial Reasons at para. 237.
- [27] Nonetheless, the judge considered that the respondent's motives mitigated her moral blameworthiness. The judge concluded that, unlike in the cases before him, the respondent did " [endeavour] to exercise her best judgement", albeit in a "terribly misguided" manner: RFS at para. 54. He found that the respondent did not harbour "ill will or animosity" to Ms. Girard; rather, her conduct resulted from a "certain view of compassion" that was "fatally" and "irrationally" distorted from both her responsibilities to Ms. Girard and common sense. Likewise, there was no evidence of abuse in the sense of physical or emotional mistreatment or violent or cruel behaviour toward Ms. Girard.

- [28] While the Crown submitted that the offence traversed four and-a-half years--as reflected in the indictment--the judge observed that the findings of fact did not merit a finding that Ms. Dahl's culpability stretched over this entire period. The respondent's failure to ensure Ms. Girard received medical and dental care generally during the charged time period was serious, yet the respondent's culpability for the offence flowed primarily from the several months leading to Ms. Girard's death.
- [29] Regarding the respondent's personal circumstances, the judge noted that Ms. Dahl was 54 years old, that she undergoes psychiatric care once a month, and that her "mental breakdowns" relate to the matter at hand. He observed that there was a lack of information as to the psychiatric care the respondent receives, but accepted that "the consequences of her conduct, and the consequences of these proceedings, have taken a toll on the mental health of Ms. Dahl": RFS at para. 61. The judge also noted that it is "highly probable" that she will never again work in caregiving field, a field she had worked in most of her adult life.
- [30] The judge went on to observe that while "denunciation and deterrence" were "primary goals", they must be balanced with the principles of rehabilitation and parity to attain a proportionate sentence. The judge noted that "sentencing is a highly individualized endeavour in an effort to ultimately reach a fit sentence in the particular circumstances of the case": RFS at para. 62.
- [31] He concluded that a suspended sentence, as advocated by the respondent's counsel, did not adequately address the principles of denunciation and deterrence, whereas the Crown's proposed sentence "[did] not afford appropriate weight to the individualized circumstances of the particular offence": RFS at para 63. The judge determined that a period of imprisonment was required, and turned his mind to the conditional sentence regime.
- [32] The judge noted that conditional sentence orders give voice to the principle of restraint embodied in ss. 718.2(d) and (e) of the Criminal Code. He then quoted s. 742.1 of the Code, which prescribes that conditional sentences permit a sentence of imprisonment of less than two years to be served in the community, provided the court is satisfied that the safety of the community would not be endangered and the purpose and principles of sentencing are upheld.
- [33] He went on to consider the seminal case of *R v. Proulx*, 2000 SCC 5, making several observations which I have excerpted below. In summary, conditional sentences are designed to be both punitive and rehabilitative; punitive conditions that restrict an offender's liberty--such as house arrest--should generally be included. In determining the appropriateness of a conditional sentence, a court should first consider the risk of an offender re-offending and the gravity of harm that could result from re-offending. Provided these concerns are assuaged, a court must then consider whether a conditional sentence is consistent with the purpose and principles of sentencing.

- [34] Of particular note was the trial judge's reliance on this statement from Proulx: " 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": RFS at para. 71, citing Proulx at para. 107.
- [35] The judge then concluded that the respondent should be subject to a period of imprisonment of 12 months, to be served as a conditional sentence.
- [36] In addition to the usual good behaviour and reporting terms, the conditional sentence order imposed a curfew between 6:00 p.m. to 8:00 a.m. each day during the first six months of the order, followed by a curfew between 11:00 p.m. to 8:00 a.m. each day for the remaining six months. The order also required the respondent to complete 100 hours of community work by July 29, 2023 and attend and participate in counselling or psychiatric/psychological programming, as directed by her conditional sentence supervisor.
- [37] He also ordered that the CSO be followed by a 12-month probation order which, in addition to the usual good behaviour and reporting terms, included providing the probation officer details of the respondent's employment status and participating in any counselling or education directed by the probation officer which may include psychiatric or psychological health.

