SUPREME COURT OF NOVA SCOTIA
Citation: *R. v. Barrons*, 2017 NSSC 216

Date: 2017 08 28
Docket: Hfx No. 440381
Registry: Halifax

Between:

Her Majesty the Queen

v.

Charles Edward John Barrons

Restriction on Publication: S. 486

SENTENCING DECISION

Judge:	The Honourable Justice Joshua M. Arnold
Heard:	August 17, 2017, in Halifax, Nova Scotia
Counsel:	Christine Driscoll, for the Crown Stanley MacDonald, Q.C., and Jennifer Penman, for the Defence

By the Court:

[1] Charles Edward John Barrons was originally charged:

> 1. That he on or about the 12th day of September, 2014 at, or near Halifax, in the County of Halifax in the Province of Nova Scotia, did unlawfully break and enter a place, to wit.: a residence of B.L. situated at […], Halifax, Nova Scotia, and did commit therein the indictable offence of assault contrary to Section 348(1)(b) of the *Criminal Code*.
>
> 2. and further that he at the same time and place aforesaid, did unlawfully and willfully damage property of B.L. and did thereby commit mischief, contrary to Section 430(4) of the *Criminal Code.*
>
> 3. and further that he at the same time and place aforesaid, did unlawfully assault Matthew William Stewart Shackell, contrary to Section 266 of the Criminal Code.
>
> 4. and further that he at the same time and place aforesaid, did unlawfully assault B.L., contrary to Section 266 of the *Criminal Code*.
>
> 5. and further that he at the same time and place aforesaid, did unlawfully utter a threat to Matthew William Stewart Shackell to cause bodily harm or death to the said Matthew William Stewart Shackell, contrary to Section 264.1(1)(a) of the *Criminal Code*.
>
> 6. and further that he at the same time and place aforesaid, did unlawfully commit a sexual assault on B.L., contrary to Section 271 of the *Criminal Code*.

[2] Midway through his judge alone trial, Mr. Barrons tendered a guilty plea to the following charge:

> 1. That he on or about the 12th day of September, 2014 at, or near Halifax, in the County of Halifax in the Province of Nova Scotia, did unlawfully break and enter a place, to wit.: a residence of B.L. situated at […], Halifax, Nova Scotia, and did commit therein the indictable offence of assault on Matthew Shackell, contrary to Section 348(1)(b) of the *Criminal Code*.

[3] The Crown accepted this guilty plea and the trial proceeded no further.

[4] Crown and defence provided the court with an Agreed Statement of Facts at the time of Mr. Barrons' guilty plea. This agreement states:

> On September 11, 2014, Charlie Barrons, Matthew Shackell and B.L. were at Cheers bar in Halifax. Though they saw each other at the bar, Mr. Barrons did

> not have any contact with either Mr. Shackell or B.L. At some point, Mr. Shackell and B.L. left the bar and went to B.L.'s apartment. Mr. Barrons did not know that they had left together. At approximately 1:00 AM on September 12, 2014, Mr. Barrons walked to B.L.'s apartment, and knocked on her door. At that point, he did not know that Mr. Shackell was in the apartment.
>
> As Mr. Barrons knocked on the apartment door, he heard Mr. Shackell and B.L. inside. At that point, Mr. Barrons became very upset and angry. He then broke the door of the apartment as depicted in the photographs, and entered. He then proceeded to the bedroom door, where Mr. Shackell and B.L. were located. They attempted to stop Mr. Barrons from coming into the bedroom, but he was able to gain entry by force. At this time, Mr. Barrons called B.L. "a fucking whore" and was hollering "are you fucking kidding me?"
>
> As Mr. Barrons came through the bedroom door, Mr. Shackell and Mr. Barrons grabbed each other and there was a scuffle. During the scuffle Mr. Shackell's back hit the closet door with enough force to crack the door. During this altercation B.L.'s arm and face were accidentally struck.
>
> After this struggle, Mr. Shackell left the apartment. Mr. Barrons was in the bedroom with B.L. and yelled to her "did you fuck him?" They went to the bathtub and Mr. Barrons turned on the water. After a short time, B.L. left the bathroom and came in contact with Patricia Murray. They went into Ms. Murray's bedroom, where they called the police. Mr. Barrons entered the bedroom and put his arm on B.L.'s shoulder and arm and asked if he could talk to her. B.L. and Ms. Murray talked calmly to Mr. Barrons hoping he would leave, which he did. The police arrived soon after, and Mr. Barrons was arrested.

[5] Trial exhibit one, photographs of damage to the apartment, and trial exhibit two, Facebook messages, were entered as exhibits at the sentencing hearing, and I have considered those in this decision.

[6] Section 742.1(c) of the *Criminal Code* states:

> 742.1 If a person is convicted of an offence and the court imposes a sentence of imprisonment of less than two years, the court may, for the purpose of supervising the offender's behaviour in the community, order that the offender serve the sentence in the community, subject to the conditions imposed under section 742.3, if
>
> …
>
> (c) the offence is not an offence, prosecuted by way of indictment, for which the maximum term of imprisonment is 14 years or life…

[7] Section 348 of the *Criminal Code of Canada* states, in part:

> 348 (1) Every one who
>
> …
>
> (b) breaks and enters a place and commits an indictable offence therein, or
>
> …
>
> is guilty
>
> (d) if the offence is committed in relation to a dwelling-house, of an indictable offence and liable to imprisonment for life…

[8] Because break and enter into a dwelling house and committing an indictable offence carries a maximum sentence of life in prison and therefore removes the possibility of conditional sentence for Mr. Barrons, and because the Court of Appeal has set a benchmark of three years in prison for break and enter offences, Mr. Barrons made an application to have s. 742.1(c) declared unconstitutional. That application was denied.

[9] The Crown argues that Mr. Barrons should be sentenced to a period of custody in a Federal institution in the range of two years followed by three years probation. Mr. Barrons says that a suspended sentence followed by probation is the proper sentence in these circumstances.

Codified Principles of Sentencing

[10] Section 718 of the *Criminal Code* states:

> 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.

[11] Section 718.1 of the *Criminal Code* states:

> 718.1 A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[12] Section 718.2 of the *Criminal Code* states:

> 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,
>
> > (i) evidence that the offence was motivated by bias, prejudice or hate based on race, national or ethnic origin, language, colour, religion, sex, age, mental or physical disability, sexual orientation, or gender identity or expression, or on any other similar factor,
> >
> > (ii) evidence that the offender, in committing the offence, abused the offender's spouse or common-law partner,
> >
> > (ii.1) evidence that the offender, in committing the offence, abused a person under the age of eighteen years,
> >
> > (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,
> >
> > (iv) evidence that the offence was committed for the benefit of, at the direction of or in association with a criminal organization,
> >
> > (v) evidence that the offence was a terrorism offence, or
> >
> > (vi) evidence that the offence was committed while the offender was subject to a conditional sentence order made under section 742.1 or

> released on parole, statutory release or unescorted temporary absence under the Corrections and Conditional Release Act
>
> shall be deemed to be aggravating circumstances;
>
> (b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;
>
> (c) where consecutive sentences are imposed, the combined sentence should not be unduly long or harsh;
>
> (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
>
> (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

[13] Mr. MacDonald strongly emphasizes 718.2(d) and (e) in support of his position.

