
CANADA / JUDGMENT

R. v. Henareh

2015 BCSC 2455

COURT

Supreme Court of British Columbia

DECIDED

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2015 BCSC 2455 R. v. Henareh

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Henareh,

2015 BCSC 2455

Date: 20151204

Docket: 26235-5

Registry: Vancouver

Regina

v.

Esfandiar Henareh

Before: The Honourable Madam Justice Watchuk

Oral Reasons for Sentence

Counsel for the Crown:

M. Namazi

Counsel for the Accused:

R.C. Claus

Place and Date of Hearing:

Vancouver, B.C.

January 5, 2015

February 18

June 24 & 26, 2015

November 5 & 6, 2015

Place and Date of Judgment:

Vancouver, B.C.

December 4, 2015

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I. INTRODUCTION

- [1] These are the Reasons on the sentencing of Esfandiar Henareh who was found guilty on January 5, 2015 on a charge of possession of opium for the purpose of trafficking pursuant to s. 5(2) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19.
- [2] The sentencing position of the Crown is that Mr. Henareh should be imprisoned for three to four years.
- [3] On behalf of Mr. Henareh it is submitted that the range of sentences available includes a Conditional Sentence Order of two years less one day; six months jail with three years' probation; and a 90-day interim sentence with two years' probation and substantial community work service. It is the latter - 90 days to be served intermittently - that is the preferred sentencing position of the defence.

II. BACKGROUND

- [4] The charge on which Mr. Henareh was found guilty, possession of opium for the purpose of trafficking, arose from events on March 11, 2011. That charge is count 3 on indictment #26235-2. Counts 1 and 2 charge Mr. Henareh jointly with Aghasi Salamat Ravandi with the offences of importing opium and possession of opium for the purpose of trafficking between March 9 and March 11, 2011. The Crown has stated that it will stay counts 1 and 2 against Mr. Henareh at the conclusion of this sentencing on count 3.
- [5] The Indictment states:

Count 1 / Chef 1

Aghasi SALAMAT RAVANDI and / et Esfandiar HENAREH, on or between the 9th day of March, 2011 and the 11th day of March, 2011, at or near the City of Richmond, in the Province of British Columbia, did unlawfully import into Canada a controlled substance, to wit: Opium, contrary to Section 6(1) of the Controlled Drugs and Substances Act.

Count 2 / Chef 2

Aghasi SALAMAT RAVANDI and / et Esfandiar HENAREH, on or about the 11th day of March, 2011, at or near the City of Richmond and the City of Vancouver, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: Opium, for the purpose of trafficking, contrary to Section 5(2) of the Controlled Drugs and Substances Act.

Count 3 / Chef 3

Esfandiar HENAREH, on or about the 11th day of March, 2011, at or near the City of Vancouver, in the Province of British Columbia, did unlawfully possess a controlled substance, to wit: Opium, for the purpose of trafficking, contrary to Section 5(2) of the Controlled Drugs and Substances Act.

- [6] In an oral ruling dated December 12, 2013, I granted the application of Mr. Salamat Ravandi for severance with the result that his trial proceeded separately on counts 1 and 2 on which he was charged jointly with Mr. Henareh: R. v. Ravandi and Henareh, reported at 2013 BCSC 2374.
- [7] Mr. Salamat Ravandi elected trial by judge alone. On January 15, 2015, in Reasons reported at 2015 BCSC 511, he was convicted by Mr. Justice Davies of the offences of importing opium and possession of opium for the purpose of trafficking as set out in counts 1 and 2. The brief circumstances of those offences were that a shipment of 18 kilograms of opium concealed in samovars arrived at the Vancouver International airport on March 9, 2011. On March 11, Mr. Henareh was at the airport location when Mr. Salamat Ravandi attended to pick up the opium with a U-Haul van. After the van was driven by Mr. Salamat Ravandi to a location near Mr. Henareh's residence and parked with the 18 kilograms of opium locked inside, Mr. Henareh and Mr. Salamat Ravandi left together in Mr. Henareh's vehicle travelling to Mr. Salamat Ravandi's residence. Mr. Henareh was arrested shortly after Mr. Salamat Ravandi got out of that vehicle. In the trunk of Mr. Henareh's vehicle were 14 kilograms of opium which form the substance of count 3.
- [8] Mr. Salamat Ravandi was sentenced to 4½ years imprisonment on October 16, 2015 by Mr. Justice Davies for the offences of importing opium and possession for the purpose of trafficking opium (R. v. Salamat Ravandi, 2015 BCSC 2167 [Ravandi]).
- [9] The trial of Mr. Henareh, who had elected judge and jury, commenced with a voir dire regarding the admissibility of the 14 kilograms of opium located in the trunk of his vehicle. The application to exclude the evidence as a result of a breach of his rights under ss. 8 and 9 of the Charter was dismissed in a Ruling dated February 19, 2014 and reported at 2014 BCSC 566. The evidence was admitted.
- [10] After an adjournment of the dates set in September 2014, the trial was scheduled to proceed on January 5, 2015. On that date, Mr. Henareh re-elected trial by judge alone and invited the court to enter a finding of guilt to count 3, a charge of possession of opium for the purpose of trafficking.

III. CIRCUMSTANCES OF THE OFFENCE

- [11] As a result of surveillance at the airport when a shipment of opium was transported to Canada in samovars, Mr. Henareh's vehicle was stopped and searched on March 11, 2011. Mr. Henareh was the sole occupant as his former co-accused, Aghasi Salamat Ravandi, had exited the vehicle shortly before at his residence. When Mr. Henareh's vehicle was searched, approximately 14 kilograms of opium was located in the trunk of the vehicle concealed inside of three coolers.
- [12] Counsel filed Admissions on Conviction pursuant to s. 655 of the Criminal Code, R.S.C. 1985, c. C-46. That document, dated January 5, 2015, states as follows:

A. IDENTITY OF ESFANDIAR HENAREH

1. Esfandiar Henareh, the individual before the court, is the same Esfandiar Henareh observed by Canada Borders Services Agency (CBSA) officers and by Royal Canadian Mounted Police (RCMP) officers on March 11, 2011. He is also the same individual arrested and searched by RCMP on that date in the City of Burnaby, in the Province of British Columbia.
2. At the time of the commission of this offence, Henareh resided at 206-1788 SE Kent Avenue, Vancouver, B.C. V5P2S7.

B. ARREST OF HENAREH - JURISDICTION

3. RCMP Sergeant Max Fossum arrested Henareh on March 11, 2011 as Henareh was about to conduct a u-turn in his Honda in the alley behind the residential building located at 4355 Maywood Street, in Burnaby, B.C. Henareh was arrested for importation of a controlled substance.

