

CANADA / JUDGMENT

R. v. Woolsey

2021 BCCA 439

COURT

British Columbia Court of Appeal

DECIDED

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2021 BCCA 439 R. v. Woolsey

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Woolsey,

2021 BCCA 439

Date: 20211123

Docket: CA45280

Between:

Regina

Respondent

And

Robert James Woolsey

Appellant

Before:

The Honourable Madam Justice Dickson

The Honourable Mr. Justice Fitch

The Honourable Mr. Justice Abrioux

On appeal from: Orders of the Supreme Court of British Columbia, dated

April 5, 2018 (conviction and sentence) (R. v. Woolsey, Abbotsford Docket 84714-1).

The Appellant, appearing in person

(via teleconference):

R.J. Woolsey

Counsel for the Respondent:

S.K. Steele

Place and Date of Hearing:

Vancouver, British Columbia

October 14, 2021

Place and Date of Judgment:

Vancouver, British Columbia

November 23, 2021

Written Reasons by:

The Honourable Mr. Justice Abrioux

Concurred in by:

The Honourable Madam Justice Dickson

The Honourable Mr. Justice Fitch

Summary:

The appellant was convicted of five counts of trafficking in cannabis. On each count, he was sentenced to a \$250 fine and one day imprisonment, to be served concurrently, as well as several ancillary orders. He appeals his sentence on the basis that it was a material error for the judge to fail to consider his submission that a conditional discharge would be appropriate. Held: Appeal allowed. The appellant's primary position on sentencing was that he should receive a conditional discharge. It was incumbent on the judge to engage with a sentencing submission and a proposed disposition that was available as a matter of law and reasonably open to the appellant in this case. Failure to do so was a material error. In performing its own sentencing analysis the Court concludes that a conditional discharge is appropriate.

Reasons for Judgment of the Honourable Mr. Justice Abrioux:

Introduction

- [1] On April 5, 2018, following a trial in the Provincial Court of British Columbia, the appellant was convicted of five counts of trafficking in cannabis contrary to s. 5(1) of the Controlled Drugs and Substances Act, S.C. 1996, c. 19 [CDSA].

- [2] Mr. Woolsey represented himself at the trial, although he did have counsel for several pre-trial appearances relating to the manner in which a constitutional challenge he had brought to s. 5(1) of the CDSA would be argued at the trial. He was self-represented on his conviction appeal, which was dismissed by this Court in reasons indexed as 2021 BCCA 253 [Woolsey CA].
- [3] The sentencing hearing occurred on April 5, 2018, immediately following Mr. Woolsey's conviction. The trial judge imposed a sentence of one day imprisonment concurrent on each count, a fine of \$250 on each count--for a total of \$1,250--and certain ancillary orders.
- [4] The only issue on this sentence appeal is whether the trial judge, by failing to grant the appellant a conditional discharge, committed an error in principle that had an impact on the sentence. Absent such an error, in my view, the sentence was not demonstrably unfit.
- [5] For the reasons that follow, I would allow the appeal and grant the appellant a conditional discharge.

Background, Circumstances of the Offender and Submissions by the Parties at the Sentencing Hearing

- [6] Mr. Woolsey is a passionate believer in the right to reasonable access to cannabis for medical purposes. The background was summarized this way in Woolsey CA:
- [3] In February 2015, Mr. Woolsey opened a Compassion Club dispensary in Deroche, B.C. He sold marihuana and derivative products there to customers permitted to possess them pursuant to a valid medical authorization, as provided for in the Marihuana for Medical Purposes Regulations, SOR/2013-119 [MMPR]. According to Mr. Woolsey, before opening the dispensary he consulted with Staff Sergeant Rob Dixon of the Mission RCMP, who led him to believe he could operate it without police interference so long as he sold his products only to persons with a verified medical need for cannabis.
- [4] On September 24, 2015, September 25, 2015, November 19, 2015 and November 21, 2015, Mr. Woolsey sold cannabis at the dispensary to undercover officers who did not produce documentation showing they were authorized to possess it for medical reasons. On November 25, 2015, police arrested him for trafficking and searched the dispensary and his residence, where they seized various items, including cannabis plants and video recordings.
- [7] In his submissions on sentence, Crown counsel acknowledged that the potential sentence had a range from an absolute discharge to a custodial term of five years less a day. He submitted that a conditional sentence of 60 days be imposed with a curfew for the first 30 days, together with ancillary orders of forfeiture of cash seized and weapons restrictions.
- [8] Mr. Woolsey outlined his personal circumstances to the judge, including that he was 66 years old. He acknowledged a criminal record for possession of cannabis which dated from 1969 to 1978. He stated that as a teenager he had been diagnosed as hyperactive for which psychiatrists had prescribed valium. This led him to commence taking cannabis as a