Aggravating Factors

[14] Section 348**.**1 of the *Criminal Code* states:

> 348.1 If a person is convicted of an offence under section 98 or 98.1, subsection 279(2) or section 343, 346 or 348 in relation to a dwelling-house, the court imposing the sentence on the person shall consider as an aggravating circumstance the fact that the dwelling-house was occupied at the time of the commission of the offence and that the person, in committing the offence,
>
> > (a) knew that or was reckless as to whether the dwelling-house was occupied; and
> >
> > (b) used violence or threats of violence to a person or property.

[15] In this case, Mr. Barrons knew that B.L.'s residence was occupied. An assault occurred inside that apartment. It is mandatory that I consider s. 348.1 of the *Criminal Code* as an aggravating circumstance.

[16] Additionally, the apartment Mr. Barrons broke into was inhabited by his ex-girlfriend. While we do not have spousal dependence between B.L. and Mr. Barrons, there is a domestic undercurrent. Although there was no domestic

relationship as defined by the *Criminal Code*, the fact that Mr. Barrons and B.L. had been intimate has some significance in weighing the appropriate principles of sentencing.

Mitigating Factors

[17] Mitigating factors in this case include:

- Mr. Barrons entered a guilty plea;
- Mr. Barrons has no prior record;
- Mr. Barrons was youthful when the offence was committed;
- Mr. Barrons was a productive member of society when the offence was committed;
- Mr. Barrons has improved himself since being charged; and
- Mr. Barrons has been on bail conditions since September 2014 without incident.

Range of Sentence

[18] In *R. v. Zong*, [1986] N.S.J. 207 (N.S.S.C., A.D.), the court set a benchmark of three years in custody for the crime of break and enter, "from which a trial judge should move as the circumstances in the judgement of the trial judge warrant" (para. 7). So while a benchmark was set, the ability for a sentencing judge to exercise discretion was recognized.

[19] The Court of Appeal revisited the benchmark in *R. v. Bursey*, [1991] 104 N.S.R. (2d) 94 (N.S.C.A.) and in upholding a suspended sentence for a break and enter offence stated:

> We must not only keep the foregoing in mind in considering the principles laid down by *Grady*, but we must also remember that in considering the fitness of the sentence, we are not to consider it improper merely because we feel we might have imposed a different sentence. Apart from misdirection or nondirection on the principles of sentencing,. a sentence should only be varied if we are satisfied that it is clearly excessive or inadequate in relation to the offence proven or the record of the accused: *R. v. Cormier* (1974), 9 N.S.R. (2d) 687.

> We accept that in cases of break and enter, three years imprisonment is indeed a benchmark but all cases must be dealt with on an individual basis. There is no similarity at all between the facts before us and those in *Zonq*.
>
> Applying the relevant principles, we see that. an experienced trial judge has reviewed in his decision the relevant circumstances of the offender and the offence. He has concluded that in these somewhat unusual circumstances, the respondent should be given one more chance. We are not able to say that Judge Kimball imposed a clearly inadequate sentence in relation to the offender and the offence. Properly administered, a suspended sentence can have substantial consequences.

[20] The Court of Appeal referred to "somewhat unusual circumstances". They did not require exceptional circumstances and reiterated that, properly administered, a suspended sentence can have substantial consequences.

[21] Both Crown and defence agree that in suggesting the appropriate sentence for Mr. Barrons they were unable to find a case that was exactly on point with this particular series of factual circumstances. Each side says that they were able to find cases that were instructive.

Home Invasions Generally

[22] In *R. v. P.J.H.*, 2000 NSCA 7, Glube C.J.N.S. spoke for the court and stated:

> [70] The decision in *Matwiy* provides a thorough review of cases dealing with home invasions in Alberta, including several where 15 year sentences were upheld on appeal. The case lists the basic, essential features of a "home invasion" robbery, namely,
>
> ... A mature individual with no prior record,
>
> (a) plans to commit a home invasion robbery (although the plan may be unsophisticated), and targets a dwelling with intent to steal money or property, which he or she expects is to be found in that dwelling or in some other location under the control of the occupants or any of them;
>
> (b) arms himself or herself with an offensive weapon;
>
> (c) enters a dwelling, which he or she knows or would reasonably expect is occupied, either by breaking into the dwelling or by otherwise forcing his or her way into the dwelling;

> (d) confines the occupant or occupants of the dwelling, even for short periods of time;
>
> (e) while armed with an offensive weapon, threatens the occupants with death or bodily harm; and
>
> (f) steals or attempts to steal money or other valuable property.
>
> The starting-point for sentences for a home invasion robbery as we have defined it, should be eight years. (Paras. 30 and 31.)

[23] In *R. v. Newhook*, 2008 NLCA 28, the court examined the appropriate sentence for a home invasion and found:

> [27] Section 348.1 of the *Criminal Code* reads:
>
> > Aggravating circumstance – home invasion - If a person is convicted of an offence under any of subsection 279(2) or sections 343, 346 and 348 in relation to a dwelling-house, the court imposing the sentence on the person shall consider as an aggravating circumstance the fact that the dwelling-house was occupied at the time of the commission of the offence and that the person, in committing the offence,
> >
> > (a) knew that or was reckless as to whether the dwelling-house was occupied; and
> >
> > (b) used violence or threats of violence to a person or property.
>
> [28] To engage s. 348.1, the offender must be convicted of a listed crime in relation to a dwelling house, either unlawful confinement (s. 279(2)), robbery (s. 343), extortion (s. 346) or break and entry (s. 348). The aggravating circumstance consists of a combination of:
>
> > (a) occupation of the dwelling-house at the time of the offence;
> >
> > (b) knowledge of this or recklessness as to whether the dwelling-house was occupied; and
> >
> > (c) actual or threatened use of violence to a person or property.
>
> The coincidence of these factors requires the sentencing judge to consider "home invasion" as an aggravating circumstance in determining sentence.
>
> [29] Under the heading "Further Aggravating Consideration", the Trial Judge reproduced s. 348.1. Thereafter, however, there is no reference to this in his

sentencing decision. "Home invasion" is a very serious aggravating factor, one that, while he referred to it, the Trial Judge failed to apply. This amounts to an error of law. Accordingly, I will now consider what sentence should be imposed for the break and enter.

[30] At the outset, I would highlight a distinction between "home invasion robbery" cases (this not being one) and the broader category of "home invasion" cases (of which this is one). Home invasion robbery cases are not useful in considering what is a fit sentence when there is no robbery. See *R. v. A.J.C.* (2004), 2004 BCCA 268 (CanLII), 186 C.C.C. (3d) 227 (BCCA) at para. 1, per Finch, C.J.B.C. and *R. v. S.(J.)* (2006), 2006 CanLII 22101 (ON CA), 210 C.C.C. (3d) 296 (ONCA), per Blair, J.A.

[31] Section 348.1 (adopted in 2002), codified what has always been a significant aggravating factor in sentencing, that is to enter someone's home and do injury or threaten to do injury to them there. For example, Chief Justice Glube stated in *R. v. Harris* (2000), 2000 NSCA 7 (CanLII), 142 C.C.C. (3d) 252 (NSCA) at para. 81:

> These types of offences (home invasion) require denunciation by society, deterrence of the accused and others from committing this type of offence, and protection of the public as the primary considerations of sentencing those who choose to invade the sanctity of the home of another and do violence through intimidation, terrorism or actual assault.

[32] In *R. v. P.J.B.* (1999), 1999 CanLII 18938 (NL CA), 182 Nfld. & P.E.I.R. 14 (NLCA) this Court dealt with sentencing in a home invasion case not involving robbery. While the case pre-dated s. 348.1 of the *Criminal Code*, as I noted above, s. 348.1codified existing case law, rather than creating new law. Thus, I read the case as relevant to the application of s. 348.1.