## V. Discussion

### Standard of Review

- [38] The principles are well known and were recently summarized by this Court in *R. v. Nystrom*, 2023 BCCA 232:
- [15] This Court must give considerable deference to a trial judge's exercise of discretion in determining a fit sentence. Intervention on a sentence appeal is justified only where the judge committed an error in principle that had an impact on the sentence, or imposed a sentence that is demonstrably unfit: *R. v. Lacasse*, 2015 SCC 64; *R. v. Agin*, 2018 BCCA 133; *Friesen* [2020 SCC 9] at para. 26. A sentence is demonstrably unfit where it is clearly or manifestly excessive or inadequate, or represents an unreasonable or marked departure from the principle of proportionality: *Lacasse* [2015 SCC 64] at paras. 52-53.
- [16] Where an error in principle has impacted the sentence, or where the sentence is demonstrably unfit, this Court may inquire into the fitness of the sentence and replace it with the sentence we consider appropriate, giving less deference to the sentencing judge. In doing so, we are to defer to the judge's findings of fact and identification of aggravating and mitigating factors, except to the extent they are affected by an error in principle: *Lacasse* at paras. 43-44; *Friesen* at paras. 27-29; *Agin* at paras. 48, 52; *R. v. Parranto*, 2021 SCC 46 at para. 122.

- [39] In *R. v. Lacasse*, 2015 SCC 64 at para. 52, Justice Wagner, as he then was, confirmed the "very high threshold that applies to appellate courts" in determining whether a sentence is demonstrably unfit. He approved descriptions of that threshold as "clearly unreasonable", "clearly or manifestly excessive", "clearly excessive or inadequate" or a "substantial and marked departure" from the sentences customarily imposed on similar offenders who committed similar offences in similar circumstances.

#### Was the Sentence Demonstrably Unfit?

- [40] The Crown's position is that the judge ought to have found that a greater degree of deterrence and denunciation was called for in light of Ms. Girard's extreme vulnerability. It refers to s. 718.04 of the Code which requires courts to treat deterrence and denunciation as primary in cases of abuse of a vulnerable victim. It says that while this provision was not in effect in 2018, the same considerations applied prior to codification, much as they did in those cases falling under s. 718.01, involving abuse of a child. The Crown also takes issue with the judge's omission of s. 718.2(a)(iii)--the abuse of trust aggravating factor--from the sentencing judgment, which the Crown says "was relevant to moral culpability [and] ought not to have effectively been treated as neutralized by motive".
- [41] It submits that although the judge stated that deterrence and denunciation remained the primary goals on the facts, the type and conditions of the sentence imposed, and the emphasis on the respondent's personal circumstances, demonstrate they were not treated as such. In particular, although the judge referred to the breach of trust as "tragic", he did not properly give effect to the fact that the respondent was a paid caregiver which increased her moral culpability. Her motivation combined with personal circumstances could not contribute to denunciation and deterrence to an extent that incarceration was not required despite the harm.
- [42] To that end, the Crown also submits that a CSO was a demonstrably unfit sentence because it did not give proper effect to deterrence or denunciation. Further, the CSO was neither lengthy nor onerous: it amounted to a curfew. Protection of vulnerable persons with disabilities is a basic value in our society and the respondent made an unreasonable decision to allow Ms. Girard to starve to death rather than to seek medical care. Incarceration was required.
- [43] The respondent's position is that deterrence and denunciation were at the forefront of the RFS. The authorities to which the judge was referred dealt with systemic patterns of abuse and "conduct marked by long term abuse, coupled with indifference, if not outright cruelty directed towards the victim": RFS at para. 29.
- [44] In contrast, the connection between the respondent and Ms. Girard was, since its inception, that of a loving and caring relationship. The respondent points to the judge's findings outlined above that:

- Her motives provided mitigating circumstances that impact her moral blameworthiness, notwithstanding the inexplicable failure to act;
- There was no suggestion in the evidence nor was it the Crown's position that she held any ill will or animosity towards Ms. Girard;
- The circumstances demonstrate conduct that was driven by a certain view of compassion which--albeit irrationally skewed away from her responsibilities and common sense--was nonetheless a truly held belief that she was doing the right thing; and
- There was no evidence of abuse as that term is understood in these types of cases. That is, there was no evidence of physical or emotional mistreatment nor of violent or cruel behaviour, or evidence that the physical surroundings in the home were anything other than appropriate and respectful.

[45] The respondent also says that she continued to attempt to get Ms. Girard to eat right until the end. When that failed, she attempted meal supplements.

[46] The respondent argues that the judge recognized and properly considered her position of trust as a paid caregiver, and Ms. Girard's vulnerability, in crafting a fit sentence, which in this case was the CSO and term of probation.