replacement therapy. Over the years, he had become an advocate for cannabis as a pain and behaviour therapy. He said he had been consuming cannabis for over 40 years to assist with his own condition and, in his words: "In fact, it enabled me to excel in all my jobs instead of racing ahead of everyone else."

- [9] The appellant described the lengthy process he undertook to obtain an authorization to possess cannabis for his own medical purposes and thereafter to open his cannabis clinic in Deroche, BC, which was associated with the BC Pain Society. From the date of the opening in 2015, the clinic grew to have 480 registered cardholding patients in six months.
- [10] In so far as the offences were concerned, it was Mr. Woolsey's submission that his interaction with law enforcement officers both prior and subsequent to the opening of his business had led him to believe that compassion clubs such as the one he was operating would be "tolerated". In that regard, he pointed to a newspaper article that had appeared in the Mission Record on January 30, 2015 and which referred to an RCMP Staff Sergeant stating that compassion clubs were traditionally tolerated.

- [11] The appellant submitted that under the circumstances:

I think I should have a conditional discharge. Your Honour if you want to give me time, give me time served, the 10 hours I spent in that cell

[Emphasis added.]

- [12] The Crown made no submission regarding the propriety or otherwise of a conditional discharge and in particular whether it would be contrary to the public interest for the judge to grant one to Mr. Woolsey.

Reasons for Sentence

- [13] The judge commenced the reasons by stating "this becomes a difficult matter for sentencing because of the transition that Canada is in right now with respect to the future of cannabis." He then referred to some draft legislation of which he was aware but not completely familiar with and observed:
- [2] it is difficult, of course, to sentence someone for something that is an offence on Monday that might not be an offence on Tuesday and it presents some difficulties.
- [3] I have to say, in fact, I honestly cannot remember the last time, other than this case, that I have seen a marihuana-related offence prosecuted because of the transition that is going on.
- [14] The judge then referred to the factors he was taking into account in considering a fit sentence and observed:
- a) the sales in question were outside of the limits of those authorized by law or by regulation;

- b) the sales took place under somewhat unique circumstances in the sense that they occurred within a branch of the B.C. Pain Society and on Mr. Woolsey's premises. In that regard he remarked: "This is not a situation where somebody is essentially standing on a street corner or selling marihuana on the grounds of a high school or an elementary school. It is really a situation where the purchaser seeks out the buyer at a business premises that has at least publicly declared other intents", at para. 4;
- c) while he appreciated that there was a dispute as to the exact discussions that may or may not have taken place between Mr. Woolsey and the police, there was at least an atmosphere suggesting, and, in fact, there was the phrase used in the newspaper article:
 - [5] that there is a tolerance on the part of enforcement agencies as the article quotes Sgt. Dixon as saying Compassion Clubs have traditionally been tolerated. Whether the discussions took place precisely as Mr. Woolsey says, whether there were no such discussions or whether there were discussions and Sgt. Dixon cannot remember precisely what they were, I guess the point to me is that there was at least an effort here to try and be upfront as opposed to some clandestine operation and I think that puts the matters in a different category.
 - d) there is certainly a trust that persons who have the ability to operate within the framework of the law not step offside because there is a trust that is being breached which "presents a very difficult issue with respect to sentencing": at para. 6; and
 - e) while Mr. Woolsey had a criminal record, there had been a 40-year gap. Accordingly he was really treating him as if he were a first time offender.
- [15] The judge then commented:
- [8] That takes me back to this is [sic] a very unique and unusual set of circumstances that Mr. Woolsey finds himself before the court in terms of sentencing.
- [16] Having set out the parties' position on sentencing, the judge then completed his analysis and conclusions which I now set out essentially in their entirety:
- [11] I take into account the extrajudicial consequences that have resulted, specifically the loss of considerable amount of property, not just offence-related property, but the other consequences, the other financial losses that have resulted from this.
- [12] I also take into account the motivation. I do agree with Mr. Woolsey that there is a difference between a person motivated to commit an act that can potentially easily cross the line into a criminal offence where the motivation is a legitimate desire to help persons with illnesses versus the person who sells simply for profit motive who simply uses the substance for pleasure or to enhance the pleasure of others where there is a greed motivation and I do not sense that that has been the motive in this case.