[33] In *R. v. P.J.B.*, the offender pleaded guilty to break and enter, assault with a weapon, and using a firearm while committing an indictable offence. At 12:45 a.m., the offender entered the residence of his ex-wife and her common-law partner. He broke in the back door, armed with a shotgun. He and his ex-wife's partner struggled. The offender's ex-wife called the police. The offender fled the residence, where he was met and arrested by police responding to the call. The offender was sentenced to two terms of eighteen months imprisonment for break and enter and for the firearms charge, to be served concurrently. In addition, the accused was sentenced to six months concurrent for assault with a weapon.

[34] The Crown appealed, arguing that the sentence for the firearms offence should have been consecutive to the other sentences and that the sentences were unfit. The Court of Appeal agreed that the sentence for the firearms offence was statutorily required to be consecutive to the other sentences. However, the Court

upheld the sentences for break and enter and for assault. At paras. 52 and 53, Chief Justice Wells stated:

> Clearly the 18 month sentence imposed in this case [for break and enter] is on the low end. It may be sufficiently low that it strains the lower limit of the range of sentences for offences arising out of the invasion of a home carrying a firearm, particularly where there was a prior conviction for break and entry. As well the danger to others inherent in such actions, and the actual impact on the victims here, speak loudly to the need for deterrence, general and specific.
>
> While the sentence is on the low end, it is not so low however that this court could justify intervening to increase it. Even if intervention were warranted then the fact that the sentence is precisely the sentence that Crown counsel asked for at trial would have to be considered. …

[35] I would note parenthetically that I might have taken a different view as to whether the sentences for break and enter and for assault should have been consecutive, rather then concurrent; the Crown may well not have argued the point. That said, I would affirm the statement by Chief Justice Wells that an 18 month sentence for home invasion is at the "low end" of the acceptable range. (I would contrast this with the four month sentence imposed by the Trial Judge here for the break and enter.)

[36] In *R. v. Anderson* (1998), 1998 CanLII 2417 (NS SC), 168 N.S.R. (2d) 393 (NSSC) (appeal from conviction dismissed at (1999), 1999 CanLII 1052 (NS CA), 175 N.S.R. (2d) 362 (C.A.)) the offender was convicted of break and enter, two counts of assault with a weapon and breach of probation. At 4:30 a.m., the offender broke into the house of his friend, where his wife was also. Before doing so, he had cut the telephone lines. He beat the two occupants with a flashlight. The offender had a lengthy criminal record; at the time of the offence, he was on probation. The offender was sentenced to five years for break and enter, eighteen months consecutive for assaulting his wife, eighteen months concurrent for assaulting his friend, and twelve months consecutive for breach of probation. The total sentence was seven and a half years imprisonment (reduced to six and a half, taking account of time on remand).

[37] In *R. v. Johnson* (2004), 2004 ABCA 308 (CanLII), 357 A.R. 242 (C.A.) the Crown appealed a sentence for break and enter, and assault. The offender broke into a home (which he did not know was then occupied). The victim woke to find him sitting on her bed. He placed his hand over her throat; she fought back, forcing him to flee. The offender was sentenced to eight months imprisonment and one year probation. The Crown appealed. The Court of Appeal noted that the offence shared many characteristics with a home invasion. The break-in was premeditated and the assault was not a mere reaction to being surprised; rather he confronted the victim seeking to force her to tell him the

location of certain valuables in the house. The appeal was granted and the sentence increased to two and a half years imprisonment.

[38] In *R. v. Strickland*, [2006] N.J. No. 252 (Prov. Ct.)(QL) the offender was sentenced for breaking into his ex-girlfriend's apartment and assaulting her. (He was also sentenced for other unrelated offences; I will focus here only on the sentence for break and entry, and assault.) Porter P.C.J. noted at para. 9:

> Section 348.1 mandates that a Court must consider the fact that the accused knew that the residence was occupied at the time as an aggravating factor.

The offender was sentenced to consecutive terms of three years for breaking into the apartment and three months for the assault.

[39] The offence in this case warrants a sentence above the "low end" of the range (set at 18 months in *P.J.B., supra*). Of particular note is that this was the second time Mr. Newhook unlawfully entered Ms. White's house and assaulted her there. However, the offence does not involve as many serious aggravating factors as in Anderson, *supra* (where the sentence for break and enter was five years). On the facts of this case, I would impose a sentence of three years on Mr. Newhook for the break and enter.

[40] The Trial Judge sentenced Mr. Newhook to nine months for assault with a weapon and four months for assault, to be served concurrently. (As noted above, I agree that the terms for these two offences should be concurrent.) Nine months and four months for the assaults in this case seem low. However, I cannot say the sentences are "demonstrably unfit". Thus, I do not vary them.

[24] More recently, in *R. v. Chudley*, 2016 BCCA 90, the court stated:

> [22] There is no single offence of "home invasion". Instead, the term is used as a shorthand expression describing a combination of offences involving breaking and entering a dwelling with the intent to commit a robbery, with knowledge or recklessness as to whether the dwelling is occupied. They also often involve the confinement, terrorizing or assault of the occupants: *Bernier* at paras. 81, 97. This Court has held that caution is required in suggesting a general range of sentences for home invasions because the term lacks precision and the combinations of crimes changed in each individual case will vary: *Bernier* at paras. 37, 81-82.
>
> [23] That being said, s. 348.1 of the *Criminal Code* deems a home invasion to be an aggravating circumstance for certain offence in relation to a dwelling. It reads:
>
> > If a person is convicted of an offence under section 98 [break and enter during which a firearm is stolen] or 98.1 [robbery during which a firearm

> is stolen], subsection 279(2) [unlawful confinement] or sections 343 [robbery], 346 [extortion] or 348 [break and enter with intent] in relation to a dwelling-house, the court imposing the sentence on the person shall consider as an aggravating circumstance the fact that the dwelling-house was occupied at the time of the commission of the offence and that the person, in committing the offence,
>
> (a) knew that or was reckless as to whether the dwelling-house was occupied; and
>
> (b) used violence or threats of violence to a person or property.

[24] Further, this Court has recognized several sentencing principles that are normally engaged in home invasion type cases. First, in *R. v. Vickers*, 2007 BCCA 554 (CanLII), the Court held that deterrence and denunciation are the primary factors in sentencing for violent crimes, especially when these crimes violate the safety and security of a person's home: para. 12. As Madam Justice Saunders observed in *R. v. Meigs*, 2007 BCCA 394 (CanLII) at para. 25:

> "it is a grave offence to enter another person's home without permission, and graver to enter the home and violate the occupant. The courts must and do impose stern sanctions for such crimes"

[25] Second, with respect to rehabilitation, this Court in *Vickers* stated that while it cannot be overlooked, it is of secondary importance. This is particularly true when there is no indication that the offender is a good candidate for rehabilitation or when he or she has demonstrated a history of violence: *Vickers* at paras. 13, 15.

[26] Third, the "step principle" - the idea that sentences should only be increased in moderate steps to avoid an adverse impact on the offender's chances of rehabilitation - is generally not helpful when the dominant sentencing factor is protection of the public: *Vickers* at para.16. Also, the "step principle" generally only applies when rehabilitation is a significant sentencing consideration: *R. v. McCallum*, 2004 BCCA 341 (CanLII) at para. 10

[27] Fourth, higher sentences are appropriate when serious injuries are inflicted: *Vickers* at para. 19. In *A.J.C.* at para. 42, then Chief Justice Finch stated that a 14 or 15 year sentence may be appropriate in "the most aggravated circumstances where a 'home invasion' involves not only a break and enter to commit robbery, the terrorizing and confinement of victims, and the use of weapons to achieve these objectives, but also the infliction of serious injuries, sexual assault or death."