[47] In considering whether this sentence was demonstrably unfit and, if so, what a fit sentence should be, it is of assistance to first review certain authorities.

[48] In *R. v. Peterson*, [2005] O.J. No. 4450 (Ont. C.A.), 201 C.C.C. (3d) 220, the offender was convicted of failing to provide the necessities of life for his father, who suffered from dementia and lived in the offender's home. Police discovered the father to be very thin, living in unhygienic conditions, having gone days without food or bathing, inappropriately dressed, and incontinent for urine. The offender was sentenced to six months' imprisonment and two years' probation; he appealed. The Ontario Court of Appeal dismissed the appeal and upheld the sentence as being within the usual range of four to eight months' imprisonment for offences of this type.

[49] In *R. v. Nanfo*, 2008 ONCJ 313, the offender pleaded guilty to failing to provide the necessities of life to her elderly mother, who lived with her and who suffered from dementia and blindness. The victim's living space was appallingly filthy: human feces covered the floor, walls, bed and bedding, and the toilet was overflowing with feces; garbage was piled high and there were flies everywhere. The victim was not seen by a doctor for at least two years. The court found that the victim's weight had decreased dramatically over a two-year period, that she had minor abrasions and a bed sore, and was covered in fecal matter. Ultimately, the victim died from a heart attack, but this could not be linked to the neglect. Nonetheless, the offender waited 24 hours after the victim's death to call authorities in order to attempt a cleaning of the residence. A 12-month sentence of imprisonment was imposed, to be served as a conditional sentence, which included a weekend curfew.

- [50] In *R. v. Guimond*, 2010 MBPC 33, the offender pleaded guilty to failing to provide the necessities of life to a child to whom the offender was related. The offender returned from an outing and quickly placed the child in a high back chair against a piece of plywood that separated the chair from a steep flight of stairs, and rushed to the washroom. While the offender was in the washroom the child fell down the stairs and later died due to these injuries. The offender was sentenced to an 18-month conditional sentence order, which imposed house arrest for the first 12 months, followed by a 10 p.m. to 6 a.m. curfew for the final 6 months, and three years' probation.
- [51] In *R. v. C.G.O.*, 2011 BCPC 145, the offender pleaded guilty to aggravated assault and failing to provide the necessities of life to her three-year old niece, by shaking her repeatedly and placing her in a scalding hot bath causing severe injuries. While the victim had largely recovered from the burns, she had suffered a severe brain injury due to the shaking: she could not walk or speak and was fed through a tube. After considering the offender's difficult personal circumstances, as well as her Indigenous heritage, the sentencing judge ordered a global conditional sentence of two years less one day--which included a daily curfew from 10 pm to 6 am and required attendance in Indigenous based programming--and three years' probation.
- [52] On appeal, in reasons indexed as *R. v. O.*, 2012 BCCA 129, Saunders J.A., writing for the majority, held that the sentence was unfit because it did not adequately address the principles of deterrence and denunciation, and that a period of incarceration of the same length as the CSO ought to have been imposed. Nonetheless, she determined that the sentence should not be altered due to the support structure in place for the offender as a result of the CSO, and that it was appropriate to consider these features in light of the offender's Indigenous heritage; accordingly, she dismissed the appeal. In concurring reasons, Bennett J.A. would have dismissed the appeal because she determined that the sentence was not demonstrably unfit, largely due to the stringent conditions on both the CSO and probation order--lasting a total of five years--and the emphasis on restoration and rehabilitation in accordance with the offender's Indigenous heritage.
- [53] In *R. v. Davy*, [2015] O.J. No. 939 (Ont. S.C.J.), 2015 CarswellOnt 2799, the offenders--the victim's daughter and son-in-law--were convicted of failing to provide the necessities of life and endangering the life of the victim, over a period of three years. The house was in a state of squalor; the odor of cat urine was rampant as was the presence of feces. The victim, who suffered from dementia, was found unclothed on a bare mattress, covered in her own vomit, in a room with blacked out windows; she appeared emaciated, was in a dirty condition, was dehydrated, was suffering from gastrointestinal bleeding, and had a fractured hip. The sentencing judge determined that a CSO was not proportionate to the gravity of the offence and imposed a 12-month sentence of imprisonment, followed by two years' probation.
- [54] In *R. v. Lis*, 2020 ONCA 551, the offender pleaded guilty to failure to provide the necessities of life to her daughter, who had cerebral palsy, and died at nine years' old, weighing only 31 pounds, due to complications of malnutrition and dehydration. The sentencing judge

calculated pre-disposition credit as equivalent to 17 months' imprisonment and imposed imprisonment of one day, followed by three years' probation. The Court allowed the Crown's sentence appeal on the basis that it failed to prioritize denunciation and deterrence as required by s. 718.01 of the Criminal Code, and substituted a sentence of three years, less 17 months' credit, leaving 19 months' remaining. The Crown did not seek reincarceration and the Court stayed execution of the remaining sentence.