Fingerprints of Henareh are Taken at the Jail

4. After his arrest, Henareh was transported to the Burnaby RCMP detachment.
5. RCMP Constable Brenda Winpenny fingerprinted and photographed Henareh at the Burnaby RCMP detachment.

C. NATURE OF THE SUBSTANCES AND CONTINUITY OF EXHIBITS - POSSESSION

6. The nature and continuity of the controlled substance set out in Count 3 of the Indictment is admitted.

Search of Henareh's Wallet

7. A British Columbia Driver's Licence numbered 8580829 in Mr. Henareh's name was located inside a wallet seized from Mr. Henareh at the time of his arrest.

Search of the Honda Driven by Mr. Henareh

8. On March 11, 2011, Henareh's Honda was searched and the following items were among the things seized from the Honda:
 - a) A black Samsung cellular phone with number 604-612-3355 was located in the centre console. Henareh is the subscriber of this cellular phone number.
 - b) Miscellaneous documents were located in the glove box including several letters addressed to Henareh and his family at their residence on SE Kent Avenue.
 - c) The trunk of the Honda was searched and the following items were located:
 - i) A blanket covering the contents at the back of the trunk.
 - ii) A large quantity of bundled newspapers dated February 23 and 25, 2011.

iii) The blanket was moved and three identical red and white seven litre Coleman brand coolers were observed.

iv) Each of the three coolers contained opium packaged in the same manner. The opium weighed a total of 13,787.4 grams.

Health Canada Analysis of Opium in Coolers

9. The following is a description of the three coolers and the drug exhibits located therein:

i) Cooler 1 contained three similarly knotted opaque plastic bags. Each opaque plastic bag contained a block of opium wrapped in a clear plastic bag.

ii) Cooler 2 contained three similarly knotted opaque plastic bags. Two of the opaque plastic bags contained a block of opium wrapped in a clear plastic bag. The third opaque plastic bag contained a block of opium wrapped in a clear plastic bag inside a Ziploc freezer bag.

iii) Cooler 3 contained two similarly knotted opaque plastic bags. One opaque plastic bag contained a white shopping bag and a block of opium wrapped in a clear plastic bag. The white shopping bag contained a block of opium wrapped in a clear plastic bag inside a Ziploc freezer bag. The second opaque plastic bag contained a block of opium wrapped in a clear plastic bag.

10. The substances inside the coolers was analyzed by Health Canada and confirmed to be opium.

Henareh's Fingerprints

11. Impressions of fingerprints were found on the plastic bags containing the opium inside the coolers. Two of the fingerprints were individualized to Henareh.

D. POSSESSION FOR THE PURPOSE OF TRAFFICKING

12. The 13.787 kilogram seizure of opium from the Honda would equate to approximately 68,935 doses at the average level of 200 milligrams per dose. A subject who is heavily addicted to opium could possibly use 1 to 3 grams of opium daily. The seizure would therefore amount to about 12.5 years of supply for one individual using 3 grams per day.

13. The smoking of raw opium can produce severe physical and psychological addiction to the drug. The main Central Nervous System effects are: suppression of the sensation of and emotional response to pain, euphoria, drowsiness, lethargy, relaxation, difficulty in concentration, decreased physical activity, mild anxiety, papillary constriction, blurred vision, impaired night vision, and suppression of cough reflexes.

14. The 13.787 kilograms of opium from the Honda would be worth approximately \$275,740 CDN. If sold at the gram level, it would be worth approximately \$413,610 CDN.

15. The opium possessed by Henareh in the trunk of his Honda was possessed for the purpose of trafficking.

[13] The circumstances of the offence involved an investigation of both Mr. Salamat Ravandi and Mr. Henareh as well as the surveillance on the date of Mr. Henareh's arrest.

[14] The evidence pertaining to the circumstances of the offence which could be put before the court at this sentencing hearing was disputed. In a Ruling dated June 9, 2015, reported at 2015 BCSC 992, I ruled that evidence in addition to the Admissions is necessary. As a result the following documents are filed as exhibits on this sentencing by the Crown. The facts to be found and the inferences to be drawn from those documents remain, in many respects, contested:

1. The Transcript of Sgt. Fossum's evidence on the voir dire dated January 7, 2014;
2. U-Haul Rental Documents February 9, 2011;
3. IDENT Continuation Report dated March 31, 2011;
4. The Report to Crown Counsel dated April 10, 2011 and amended on November 1, 2012 and the Curriculum Vitae of Staff Sergeant Murphy;
5. Admissions of Fact, signed September 2014, appending numerous exhibits;
6. Business Record Affidavits from Rogers and Telus Communications; and,
7. Affidavit and Phone Records in Relation to 604-612-3355 (Mr. Henareh's cell phone), and an Affidavit and Phone Records in Relation to 778-867-2843 (Mr. Salamat Ravandi's cell phone).

[15] The evidence concerns more than the one shipment of opium which arrived on March 9, 2011 and was picked up at the airport by Mr. Salamat Ravandi two days later, on March 11. The opium located in the vehicle trunk had previously been imported into Canada. It is not known if it all arrived at one time, or when it arrived. The evidence contained in the materials, in conjunction with submissions by the Crown, support the following findings of fact:

- (a) On March 9, 2011, the first day that Mr. Salamat Ravandi attempted to clear the March shipment, he and Mr. Henareh attended at a U-Haul location together to rent the same kind of van that they rented on February 9, 2011 and March 11, 2011. All three times they attended together. On one occasion, the video footage captured the fact that Mr. Henareh drove them to the U-Haul location in his Honda;
- (b) The quantity and appearance of the opium which arrived in the March shipment is very similar to the opium located in the trunk of Mr. Henareh's car;
- (c) On March 11, 2011, when Mr. Salamat Ravandi returned to pick up the shipment, he and Mr. Henareh rented a similar van from U-Haul;
- (d) Mr. Henareh drove him to the airport in the same Honda which was later searched and where the 14 kilograms of opium was found;