[25] In *R. v. McAuley* (2012), 1022 APR 1022 (NLPC), [2012] N.J. No. 371:

> 37 The offence committed by Mr. McAuley is aggravated by his knowledge at the time of commission of the offence that the residence he was forcefully entering was occupied. However, the presence of this aggravating factor does not mean that a period of imprisonment is mandatory or that deterrence and denunciation must rule out rehabilitation. As I concluded in *R. v. Power*, [2002] N.J. No. 245 (P.C.), in the course of imposing sentence for a number break and entries into cabins and one into a residence, though the Court must place its primary emphasis upon the principles of general and specific deterrence when imposing sentence for such offences this does not mean that rehabilitation is to be "ignored."
>
> 38 In *R. v. Knott*, 2012 SCC 42, the Supreme Court of Canada indicated that "the purpose and principles of sentencing set out in the *Criminal Code* are meant to take into account the correctional imperative of sentence individualization." Parliament has instructed judges to consider reasonable alternatives to imprisonment. Is there a reasonable alternative in this case?

Crown's Cases

[26] The Crown relies on the following cases in support of their request for a penitentiary sentence: *R. v. Adams*, 2010 NSCA 42; *R. v. McAllister*, 2008 NSCA 103; *R. v. MacKenzie*, 2007 NSCA 10; *R. v. MacKenzie*, 2004 NSCA 117; *R. v. Andersen*, 1999 NSCA 80; *R. v. Bernard*, 2014 NSSC 463; *R. v. MacLennan*, 2016 NSPC 85.

Other Relevant Sentencing Principles

[27] In *R. v. Best*, 2012 NSCA 34, the court considered the appeal of a 90-day intermittent sentence followed by two years probation. The court outlined the facts:

> 2 In late June of 2009, Ms. Rose Geddes hosted a family reunion at her home in Eureka, Pictou County. It started during the day and went into the evening. There were many guests and an abundance of liquor, especially as the evening approached and the children had gone. The respondent Clarence Arthur Best was an invited guest. A neighbour, Mr. Robert Robson, was not.
>
> 3 It seems that Mr. Robson and Ms. Geddes were friendly neighbours (before Ms. Geddes' husband died) but by late June 2009, their relationship was strained. In any event, that day Mr. Robson was drinking alone in his home and heard the Geddes party going on. He decided to make his way over, uninvited. He was not there long before he was sent on this way with a "sucker punch", at the hands of another invited guest.

> 4 The party continued without Mr. Robson, who had gone home to bed. Then, for reasons that remain unclear, Mr. Best and another guest, Mr. Michael Wright, went over to Mr. Robson's home. They walked in uninvited and attacked Mr. Robson who was still in bed. Mr. Best knew Mr. Robson, although Mr. Wright apparently did not. While Mr. Best swung at Mr. Robson, he landed no blows. However, Mr. Wright certainly did as they fought throughout the house. In the end, Mr. Robson suffered serious injuries including a cervical fracture and injuries to his jaw requiring it to be wired shut. Both intruders were charged with break and enter, and aggravated assault. Judge Robert A. Stroud of the Nova Scotia Provincial Court, in a separate indictment, found Mr. Best guilty and this decision has not been appealed.

[28] In discussing whether the 90-day sentence was appropriate, MacDonald C.J., speaking for the unanimous panel (Farrar J.A. And Beveridge J.A. concurring) stated:

> 12 The second ground attacks the appropriateness of the sentence. This involves an exercise of the judge's discretion to which we would normally defer, interfering only if we found the sentence to be demonstrably unfit. See: *R. v. Solowan*, [2008] 3 S.C.R. 309, 2008 SCC 62; *R. v. A.N.*, 2011 NSCA 21; *R. v. Bernard*, 2011 NSCA 53; *R. v. Conway*, 2009 NSCA 95, and *R. v. Markie*, 2009 NSCA 119.
>
> 13 In both his oral and subsequent signed decision, the judge downplayed the need to emphasize denunciation and deterrence. For example, in his oral decision he said:
>
> > For the reasons stated, I do not believe that this is a case where denunciation and deterrence are particularly pressing.

[29] Chief Justice MacDonald emphasized the paramountcy of general and specific deterrence, denunciation and protection of the public in crafting a sentence for a home invasion. In doing so, he stated :

> 25 Now I realize that the facts in our case are not nearly as gruesome as those in *Harris* and *Best*. Furthermore, no case is ever the same and it would be dangerous to generalize. However, while the specifics of each case must be assessed, serious jail time for this type of offence is generally required. For example, in *Wright, supra*, the Ontario Court of Appeal explained:
>
> > 24 In my view, however, "home invasion" cases call for a particularly nuanced approach to sentencing. They require a careful examination of the circumstances of the particular case in question, of the nature and severity of the criminal acts perpetrated in the course of the home invasion, and of

> the situation of the individual offender. Whether a case falls within the existing guidelines or range B or, indeed, whether it may be one of those exceptional cases that falls outside the range and results in a moving of the yardsticks B will depend upon the results of such an examination. I agree with the British Columbia Court of Appeal in *A.J.C.*, [2004] B.C.J. No. 964 (at para. 29), however, that in cases of this nature the objectives of protection of the public, general deterrence and denunciation should be given priority, although of course the prospects of the offender's rehabilitation and the other factors pertaining to sentencing must also be considered. Certainly, a stiff penitentiary sentence is generally called for.
>
> 26 In this light, it becomes clear that the 90-day intermittent sentence for Mr. Best's offence was demonstrably unfit.

[30] Chief Justice MacDonald found that the appropriate range of sentence for Mr. Best was three years in prison:

> 33 These cases depict a range of 3 to 11 years' imprisonment. Of course, all are fact specific. Here the following considerations would lead me to the three-year mark:
>
> --Mr. Best's positive pre-sentence report;
>
> --his cooperation with the authorities to date, including turning himself in when he heard he was being investigated;
>
> --his strong family support;
>
> --the fact that he has no criminal record to speak of;
>
> --his post-sentence report confirming his apparent abstinence from both drugs and alcohol;
>
> --the fact that he is awaiting further counselling.

[31] Although the 90-day sentence was found to be inadequate, the Court of Appeal determined that sending Mr. Best back to prison would not serve the interests of justice:

> 34 However that does not end the matter. Instead, in my view, this is one of those rare cases where, despite the initial inadequate sentence, it is no longer in the interests of justice to re-incarcerate Mr. Best. I say this because he has completed his term of incarceration and is well into his period of probation. Furthermore, by all accounts he is doing well. In these exceptional circumstances,

> I am convinced that sending him back to jail would not serve the interests of justice.