- [55] In *R. v. Brush*, 2022 BCSC 1194, the offender, a contracted caregiver, pleaded guilty to failing to provide the necessities of life to her client who required 24-hour care. Over a period of at least two years, the offender failed to provide the victim with her prescribed medications and with proper nutrition; her living space was also unsanitary. When the victim's physician attended to her in May 2019, he found her to be emaciated. When the victim was admitted to hospital, doctors observed that she had matted hair, overgrown nails, a sore on her head, and a pressure sore on her hip area. With proper care, the victim's weight increased and she fully recovered and was "thriving" at the time of the sentencing hearing. Finding a high degree of moral blameworthiness on the part of the offender, the sentencing judge imposed an 18-month term of imprisonment, followed by 18 months' probation.
- [56] In *R. v. Saad*, 2022 BCSC 2384, the offender pleaded guilty to failing to provide the necessities of life for nine children in her care, including a toddler who died while under her care. The infant was strangled to death by a string of decorative lights near the playpen in which the child was placed for an afternoon nap, and left unattended without monitoring. The offender operated an unlicensed facility and was only permitted to care for two toddlers under the age of 18 months; instead, she was caring for six toddlers. The offender was aware of the regulations but consciously decided to disobey them and took steps to deceive the children's parents about the number of children she cared for at one time. The sentencing judge imposed a period of 20 months' imprisonment and 12 months' probation.
- [57] In the reasons, the judge in the case at bar correctly observed:
- [67] *R. v. Proulx*, 2000 SCC 5, remains the seminal authority relating to the principles concerning the application of the conditional sentence regime.
- [68] Conditional sentences include both punitive and rehabilitative objectives and may be as onerous and perhaps even more onerous than a jail term. Conditional sentences generally should include punitive conditions that are restrictive of the offender's liberty, conditions such as house arrest should be the norm and not the exception (see *Proulx* at para. 127).
- [69] In the event the Court determines that a term of imprisonment of less than two years is appropriate, the Court is to consider whether serving the sentence in the community meets the principles and goals of sentencing.

[70] Two factors should be taken into account, namely, the risk of the offender re-offending; and the gravity of the damage that could ensue in the event of the offender re-offending. Once the prerequisites of s. 742.1 are satisfied, the judge should consider whether in all the circumstances the conditional sentence is consistent with the fundamental purpose and principles as set out in the Criminal Code: Proulx at para. 127.

[71] Finally, Lamer C.J.C. speaking for the Court said this at para. 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 [R. v. Wismayer, (1997), 115 C.C.C. (3d) 18 (Ont. C.A.)], at p. 36. The empirical evidence suggests that the deterrent effect of incarceration is uncertain: see generally [Canadian Sentencing Commission, Sentencing Reform: A Canadian Approach (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.

[Emphasis added.]

[58] In concluding that a CSO was appropriate in this case the judge said:

[72] In all of the circumstances I have come to the conclusion a period of imprisonment of 12 months is a fit and proper sentence. I'm also of the view that this case is precisely the kind of case that allows for a conditional sentence.

[73] Ms. Dahl, up until the events before us, [led] a productive and responsible life. The paralysis of judgment exhibited in this case appears to be isolated. It is not suggested there is a risk of re-offending. There is no indication she cannot continue with a fulfilling and contributing life. She is undergoing certain psychiatric care. There is no reason that the psychiatric care could not as well address all matters that may have impacted her in relation to the decision-making concerning Ms. Girard in those fateful months leading to her death. Ms. Dahl appears firmly on a road to coming to terms with the consequences of her actions, although it appears to continue to be a lengthy road of reconciliation for her. I am of the view that in all the circumstances incarceration is not necessary in this case. In my view, deterrence and denunciation are achieved, and the principle of proportionality met, by a non-custodial sentence.