- [13] All of this still leaves me perplexed with the appropriate sentence in this case. I have difficulty in reaching the conclusion that this calls for a jail sentence, as I say, particularly because of the fact that the landscape might be quite different a year from now and that it is hard to justify sending somebody to jail for something that the person with the passage of a few more calendar months could do with impunity.
- [14] Taking into account the principles of sentencing, denouncing the unlawful conduct, taking into account the harm done to victims in this case. I am mindful that this involved a sale to undercover police officers and that otherwise no one has identified themselves as victims other than, I suppose, that the Crown would make the argument that the community at large is the victim. I am taking into account the issue of deterrence, though it is difficult what to make of that in light of what may occur in [sic] future.
- [15] I am satisfied that it is not necessary to separate Mr. Woolsey from society. I would have greater concerns about rehabilitation if this was an offence motivated for profit or if this was an offence that was harmful to children or something along that line, aside from consenting adults.
- [16] The order that I am going to make is this. On each of the five offences, there will be a sentence of one day concurrent on each count to be applied against the time served.
- [17] In addition to the time served, there will be a fine of \$250 on each offence. I am taking into account that some of that money is going to be coming back from the items that were seized by Mr. Woolsey but I think that is the compromise that is called for in these circumstances.
- [17] The judge also made a forfeiture order, certain ancillary orders, and victim surcharge orders.

Standard of Review

- [18] In light of the issues that arise on this appeal, it is of assistance to set out a summary of the applicable principles as recently explained by the Court in *R. v. Friesen*, 2020 SCC 9:
- [25] Appellate courts must generally defer to sentencing judges' decisions. The sentencing judge sees and hears all the evidence and the submissions in person (*R. v. Lacasse*, 2015 SCC 64], at para. 48; *R. v. Shropshire*, [1995] 4 S.C.R. 227, at para. 46). The sentencing judge has regular front-line experience and usually has experience with the particular circumstances and needs of the community where the crime was committed (*Lacasse*, at para. 48; *R. v. M. (C.A.)*, [1996] 1 S.C.R. 500, at para. 91). Finally, to avoid delay and the misuse of judicial resources, an appellate court should only substitute its own decision for a sentencing judge's for good reason (*Lacasse*, at para. 48; *R. v. Ramage*, 2010 ONCA 488, 257 C.C.C. (3d) 261, at para. 70).
- [26] As this Court confirmed in *Lacasse*, an appellate court can only intervene to vary a sentence if (1) the sentence is demonstrably unfit (para. 41), or (2) the sentencing judge made an error in principle that had an impact on the sentence (para. 44). Errors in principle include an

error of law, a failure to consider a relevant factor, or erroneous consideration of an aggravating or mitigating factor. The weighing or balancing of factors can form an error in principle "[o]nly if by emphasizing one factor or by not giving enough weight to another, the trial judge exercises his or her discretion unreasonably" (R. v. McKnight (1999), 135 C.C.C. (3d) 41 (Ont. C.A.), at para. 35, cited in Lacasse, at para. 49). Not every error in principle is material: an appellate court can only intervene if it is apparent from the trial judge's reasons that the error had an impact on the sentence (Lacasse, at para. 44). If an error in principle had no impact on the sentence, that is the end of the error in principle analysis and appellate intervention is justified only if the sentence is demonstrably unfit.