- (e) Mr. Henareh waited for him in the Cafe at the airport. Their interactions there were as if they were pretending that they did not know one another;
- (f) They met outside the Cafe behind a wall;
- (g) They were in frequent phone contact with one another although not did not text message while in the Cafe;
- (h) Mr. Henareh later departed in his Honda and waited for Mr. Salamat Ravandi near Mr. Henareh's residence;
- (i) Mr. Salamat Ravandi drove the U-Haul with the shipment to the same location. They met on the street in front of Mr. Henareh's residence. Mr. Henareh handled part of the shipment when they placed one pink bag, containing carpets and blankets, into Mr. Henareh's Honda;
- (j) The U-Haul with the concealed opium inside the samovars remained parked outside Mr. Henareh's residence;
- (k) The two men left together in Mr. Henareh's vehicle. While driving, Mr. Henareh behaved in a fashion consistent with conducting "heat checks". After some delays and driving in a circuitous fashion, he drove to Mr. Salamat Ravandi's residence, but did not drop him off directly in front. Rather, he stopped almost a block away;
- (l) Mr. Henareh then waited about five minutes before he drove behind Mr. Salamat Ravandi's building;
- (m) The phone records demonstrate that the men were in phone contact during the time that Mr. Henareh was waiting in the Honda;
- (n) When the Honda made a U-turn in the back alley, Sgt. Fossum approached the grey Honda with his unmarked police vehicle and stopped in front of it. Sgt. Fossum exited his police vehicle and arrested Mr. Henareh for importation of a controlled substance;
- (o) When Sgt. Fossum advised Mr. Henareh that he was under arrest, Mr. Henareh looked in the direction of the pink package in the backseat and stated "not mine". Sgt. Fossum believed that although Mr. Henareh appeared to have limited English skills, he understood that he was a police officer and that they were after the package;
- (p) Cpl. Mehat observed Mr. Salamat Ravandi exit the rear of his apartment building at 4355 Maywood Street. Cpl. Mehat noted that Mr. Salamat Ravandi appeared to be looking for Mr. Henareh;
- (q) Mr. Henareh's cell phone was located in the Honda incidental to arrest. Mr. Salamat Ravandi's cell phone was located on him upon his arrest;

- (r) A search of the Honda located numerous documents. A pink shipping bag was located on the back seat of the grey Honda. This bag contained the carpets and blankets which had been picked up at the airport that day. In addition, in the trunk, police located the newspapers and the three coolers which contained the wrapped blocks of opium as described in the Admissions on Conviction;
 - (s) Mr. Henareh's fingerprints were located on two of the bags used for wrapping the opium. Mr. Salamat Ravandi's fingerprints were compared, but not identified on any of the bags;
 - (t) A search of Mr. Salamat Ravandi located documents relating to shipments from Iran in February and March 2011 through the same consignee; and
 - (u) As shown in the phone records, there was frequent phone contact between Mr. Henareh and Mr. Salamat Ravandi on dates which correspond to the relevant events.
- [16] Crown counsel submits that these facts and the sequence and timing of these events together with the calls between Mr. Salamat Ravandi and the shipper demonstrate that Mr. Henareh had a key role in the importation of both shipments - the one located in his trunk and the one secreted in the samovars which was picked up on March 11. This is the basis of the Crown's submissions and the essence of the factual issue on this sentencing. I will return to this issue in the discussion of aggravating factors. Section 724(3)(e) of the Criminal Code requires that the Crown must prove an aggravating fact beyond a reasonable doubt.

IV. CIRCUMSTANCES OF THE OFFENDER

- [17] Mr. Henareh is 46 years old and has been in Canada since February 2008. He is married and has a daughter aged 18. Both his daughter and his wife are Canadian citizens. He is not a citizen of Canada, and it had been submitted that any sentence in excess of six months incarceration will result in his deportation without appeal.
- [18] Mr. Henareh has been steadily employed since his arrival in Canada and continues to be employed driving a delivery truck. His wife is also employed full-time although she is currently unable to work due to the stress and uncertainty surrounding her husband's future. His daughter is a student at Langara College taking a psychology major with the goal of becoming a psychologist.
- [19] Mr. Henareh was born in rural Iran and his education went only as far as elementary school. He left school to work on the farm at age 12. His wife is from the city and they married in 1994. After his marriage he worked summers on the farm and as a taxi driver the rest of the year. Their daughter was born in 1996.
- [20] The family is Kurdish. It is submitted that they are a people who have been oppressed in Iran, Iraq, and the countries bordering them. A Kurd has no opportunity to advance in Iran. Mr. Henareh was able to work only as a taxi driver in Iran while his wife could not work at all as there are no opportunities for a Kurdish woman in Iran. Mrs. Henareh has a sister who is a lawyer in Australia, a brother who is a doctor in Amsterdam, and a sister who is doing a

PhD in Human Rights in London. When she returned to Iran to attend a family event for her husband, she was extensively questioned about the whereabouts and occupations of her siblings. She and her sister living in London are satisfied that should Mrs. Henareh return to Iran she would be jailed and executed. A brother of Mr. Henareh was jailed and executed.

- [21] Mr. Henareh and his family left Iran in 2006 due to the oppression which they felt made it intolerable and unsafe for them to remain. They went to Turkey where Mr. Henareh was able to work to maintain the family while they applied to immigrate to Canada. A sister of Mrs. Henareh who is married to an engineer lives in Vancouver and they sponsored the family. While in Iran their daughter completed elementary school, while in Turkey she was in language school learning the Turkish language, and when they came to Canada she started Grade 6 in an ESL school. By the fall of that year she started Grade 7 in a regular school because her facility with English had progressed. She graduated from David Thompson High School and is now a student at Langara College.
- [22] When the family arrived in Vancouver in 2008, Mrs. Henareh went to work almost immediately as did her husband. She worked first at a kiosk food outlet. After two months she was unable to stay on due to the language barrier and culture shock. She took a course in customer service for three months and then obtained work at Fabricland where she has worked since. The only periods she has missed from work relate directly to her stress and depression resulting from her husband's arrest and the court proceedings.
- [23] Mr. Henareh has worked steadily since his arrival. His initial employment was unloading trucks. That work lasted until shortly before his arrest when he was laid off. It was that layoff which led to his involvement with Mr. Salamat Ravandi because he had a car and he had time. Shortly after his arrest he was working in construction for a while, and then after another brief layoff, he has been working for a company driving a delivery truck for the last four years.
- [24] Mr. Henareh submits that his income is necessary for the family to make ends meet. Although he does not earn a lot of money, both incomes are required to maintain the family expenses.
- [25] Mr. Henareh has recently had health problems with treatment for kidney stones. Sentencing was delayed to allow for further treatment and possible surgery.

V. AGGRAVATING FACTORS

- [26] I will first outline the Crown's submissions with regard to the aggravating factors and where defence counsel takes issue with those submissions, I will set out the position of defence counsel. It is not disputed that the amount of opium located in the trunk of Mr. Henareh's vehicle, approximately 14 kilograms, is an aggravating factor. It is also not disputed that opium, as a substance not indigenous to Canada, must have been imported into Canada. Defence counsel points out that that is also the case with other controlled substances. It is admitted that the quantity was possessed for the purpose of trafficking.