[32] In *R v. Bratzer*, 2001 NSCA 166, the youthful adult accused was sentenced for three counts of robbery. He was armed and masked when the robberies occurred. The court noted a benchmark for a single robbery is in the two-to-three year range. Yet, in considering the need for individualized sentencing, the court stated:

> 13 The conditional sentencing provisions endorsed by Parliament have impacted significantly upon both the process of formulating a sentence and the "currency" of existing case law. This effect was recognized by this court, most recently in *R. v. Longaphy* (2000), 189 N.S.R. (2d) 102: [2000] N.S.J. No. 376 (Quicklaw) (N.S.C.A.) (per Oland J.A.):
>
> > ... Roscoe J.A. commented in *R. v. S.C.* (1999), 175 N.S.R. (2d) 158; 534 A.P.R. 158, at [paragraph] 10, sentencing cases which predate those provisions are subject to and limited by the legislative directions in s. 718.2(d) and (e) that an offender not be deprived of liberty if less restrictive sanctions may be appropriate and that all available sanctions that are reasonable in the circumstances should be considered for all offenders. In my opinion, the earlier cases can no longer be regarded as establishing rigid starting points or ranges against which sentences decided after these legislative changes came into effect must be measured. They are to be read with great care and awareness of the sentencing principles which now apply, particularly those pertaining to incarceration as a last resort and the focus upon individualized sentencing.

[33] The court also reiterated the fact that just because a sentence is at the bottom of the range, it is not demonstrably unfit.

> 37 Objectively, the sentence imposed upon Mr. Bratzer is a lenient one and at the low end of the range for robbery. In *R. v. McDonnell*, [1997] 1 S.C.R. 948; [1997] S.C.J. No. 42 (Quicklaw), Lamer, C.J.C., for the majority, noted however that simply because a sentence is at the bottom of the range, it is not demonstrably unfit (at para. 43).

[34] The sentencing judge heard significant evidence about Mr. Bratzer, his challenges, his support network and the incredible strides he had made since his participation in the crimes. The court noted:

> 38 The Crown quite properly emphasizes the aggravating circumstances of these offences: this was not a single robbery, but a series; Mr. Brazter was masked

> and armed; the crimes were planned; Mr. Bratzer appeared to be the leader; he targeted businesses in communities in which he was not known; in his post arrest interview he said that he enjoyed the "rush' of committing the robberies and trying to outwit the police; and that he expressed no remorse. The Crown says the judge did not sufficiently emphasize these ingredients. In his sentencing remarks, however, the judge referred in some detail to these aggravating factors.
>
> 39 Clearly central to this disposition were Mr. Bratzer's youth and, quite unique to this case, the very considerable evidence led as to his substantial progress while on interim release. In this regard the judge identified several relevant factors: Mr. Bratzer was not plagued by alcohol or drug addiction which so often defeats an offender's attempt at reformation; he was a person with identified potential who had attracted the confidence of his superiors; he had a longstanding and attainable career objective; he had a good relationship with a loving and very supportive family; his family was prepared to supervise him if on conditional release and had a demonstrated ability to provide effective oversight; he was a youthful offender without a serious or longstanding past record; he had received psychiatric counseling to address his feelings of anger and inadequacy and, in that regard, had received a positive report from his doctor; he had successfully completed his Grade 12 equivalency; perhaps most importantly, he had displayed a willingness and an ability to abide by stringent conditions over the 13 months of interim release.
>
> …
>
> 40 There is ample authority for the proposition that sentences for youthful offenders should be directed at rehabilitation and reformation, not general deterrence. (*R. v. Leask* [1996] M.J. No. 587 (Quicklaw) (C.A.); *R. v. Demeter and Whitmore* (1976), 32 C.C.C. (2d) 379 (Ont.C.A.); *R. v. Casey*, [1977] O.J. No. 214 (Quicklaw) (Ont.C.A.)) This is common sense. A youthful offender, particularly one such as Mr. Bratzer, who has an interest in a vocation and can be equipped with the tools to earn an honest living, is more likely to be diverted from a life of crime than would a career criminal.

[35] The court in *Bratzer* determined that a community based sentence in the form of a conditional sentence was appropriate for three armed robberies, despite the benchmark.

[36] In *R v. Proulx*, 2000 SCC 5, McLaughlin C.J. delivered a unanimous judgement of the court endorsing conditional sentences and emphasizing the appropriate nature of community based sentences even for serious crimes. The Supreme Court recognized problems with over reliance on incarceration in sentencing:

16 Bill C-41 is in large part a response to the problem of overincarceration in Canada. It was noted in *Gladue*, at para. 52, that Canada's incarceration rate of approximately 130 inmates per 100,000 population places it second or third highest among industrialized democracies. In their reasons, Cory and Iacobucci JJ. reviewed numerous studies that uniformly concluded that incarceration is costly, frequently unduly harsh and "ineffective, not only in relation to its purported rehabilitative goals, but also in relation to its broader public goals" (para. 54). See also Report of the Canadian Committee on Corrections, Toward Unity: Criminal Justice and Corrections (1969); Canadian Sentencing Commission, Sentencing Reform: A Canadian Approach (1987), at pp. xxiii-xxiv; Standing Committee on Justice and Solicitor General, Taking Responsibility (1988), at p. 75. Prison has been characterized by some as a finishing school for criminals and as ill-preparing them for reintegration into society: see generally *Canadian Committee on Corrections, supra*, at p. 314; Correctional Service of Canada, A Summary of Analysis of Some Major Inquiries on Corrections -- 1938 to 1977 (1982), at p. iv. In *Gladue*, at para. 57, Cory and Iacobucci JJ. held:

> Thus, it may be seen that although imprisonment is intended to serve the traditional sentencing goals of separation, deterrence, denunciation, and rehabilitation, there is widespread consensus that imprisonment has not been successful in achieving some of these goals. Overincarceration is a long-standing problem that has been many times publicly acknowledged but never addressed in a systematic manner by Parliament. In recent years, compared to other countries, sentences of imprisonment in Canada have increased at an alarming rate. The 1996 sentencing reforms embodied in Part XXIII, and s. 718.2(e) in particular, must be understood as a reaction to the overuse of prison as a sanction, and must accordingly be given appropriate force as remedial provisions. [Emphasis added.]

17 Parliament has sought to give increased prominence to the principle of restraint in the use of prison as a sanction through the enactment of s. 718.2(d) and (e). Section 718.2(d) provides that "an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances", while s. 718.2(e) provides that "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders". Further evidence of Parliament's desire to lower the rate of incarceration comes from other provisions of Bill C-41: s. 718(c) qualifies the sentencing objective of separating offenders from society with the words "where necessary", thereby indicating that caution be exercised in sentencing offenders to prison; s. 734(2) imposes a duty on judges to undertake a means inquiry before imposing a fine, so as to decrease the number of offenders who are incarcerated for defaulting on payment of their fines; and of course, s. 742.1, which introduces the conditional sentence. In *Gladue*, at para. 40, the Court held that "[t]he creation of the

> conditional sentence suggests, on its face, a desire to lessen the use of incarceration".
>
> 18 Restorative justice is concerned with the restoration of the parties that are affected by the commission of an offence. Crime generally affects at least three parties: the victim, the community, and the offender. A restorative justice approach seeks to remedy the adverse effects of crime in a manner that addresses the needs of all parties involved. This is accomplished, in part, through the rehabilitation of the offender, reparations to the victim and to the community, and the promotion of a sense of responsibility in the offender and acknowledgment of the harm done to victims and to the community.

[37] I would reiterate that in this case a conditional sentence is not available. Since *Proulx*, Parliament has revoked the ability of individuals charged with break and enter, like Mr. Barrons, to achieve a conditional sentence. However, Parliament has not imposed a mandatory minimum sentence and have left a suspended sentence available. Parliament could have imposed a mandatory minimum sentence, but they chose not to do so.

