

CANADA / JUDGMENT

R. v. Saunders

2022 BCSC 1263

COURT

Supreme Court of British Columbia

DECIDED

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2022 BCSC 1263 R. v. Saunders

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Saunders,

2022 BCSC 1263

Date: 20220725

Docket: 94764

Registry: Kelowna

Regina

v.

Robert Riley Saunders

Restriction on Publication: Pursuant to ss. 486.4 and 517 of the Criminal Code

Before: The Honourable Mr. Justice Wilson

Reasons for Judgment on Sentence

Counsel for the Crown:

H. Magnin

Counsel for the Accused:

B.E. Fitzpatrick

Place and Date of Trial/Hearing:

Kelowna, B.C.

March 21 - 25; 30 - 31;

May 20; June 23 - 24;

July 12, 2022

Place and Date of Oral Result Given:

Kelowna, B.C.

July 25, 2022

Place and Date of Judgment:

Kelowna, B.C.

July 25, 2022

Conviction

[1] Robert Riley Saunders was a social worker employed by the Province of British Columbia, Ministry of Children and Family Development (the "Ministry"). He pleaded guilty to the following Criminal Code, R.S.C. 1985, c. C-46 offences:

Count 1: Robert Riley SAUNDERS, from the 1st day of July, 2011 to the 1st day of February, 2018, inclusive, at or near Kelowna, in the Province of British Columbia, did by deceit, falsehood or other fraudulent means defraud the Province of British Columbia (Ministry of Children and Family Development), of a value in excess of five thousand dollars (\$5,000.00), contrary to Section 380(1)(a) of the Criminal Code,

Count 3: Robert Riley SAUNDERS, from the 1st day of July, 2011 to the 1st day of February, 2018, inclusive, at or near Kelowna, in the Province of British Columbia did, in connection with the duties of his office, commit a breach of trust as a Child Protection Guardianship Worker with the Ministry of Children and Family Development, contrary to Section 122 of the Criminal Code.

Count 4: Robert Riley SAUNDERS between August 1, 1996 and January 1, 2018, at or near the cities of Prince George, Fort St. John and Kelowna, and elsewhere in the province of British Columbia, did cause the Province of British Columbia (Ministry of Children and Family Development) to act on a forged document, to wit a University of Manitoba degree in social work, as if it were genuine contrary to section 368(1)(b).

[2] This hearing is to determine Mr. Saunders' sentence.

The Offences

[3] Mr. Saunders was a guardianship worker with the Kelowna Indigenous Integrated Family Service and Guardianship Team. He used his position to steal over \$460,000 from the Ministry in the six-and-a-half years prior to his termination.

- [4] The circumstances of the offences are set out in detail in my oral decision from a Gardiner hearing. The Gardiner hearing decision will be published concurrently with this decision at 2022 BCSC 1141. As such, I do not intend to repeat all of the details here.
- [5] In general terms, Mr. Saunders' scheme was as follows. Mr. Saunders, as a youth in care's guardianship worker, would attend at a financial institution with a youth and would open a joint account in both his and the youth's name. He would then cause cheques to be issued payable to the youth, which he deposited into the joint account. In most cases, he then transferred the funds from the joint account into his own personal account at the same institution.
- [6] Most of the cheques were in an amount of under \$600. Mr. Saunders typically issued two cheques per month to a youth, supposedly for the shelter and support of the youth. Other cheques, also generally in amounts of under \$600, were issued as what are referred to as start-up funds. Because shelter and support payments are ongoing, whereas start-up funds are generally one-time payments, the lion's share of the funds misappropriated by Mr. Saunders were of the former category.
- [7] In the vast majority of cases, Mr. Saunders fraudulently created the requisite paperwork to make it appear that the youth in care was receiving benefits in order to justify the issuance of the cheques.
- [8] Over a period of six-and-a-half years, Mr. Saunders opened 24 such bank accounts and issued over 850 Ministry cheques totalling over \$460,000.

Crown's Position

- [9] The Crown seeks a jail sentence of between six and eight years, which it breaks down as follows:
- a) five to six years on the fraud count;
 - b) two to three years on the breach of trust count; and
 - c) one year on the forgery offence related to Mr. Saunders' falsified qualifications.
- [10] The Crown says that the sentences should be consecutive rather than concurrent, but seeks a global sentence of six to eight years based upon principles of proportionality.

Defence's Position

- [11] Mr. Saunders argues for a conditional sentence order. Although perceived as more lenient than custodial sentences, he points out that the courts have confirmed that this is not necessarily the case.
- [12] The Court held in *R. v. Kratky*, 1997 CanLII 936 (B.C.S.C.) at para. 16 that:

- [16] A conditional sentence imposes substantial restraint upon the liberty of the offender. It is not subject to parole and therefore must be served in full. . . . The practical reality is that while a jail sentence may sound more severe, a conditional sentence in totality may be equally or significantly as severe as the jail sentence.
- [13] Counsel for Mr. Saunders reviewed a number of fraud cases, which included a breach of trust component, where conditional sentences were ordered.
- [14] The offender concedes that the fraudulent degree conviction would warrant a consecutive sentence as it is unrelated to the financial fraud claims. He argues that a sentence of time served, which is 30 days based upon enhanced credit, would properly reflect the appropriate sentence.
- [15] As for the breach of trust and fraud claims, the offender argues that concurrent sentences are appropriate because they arise out of the same transactions.