- [59] Respectfully, in my view, the judge's reasoning on this issue resulted in a sentence which was demonstrably unfit. I reach this conclusion for several reasons.
- [60] The RFS, when read contextually and as a whole indicate that he erred in his proportionality analysis, particularly in his conclusions as to the gravity of the offence, and placed more emphasis than ought to have been the case on the respondent's motives and lack of mala fides.
- [61] The judge, despite his statement that the principles of deterrence and denunciation were "primary goals", failed to adequately address the reason behind the elevation of these principles. That is to say, he did not sufficiently deal with the offence at hand and the related aggravating factors; accordingly, he failed to give proper effect to denunciation and deterrence.
- [62] Parliament has expressly provided that, "evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim" should be considered an aggravating factor: Criminal Code, s. 718.2(a)(iii). The respondent was a caregiver to Ms. Girard, who lived in the respondent's home and was wholly dependent on the respondent for her health and personal needs. It is hard to imagine a greater conferral of trust than that Ms. Girard granted to the respondent. Despite the respondent's lack of mala fides, she abused the position of trust she occupied with respect to Ms. Girard, which resulted in Ms. Girard's tragic and untimely death. Accordingly, the trial judge erred by failing to consider Ms. Girard's heightened moral culpability in relation to s. 718.2(a)(iii).
- [63] Further, the victim's obvious vulnerability, the role of trust in the relationship, and the fact that paid caregivers represent an audience for whom general deterrence is particularly important was recognized by this Court in *R. v. Ashley-Pryce*, 2004 BCCA 531:
- [10] Obviously, the breach of trust committed by Mr. Ashley-Pryce engages the principle of deterrence and denunciation and the sentence he receives is likely to be noted by that community to a greater extent than many sentences are noted by the general public. Society must be able to trust that such persons will not commit serious breaches of this kind.
- [Emphasis added.]
- [64] I also disagree, for example, with the judge's characterization that "there was no evidence of abuse as that term is understood in these types of cases": RFS at para. 56. He erred in limiting his analysis of abuse to "these types of cases". There can be no doubt that, no matter her motives and compassion, the respondent's conduct towards Ms. Girard in the last months of her life--which resulted in death by starvation that may well have been avoided had Ms. Girard been referred to medical care in a timely way--constituted abuse.

- [65] As summarized above, CSOs have been imposed where an offender failed to provide a clean, hospitable living environment and grossly neglected the care and nourishment of an elderly parent, but did not directly cause the death of the parent: see for example Nanfo at paras. 7, 24-25. Further, CSOs have also been imposed where a momentary lapse of judgment--as opposed to a pattern of conduct stretching over several months--led to the death of a child related to the offender: Guimond at paras. 56-59.
- [66] From this perspective and considering the aggravating factors which are not in dispute--including the existence of a trust relationship and Ms. Girard's extreme vulnerability--the judge, in his proportionality analysis, actually elevated, in my view, the respondent's rehabilitation, personal circumstances, compassion, motives, and belief she was doing the right thing, to essentially the same level as deterrence and denunciation, notwithstanding his words to the contrary.
- [67] Further, the CSO did not contain sufficient punitive conditions to provide significant deterrence. The judge observed at para. 68 of the sentencing reasons, quoted at para. 56 above, "that conditions such as house arrest should be the norm and not the exception (see Proulx at para. 127)". And yet, the conditions he imposed amounted to no more than a curfew from 6:00 p.m. for the first six months and 11:00 p.m. for the remainder, together with 100 hours of community work.
- [68] Accordingly, it is difficult to understand how, in these circumstances, a twelve-month conditional sentence is "consistent with the fundamental purpose and principles of sentencing": Criminal Code, s. 742.1(a). This was one of those circumstances referred to in Proulx where a period of incarceration was required.
- [69] In reaching this conclusion, I do not intend to suggest that a CSO should never be available in a situation where an individual is convicted of or pleads guilty to the offence of failing to provide the necessities of life. There are indeed circumstances, which one could envision, where a CSO may very well be appropriate. Where a CSO is of significant length and contains sufficiently restrictive and onerous conditions, a CSO may effectively serve principles of deterrence and denunciation: Proulx at paras. 99-100, 103-107.
- [70] CSOs also have a special role in reducing the over-incarceration of Indigenous offenders, in line with the "remedial component" of s. 718.2(e) of the Code: R. v. Gladue, [1999] 1 S.C.R. 688, 1999 CanLII 679 at paras. 33, 40, 44; R. v. Ipeelee, 2012 SCC 13 at para. 59; see also R. v. Kehoe, 2023 BCCA 2 at paras. 36-44. As in C.G.O. (BCCA), where a CSO may otherwise be inappropriate to achieve the purpose and principles of sentencing, the unique circumstances of an Indigenous offender--and a concomitant focus on rehabilitation, restorative justice, and promotion of a sense of responsibility in the community--may weigh in favour of a CSO: see also R. v. Ladue, 2011 BCCA 101 at para. 51.
- [71] I have considered the authorities related to elder-abuse, including Davy, where the offenders received 12 months' imprisonment after failing to care for an elderly parent under the most egregious circumstances; the victim nonetheless survived. In Brush, the contracted