Suspended Sentences for Break and Enter

[38] Mr. Barrons provided the court with a variety of Nova Scotia cases where suspended sentences were imposed for break and enter offences. As noted, in *R. v. Bursey* our Court of Appeal upheld a suspended sentence for a break and enter. Suspended sentences were also imposed for break and enter offences in the following cases as noted by the defence:

- *R. v. Palmer* (1976) 17 NSR (2d) 236 (NSSC, AD) - the accused was given a 12 month suspended sentence for breaking into an unoccupied cottage;

- *R. v. Schrader* (1991), 104 NSR (2d) 91 (NSCA) - the 20-year old repeat offender was given a three-year suspended sentence for attempted break and enter into a commercial premises;

- *R. v. Purdy* (1993), 21 WCB (2d) 616 (NSCA) – multiple mature accused broke into a residence knowing it was occupied and assaulted the occupant in the presence of his children. The accused were all under the influence of alcohol. All were given two-year suspended sentences with significant community service hours. The only issue considered by the Court of Appeal was an ancillary order;

- *R. v. Rudderham*, 1983 CarswellNS 502 (N.S.S.C., A.D.) – 19-year old repeat offender who had spent two months on remand and had psychiatric and addiction issues granted a two-year suspended sentence for a break and enter into a car dealership; and

- *R. v. Newell and Poteri* (1983), 60 N.S.R. (2d) 33 (N.S.S.C., A.D.) – Newell was a 20-year old, first time offender with a strong prospect of rehabilitation plead guilty to break and enters into five uninhabited cottages was given a two-year suspended sentence.

Deterrent Effect of a Suspended Sentence

[39] As Mr. Barrons points out, a suspended sentence can have a significant deterrent effect. In *R. v. Scott*, 1996 NSCA 165, on a charge of robbery, the court overturned a sentence of two years less a day in jail for a first-time offender, and imposed a suspended sentence with three years probation. In doing so, Pugsley J.A. stated:

> I agree with counsel's submission and add that the approach of the sentencing judge, in addition, ignored the deterrent effect of a suspended sentence, implying that deterrence could only be reflected in a custodial sentence.
>
> The sentencing judge was quite right in noting that cases involving robbery with violence in this province generally attract a three year sentence. There are exceptions, however, to every norm, and I am convinced this case falls within that class.
>
> Chief Justice MacKinnon cautioned against an inflexible approach in *Grady***.** he said at p. 266:
>
> > "It would be a grave mistake, it appears to me, to follow rigid rules for determining the type and length of sentence in order to secure a measure of uniformity, for almost invariably different circumstances are present in the case of each offender. There is not only the offence committed but the method and manner of committing; the presence or absence of remorse, the age and circumstances of the offender, and many other related factors. For these reasons it may appear at times that lesser sentences are given for more serious offences and vice versa, but the court must consider each individual case, on its own merits, even if the different factors involved are not apparent to those who know only of the offence charged and the penalty imposed."

[40] Justice Pugsley went on to add:

> I find the comments of Hart, J.A. of this court on behalf of the majority in *R. v. Thompson* (1983), 58 N.S.R. (2d) 21, at 24, to be particularly applicable to the circumstances of this case:
>
> > "In my opinion when there is a strong chance of complete rehabilitation of the young offender the suspension of sentence with the imposition of controls to bring about that rehabilitation is a suitable method of protecting the public. Although the general deterrence of a period of imprisonment does not appear on the surface of this arrangement it must always be remembered that it is there. The offender who chooses to avoid the controls chosen for his rehabilitation may very well end up in prison, and as long as the public is assured of this then all the proper elements of sentencing are there."
>
> Allan Manson, associate editor of the Criminal Reports, in referring to *Thompson* writes at (1983), 32 C.R. p.5:
>
> > "...the salutary effect of the rehabilitative context structured and controlled by a probation order reflect the role of an individualized sentence which is precluded by an approach to sentencing young offenders which emphasizes general deterrence."

[41] Here, we are not dealing with a young offender *per se*, but we are dealing with a young man who had spent the majority of his life living as a student up to the time of this offence.

[42] In concluding that the trial judge erred in *Scott*, Pugsley J.A. confirmed for the unanimous court:

> The deterrent effect of a suspended sentence, recognized by Justice Hart, was noted by Justice Chipman, writing for the court in *R v. Bursey* (1991), 1991 CanLII 2576 (NS CA), 104 N.S.R. (2d) 94 where he stated at p. 97:
>
> > "Properly administered, a suspended sentence can have substantial consequences."
>
> I do not minimize the type of activity in which Ms. T.L.S. was engaged on this specific occasion. The circumstances involving the instability and abuse she suffered in her home, together with the continuation of that abuse and her obvious psychological, emotional and financial dependence upon a seasoned and dangerous criminal who was the father of her two children, are factors which take this case out of the norm. There is no reason to believe that she had determined to pursue a course of criminal activity as a pattern for the future. Indeed her conduct since March, 1995, militates against that belief.

[43] While the accused in *Scott* had a sad life, the real turning point for Justice Pugsley was the fact that there was no entrenched criminal activity on the part of that individual combined with their very positive future prospects.

[44] In upholding a suspended sentence of two years for an accused convicted of threats and firearms offences where alcohol was involved, in *R. v. George* (1992), 112 NSR (2d) 183 (NSCA), Chipman J.A. stated for the court:

> [14] The trial judge correctly identified the relevant principles and the only question is whether in balancing the importance of deterrence against the attempt to rehabilitate the respondent, she erred. On consideration, we have concluded that it was not shown that she did. Deterrence has not been totally overlooked. As the judge said, the sword of Damocles does, figuratively, hang over the respondent's head. Should there ever be a repetition of his dangerous behaviour during the period of suspension of sentence he not only will face punishment for that, but will face the very real risk of severe consequences flowing from these three convictions.

[45] More recently, in *R. v. Perrin*, 2012 NSCA 85, Beveridge J.A. upheld a 30-day sentence for a 21-year old accused who was convicted of a break and enter into an unoccupied dwelling while serving a conditional sentence. Justice Beveridge found:

> [18] Here the trial judge exercised his discretion in electing to impose a short additional period of incarceration. I agree with the respondent that the imposition of what is sometimes referred to as a short, sharp sentence is appropriate, particularly where the offence was one of property as opposed to a crime of violence. Martin J.A. in *R. v. Vandale* (1974), 21 C.C.C. (2d) 250, quoted with approval the reasons of McKenna J. of the English Court of Appeal in *R. v. Curran* (1973), 57 Crim. App. R. 945, where he said:
>
> > As a general rule it is undesirable that a first sentence of immediate imprisonment should be very long, disproportionate to the gravity of the offence and imposed as this sentence was for reasons of general deterrence, that is, as a warning to others. The length of a first sentence is more reasonably determined by considerations of individual deterrence and that sentence is needed to teach this particular offender a lesson which he has not learned in the lighter sentences which he has previously received.

[46] Therefore, our Court of Appeal has ruled that general deterrence and denunciation can be achieved by way of a suspended sentence. They have also

clarified that in most circumstances home invasion cases require a period of incarceration.