The Victims

- [16] There are two categories of direct victims in this case. First, the Ministry is the entity from whom Mr. Saunders stole over \$460,000. The offender's guilty plea recognized the fact that the Ministry had been deprived of its funds.
- [17] The second group of direct victims were the youth in care. The identities of the 24 youth victims are subject to a publication ban, and each has been identified by a letter, from Victim A to Victim X.
- [18] Mr. Saunders did not agree that the youth that were in his care were victims by his fraud. He said that the youth were never entitled to the funds and therefore they could not have been deprived. I concluded that the youth in care were victims following a Gardiner hearing that took place over seven days preceding the sentencing hearing. Specifically, I concluded that:
- a) The Crown had proven beyond a reasonable doubt that youth in Mr. Saunders' care were at risk of deprivation by Mr. Saunders' fraud of the Ministry funds intended for youth in care;
 - b) The Crown had proven actual deprivation with regard to both age-out funds, and also with regard to Victim "H"'s entitlement to funding under an independent living agreement;
 - c) The Crown had proven beyond a reasonable doubt that Mr. Saunders' fraud caused an increased risk of deprivation to Victim "J" and the other youths' entitlement to funding under an independent living agreement;
 - d) The Crown had proven beyond a reasonable doubt that Mr. Saunders did not prepare Victim "H" to age-out of care, specifically with regard to an independent living agreement, but had not proven beyond a reasonable doubt that Mr. Saunders failed to prepare the other youth to age-out of care; and

- e) The Crown did not prove beyond a reasonable doubt that Mr. Saunders cancelled Victim "E"'s flight to strand him in Ontario to better perpetrate his fraud.
- [19] The Court had the benefit of victim impact statements from four of the youth in care, including both Victim "H" and Victim "E", both of whom testified in the Gardiner hearing.
- [20] There were also other indirect victims of Mr. Saunders' fraudulent scheme. Present and former social workers with the Ministry, Ms. Plut, Ms. Chandler, and Ms. McIntyre, provided victim impact statements that summarized how the reputation of social workers in the Okanagan, and specifically those involved in the Indigenous Integrated Family Service and Guardianship Team in particular, were lowered in the estimation of the eyes of the public.
- [21] Finally, the offences impacted the Canadian public generally. First, the money Mr. Saunders took was public money collected from Canadian individuals and businesses by way of taxes. Second, Mr. Saunders' treatment of the Indigenous youth in his care only further negatively impacts the relationship between Canada and its Indigenous communities, strained as a result of colonialism and including, but not limited to, the residential school system.

Principles of Sentencing

- [22] The general principles of sentencing are found in s. 718 of the Criminal Code:

Purpose

718 The fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

- (a) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims or to the community.

- [23] Courts in Canada have consistently held that the principles of general deterrence and public denunciation are the key sentencing principles to consider in cases of large-scale fraud involving breach of trust such as a theft from an employer. Rehabilitation is a secondary consideration. In *R. v. Tickell*, 2010 BCCA 303 [Tickell], the Court held the following at para. 60:

- [60] The sentencing judge had regard for all the sentencing principles. He properly noted that the dominant factors to consider in fraud cases are general and specific deterrence. Mr. Tickell was described as "a relatively young man in the courts" but he cannot be described as a youthful offender deserving of a lesser sentence. The reasons in *R. v. Bertram* (1990), 40 O.A.C. 317, are apposite:
- [7] Like this case, the persons sentenced in those cases were in the main first offenders. They were educated people of previous good character and reputation, and they held important positions. The sentences in such cases are not really concerned with rehabilitation. Instead, they are concerned with general deterrence and with warning such persons that substantial penitentiary sentences will follow this type of crime, to say nothing of the serious disgrace to them and everyone connected with them and their probable financial ruin.
- [24] In *R. v. Bath and Khangura*, 2012 BCSC 645, Madam Justice Holmes (as she then was) described the appropriate sentencing principles as follows at para. 40:
- [40] Further principles of sentencing, designed to help achieve the sentencing objectives I have outlined, are set out in ss. 718.1 and 718.2 of the Criminal Code. They include that a sentence should be proportionate to the gravity of the offence and the degree of responsibility of the offender, and should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. A sentence should be increased or reduced to reflect any relevant aggravating or mitigating circumstances relating to the offence or the offender. An offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances.
- [25] Other sentencing principles relevant to the circumstances here include ss. 718.2(a)(iii) and (iii.1), which are aggravating factors:

Other sentencing principles

718.2 A court that imposes a sentence shall also take into consideration the following principles:

- (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
- (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
- (iii.1) evidence that the offence had a significant impact on the victim, considering their age and other personal circumstances, including their health and financial situation,

- [26] More specifically, s. 380.1 of the Criminal Code expressly provides that the following are aggravating factors when sentencing an offender convicted of fraud under s. 380:

Sentencing -- aggravating circumstances

380.1 (1) Without limiting the generality of section 718.2, where a court imposes a sentence for an offence referred to in section 380, 382, 382.1 or 400, it shall consider the following as aggravating circumstances:

- (a) the magnitude, complexity, duration or degree of planning of the fraud committed was significant;
- (c) the offence involved a large number of victims;
- (c.1) the offence had a significant impact on the victims given their personal circumstances including their age, health and financial situation;
- (d) in committing the offence, the offender took advantage of the high regard in which the offender was held in the community;
- (e) the offender did not comply with a licensing requirement, or professional standard, that is normally applicable to the activity or conduct that forms the subject-matter of the offence; and
- (f) the offender concealed or destroyed records related to the fraud or to the disbursement of the proceeds of the fraud.