caregiver received a period of 18 months' imprisonment after failing to provide the victim with her prescribed medications and proper nutrition, and failing to tend to her needs over a prolonged period; again, death did not result and the victim managed a full recovery with proper medical care.

- [72] I have also considered the cases concerning children. In C.G.O. (BCCA), absent the offender's Indigenous heritage and related support plan, the Court would have imposed a period of imprisonment of two years less a day. In Lis, the Court substituted a sentence of three years' imprisonment, less pre-disposition credit, for the offender's failure to provide the necessities of life to her daughter. Likewise, in Saad, the BCSC imposed a sentence of 20 months' imprisonment for the offender's creation of an unsafe environment that tragically resulted in the death of a toddler.
- [73] I conclude from these authorities that the objectives of denunciation and deterrence must be paramount to other sentencing principles when the court is dealing with offences against children or otherwise vulnerable persons. Additionally, at the time of the offence, Parliament had expressly provided as such for offences against children in s. 718.01, and I agree with the Crown that the same principle logically applied to offences involving abuse against otherwise vulnerable people.
- [74] Nonetheless, I accept that the circumstances of this case are unique and differ from the authorities to which I have referred. It is not disputed, as found by the judge, that: the respondent's actions were motivated by "a certain view of compassion"; that there was "no evidence of physical or emotional mistreatment, in the sense of violent or cruel behaviour directed at Ms. Girard"; and that nothing suggested Ms. Girard's living space was "anything other than appropriate and respectful": RFS at paras. 55-56. I am also influenced by the accused's testimony that "she had tried to get fluids into Ms. Girard, even to the last minute": Trial Reasons at para. 158.
- [75] I would add that there was no evidence of any training or education Ms. Dahl had received and that it can be taken from the Trial Decision that Kinsight's oversight of Ms. Dahl was not optimum.
- [76] Still, the respondent's role as a paid caregiver to Ms. Girard, the special trust relationship that existed in the context of abject vulnerability, the significant breach of that trust, and Ms. Dahl's failure to seek medical care for Ms. Girard when it was "patently obvious" that not doing so would endanger her life, cannot be ignored. Tragically, the respondent's failure to perform her duty resulted in Ms. Girard's likely preventable death. Such a failure is deserving of heightened denunciation and deterrence.
- [77] On balance, in considering the circumstances of the offence and those of the offender, I have concluded that a period of incarceration of 15 months followed by a period of 12 months' probation would constitute a fit sentence.

Calculating the period of incarceration to be served on imposition of the custodial sentence