- [27] Crown counsel submits that the subject opium had been imported in a manner similar to the opium imported on the date of the arrest, and that Mr. Henareh had knowledge of the manner of importing the opium located in his vehicle. Defence counsel takes issue with this submission and states that there is no evidence how the opium located in Mr. Henareh's vehicle came into Canada and that suggestions as to its manner of importation are mere speculation.
- [28] Crown counsel submits that, in the alternative, on the totality of the facts there was a partnership between Mr. Henareh and Mr. Salamat Ravandi. In that partnership, Crown counsel says that the role of Mr. Henareh was more than being a courier and rather that he played a key role in the partnership. Defence counsel states that the relationship between the two former co-accused was one of friendship and that Mr. Henareh was holding the opium for Mr. Salamat Ravandi after the police visit to Mr. Salamat Ravandi's home in February 2011. He had no other involvement. While Crown counsel submits that this is not an isolated incident but part of an ongoing enterprise, defence counsel states that this was only one circumstance. This is the primary issue to be resolved.
- [29] Defence counsel submits that the frequent contact evidenced in the phone records is also consistent with friendship. He points out that although the surveillance officers were of the view that the co-accused were texting each other while in the airport coffee shop, it is clear that they were not texting each other at that time and thus the inferences to be drawn from the phone records are minimal.
- [30] It is submitted by Crown counsel that an aggravating factor is that this offence was undertaken with a profit motive. While that is not admitted by defence counsel, there is no suggestion that Mr. Henareh is an addict. I agree with Crown counsel in this regard.
- [31] Crown counsel further submits that there would have been, by necessity, preplanning and deliberation prior to this event, particularly since the police had been to Mr. Salamat Ravandi's residence one month earlier and warned him about involvement with imported drugs. Defence counsel submits that there is no evidence of funds received by Mr. Henareh from the drug transactions. He assisted Mr. Salamat Ravandi on one day and there is no evidence that Mr. Henareh was aware of the warning by police to Mr. Salamat Ravandi.
- [32] This offence is one, which in the view of Crown counsel, indicates sophistication regarding how the roles were organized. Although there is no evidence of Mr. Henareh receiving remuneration, I agree that this was a deliberate and relatively sophisticated plan.
- [33] Finally, it is submitted and not disputed that, as a Schedule 1 drug, opium is addictive and destructive.
- [34] Although Crown counsel submitted that the fact that Mr. Henareh is a refugee is an aggravating factor, I decline to make that finding in this case.

A. Findings of Fact

- [35] I turn to the findings of fact regarding the degree of involvement of Mr. Henareh. These findings will inform his degree of responsibility for the purpose of sentencing pursuant to s.718.1 of the Criminal Code.
- [36] The Crown submits that it is an aggravating factor that Mr. Henareh and Mr. Salamat Ravandi were partners in the opium importing business. On behalf of Mr. Henareh, it is submitted that Mr. Henareh was assisting a friend. I find that the facts lie between these views.
- [37] It is not submitted that Mr. Henareh was the operating mind. I find him to be an employee in a position of trust as indicated by his possession of a valuable asset, the opium. Although they may well also have been friends, this was a business relationship between Mr. Henareh and Mr. Salamat Ravandi.
- [38] Mr. Henareh's involvement was more than a one-time event, such as in *R. v. Alvarez*, [1986] B.C.J. No. 300 (C.A.), discussed below, or being in the wrong place at the wrong time helping a friend.
- [39] However, the evidence does not support a finding of partnership. It was Mr. Salamat Ravandi who was in contact with the shipper and suppliers and who appeared to take control of the opium when it arrived. There is no evidence of financial transactions made by Mr. Henareh with regard to the opium.
- [40] Mr. Henareh's phone records and his presence at the U-Haul rental facility in February and March indicate a pattern. He knew, I find, of the shipment which arrived on March 9 and was picked up on March 11. His presence at the airport that day was part of the plan. The expert opinion regarding the usual presence of a "watcher" accords with Mr. Henareh's activities on March 11. Mr. Henareh played an important role. He was trusted. I find that he had knowledge of the opium importation scheme which included the shipment received on March 11 and at least one previous shipment.

B. The Controlled Substance - Opium

- [41] Opium is a natural product obtained by the incision of the unripe poppy capsule. The milky latex which oozes from the incisions is scraped by hand and air dried to make opium gum.
- [42] One acre of cultivated land will support approximately 40,000 to 60,000 poppies which will yield approximately 10 kilograms of raw opium. Ten kilograms of raw opium can be converted into one kilogram of pure morphine which will yield one kilogram of pure heroin.

- [43] In its raw state, opium is usually smoked although it can be taken orally or made into tea. The usual dose of opium is 30 to 200 milligrams, which can be repeated during a day. A gram can provide at least five doses. The 13.787 kilograms seized would equate to approximately 68,935 doses at the higher level of 200 milligrams per dose. A subject who is heavily addicted to opium could use one to three grams of opium daily. This quantity will provide a 12.5 year supply for one individual at the high end of three grams per day.
- [44] The smoking of raw opium can produce severe physical and psychological addiction to the drug. The main central nervous system effects are suppression of the sensation of an emotional response to pain, euphoria, drowsiness, lethargy, relaxation, difficulty in concentration, decreased physical activity, mild anxiety, pupillary constriction, blurred vision, impaired night vision, and suppression of cough reflexes.
- [45] It was the opinion of Staff Sergeant P.K. Murphy of the RCMP that this opium was held for the purpose of trafficking, and that this trafficking was at the importation, wholesale and distribution levels. In his opinion, the quantity of opium seized during the investigation, both from Mr. Salamat Ravandi and Mr. Henareh, is considered very large and requires a considerable cash investment and risk by the purchaser and their associates. Quantities in this amount are not easily arranged or distributed unless associated with well-organized criminal groups. Further he says in his Report:

the quantity of opium seized during this investigation is not easily obtained on the first instance transaction between all parties involved. An amount of this size is usually only transacted in one of two ways: all parties involved have conducted successful previous transactions and have an established and successful track record, or trusted and influential third parties vouch for either (or both) seller and purchaser. Shipments of this nature are usually prenegotiated, and purchased prior to shipping, although an established group may ship drugs for later payment.

- [46] The value of the opium seized, 13.787 kilograms, would be \$275,740 or if sold at the gram level, it could be worth \$413,610.