- [27] If a sentence is demonstrably unfit or if a sentencing judge made an error in principle that had an impact on the sentence, an appellate court must perform its own sentencing analysis to determine a fit sentence (Lacasse, at para. 43). It will apply the principles of sentencing afresh to the facts, without deference to the existing sentence, even if that sentence falls within the applicable range. Thus, where an appellate court has found that an error in principle had an impact on the sentence, that is a sufficient basis for it to intervene and determine a fit sentence. It is not a further precondition to appellate intervention that the existing sentence is demonstrably unfit or falls outside the range of sentences imposed in the past.
- [28] However, in sentencing afresh, the appellate court will defer to the sentencing judge's findings of fact or identification of aggravating and mitigating factors, to the extent that they are not affected by an error in principle. This deference limits the number, length, and cost of appeals; promotes the autonomy and integrity of sentencing proceedings; and recognizes the sentencing judge's expertise and advantageous position (Housen v. Nikolaisen, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 15-18).
- [29] Often the sentence that the appellate court determines to be fit will be different from that imposed by the sentencing judge, and the appellate court will vary the sentence. If the sentence chosen by the appellate court is the same as that imposed by the sentencing judge, the appellate court may also affirm the sentence despite the error.

The Legal Framework

- [19] The well established framework which relates to absolute and conditional discharges was summarized by Justice Bennett in R. v. Jeremiah, 2018 BCCA 89:
- [13] An absolute or conditional discharge may be ordered by a court in the circumstances outlined in s. 730(1) of the Criminal Code, R.S.C. 1985, c. C-46. The offence cannot be one that carries a minimum sentence, and the maximum sentence must be less than 14 years. The discharge must be in the best interest of the accused and not contrary to the public interest. A discharge means that no conviction is entered, despite a person being found guilty of an offence.

- [14] The leading case in British Columbia on discharges as a form of sentencing is *R. v. Fallofield* (1973), 13 C.C.C. (2d) 450 (B.C.C.A.), despite being decided 45 years ago. The legislation is generally unchanged, and the principles remain the same.
- [15] Perhaps the first observation of interest in the decision, which involved the sentencing judge refusing a discharge because he thought they were limited to offences of strict liability or offences that were "unintentional or unavoidable", was that this Court observed that "a discretion which is unfettered by law must not be fettered by judicial interpretation of it": *Fallofield* at 452.
- [16] This Court reviewed a number of authorities, and concluded with the following, subject to the exercise of discretion by the sentencing judge, at 454-55:

From this review of the authorities and my own view of the meaning of s. 662.1 [now s. 730(1)], I draw the following conclusions, subject, of course, to what I have said above as to the exercise of discretion.

- 1) The section may be used in respect of any offence other than an offence for which a minimum punishment is prescribed by law or the offence is punishable by imprisonment for 14 years or for life or by death.
- 2) The section contemplates the commission of an offence. There is nothing in the language that limits it to a technical or trivial violation.
- 3) Of the two conditions precedent to the exercise of the jurisdiction, the first is that the Court must consider that it is in the best interests of the accused that he should be discharged either absolutely or upon condition. If it is not in the best interests of the accused, that, of course, is the end of the matter. If it is decided that it is in the best interests of the accused, then that brings the next consideration into operation.
- 4) The second condition precedent is that the Court must consider that a grant of discharge is not contrary to the public interest.
- 5) Generally, the first condition would presuppose that the accused is a person of good character, without previous conviction, that it is not necessary to enter a conviction against him in order to deter him from future offences or to rehabilitate him, and that the entry of a conviction against him may have significant adverse repercussions.
- 6) In the context of the second condition the public interest in the deterrence of others, while it must be given due weight, does not preclude the judicious use of the discharge provisions.
- 7) The powers given by s. 662.1 [now s. 730(1)] should not be exercised as an alternative to probation or suspended sentence.

- 8) Section 662.1 [now s. 730(1)] should not be applied routinely to any particular offence. This may result in an apparent lack of uniformity in the application of the discharge provisions. This lack will be more apparent than real and will stem from the differences in the circumstances of cases.

Discussion

Position of the Parties

- [20] Mr. Woolsey submits that the judge committed a material error that impacted on the sentence by failing to consider whether granting him a conditional discharge, in the circumstances of this case, would be contrary to the public interest. In the alternative, he argues that the sentence of time served and the \$1,250 fine was demonstrably unfit.
- [21] The Crown acknowledges that the statutory prerequisites to the judge considering a conditional discharge were met in this case.
- [22] Its position is that the judge was extremely sympathetic to the appellant and appropriately considered the relevant circumstances. It argues that although the judge did not specifically refer to the granting of a conditional discharge as a potential sentence in his consideration and analysis of the sentencing alternatives, it was implicit in the reasons that he had decided it would not be in the public interest to do so. That is because the judge is presumed to know the law and he did specifically refer in his reasons to the appellant seeking a conditional discharge, a submission to which I shall return.
- [23] The Crown acknowledges that after the sentencing decision on April 5, 2018, the Supreme Court of Canada rendered its decision in *R. v. Boudreault*, 2018 SCC 8, which concluded that the victim surcharge violated s. 12 of the Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c. 11. Accordingly it concedes that the victim surcharge orders should be set aside.