[27] Sentencing is an individualized process that requires the court to consider all of the circumstances, including the circumstances of the offence, the offender, and the community needs. The court must also be mindful of the parity principle, which provides that a sentence should be similar to sentences imposed on similar offenders for similar offences in similar circumstances.

[28] With these factors in mind, the Court's job is to impose an appropriate sentence for Mr. Saunders.

The Offender

[29] Mr. Saunders is currently 52 years of age. He was born and raised in Winnipeg, Manitoba, as the middle child of three children. Both his parents struggled with alcohol and they separated when he was in his mid-teens.

[30] His dreams of becoming a professional hockey player ended at 16 years of age when he broke his leg, although he continued to pursue the sport. He attended the University of Manitoba where he played hockey and took some general arts courses. He did not complete his degree.

[31] Starting in approximately 1995, he worked as a rehabilitation counsellor at a private agency in Manitoba.

- [32] Mr. Saunders admits he lied about his academic qualifications when he applied for employment with the Ministry. With the assistance of his then girlfriend, he forged a University of Manitoba degree and was hired by the Ministry in Fort St. John. Although he was told that a certified copy was required, there was never any follow-up. He took an oath of employment when hired which affirmed that all of the representations that he had made for the purposes of getting employment were true.
- [33] Approximately five years after he was hired, he applied for and was granted a lateral transfer to the Kelowna office, again claiming to have completed a bachelor of social work degree and a bachelor of arts from the University of Manitoba. He continued at the Kelowna office until he was terminated, working as a guardianship worker for over 10 years.
- [34] Mr. Saunders was not diagnosed with any mental health issues prior to being charged with these offences. He claims to have attempted to take his own life following his initial suspension and has expressed suicidal ideations since. He has been seeing a psychologist in Calgary, Dr. Brad Isaak, for the past year.
- [35] This case has been the subject of significant public and media interest, both in the Kelowna area and more broadly. Mr. Saunders found it very difficult to find and maintain employment, and subsequently moved to Calgary, Alberta, where some of those problems persisted, albeit he has now had employment with a landscaping company for some time. Mr. Saunders expressed that he does not know why his story was "kept in the media longer than those who committed serious crimes like murder, rape and shootings".
- [36] In terms of relationships, he was in a relationship with Ms. Julie Pachol from 1994 until 2009. There are two children of that relationship, a son aged 21 and a daughter aged 18. Both children maintain a close relationship with their mother but have now distanced themselves from Mr. Saunders as a result of these charges. He was in another relationship from 2014 to 2018 and is now in a relationship with Ms. Amy Woehleke. Ms. Woehleke is aware of these proceedings and is supportive of him.
- [37] Mr. Saunders has two sisters, along with his brother-in-law. He continues to reside with his older sister who is clearly a great support for him. He has no criminal record.

Aggravating Circumstances

- [38] The Crown argues that theft from the public purse is an aggravating factor in this case because the offender was in a position of trust. The Crown argues that the role of a guardianship worker necessarily involves a significant amount of discretion and that Mr. Saunders was opportunistic as he took advantage of the broad discretion he held in order to perpetrate his fraud. The Crown also argues that the youth in care were particularly vulnerable, and this too should be treated as a significant aggravating factor.
- [39] I am also mindful of the aggravating factors as set out in ss. 380.1 and 718.2 of the Criminal Code as outlined earlier.

Mitigating Circumstances

- [40] The offender pleaded guilty as set out earlier.
- [41] As it relates to the offender's guilty plea in this case, the Gardiner hearing was still required and some victims were required to testify. The Gardiner hearing took seven days of court time. As such, the only mitigating factor as it relates to the guilty plea given the inevitability of a conviction is some reduction of the amount court time that would have been required had the Crown been required to prove the charges.

Availability of a Conditional Sentence Order

- [42] The parties agree that a conditional sentence order is available in these circumstances as a matter of law because the offences were prior to the statutory amendment of November, 2012 that now precludes conditional sentence orders in certain circumstances that would have included this offence. As such, a conditional sentence is available as a remedy. What is at issue is whether it is appropriate as a remedy.
- [43] Per *R. v. Proulx*, 2000 SCC 5 [Proulx], the preconditions for a conditional sentence order are:
- a) there is no minimum punishment set out in the Criminal Code;
 - b) the appropriate sentence is no more than two years less a day; and
 - c) there is no issue with regard to the safety of the community.
- [44] The maximum sentence for the offence of fraud over \$5,000 is a term of imprisonment not exceeding 14 years. The maximum sentence for breach of trust by a public official is five years imprisonment, whereas the maximum sentence for forgery is 10 years imprisonment. There is no minimum sentence at issue in these circumstances.
- [45] I do not consider that Mr. Saunders poses a threat to the safety of the community. This was not a crime of violence.
- [46] The issue here is whether a sentence of two years less a day would be appropriate in the circumstances of this case.

Defence Authorities

- [47] Counsel for Mr. Saunders referred to the following authorities to support his submission that a conditional sentence order would be appropriate.
- [48] In *R. v. Whittaker*, 2021 BCPC 8, the offender stole \$746,046.62 from her employer, a guiding company. The fraud involved over one thousand transactions, including use of the company credit cards. She confessed before her fraud was detected, although an audit was imminent and the Court found that the audit would undoubtedly have resulted in detection. She had a gambling addiction that was considered a mitigating circumstance. She cooperated throughout with authorities, although she had covered her tracks to disguise the fraud in the

first instance. The guiding company went bankrupt, as did its principal. The offender was the owner's trusted employee on all financial matters. The Court concluded that a conditional sentence order was appropriate. By the time of sentencing, it had been seven years since the events and the Court concluded that she posed no risk to the community.