- [78] The Crown concludes its Statement on Appeal this way:
- [33] The respondent will receive, by operation of law, credit on a 1:1 basis for time served on her CSO since September 29, 2022, but will not have earned remission for that time (approximately 8 months by June 2, 2023, and 4 months earned remission): *R. v. Andrew*, 2008 BCCA 141, [at paras.] 35-38; *R. v. Nguyen*, 2008 BCCA 252, [at paras.] 56-57.
- [34] The onus is on the respondent to establish that an otherwise fit sentence should not be enforced: *Siwicki*, 2019 MBCA 104 at paras. 70-71; *Hamilton*, [2004] O.J. No. 3252 at paras. 165, 186 C.C.C. (3d) 139 (Ont. C.A.). Delay is relevant. The appeal was filed provisionally on October 29, 2022, but discussions about a hearing date did not occur until December 20, 2022, and due to appellant counsel's schedule, no date could be set until June 2, 2023. Depending on what this Court determines would have been a fit sentence and the consequential time left to be served, it may be appropriate for this Court to consider if incarceration is in the interests of justice. Weighing in favour of enforcement is the seriousness of the offence.
- [Emphasis added.]
- [79] The Crown did not seek to stay the CSO pending the outcome of this appeal which was an avenue available to it: *R. v. Cadman*, 2016 BCCA 187 at paras. 2, 9-14 (Chambers); Criminal Code, s. 683(5)(f). Accordingly, as acknowledged by the Crown, if incarcerated, the respondent would receive 1:1 credit for the period she has completed on the CSO.
- [80] There are two approaches available to this Court, which would, due to the sentence imposed on appeal, result in the respondent not being obliged to serve any custodial time: (1) a stay in accordance with the principles outlined in *R. v. Williams*, 2020 BCCA 286 at para. 82 (see also *R. v. Dhillon*, 2021 BCCA 271 at paras. 48-49 and *R. v. Penner*, 2023 BCCA 191 at paras. 95-97, for recent examples); or (2) provision of credit for remission that the offender likely would have earned had a conventional term of 15 months' imprisonment been initially imposed, as was done in *R. v. Nguyen*, 2008 BCCA 252 at paras. 56-57 and *R. v. Ali*, 2022 BCCA 83 at paras. 52-54.
- [81] Where a custodial sentence is imposed on appeal in place of a conditional sentence, the sentence commences from the date on which the conditional sentence was imposed, meaning that if incarcerated, the offender would then receive 1:1 credit for the time served on the CSO. However, the time spent on the CSO is not used to calculate earned remission under the Prisons and Reformatory Act, R.S.C. 1985, c. P-20, s. 6: *R. v. Andrew*, 2008 BCCA 141 at para. 32; *Nguyen* at para. 53. In British Columbia, earned remission is calculated in accordance with the criteria specified in the Correction Act Regulation, B.C. Reg. 58/2005, s. 34: with good performance, a prisoner may earn up to 15 days remission per month and, for each portion of a month served, one day remission for each full two days served.
- [82] I am of the view that it is appropriate to grant credit for earned remission in this case. The reason for doing so was recently outlined in *Ali*:

[52] As explained in *R. v. Nguyen*, 2008 BCCA 252 at para. 53, when a custodial sentence is imposed by an appeal court in substitution for a conditional sentence, the offender will receive credit for the time spent on the conditional sentence. However, that time will not count towards statutory remission. As a result, the offender is likely to be released later than had the conventional prison term been imposed at sentencing. See also *R. v. Andrew*, 2008 BCCA 141.

[Emphasis added.]

[83] There appears to be two ways by which to account for earned remission: (1) in *Nguyen*, this Court imposed the same discharge date on the offender that he would have received had the custodial sentence been originally imposed and had he earned remission for this period: at paras. 56-57; and (2) in *Ali*, this Court granted the offender 45 days' credit for the almost 90 days he had already served on the CSO (15 days per month), and reduced the custodial time to be served by this period: at paras. 52-54.

[84] In the case at bar, I prefer the latter approach. The respondent was originally sentenced on September 29, 2022, which means that by the date of this judgment, she will have served just over 10 months of the CSO. I would assign Ms. Dahl an additional five months' credit to reflect the remission she likely would have earned had she been incarcerated for these 10 months.

[85] Once the credit is taken into account, the carceral sentence that would run from September 29, 2022 is 10 months' imprisonment, meaning that the custodial portion of the sentence was served as of July 29, 2023. A period of 12 months' probation on the same conditions imposed by the initial sentencing judge remains to be served.

[86] In light of the impact of the credit I have assigned, I need not consider whether a stay of the post-appeal portion of sentence is warranted.

## VI. Disposition

[87] I am of the view that a twelve-month conditional sentence unreasonably departed from the fundamental principle of proportionality and was demonstrably unfit.

[88] Accordingly, I would grant the Crown leave to appeal, allow the appeal from sentence, set aside the CSO, and substitute a 15-month conventional term of imprisonment.

[89] I would grant Ms. Dahl five months' credit to account for earned remission. She has served more than 10 months on her CSO. As such, I would treat Ms. Dahl's sentence of imprisonment as having been served as of July 29, 2023.

[90] I would order a period of 12 months' probation on the same conditions as those imposed by the judge, to commence as of July 29, 2023.

"The Honourable Mr. Justice Abrioux"

I AGREE:

"The Honourable Madam Justice Newbury"

I AGREE:

"The Honourable Mr. Justice Hunter"

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