VI. Mitigating Factors

- [47] Mr. Henareh has no criminal record.
- [48] With regard to remorse, Mr. Henareh stated through counsel that he was sorry. Crown counsel submits that the letters submitted on his behalf minimize his involvement. Although they do minimize, I cannot attribute the writers' incomplete understanding of the circumstances of the offence to Mr. Henareh.
- [49] Mr. Henareh has the support of his family and friends as indicated by the letters written on his behalf.

[50] While Mr. Henareh did not plead guilty to Count 3, possession for the purpose of trafficking, in order to preserve his right of appeal, defence counsel submits that his invitation to the court to convict Mr. Henareh on that charge after Crown counsel agreed to stay the two counts of importation should be taken into account since a jury trial was avoided. In the circumstances of this case including that the guilty plea was entered at a relatively late stage of the proceedings, I do not take this process as a mitigating factor.

VII. Immigration Consequences

[51] The court heard evidence from Officer Ward Hindson who is an Inland enforcement officer with Canada Border Services Agency. His duties involve conducting investigations under the Immigration and Refugee Protection Act, S.C. 2001, c. 27 [Act] and the Immigration and Refugee Protection Regulations, SOR/2002-227 to determine if non-Canadian citizens are inadmissible to Canada under the Act.

[52] Officer Hindson was a witness called by the Crown who testified in order to assist this Court to understand the immigration consequences of a sentence imposed specifically on Mr. Henareh given the particular offence of which he has been found guilty and his immigration status.

[53] A large portion of Officer Hindson's evidence focussed on the serious criminality provision in the Act for convictions within Canada which states:

36. (1) A permanent resident or a foreign national is inadmissible on grounds of serious criminality for
- (a) having been convicted in Canada of an offence under an Act of Parliament punishable by a maximum term of imprisonment of at least 10 years, or of an offence under an Act of Parliament for which a term of imprisonment of more than six months has been imposed.

[54] Mr. Henareh is currently a permanent resident of Canada. He entered under the category known as "RAG" which stands for Refugee Assisted Group. He was processed as a refugee from Turkey as was determined that he was at risk in Iran. He entered Canada as a permanent resident. The RAG code indicates a person brought to Canada and granted protection. If Mr. Henareh loses his permanent resident status as a result of the issuance of a removal order and the exhaustion of all appeals, he will revert to protected person status in Canada.

[55] Officer Hindson summarized that process as it would apply in this case. As Mr. Henareh has been convicted of a serious criminal offence he could be found inadmissible as a result of the operation of s. 36(1)(a) of the Act because the maximum sentence for the particular offence applicable in this case is ten years or more.

- [56] At that stage, a file such as this is referred to an officer such as Officer Hindson. He requests submissions and exercises his discretion to either send the file to an immigration hearing or to issue a warning letter. If it is his decision to send the matter to an immigration hearing, his manager will review the file and can at that point substitute a decision to issue a warning letter rather than send the matter to an immigration hearing.
- [57] If the matter is sent to a hearing, the member has no discretion. If the individual, such as Mr. Henarah, is convicted of certain offences and is not a Canadian citizen, the issuance of a deportation order follows here on the basis of the conviction and the crime and the maximum sentence.
- [58] At this point, the issue of appeal rights to the Immigration Appeal Board for an individual such as Mr. Henareh arises. Officer Hindson's evidence in that regard was:

Q. And just to pause there, that order has to be issued because of the nature of the offence for which the person has been convicted of.

A. Correct.

Q. Not the sentence that they've received.

A. Correct. That order is purely based off the conviction and the crime and the maximum sentence that is listed in the Criminal Code of Canada. Up until that point and throughout the whole process, I will add that the client could seek to, of course, judicial review any decision to the Federal Court of Canada, if they disagree with a step or decision. Every step throughout what we do can be challenged to the Federal Court trial division.

Once they are ordered deported, then that is when we have to determine if there's an appeal right or not for him, because he is a permanent resident of Canada.

Now, if he was to receive a sentence from you, My Lady, of more than six months, then he would not be entitled to an appeal under the Immigration Act. That's 64(2). If it's less, then he does -- would have appeal rights.

If you do not have a right to appeal, in this case because he was a permanent resident that came to Canada as a refugee class, he then reverts to being a protected person in Canada. So he's a level above a foreign national.

Someone who is a protected person in Canada, if we wish to remove them from Canada, we have to be worried about the principles of non-refoulement.

- [59] It is at this point when a removal order is standing and there is no appeal that an individual in the circumstances of Mr. Henareh reverts to being a protected person. The principle of non-refoulement operates. There is another assessment referred to as a "danger opinion process" which involves a determination of the risk to public safety if the individual is allowed to remain in Canada, and the risk to the individual if he returned to a country where he found to be at risk. In making the assessment at the stage of the danger opinion, the

officer evaluates many factors such as the date of the offence, the time passed, the criminal record, and the involvement of any violence, the remorse of the individual, the potential impact on his family if he is removed, his connection to Canada and, importantly, the circumstances he is likely to face if he is returned to another country.

- [60] When that danger opinion process is complete, it is served on the individual who has an opportunity to comment further and make submissions.
- [61] At the next stage, it is sent to a delegate of the Minister in order to make the determination of the danger to public safety if the individual stays and the risk to the person if the individual is returned. It is at that stage that Country Condition documents and the materials from NGO and other sources are reviewed by the Minister's delegate.
- [62] Officer Hindson, throughout his description of the steps involved, indicated that judicial review is available at every step and that the Minister's decision is also subject to judicial review.
- [63] Mr. Henareh or an individual in his circumstances may not face an immigration hearing which would result in a removal order because at the first stage there may be a warning letter issued rather than a referral to the immigration hearing. It is thus uncertain if Mr. Henareh would or would not be subject to a removal order if he was granted a sentence in excess of six months. He may receive a warning letter rather than facing an immigration hearing and a removal order. If he does have an immigration hearing, which would result in a removal order, he will revert to the status of a protected person and the danger opinion process - lasting one to seven years - will commence. He may or may not be removed at the conclusion of the danger opinion process. At every step of the entire process, he has access to judicial review.
- [64] In summary, if the removal order is issued, Mr. Henareh as a result of his having the status of a RAG by virtue of being part of the refugee assisted group, would revert to being a protected person. As a protected person, there will be a danger opinion process involving many factors including humanitarian and compassionate grounds and that process will take one to seven years.
- [65] If he is referred to an immigration hearing, rather than being granted a warning letter, and if the sentence is greater than six months, then as defence counsel submits, there is no in-person appeal process pursuant to s. 64(2) of the Act but rather in Mr. Henareh's case, the danger opinion process with multiple opportunities for written submissions on his behalf.