- [49] In *R. v. Houde*, 2005 BCPC 632, the offender plead guilty to defrauding a credit union of \$168,000 over a period of ten-and-a-half months. His fraud was motivated by greed in order to develop and enhance his own competing business. The Court concluded that he was in a high level of trust, and effectively controlled the financial institution. His fraud was detected, and he suffered public humiliation and embarrassment associated with the publicity of his criminal conduct in a small community, resulting in a loss of his wife's business and necessitating a move away from the community. The Court concluded that he had not benefited significantly from his fraud, and lost other investments as a result. The Court concluded that a conditional sentence was appropriate.
- [50] In *R. v. Eby and Goodman*, 2005 YKSC 56, Ms. Eby pleaded guilty to forgery and breach of trust involving two transactions that defrauded the Yukon Housing Corporation of \$318,575. Ms. Eby confessed to her conduct. She was unable to find alternative employment in the small community where she resided, and had two small children. The judge imposed a conditional sentence.
- [51] In *R. v. Keatley*, 2009 BCPC 249, the offender defrauded her employer, a credit union, of \$537,267 over a period of approximately 15 months. There were in excess of 60 transactions. As an assistant manager, she was a trusted employee. She had a gambling addiction that she was funding with her fraud. She was given a conditional sentence.
- [52] In *R. v. Roberts*, 2019 BCSC 338, the offender provided false information to a bank regarding his company's accounts receivable, the result of which was that the bank provided a \$7 million operating line of credit. The bank lost over \$6 million because the information provided by the offender to justify the loan was fraudulent. There was no breach of trust, as the vendor was at arm's length with the defrauded bank. The Court imposed a conditional sentence and concluded Mr. Roberts was not the mastermind or directing mind of the fraud, but rather was following instructions from his employer.
- [53] In *R. v. Bunn*, 2000 SCC 9 [Bunn], the offender was a disbarred lawyer who had taken \$86,000 in trust funds. The Manitoba Court of Appeal overturned the trial judge's imposition of a custodial sentence and imposed a conditional sentence order instead, citing the ruin and humiliation of the offender as a factor. At para. 23, the Supreme Court of Canada said the following:
- [23] Turning to a consideration of the principles of sentencing, the court reasonably concluded that the ruin and humiliation that Mr. Bunn had brought down upon himself and his family, together with the loss of his professional status, could provide sufficient denunciation and deterrence when coupled with a conditional sentence of two years less a day with house arrest. The Court of Appeal also imposed a condition of 200 hours of community service

which was capable of achieving the restorative objective of reparation to the community. Moreover, the Court of Appeal noted important mitigating circumstances in this case. The respondent was the sole provider and caregiver for both his wife, who suffered from multiple sclerosis and had been confined to a wheelchair for years, and their teenage daughter.

- [54] In *R. v. Burkhardt*, 2006 BCCA 446 at paras. 19 and 20, the Court of Appeal confirmed that it is not necessary for an offender to show that there are unusual circumstances in order to obtain a conditional sentence order.

Crown Authorities

- [55] The following authorities were referred to by the Crown.
- [56] In *Tickell*, the offender provided falsified qualifications including a false claim that he had a university degree in support of his application for employment with the Public Guardian and Trustee. Once hired, he abused his position of trust as the trustee representative for two extremely vulnerable individuals (both had been declared incompetent to manage their own finances) to assign the money and property of both clients to himself. The value of the property he successfully transferred was just under \$1 million. He was charged with various offences relating to this fraud including fraud over \$5,000 (s. 380(1)(a)), forgery (s. 367(a)), and breach of trust by a trustee (s. 336). He was sentenced to a global term of imprisonment of six years. This sentence was upheld on appeal.
- [57] In *R. v. Spiller*, 1969 CanLII 950 (B.C.C.A.), the Court of Appeal increased the sentence imposed by the sentencing judge from three to six years' jail for a bank employee who had used her position of trust and special knowledge to devise and implement a scheme to steal approximately \$500,000 from her employer over the course of four-and-a-half years (a value in excess of four million dollars in today's money).
- [58] The offender in *R. v. Dreger*, 2014 BCCA 54 [Dreger], appealed her sentence of five years' jail for using her position as a trusted bookkeeper to defraud her employer, a small family-owned company, of just over \$245,000 over a seven-year period. The amounts she stole increased significantly each year she was involved in the scheme and were used to support an extravagant lifestyle. The offender entered a guilty plea, had no prior criminal record, and consented to a civil judgment, although nothing had been paid on account of the debt by the time of the sentencing. The Court of Appeal found the sentencing judge erred in finding Ms. Dreger's lack of remorse was an aggravating factor and reduced the sentence to four years.
- [59] In *R. v. Gaugler*, 2011 BCCA 508, there were two victims, the CEO of a large company for whom the offender worked, and the CEO's elderly mother-in-law. Over a 10-year period Ms. Gaugler, the executive assistant to the CEO, used her unrestricted access to both personal and family accounts to steal approximately \$2.5 million. She wrote cheques to herself and transferred funds to her accounts, all to support a lavish lifestyle. She entered an early guilty

plea and liquidated her assets to repay approximately \$1.3 million. The Crown sought a sentence of three to five years, whereas the offender requested a conditional sentence order. The judge imposed four years' imprisonment.