Analysis

- [24] As the Court noted in *Friesen*, errors in principle include an error of law, a failure to consider a relevant factor, or erroneous consideration of an aggravating or mitigating factor. The weighing or balancing of factors can form an error in principle if the judge exercises her or his discretion unreasonably by emphasizing one factor or by not giving enough weight to another.
- [25] In considering whether the judge committed a material error in this case, I acknowledge the practical realities that sentencing judges often face when managing busy dockets under what are often significant time constraints.

[26] In this case, the trial proceeded over several days in November 2017, with additional appearances on December 12, 2017 and January 15, 2018. As of that latter date, there remained outstanding a Crown application to amend the information, as well as the submissions of the appellant and the Crown regarding the constitutional challenge.

[27] Those occurred several weeks later on April 5, 2018, immediately following which the judge gave his ruling dismissing the constitutional challenge. He then convicted the appellant of the five counts set out in the information.

[28] The judge then inquired if the parties wished to proceed to sentencing. Crown counsel asked for the matter to be stood down so that he could discuss the issue with Mr. Woolsey. The judge and the parties had the following exchange:

The Court: Again, I don't want to deny anybody the right to be heard but I suspect the Crown's not seeking a jail sentence in this case, are you?

[Crown Counsel]: Not one of conventional incarceration in any event.

The Court: All right. Okay. I'll give you a chance to speak with Mr. Woolsey. And Mr. Woolsey, then you can determine whether you want sentencing to proceed today or that you want--want this adjourned for some purpose.

The Accused: OK.

The Court: All right.

[29] Following a recess, Crown counsel advised the judge that:

- He had canvassed with duty counsel if he could speak to Mr. Woolsey but that he was not then available to do so; and
- Mr. Woolsey had told him he was "comfortable proceeding."

[30] The judge then told Mr. Woolsey that if he did change his mind regarding speaking to duty counsel "we'll give you that option."

[31] The parties made their submissions on sentence, and the judge gave his decision immediately thereafter.

[32] The judge summarized the appellant's position in his reasons as follows:

[10] Mr. Woolsey asks either for a sentence of time served or a sentence, alternatively, of a conditional discharge.

[33] In fairness to the appellant, his position was not that equivocal. As I have noted, his submission in fact was:

Your Honor, I think I should have a conditional discharge. Your Honour if you want to give me time, give me time served, the 10 hours I spent in that cell

[34] Given that the only reference in the judge's reasons to a conditional discharge is found at para. 10, and that the Crown made no submissions regarding the propriety or otherwise of a conditional discharge, this raises what in my view is the central question on appeal: upon reading the reasons functionally and contextually, and taking into account the live issues at the sentencing hearing, can it be concluded that the judge implicitly engaged with a sentencing submission and with a proposed disposition that was available as a matter of law and reasonably open to the appellant to seek in the circumstances of this case?

[35] Respectfully, I have concluded that the judge did commit a material error.

[36] In my view, in light of the fact that a conditional discharge was:

- the appellant's primary or key argument on sentence; and
- this sentence was in his best interests,

it was incumbent on the judge to specifically address the propriety of a conditional discharge and whether it would be contrary to the public interest.

[37] That is because the judge himself described the circumstances as being "unique" and "difficult" and noted there was some evidence of tolerance of compassion clubs, all of which left him "perplexed with the appropriate sentence in this case."

[38] And yet, in analysing this "perplexing" case, the judge did not address the appellant's primary submission on sentence.

[39] Giving the reasons a fulsome and contextual reading, I do not accept the Crown's argument that the judge can be said to have implicitly considered whether a conditional discharge was appropriate in this case.

[40] I am reinforced in this view by the fact that:

- The exchange between the judge and Crown counsel prior to the brief adjournment which preceded the sentencing hearing focussed on the need or otherwise of "jail time";
- The substance of the reasons themselves focussed on whether there should be a conditional sentence order and the breadth of the forfeiture order sought by the Crown; and
- The judge's summary of the appellant's position at para. 10, which appears to reflect a judicial understanding that a conditional discharge was only being sought in the alternative. As I have noted, it was, in fact, the appellant's primary argument on sentencing.