VIII. CASE LAW and discussion

- [66] Defence counsel relies on eight cases, two of which are also in the Crown's brief of authorities. The first four cases deal with intermittent sentences.

[67] In *R. v. Allison*, [1976] B.C.J. No. 816 (C.A.), the British Columbia Court of Appeal upheld the decision on sentencing for a charge of trafficking in cocaine. The amount involved was one ounce of cocaine and the sentence of 90 days imprisonment to be served intermittently. The offender was 40 years old, had a nine-year crime-free interval in his criminal record and was a cocaine addict. There were significant steps taken to rehabilitate himself at the time of the sentencing. The court stated in para. 8:

it is my opinion that the trial judge recognized that the intermittent sentence now provided in the Code should only be used in the rarest circumstances, and only when special circumstances exist.

[68] *Alvarez*, another case from the British Columbia Court of Appeal, was an appeal of a 90-day intermittent sentence following a guilty plea. The sentence was upheld. The offender had acted as a courier to deliver ten ounces of cocaine for which he was paid \$1500. The offender was an employee of a downtown hotel who carried out the errand by couriering the cocaine at his lunch hour. When he was arrested, he immediately admitted his knowledge, gave a statement and pled guilty. He had no other involvement with the cocaine.

[69] In *R. v. Kennedy*, [1988] B.C.J. No. 998, 1988 CarswellBC 1389 (C.A.), the BCCA upheld thirty days imprisonment to be served intermittently plus a \$6000 fine imposed for cultivating marijuana in the amount of two kilograms. The charge was possession of marijuana for the purposes of trafficking. In upholding what was described as an unorthodox sentence, the court stated that it was unable to say that the sentence imposed was unfit.

[70] In *R. v. MacLeod* (1994), [1995] 47 B.C.A.C. 230, 76 W.A.C. 230 (C.A.), the British Columbia Court of Appeal reduced a sentence for conspiracy to traffic in a narcotic to 90 days imprisonment to be served intermittently. The sentence had been agreed to after guilty pleas were entered. However, the trial judge did not accede to the joint submission despite the fact the Crown had agreed to the 90-day intermittent sentence in exchange for the cooperation of the three offenders. The Court of Appeal took note of the specific circumstances of the appellants who were a mother, age 72, her daughter, age 50, and a male, age 47. They had been involved in the conspiracy organized by the mother's sister. The Court of Appeal referred to the "very special circumstances of this case" (at para. 12) and was not persuaded that a conventional term of imprisonment was required for general deterrence.

[71] A more recent case, *R. v. Nesbitt*, 2012 BCCA 243, concerns a conditional sentence of two years less a day after a guilty plea for possession of 17 grams of cocaine for the purpose of trafficking. In upholding the sentence, the court noted that the offender had been rehabilitated by the time of the sentencing hearing which took place six years after the offence and the offender's arrest. The court noted at para. 2 that

[s]ince his arrest, he has walked firmly on a path away from the illegal activities in which he was engaged. The sentence imposed in the unique circumstances of this case was designed to keep him on that path while making it clear that his transgression was unacceptable for him and for others.

[72] The sentence in Nesbitt was imposed after a guilty plea. The offender was very cooperative with the police after his arrest. The police advised prison authorities that he would likely be in danger from his previous associates in jail and he was therefore kept in protective custody for 51 days before bail was granted and he was a model prisoner while in custody.

[73] The court discussed the individualized nature of sentencing at paras. 19 and 21:

[19] In *R. v. Gladue*, [1999] 1 S.C.R. 688, 171 D.L.R. (4th) 385, at para. 80 the Court referred to the individualized nature of sentencing, describing the salient question as follows:

For this offence, committed by this offender, harming this victim, in this community, what is the appropriate sanction under the Criminal Code? What understanding of criminal sanctions is held by the community? What is the nature of the relationship between the offender and his or her community? What combination of systemic or background factors contributed to this particular offender coming before the courts for this particular offence? [Emphasis in original.]

The Court continued at para. 81:

The analysis for sentencing ... must be holistic and designed to achieve a fit sentence in the circumstances. There is no single test that a judge can apply in order to determine the sentence. The sentencing judge is required to take into account all of the surrounding circumstances regarding the offence, the offender, the victims, and the community

[21] The primary issue in the present case is not so much whether a conditional sentence is appropriate, but whether a sentence of two years less one day is fit in the circumstances of this offender and this crime. On the basis of previous authorities, the Crown says it is not. That is, it says that the sentence is significantly below the range of sentences for this type of crime. The Crown's position must be considered in the context of the comments of Mr. Justice Lebel in *R. v. Nasogaluak*, 2010 SCC 6, [2010] 1 S.C.R. 206 at para. 44:

The wide discretion granted to sentencing judges has limits. It is fettered in part by the case law that has set down, in some circumstances, general ranges of sentences for particular offences, to encourage greater consistency between sentencing decisions in accordance with the principle of parity enshrined in the Code. But it must be remembered that, while courts should pay heed to these ranges, they are guidelines rather than hard and fast rules. A judge can order a sentence outside that range as long as it is in accordance with the principles and objectives of sentencing. Thus, a sentence falling outside the regular range of appropriate sentences is not necessarily unfit. Regard must be had to all the circumstances of the offence and the offender, and to the needs of the community in which the offence occurred.