- [60] In *R. v. Beggs*, 2003 BCCA 101, the offender used her senior position with Revenue Canada and related high level of security clearance to fraudulently provide herself and others various credit and refunds totalling \$221,434.96 under the Child Tax Benefit and BC Family Bonus programs. The offences were committed over a four-year period. The offender received \$103,235 from the scheme. She pled guilty to nine counts of fraud, one count of misusing taxpayer information, and one count of income tax evasion. She was sentenced to four years' imprisonment.
- [61] The Crown referenced a trafficking case, *R. v. Parranto*, 2021 SCC 46 [Parranto] for the following comments:
- [70] While not raised by the parties or the court below, this appeal provides an opportunity to emphasize that, when assessing the gravity of the offence, it is open to both the sentencing judge and the Court of Appeal to take into account the offender's willingness to exploit at-risk populations and communities. In this regard, choices which demonstrate a reckless disregard for human life increase not only the gravity of the offence but the moral culpability of the offender and may amount to an aggravating factor in sentencing.
- [62] Mr. Felix, an appellant in *Parranto*, plead guilty to trafficking in large quantities of fentanyl and cocaine to remote northern communities. In upholding his sentence, the Supreme Court, at paras. 71 and 73, emphasized that the commission of wholesale trafficking offences in fentanyl may be treated as an aggravating factor and may "be expected to attract more significant sentences as the harm to the end user and the devastating consequences to communities plagued by addiction is not contested".

General Comments on the Parties' Authorities

- [63] I will briefly touch on the parties' authorities before moving to the discussion of the relevant factors for determining whether a conditional sentence is suitable in the circumstances.
- [64] With reference to the defence cases generally, from my review of those decisions they involve a shorter duration, lower amounts, earlier cooperation or better restitution, or some combination of those factors. Many of the offenders in the cases cited by the defence also had some underlying mental health issues, a mitigating factor that is absent here.
- [65] The Crown says that based on the authorities it has cited, the range of appropriate sentence here exceeds two years, which precludes a conditional sentence. It says the *Tickell* case is the closest to the one at bar. In *Tickell*, the offender plead guilty to fraud, breach of trust, and forgery, with the forgery offence being related to a falsified qualification used to obtain his employment with the Public Guardian and Trustee's Office. While working for the Public Trustee, he transferred land from a vulnerable person, over whose estate he was the

committee, to his own use and forged a will, making himself a beneficiary.

- [66] However, Tickell differs from the current case. In Tickell, the Court concluded that the sole purpose of the forged qualifications was to get the job, which itself was for the purpose of perpetrating the fraud. This is not the case for Mr. Saunders.
- [67] I am satisfied that Mr. Saunders, while he forged his qualifications to secure his employment with the Ministry, did not do so with the long-term goal of the fraudulent activity. Rather, I accept that he initially obtained the employment out of a genuine interest in the work and that the fraud arose when the opportunity presented itself over time. That said, Mr. Tickell's victims were also those who were unable to look after themselves, no different from the youth for whom Mr. Saunders was the guardianship worker. Mr. Tickell also pleaded guilty. He received a six-year sentence from the trial judge, which was upheld on appeal.
- [68] I do not find the circumstances in Parranto to be analogous to the current case as alleged by the Crown. Trafficking in fentanyl is known to be lethal, and it is uncontested that trafficking in fentanyl to vulnerable communities for the purposes of profit, as did Mr. Felix in Parranto, directly exploits the community. Here, there is no evidence that Mr. Saunders deliberately set out to exploit the youth in care, rather he was indifferent to the effect of his actions. Further, s. 380.1(1)(c.1) already statutorily recognizes the significant impact on the victims, given their personal circumstances, as an aggravating factor.

Discussion

The Youth in Care as Victims

- [69] What distinguishes this case from the ones cited on behalf of Mr. Saunders in support of his submission for a conditional sentence order is the victims.
- [70] In the employee fraud cases, the lion's share of the victims are financial institutions or organizations. In this case, the Ministry would be akin to the financial institutions or larger organizations, to the extent that it will not suffer financial ruin as a result of the loss.
- [71] However, the fact that Mr. Saunders' victims included the youth in his care renders the analysis in the employee fraud cases to be of limited value to the Court.
- [72] It is difficult to imagine a more vulnerable population in Canada than youth who have been made wards of the state. To find themselves in such a position, the youth's parents, if alive, must have been determined to be unsuitable or incapable of providing for the youth. Further, the youth will generally have no other close family who are willing and able to take care of them either. If they did, they would be placed there. In other words, a youth in care is alone and has no adult in a position to help them, look after them, or advocate for them.
- [73] The fact that the youth affected by Mr. Saunders's actions were Indigenous youth is of note. The Indigenous youth in care were apprehended by the state, a state that for many years removed Indigenous youth from their families in order to deprive them of their culture,

language, and community through the residential school system. The systemic factors arising from the residential school system and the loss of community continue to result in harm to Indigenous communities and families. To say the relationship between Indigenous communities and families and the Ministry's apprehension of Indigenous youth is complicated is an understatement. While I have no specific information regarding the 24 youth victims in this case, it is hard to imagine that these systemic factors have not played a significant role in the lives of the youth victims, including as to the circumstances that put them into the care of the Ministry in the first place.