[41] It would follow that the error impacted on the sentence, since there was no discussion of the Fallofield factors, and specifically whether a conditional discharge would be contrary to the public interest.

- [42] In performing my own sentencing analysis, I must "apply the principles of sentencing afresh to the facts, without deference to the existing sentence, even if that sentence falls within the applicable range": Friesen at para. 27.
- [43] In doing so, I take into account the circumstances giving rise to the offences as found by the judge, including the appellant's personal circumstances, the lack of financial motivation, and what the judge found to be a breach of trust since the appellant did not comply with the existing legislation.
- [44] I have also considered that these were five offences for trafficking in cannabis, as opposed to simple possession, although it appears from the reasons that the number of incidents were not considered to be aggravating circumstances by the judge.
- [45] I recognize that the legislative framework relating to cannabis has undergone a fundamental change since April 2018. Specifically, the coming into force of the Cannabis Act, S.C. 2018, c. 16 on October 17, 2018 created a legal regime for the production, sale, and possession of recreational cannabis in Canada.
- [46] The appellant's circumstances have also changed. Over the past year, he has taken steps with associates in Jamaica in an attempt to form compassion clubs or similar entities in that country for the benefit of low-income residents. Convictions for these offences will provide significant, if not impossible, barriers to his ability to pursue this endeavor since they will affect his ability to travel outside of Canada.
- [47] Furthermore, Mr. Woolsey can now likely obtain a "record suspension" in relation to his dated 1969 to 1978 convictions.
- [48] On June 21, 2019, Bill C-93, an Act to provide no-cost, expedited record suspensions for simple possession of cannabis, S.C. 2019, c. 20, received royal assent. By order of the Governor in Council on July 28, 2019, this Act came into force on August 1, 2019.
- [49] The Parliamentary summary of the Bill states:
- Bill C-93 amends the Criminal Records Act (CRA) to allow individuals who were convicted for possession of cannabis products before 7 October 2018 to request a record suspension (formerly known as a pardon) without having to wait the usual period of time and without being required to pay a fee.
- [50] I would conclude that the appellant satisfies the relevant Fallofield criteria, including that it would not be against the public interest to grant him a conditional discharge in these particular circumstances.
- [51] Mr. Woolsey agrees to adhere to the current legislative and regulatory framework. Accordingly, it is not necessary to enter convictions against him in order to deter him from future offences or to rehabilitate him. Furthermore, entry of convictions may well have significant adverse repercussions.

[52] I would add that Mr. Woolsey understands that since he has completed the sentence imposed in April 2018, that if he were to be granted a conditional discharge, he would then be required to abide by certain conditions in a probation order which, if breached, could result in further charges being brought. In light of his desire to be able to travel outside Canada, in particular Jamaica, he is prepared to accept these conditions.

[53] Section 730(1) of the Criminal Code provides that a probation order under s. 731(2) is to be made. In my view, the mandatory statutory conditions set out in s. 732.1(2) are sufficient in this case, that is:

732.1(2) The court shall prescribe, as conditions of a probation order, that the offender do all of the following:

- (a) keep the peace and be of good behaviour;
- (b) appear before the court when required to do so by the court; and
- (c) notify the court or probation officer in advance of any change of name or address, and promptly notify the court or the probation officer of any change of employment or occupation.

[54] Under the circumstances I consider six months to be a reasonable timeframe for the duration of the probation order: see *R. v. Lima*, 2017 SKCA 108.

Disposition

[55] I would conclude by observing that the judge was right to emphasize the breach of trust inherent in the commission of these offences. But sentencing remains an individualized process. The disposition I am proposing is responsive to the unique and unusual facts of this case and the offender's personal circumstances, and I consider it highly unlikely that the result I am proposing will stand as a precedent in future cases.

[56] I would grant leave to appeal sentence, allow the appeal, and direct that the appellant be discharged on the conditions I have identified.

[57] I would also set aside the victim surcharge orders.

"The Honourable Mr. Justice Abrioux"

I AGREE:

"The Honourable Madam Justice Dickson"

I AGREE:

"The Honourable Mr. Justice Fitch"

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