- [74] The court also discussed the factor of whether cooperation with the police after the arrest would justify a sentence that is clearly outside the low end of the range. The court went on to note that "[w]hile the usual range of sentences for this type of crime involves penitentiary time, ranges are not absolute. Absent a legislated minimum, sentences are to be judged solely on the basis of whether they are fit" (Nesbitt at para. 33).
- [75] The two cases on which both parties relied were *R. v. Pirouz*, 2009 BCCA 51, and *R. v. Bhargal*, 2010 ONSC 4950. In *Pirouz*, the British Columbia Court of Appeal upheld a conditional sentence of two years less a day followed by two years' probation for importation of opium and possession of opium for the purpose of trafficking. The Crown had sought a sentence of three years imprisonment.
- [76] At paras. 6, 7, 8, and 9 are set out the aggravating factors, mitigating factors, and a review of the authorities undertaken by the trial judge:
- [6] At the time of sentencing, Mr. Pirouz was 34 years old and married with two children, aged seven and nine. He and his family had immigrated to Canada from Iran in 2005 as convention refugees after he had spent seven months in a prison in Iran for political protests. As a result of torture and other mistreatment he suffered during his imprisonment in Iran, he was diagnosed here as suffering from post-traumatic stress disorder ("PTSD") and depression. The sentencing judge also accepted that Mr. Pirouz was an opium addict, having acquired his drug habit while in prison in Iran where opium was, apparently, prevalent.
- [7] The sentencing judge gave detailed reasons for sentence. She reviewed the general principles of sentencing, and, in so doing, emphasized the seriousness of the offences in issue, reflected by the fact that, at one time, the minimum sentence for importing drugs was seven years' imprisonment. She referred to the aggravating features of the offences, including the amount of the drug seized, the obvious planning that was involved in what she described as a "not a particularly sophisticated scheme", the evidence indicating that Mr. Pirouz had been importing the drug "for some time", and the fact that Mr. Pirouz had engaged in these illegal activities after obtaining status here as a refugee.
- [8] The sentencing judge also noted many mitigating factors, including the fact that this was a first offence, that Mr. Pirouz had entered an early guilty plea, that he suffered from depression and PTSD relating to his imprisonment and torture while in Iran, that he was an opium addict with a substantial habit at the time of his arrest (as opposed to an offender motivated solely by profit), and that he had taken significant steps toward his rehabilitation by the time of sentencing. The sentencing judge observed that Mr. Pirouz's children had been temporarily apprehended following his arrest and only returned to him when he established that he was no longer using opium; that he had been working, supporting his family, and attempting to upgrade his education; that he was genuinely remorseful for his actions, and that he recognized the shame he had brought upon his family and his community. The sentencing judge also noted that Mr. Pirouz's pre-sentence report was very positive, and that there was evidence that Mr. Pirouz had made considerable progress

through counselling in dealing with his addiction and other problems.

- [9] The sentencing judge carefully reviewed the authorities placed before her by counsel and observed that, while limited in number, they supported a general range of sentence of between three and five years' imprisonment, with one case, involving possession of opium for the purpose of trafficking, attracting a two and one half year sentence. The sentencing judge then went on to distinguish all of those cases on their facts in a manner favourable to Mr. Pirouz.
- [77] With regard to the individualized nature of the process of sentencing, the court stated at para. 14:
- [14] As has been stated by this Court on many occasions, the concept of range of sentence is but one of many sentencing principles, and it does not provide inflexible boundaries within which every sentence for a particular offence must fall. While I have no doubt that incarceration for a significant period of time will usually flow from the importation of the quantity and type of drug in issue here, that result will not necessarily follow in all cases. As Chief Justice Lamer noted in *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500 (at para. 92), sentencing is an inherently individualized process, and "there is no such thing as a uniform sentence for a particular crime." As earlier noted, there is no longer a mandatory minimum sentence for the importation of drugs.
- [78] In *Bhargal*, the Ontario Superior Court of Justice sentenced an accused who pled guilty to trafficking in opium and possession of crushed opium poppy pod for the purpose of trafficking. He was sentenced to 74 days of incarceration to be served intermittently followed by a 20-month conditional sentence on the charge of trafficking in opium.
- [79] Opium poppy pod powder is known as *doda* and is used by members of the Punjabi community in the region in which this offence occurred. The amounts involved in this offence was 31.1 grams of opium and 3,460 grams of *doda*. The sentence was imposed as a result of a joint submission which was acknowledged to be below what the offender should receive. The court was persuaded that the reasons submitted by counsel made the joint submission appropriate. Although this was not a test case with regard to *doda*, it was the first *doda* sentencing with evidence called in that region. *Doda* has also been openly sold in the community for years so that there was some uncertainty regarding its legality and finally the offender forfeited all funds seized from his meat store on both occasions although it was not certain what percentage of the funds was the *doda* sales rather than the sales of meat.
- [80] Mr. Henareh also relies on the case of *R. v. Kreutziger*, 2005 BCCA 231. The offender was convicted of possession of cocaine for the purpose of trafficking and sentenced to three years in prison. This sentence was reduced by the Court of Appeal to two years less a day to be served conditionally. The appellant was convicted at trial of possession for the purpose of trafficking with regard to a one kilogram brick of cocaine valued at approximately \$30,000.

- [81] In concurring Reasons, Madam Justice Levine stated at paras. 24-26, her reasons for the sentence of two years less a day to be served conditionally:
- [24] I agree that the trial judge erred in principle in, in effect, treating the appellant's plea of not guilty and his post-offence conduct as aggravating factors in sentencing. It is the case, however, that in the authorities cited in support of defence counsel's submissions that a conditional sentence was appropriate, the accused had pleaded guilty and were entitled to have that factor considered in mitigation of their sentences. That mitigating factor was not available to the appellant.
- [25] In my opinion, a sentence of three years incarceration for a first offence of trafficking in a large amount of cocaine could not be said to be unfit at the time sentence was pronounced. There are numerous authorities that would support the fitness of such a sentence, including *R. v. Huber*, cited by Oppal J.A. and *R. v. Acosta*, February 26, 1997, Vancouver Registry No. CC960810.
- [26] If it were not for the passage of seven years from the date the offence occurred to the resolution of this appeal, I would not interfere with the sentence that was imposed. In the particular circumstances of this case, however, I agree that it would be counterproductive to send the appellant to prison.
- [82] Counsel for the Crown relies on a number of cases which primarily deal with offences involving opium. In *R. v. Aghabeigi*, 2004 BCCA 263, the offender was convicted at trial of one count of importing and one count of possession for the purpose of trafficking opium in the amount of 9.6 kilograms. She was arrested at the Vancouver Airport returning from Mexico when the opium was discovered in her luggage.
- [83] At trial the appellant, who was the 41-year-old mother of two daughters who were 18 and 20 years old, and had come to Canada from Iran in 1991, was sentenced to three years imprisonment. The Crown's sentencing position was that the appropriate sentence was between six and seven years. Defence counsel sought a conditional sentence. The sentence was upheld on appeal.
- [84] At para. 17, the Court of Appeal noted that the sentencing judge did not err in determining the range of sentencing as "[t]he range is clearly much higher than two years less a day," and did not err in imposing a sentence of three years although the sentence was lenient. The court was mindful that the offence was not undertaken by the offender "on a whim" but "much planning and effort went into its execution" (at para. 18). In addition, the appellant had stayed out of trouble while on bail and her health had deteriorated.