- [74] Mr. Saunders was uniquely positioned as a guardianship worker to be the gatekeeper of the resources that were intended to benefit these vulnerable youths. He took advantage of that position for his own benefit, with little regard to the consequences for those the resources were intended to benefit.
- [75] Mr. Saunders put his own interests ahead of all others. His motivation was greed as he supplemented his modest income as a social worker by way of his fraudulent scheme. His average take-home employment income was \$4,000 per month. By 2015, he doubled his take-home income through his scheme, and by 2017, had tripled it. He told the pre-sentence report author that he used the funds to create an identity of "being rich", wishing to associate with others who enjoyed a similar lifestyle. That lifestyle included a very nice home, vehicles, a boat, and numerous trips and vacations.
- [76] While he was enjoying the spoils of his scheme, the youth in his care were struggling, as explained in their victim impact statements. In the case of Victim "H", who I found was suitable to be placed on an independent living agreement, he was couch surfing. Victim "H" found the food and clothing vouchers he was given to be degrading and while he struggled, Mr. Saunders bragged about how great his life was with his kids. Victim "H" still struggles with trusting people in authority and continues to suffer from anxiety.
- [77] According to Victim "A", she was homeless, using drugs and supporting herself by working as a sex worker while Mr. Saunders was her guardianship worker, and, as a result, her friends and family did not want to see her. Since then, she has overcome her addiction following attendance at a treatment facility.
- [78] Victim "K" found Mr. Saunders difficult to get a hold of and unsupportive. He recalls Mr. Saunders bragging about his boat and his house.
- [79] The impact of Mr. Saunders' conduct on the 24 youth victims is impossible to assess because they all are now adults and have moved out of the Ministry system. There is no way of knowing whether each of the youth in Mr. Saunders' care would have fared better had they been given the opportunities that the Ministry was set up to provide to them. However, each youth is important and was deserving of respect. It may be that the various youth would not have succeeded, but they were entitled to be provided with the opportunity to succeed.
- [80] The vulnerability of the youth in care is a significant aggravating circumstance in this case.

Moral Blameworthiness

- [81] The sole motivating factor behind Mr. Saunders' fraud was greed. He was able to enjoy a lavish lifestyle that he could not afford solely as a result of the fraud.
- [82] Mr. Saunders addressed the Court as part of his sentencing hearing. He said that the notion that he was not remorseful for his indiscretions was not true. He said he had been restricted for the past four-and-a-half years from addressing those he impacted and he apologized to the Ministry, his coworkers, and the youth for whom he was responsible and their families. He said he never set out to deliberately harm anyone.
- [83] As to the last point, I accept that Mr. Saunders did not deliberately set out to harm anyone, but I conclude that he put himself first and acted without a care for those who might be impacted by his conduct.
- [84] Although he indicated to the author of the pre-sentence report that in or around 2015 he felt miserable and worried that "if he stopped doing it he would draw attention to himself and get caught", these words ring hollow because not only did he choose to continue his fraud, the amounts involved escalated significantly in the following years until he was caught. In 2015, the amount transferred through joint accounts into his own account was \$81,641. In 2016, it was \$104,431 and in 2017, \$125,200. The agreed statement of facts confirms that he continued to open additional joint accounts.
- [85] I accept that Mr. Saunders regrets that he has suffered the consequences of his actions, but neither his testimony during the Gardiner hearing nor the information relayed by way of the pre-sentence report would suggest a thorough comprehension of the implications of his conduct nor any appreciation of its impact on others.
- [86] Mr. Saunders' attitude towards the youth in his care, portrays that he viewed his role as their social worker as, in his words, "an exercise in futility". He described them as often putting themselves at risk "through lifestyles of addiction and criminal behaviour".
- [87] Mr. Saunders viewed the food vouchers and clothing vouchers he provided to youth from time to time as evidence of his generosity, as opposed to being demeaning, which is how one of the youth in care described the voucher system in his victim impact statement. I find that Mr. Saunders was indifferent to how his actions might impact upon the individuals he was obligated to help because he did not think it worthwhile to help them and that all efforts on their behalf would be pointless and futile.
- [88] The author of the pre-sentence report made the following comment:

It appears that in his career with MCFD, Mr. Saunders' moral and ethical compass was as good as what he could get away with. From his description of his thinking and behaviour it appears his rationalizations for his actions, even when based on faulty moral reasoning, were sufficient to not warrant any further scrutiny of himself or by others in supervisory roles. This moral ambivalence prevented him from gaining genuine insight into his behaviour until, that is, he got caught and must now face the consequences.

- [89] In the pre-sentence report, Mr. Saunders told the writer that the underlying factors for his repeated offending over the relevant time period were "holes in the system" coupled with his own greed. The pre-sentence report writer made the following comment, "[i]n terms of his understanding of the ethical obligations governing the duties of a guardianship social worker, Mr. Saunders points to the lack of enforcement of existing accountability measures on the part of his supervisors that enabled his offending".
- [90] I noted a similar tone to Mr. Saunders' attitude during the Gardiner hearing (Oral Ruling on Gardiner Application, at para. 55). However, the position of a social worker, and particularly a guardianship worker who has a much greater discretion than may normally be the case, is necessarily one where those who seek those positions must appreciate the level of trust that is placed in them. Honesty is an essential trait of a social worker. A guardianship worker's coworkers will necessarily be other like-minded people whose education, experience, and training is focused on the social sciences, not finance and accounting. It is self-evident that Mr. Saunders' moral blameworthiness is not reduced by the fact that his coworkers failed to detect his fraud.
- [91] I conclude that Mr. Saunders regrets his actions because there have been and will continue to be consequences from those actions, but I do not find that he is remorseful, and even now, he seeks to share blame with others, such as the Ministry's lax enforcement, for what was a selfish act that he undertook alone.