Background of Mr. Barrons

[47] In lieu of a pre-sentence report, the defence provided a significant amount of background information about Mr. Barrons. A concise summary of his personal circumstances is found in his brief on sentencing:

> 19. Mr. Barrons committed a serious, but uncharacteristic offence. He has no previous criminal record and, other than this offence, he is essentially a model citizen.
>
> 20. Mr. Barrons is twenty-four years old and comes from an excellent background and supportive home. He has done extremely well at university, completing a Bachelor of Commerce degree at Dalhousie and a Certificate of Ethics at Ryerson University. He was accepted into law school at the University of Ottawa, which has been deferred until September 2017.
>
> 21. He has accomplished much of this since he was charged with this offence.
>
> 22. A few days after his arrest, Mr. Barrons began meeting with a counsellor, Martin Whitzman, on a biweekly basis, until he moved from Halifax to Oakville, Ontario. Since that time, he has conferred with Mr. Whitzman every three to four weeks.
>
> …
>
> 24. Mr. Barrons' conduct since the offence demonstrates his determination to pursue his education and his respect for the law. He was subject to relatively strict release conditions, including a curfew and a "no alcohol" condition, and he did not breach any of those conditions over the past three years.
>
> 25. The impact of the bail conditions on Mr. Barrons over the last three years may be considered as a mitigating factor in his sentencing. The Nova Scotia Court of Appeal, in *R v Knockwood*, 2009 NSCA 98 [Tab 5] at paras 33 to 34, said:
>
> > 33 From these authorities I will take the present state of the law to be such that the *impact* of strict release conditions may be considered or "put into the mix", together with all other mitigating factors, in arriving at a fit sentence.
> >
> > 34 Assuming that to be so, I would conclude that the *impact* of the particular conditions of release *upon the accused* must be demonstrated in each case. That is, there must be some information before the sentencing court which would describe the substantial hardship the accused *actually*

> *suffered* while on release because of the conditions of that release. See for example *Irvine*, *supra* at paras. 27-30. [Italics in original]

26. While not as harsh as house arrest, the strict curfew condition for Mr. Barrons during his formative years in university caused actual hardship for him in relating with his peers by preventing his attendance at various social gatherings.

27. With respect to the "no alcohol" condition, Mr. Barrons has stopped drinking and never wants to drink again. He never again wants to feel out of control because of alcohol impairment. Given Mr. Barrons' age (21 to 24) and the fact that he was in university for part of those three years, the fact that Mr. Barrons has completely abstained from consuming alcohol is remarkable. It demonstrates his respect for the law, his ability to abide by conditions imposed by the Court, and his determination to show the Court that he has taken this incident seriously.

28. Mr. Barrons has been active in the community since the offence. In October 2014, he began volunteering with Feed Nova Scotia, which lasted until he graduated in 2015, and the Canadian Cancer Society Relay for Life Committee, which he continues to this day.

…

42. Mr. Barrons was accepted into law school at the University of Ottawa, which will begin in September of 2017. This will form the community in which Mr. Barrons will serve his suspended sentence. This is an ideal forum for requiring Mr. Barrons, as a condition of his probation, to provide educational sessions for the community about his offence, his experience with the criminal justice system, and the principles and goals of sentencing.

…

44. Similarly, Mr. Barrons is a young adult, with no prior record, who after his arrest has sought counselling, abstained from alcohol, complied with the terms of his release, completed university, volunteered, and gained admission to law school.

…

47. Similarly, while a short-term imprisonment in Mr. Barrons' case may address denunciation and general deterrence, it would jeopardize Mr. Barrons' significant accomplishments. It is submitted that the long term protection of the public in Mr. Barrons' case would best be served through a suspended sentence, allowing him to continue his education and work towards being a productive member of society.

…

63. It is respectfully submitted that one of the most impressive aspects of this case is the way that Mr. Barrons responded after the charges were laid. Various reference letters mention the fact that Mr. Barrons has done his best to remain positive and continue to move forward. He has not put his life on hold. He successfully completed the business program at Dalhousie University, ultimately being named to the Dean's List. After completing university, he took additional university courses and completed the LSATs. He has successfully applied for admission to law school. All the while, by every account, Mr. Barrons has respected the conditions of his release order, even when he has been out of the Country. It is submitted that keeping a positive and productive attitude when facing very serious charges is not easy. One of those charges was sexual assault. It was eventually dismissed. It is submitted that Mr. Barrons' behavior has been exemplary.

…

69. This matter has attracted a significant amount of media attention. We have filed with Your Lordship a document entitled "Social Media Information", which contains numerous excerpts from various media outlets, almost all of which refer to the allegation of sexual assault. Clearly, the stigma of a sexual assault charge has firmly attached to Mr. Barrons. Social media has served to ensure that the media attention is widespread and has created an imprint that will fossilize the impact of this event on Mr. Barrons' reputation going forward. Unfortunately, there is simply no way to remove the social media and internet publications arising from these allegations.

70. There have been other repercussions. When the charges were laid against Mr. Barrons, he was asked to resign from DALIS, which is a Dalhousie Investment Society of which Mr. Barrons was the vice-president. Mr. Barrons was extremely proud of his involvement with that organization and his resignation was particularly difficult.

…

72. Despite finishing the Dalhousie Business Program with a very high GPA and impressive resume, Mr. Barrons was unable to maintain steady employment in the financial industry. Having found a very good job after graduation, Mr. Barrons was asked to resign as a result of the allegations that were outstanding against him. Of course, this included an allegation of sexual assault at the time.

73. It is also obvious from the various reference letters and Mr. Whitzman's reports that Mr. Barrons' actions have had an enormous impact on his family. Understandably, the situation has created incredible anxiety. Mr. Barrons realizes this and it has taken its toll.

Character References

[48] Mr. Barrons has provided the court with a plethora of character reference letters that universally describe him as an exemplary citizen. The comments contained therein stand in stark contrast to the anti-social behavior he exhibited on September 12, 2014.

Counseling Report

[49] Mr. Barrons sought out counseling through Martin Whitzman immediately following his arrest in 2014 and has continued through to the present. In a report dated July 26, 2017, Mr. Whitzman states:

> Charlie remains alcohol free without issue, noting that his lifestyle continues to proceed in a very controlled manner. The bottom line remains that the behaviours that led to the criminal charges were exceptions to the rule and impacted by alcohol. Charlie has gained insight into his dysfunctional relationship and the impact that the relationship was having on his stability. He has made the necessary changes and has regained control of his life. I do believe that the relevant issues have been dealt with and the need for continuing therapy is no longer required. I continue to strongly believe that Charlie has made the necessary changes to ensure that the likelihood of a future criminal offence remains extremely low.

Victim Impact Statement

[50] Much was made during argument on sentencing of the contents of the victim impact statement. The Crown agreed to significant editing of the statement as it contained references to a charge for which the Crown agreed Mr. Barrons was not guilty. In *Bratzer*, the court discussed the role of a victim impact statement in a sentencing hearing:

> 44 The Crown has said that the sentence does not reflect an adequate response to the effect of these crimes upon the victims. A court's recognition of the plight of the victim is an important part of the sentencing process. The judge referred to the lasting effects of Mr. Bratzer's crimes upon the employees of the businesses that he robbed. Here, one of the victims had filed a victim impact statement. Such statements afford an opportunity for the victim to convey the actual personal effects of this crime. They provide assurance that sentencing judges will be mindful of the ravages of criminal behaviour. From a sentencing perspective, however, the crime is a wrong against the whole community, not just the victim. The role and limitations of victim impact statements was addressed by Wood, J.A. in *R. v. Sweeny* (1992), 71 C.C.C. (3d) 82; [1992] B.C.J. No. 1 (Quicklaw)

(B.C.C.A.). While speaking in the context of sentencing for drinking and driving, his remarks are equally applicable to all victim impact statements. At p.10:

> In 1988, Parliament amended the *Criminal Code* by enacting s. 735(1.1) to (1.4) which permit a judge to consider a written statement by the victim of an offence, or by the victim's close relatives, in which the harm done by the commission of the offence is described. By this amendment Parliament sought to ensure that the courts would not overlook the consequences to the victims of a crime when considering the seriousness of the offence committed.
>
> Several things need to be said about these provisions. First of all, it is important to note that they are permissive, not mandatory. Thus while they confirm the admissibility of victim impact statements in the sentencing process, they do not require that such statements be before the court. The result is that they will be present in some cases and not in others, a circumstance which necessarily minimizes the role which they can play in a principled approach to sentencing.
>
> Secondly, they do not purport, and I do not believe that they were ever intended, to require the sentencing court to take a retributive approach when sentencing an offender. In *R. v. Hinch and Salanski*, [1968] 3 C.C.C. 39, 2 C.R.N.S. 350, 62 W.W.R. 205 (B.C.C.A.), Norris J.A. for a majority of this court concluded that there is no role for revenge in a principled system of sentencing. I endorse that view. Such a system requires a balanced, objective approach, separate and detached from the subjective consideration of retribution.
>
> This does not mean, of course, that the tragic consequences to innocent victims are to be ignored when passing sentence on the convicted drinking driver. Indeed, as already noted, with the 1985 amendments Parliament specifically made those consequences part of the actus reus of the crime itself. And, notwithstanding the view of some, the courts have never been insensitive to the suffering which victims of crime must endure. The dilemma facing the sentencing court is to balance a proper consideration of the consequences of a criminal act against the reality that the criminal justice system was never designed or intended to heal the suffering of the victims of crime.
>
> In few cases is that dilemma more acute than it is in connection with the offences under consideration in these appeals. The terrible consequences of drinking and driving shock the sensibilities of all of us, so much so that not only the surviving victims of such crimes, but also many impartial, reasonable and fair-minded people instinctively cry out for the harshest form of punishment for the offender.

> But if the tragic consequences to innocent victims were to become the standard by which appropriate sentences for such offences are determined, the courts would soon be reduced to choosing between either imposing the maximum legal term of imprisonment in all cases, or embarking upon a comparative analysis of the seriousness of the consequences in individual cases. The first alternative would be an abdication of our responsibility and the second is unthinkable.
>
> 45 Since *Sweeney, supra,* the *Criminal Code* has been amended to now 'require', rather than simply 'permit', that judges consider any victim impact statement. That change does not, in my opinion, alter the role of such statements in the sentencing process. I am satisfied that the judge, in formulating this sentence, appropriately considered the impact of Mr. Bratzer's crimes upon the victims.

[51] There is no doubt that Mr. Barrons' actions in September 2014, had a psychological impact on B.L. That impact is of some consideration in crafting the appropriate sentence for Mr. Barrons.

Conclusion

[52] Mr. Barrons committed a serious crime. From his behaviour on the night in question he clearly had significant and unresolved issues regarding his ability to participate in a relationship which was by all accounts immature and tumultuous. He has since taken lengthy and comprehensive counseling to address those underlying issues.

[53] The crime, while serious, was impulsive, and to some extent, fueled by alcohol. Again, while the crime was serious, Mr. Barrons' moral culpability on the facts of the case are at the lower end of the range.

[54] It is true that Mr. Barrons comes from a privileged background. Justice, however, is blind. Mr. Barrons' privileged background does not give him any advantage when dealing with the criminal justice system. Nor should it result in a disadvantage to him. What we have here is a young person, who was a productive and contributing member of society. Then he committed a serious crime that has had a psychological impact on at least one of the victims. Luckily, there were no physical injuries. However the lack of physical injury does not minimize the psychological harm. Mr. Barrons was subject to conditions for almost three years since he was arrested without incident. He no longer consumes alcohol. Since being charged he has bettered himself and has good future prospects. He has taken

counseling for years and is considered by his counsellor to be a low risk to re-offend.

[55] In my opinion, the words of Buckle J. in *R. v. Rushton*, 2017 NSPC 2, (with the exception of the addiction issues) could be equally applied to Mr. Barrons:

> [97] Based on the circumstances in this case I conclude that the principles and purpose of sentencing, including denunciation and general deterrence do not require a penitentiary sentence.
>
> [98] If I were required to determine whether exceptional circumstances exist in this case, I would find that they do. I say this because of Mr. Rushton's youth (just barely an adult at the time of the offences), his limited prior youth record, his addiction and the circumstances that resulted in his addiction, and his behaviour since arrest which include seeking treatment, maintaining sobriety, complying with terms of release, completing high school, working, and his volunteer activity.
>
> [99] I have considered whether a shorter period of custody in a provincial institution is necessary to address denunciation and general deterrence. I find that while such a sentence may, in the short term, better address those principles than a suspended sentence. It would not in the long term. A suspended sentence allows for the possibility of re-sentencing the offender for this offence, a custodial sentence in a provincial institution does not.
>
> [100] I am satisfied that suspending the passing of sentence and placing Mr. Rushton on probation is the best means to accomplish long term protection of the public. When used as it was intended, a suspended sentence allows for there to be a meaningful incentive for Mr. Rushton to continue his good behaviour and his efforts toward rehabilitation. If Mr. Rushton complies with the terms of probation, he can continue his rehabilitation and work toward being a productive member of society. If he does not, then he can be brought back before me to be sentenced for these offences. In this way, it can provide deterrence and denunciation without interfering with all of Mr. Rushton's accomplishments toward rehabilitation.
>
> [101] The probation order will include conditions that will continue his rehabilitation but will have a collateral punitive benefit, including a curfew and substantial community service hours. I will also impose a condition that he attend back before the court at regular intervals so that his progress can be monitored.
>
> [102] I recognize that this sentence is not within the general range for this offence in Nova Scotia. However, I am satisfied that because of the circumstances, a sentence outside of the range is justified on proper application of the sentencing principles. In short, I am satisfied that leniency is warranted. I see

> real hope for rehabilitation in Mr. Rushton and I am prepared to take a chance on him.

[56] Considering the time Mr. Barrons has been subject to release conditions, a period of probation for an additional three years will give the justice system control over him for a full six-year period. Deterrence and denunciation are, of course, of paramount importance, but our Court of Appeal has instructed that denunciation and deterrence can be accomplished by way of a suspended sentence. I therefore sentence Mr. Barrons to a suspended sentence for three years with the following conditions:

- The statutory conditions, including to keep the peace and be of good behaviour and to attend back before me every six months so that I can monitor the progress of his probation;

- Report to a probation officer today, or if not possible today, first thing tomorrow morning, and thereafter as directed;

- Not possess or consume alcohol or any other intoxicating substances;

- Not possess or consume a controlled substance as defined in the *Controlled Drugs and Substances Act* except in accordance with a physician's prescription for him or a legal authorization;

- Attend for, participate in and complete any assessment, counselling or treatment as directed by probation, including mental health counselling and substance abuse counselling;

- Submit to urinalysis or other screening to determine the presence of alcohol or drugs in his system;

- For the first 24 months of this Order, comply with a curfew from 10:00 PM to 6:00 AM daily, except when required to be out past his curfew for education or employment purposes, and prove compliance with the curfew;

- Complete 200 hours of community service within the first 18 months of this Order;

- Arrange for a minimum of two public speaking engagements per year of the suspended sentence discussing his personal experience with the criminal justice system, legal solutions to end violence against women and the principles and purposes of sentencing; and

- Have no contact directly or indirectly with B.L. or Matthew Shackell and not be within 200 meters of their known workplaces, residences or places of education.

[57] There will also be the following ancillary orders as requested by the Crown:

- S. 109 firearm/weapon prohibition for 10 years; and

- DNA Order for the databank.

[58] As well, there will be the mandatory Victim Fine Surcharge of $200.00 to be paid today.

Arnold, J.