- [85] In *R. v. Pocasangre*, 2013 BCSC 193, Mr. Justice Melnick imposed a sentence of eight years imprisonment for importing cocaine and three years concurrent for possession of cocaine for the purposes of trafficking. He distinguished the sentences in *R. v. Eshghabadi*, 2009 BCSC 1875, and *Aghabeigi* of two years less a day and three years, respectively, for importing opium to turn on their particular facts. He found the range set out by Mr. Justice Williams in *R. v. Sandhu*, 2003 BCSC 2033, of six to ten years was applicable.
- [86] The offender in *Pocasangre* had been convicted of importing nine kilograms of cocaine which had a wholesale value between \$270,000 and \$305,000 and a street value of \$720,000.
- [87] In *Eshghabadi*, Madam Justice Wedge imposed a sentence of two years less a day for importation and possession of the purpose of trafficking of 1.46 kilograms of opium after a conviction at trial. It was noted that there are few appellate decisions in British Columbia concerning the importation and trafficking of opium. In both *Pirouz* and *Aghabeigi*, the Court of Appeal upheld sentences considerably below the range of sentence imposed for importation of heroin or cocaine. There was also a discussion of the effect of a penitentiary sentence on the immigration status of the two accused. The fact that an individual commits an importation offence while a refugee in Canada is not a mitigating factor; "conversely it can be seen as an aggravating factor" (at para. 70).
- [88] Both accused in *Eshghabadi* were addicted to opium and struggling economically. She noted the mitigating factor of the relatively unsophisticated nature of the importation scheme and the amount of opium being 1.46 kilograms. In the result, the sentence two years less a day was to be served in a provincial jail rather than being the basis of a conditional sentence.
- [89] Finally, Crown counsel relies on three Ontario cases. *R. v. Ayati-Ghaffari*, 2013 ONSC 4999, varied 2014 ONCA 812, involved the importation of 17, 97.8 and 7 kilograms of opium. The sentences imposed on the co-accused were 14 and 12 years, respectively. The second of the Ontario cases is *Bhangal* and involved *doda*, discussed previously, and the third Ontario case, *R. v. Bokark*, 2008 ONCJ 378, involved importation of 13 kilograms of opium, together with a charge of possessing that opium for the purposes of trafficking. A sentence of 9½ years was imposed in *Bokark*.
- [90] With regard to the case law submitted on behalf of Mr. Henareh, the quite dated cases which discuss intermittent sentences can be distinguished on their facts. None involved the quantity of drugs present here. In all but *MacLeod*, the offenders had significantly less involvement with the drugs. In *MacLeod* there was the mitigating factor of cooperation with the police.
- [91] *Alvarez*, which concerned a courier of ten ounces of cocaine, is an excellent indicator of degree of responsibility at the very low end. The offender was a hotel employee who acted as a courier on a one-off basis to earn some quick money. He co-operated immediately on arrest and entered an early guilty plea.

- [92] The cases in which a Conditional Sentence Order was imposed can be distinguished on their facts as they involve significantly smaller amounts of drugs, and unique personal circumstances.
- [93] The three Ontario cases relied on by the Crown can also be distinguished. Ayati-Ghaffari and Bokark are distinguishable due to the differing amounts of drugs (97.8 kg in one of three shipments in Ayati-Ghaffari with a charge of importing) and the different sentencing regime in Ontario. Bhangal, relied on by both counsel, turns on its specific facts since the drug was *doda* which has unique characteristics.
- [94] Pocasangre, a British Columbia case, can be distinguished because it involves a charge of importing and a different substance, cocaine.
- [95] Mr. Justice Davies, in the sentencing of Mr. Salamat Ravandi, addressed the range of sentencing in cases involving opium in Ravandi at paras. 31-33:
- [31] Having said that, however, the importation of opium does not generally amount to sentences in the range of trial for the importation of other Schedule I drugs, including trafficking in heroin or cocaine: see *R. v. Pocasangre*, 2013 BCSC 193 at para. 26, and *R. v. Dyal*, 2007 BCSC 623 at para. 18.
- [32] That is so because, as noted by Justice Wedge in *R. v. Eshghabadi*, 2009 BCSC 1875, para. 41, in referring to the Ontario Court of Appeal decision in *R. v. Abolmolouk* (1987), 23 O.A.C. 144:
- [41] The Court of Appeal noted the evidence of an expert who said that opium is not a very marketable commodity in Canada except in certain ethnic groups. While a hard narcotic, it has only one-tenth the strength of heroin. The Court, citing the LeDain Commission on Non-Medical Use of Drugs, noted that smoking opium produces a decidedly lower dependence liability than morphine or heroin.
- [33] Accordingly, the range for sentencing in importation of opium cases is, I have noted, in the three-to seven-year range, not the much higher range appropriate for sentencing for the importation of heroin or cocaine.
- [96] The most instructive cases with regard to range of sentence are *Eshghabadi* and *Ravandi*. Although both cases involved importation as well as possession for the purpose of trafficking, I find the ranges stated therein of assistance in the circumstances of this case of possession for the purpose of trafficking.
- [97] Notwithstanding an appropriate range of sentence being determined, I agree with defence counsel regarding the individualized nature of sentencing. The cases cited, particularly *Nesbitt*, have thorough discussions of that fundamental principle of sentencing. The sentence must be a fit sentence for this offender.

[98] With regard to the immigration consequences, I note the case of R. v. Pham, 2013 SCC 15. Mr. Justice Wagner states at para. 20:

Collateral immigration consequences are but one relevant factor amongst many others related to the nature and the gravity of the offence, the degree of responsibility of the offender and the offender's personal circumstances.

[99] In this particular case, those immigration consequences are not clear. Mr. Henareh may receive a warning letter rather than a removal order. If such a removal order is granted, he will likely be allowed to stay in Canada pending the danger opinion process, and may not be deported depending upon the result of that process.

[100] In this case, the offence is possession for the purpose of trafficking rather than importing. The primary principles are deterrence and general denunciation. The quantity is large - 14 kilograms. The opium was imported into Canada as part of an ongoing scheme involving at least two shipments of which Mr. Henareh had knowledge. He was a trusted employee of the former co-accused, Mr. Salamat Ravandi. In that role, he was in the course of assisting to accept delivery of a shipment on the day that surveillance led to his arrest.

[101] I am mindful of the rehabilitation of Mr. Henareh which it is submitted is evident by his continuing to be a hard-working family man.

[102] In arriving at a fit sentence, I take into consideration the findings of fact and the aggravating and mitigating factors particularly the ongoing involvement and knowledge of Mr. Henareh; the nature and quantity of the drug opium; and the family circumstances of Mr. Henareh, as well as his health and immigration status. The totality of those factual considerations, the principles of sentencing and the case law take this case outside of the sentencing position of defence counsel.

[103] Mr. Henareh, would you please stand, sir.

[104] I hereby sentence you to three years imprisonment.

[105] The ancillary orders, for a DNA sample and a s. 109 weapons prohibition are also granted.

"The Honourable Madam Justice Watchuk"

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