High Regard for His Position

- [92] Mr. Saunders was able to take advantage of the position and good reputation that he and his former colleagues held as social workers in the community.
- [93] Social workers in British Columbia are held in high regard. They are tasked with providing assistance in various forms to the most vulnerable members of our communities. The challenges and barriers faced by those they serve, which often include multiple barriers, necessarily requires that they be afforded discretion in determining how best to assist their clients. In this case, the variety of alternative services is what provided Mr. Saunders with the opportunity to perpetrate his fraud.

- [94] Mr. Saunders' colleagues provided victim impact statements to explain how his actions negatively impacted their efforts to build and maintain relationships with Indigenous partners, and how others in the community thought or suspected that the fraud was endemic in the system.

Collateral Consequences

- [95] There is no question here that Mr. Saunders has suffered some consequences as a result of his actions. He lost his job, along with the reputation and prestige that go with it. He has also lost his relationships with his two children, both of whom have apparently disassociated themselves from him.
- [96] However, in many respects, the humiliation and loss of reputation are an inevitable consequence of having committed the offences. The deterioration of his relationship with his children would appear to be a consequence of the offence.
- [97] The prolonged media interest in this case is undoubtedly a direct consequence of the factual matrix that led to the charges. While there are certain stories and personalities that attract a lot of public interest in circumstances that are not exactly clear, the fact that the circumstances of this case would garner attention is hardly surprising.
- [98] As was noted in Bunn, collateral consequences are not irrelevant and may be taken into account by the sentencing judge. However, as the Supreme Court of Canada said in *R. v. Pham*, 2013 SCC 15, they cannot overwhelm other factors or otherwise result in a sentence that would not otherwise be appropriate in the circumstances of the events.

Suitability of a Conditional Sentence Order

- [99] The principles of deterrence and denunciation in fraud cases are of particular importance. In Proulx, the leading authority from the Supreme Court of Canada on the availability of conditional sentence orders, the Court made the following comment at para. 114:
- [114] Where punitive objectives such as denunciation and deterrence are particularly pressing, such as cases in which there are aggravating circumstances, incarceration will generally be the preferable sanction. This may be so notwithstanding the fact that restorative goals might be achieved by a conditional sentence. Conversely, a conditional sentence may provide sufficient denunciation and deterrence, even in cases in which restorative objectives are of diminished importance, depending on the nature of the conditions imposed, the duration of the conditional sentence, and the circumstances of the offender and the community in which the conditional sentence is to be served [emphasis added].
- [100] I conclude that a conditional sentence order would be inadequate in this case. This was a very serious offence that took place over a period of several years and was motivated solely by greed. It involved hundreds of separate transactions and hundreds of thousands of dollars. Mr. Saunders' victims included our community's most vulnerable members.

- [101] Having reviewed the authorities provided and notwithstanding Mr. Fitzpatrick's very able submissions, I cannot agree that serving his sentence in the community would constitute an adequate sentence for Mr. Saunders.
- [102] Serious frauds such as this one are generally perpetrated by intelligent individuals who have been entrusted with control over significant amounts of money, who then take advantage of the circumstances in which they find themselves. The consequences must outweigh the benefits in order to be sufficient to deter others who might be tempted to act similarly. A custodial sentence is required in this case.

Consecutive or Concurrent Sentences

- [103] The Crown says that the sentence for the employee fraud involving breach of trust and the sentence for the breach of trust by public official offences should be consecutive. The Crown's argument is that different societal interests are involved. The Crown concedes that the fraud of the Ministry would not be a discrete or different set of considerations, but rather the youth victims should be treated as different because there is a divergence in terms of the societal interest.
- [104] The test for determining whether sentences should be concurrent or consecutive is "whether the acts constituting the offences were part of a linked series of acts within a single endeavour": *R. v. Bamdad*, 2013 BCCA 87 at para. 24.
- [105] Some of the factors to consider are, "the nature and quality of the criminal acts; the temporal and special dimensions of the offences; the nature of the harm caused to the community or the victims; the manner in which the criminal acts were perpetrated; and the offenders' role in the crimes": *R. v. Potts*, 2011 BCCA 9 at para. 89.
- [106] In *R. v. Robertson*, 2020 BCCA 65 at para. 91, the Court stated that even when the offences are linked, consecutive sentences can be imposed "when the offences committed protect different societal interests".
- [107] The Crown refers to the case of *R. v. Kandola*, 2014 BCCA 443 [Kandola]. Mr. Kandola was a border service officer with the Canadian Border Services Agency ("CBSA") at the Pacific Highway Border Crossing. Mr. Kandola used his access code to search the CBSA system and learned that his co-conspirator Mr. Johal was suspected of importing cocaine. Mr. Kandola advised Mr. Johal of the report that enabled Mr. Johal to arrange for another to bring the cocaine into Canada. They arranged to have the truck pass through Mr. Kandola's primary inspection lane booth so that he could then wave them through.
- [108] Mr. Kandola was sentenced to a global sentence of 15 years. The sentence was composed of a 14-year jail sentence on the conspiracy count, 14 years concurrent on the importation count, and one-year consecutive on the breach of trust and bribery offences. On appeal, Mr. Kandola argued that there was double counting in that the offender was both charged with breach of trust under s. 122 and his breach of trust was considered an aggravating factor on

sentence. In upholding the trial judge's conclusion that different societal interests impacted by the different offences warranted consecutive sentences, Madam Justice Garson stated the following at para. 41:

- [41] In this case, the whole actus reus of the importing scheme involved the abuse of public office. That element of the offence would need to be considered when determining an appropriate sentence for each count. In deciding that a consecutive sentence was appropriate for the breach of trust and bribery counts, the judge made specific reference to the "special position of trust" Border Services Officers hold in the community. When such officers abuse their power "all of Canadian society is put at risk": Reasons for Sentence at para. 73. The judge's reasons show that the separate societal interest threatened by the bribery and breach of trust necessitated a separate, consecutive sentence. As well, I note that the bribery offence includes elements and actions that are not accounted for under the other counts, even if there was some overlap. I would not accede to the argument that imposing a consecutive sentence was an error in this case [emphasis added].
- [109] The Crown also refers to the case of *R. v. Willis*, 2018 NSSC 238 [Willis], where a six-year sentence was imposed on a border services officer who used his position to delay the deportation of the victim in exchange for sex. The offender was charged with sexual assault, breach of trust, and bribery. The sentencing judge concluded that it was the abuse of public office, and related special position of trust in the community, that enabled the offender to use the power of that office to extort sex from the victim. The offender was sentenced to three-year concurrent sentences on the breach of trust and bribery offences and three years' consecutive on the sexual assault.
- [110] The Crown argues that the societal interests threatened by the fraud count are financial, whereas the societal interests represented by the breach of trust count are societal and reflect the impact the offender had on both his victims and the Canadian public at large.
- [111] In *Kandola*, the societal interests were more discrete than here because of the distinct nature of the harm associated with the importation of potentially lethal drugs. Mr. Kandola's misuse of his office enabled him to access the information about the original suspect, and then subsequently be bribed into participating in the importation of drugs. The two wrongful acts were separate events.
- [112] In the *Willis* decision, the sexual assault of the refugee claimant was a separate and distinct criminal offence, whereas the extortion and breach of trust represented similar characterizations of the same underlying criminal act, for which concurrent sentences were imposed.
- [113] In the circumstances here, I consider the breach of trust and the fraud to be a part of the same transaction. In my view, the actions of Mr. Saunders that give rise to both the fraud and the breach of trust are indistinguishable.

- [114] While I accept that Mr. Saunders' criminal scheme cast a broad net in terms of its victims, the vulnerability of the youth victims serves as an aggravating factor, and perhaps a significant aggravating factor, as opposed to warranting consecutive sentences.

Forgery Charge

- [115] On the forgery charge, which relates solely to the falsified degree that assisted him in gaining the employment, the Crown seeks a consecutive term of one year. Apparently, there are no cases dealing with a falsified degree.
- [116] Unlike the Tickell case referred to by Crown, where the finding of the Court was that Mr. Tickell obtained the job with falsified employment documents at the Public Guardian and Trustee's Office for the purpose of perpetrating the fraud (and I note that he was not charged for that falsification, but it was rather viewed as an aggravating factor), this is not the case for Mr. Saunders. Rather, Mr. Saunders obtained the job albeit with a forged degree and committed the fraud many years later.

Disposition

- [117] Having reviewed the authorities provided by both Crown and the defence, and having concluded that a noncustodial sentence would be inappropriate here, I turn now to the duration of Mr. Saunders' sentence.
- [118] The cases where the only victim was a financial institution are distinguishable on that ground alone, given the impact on the vulnerable youth who were entrusted to Mr. Saunders' care. I find the most helpful cases in terms of a fit sentence to be Tickell and Dreger. I have already indicated why the circumstances in Tickell were distinguishable from the current facts, primarily because in Tickell, the offender fraudulently obtained his job solely for the purposes of perpetrating the fraud.
- [119] In Dreger, the amounts were less and the victims less vulnerable than is the case here. At para. 58, Madam Justice Bennett stated the following:
- [58] Ms. Dreger took a substantial sum of money from her employer, who had trusted her implicitly. This occurred over a seven year period. Her crime had a significant effect on her employer and his company, as well as other employees and the outside auditors. Her moral blameworthiness is high, and general deterrence is a significant sentencing factor. It is clear that a term of imprisonment is required, and her counsel does not now suggest otherwise. Weighing all of the circumstances and applying the principles of sentencing, I conclude that a sentence of four years is a fit sentence.
- [120] In all of the circumstances, I conclude that a sentence of five years' imprisonment is appropriate for the fraud charge.

- [121] I sentence Mr. Saunders to two years on the breach of trust charge, recognizing that the circumstances that gave rise to the breach of trust claim were aggravating factors in the sentence for fraud. This sentence is to be served concurrently with the sentence for the fraud charge.
- [122] As for the charge relating to the forged university degree, I sentence Mr. Saunders to one month to be served consecutively. With consideration for time served, there is no time remaining to serve on this aspect of the sentence.
- [123] In terms of ancillary orders, I agree that a DNA order is secondary and not required in this case.
- [124] Mr. Saunders agrees that he should have no authority over the property of others pursuant to s. 380.2. I make that order and I conclude that a lifetime ban is appropriate given the magnitude and duration of these events.
- [125] Finally, Mr. Saunders is prohibited from communicating, directly or indirectly, with:
- a) any child in the care of the Ministry of Children and Family Development over whom he acted as guardianship worker in Kelowna from 2011-2018; and
 - b) any employees, former or current, at the Ministry of Children and Family Development or any employees or organizations associated with Child Protection Services in British Columbia, which order is made pursuant to s. 743.21.
- [126] There will be a victim surcharge pursuant to s. 737 in the amount of \$600.
- "Wilson J."

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