COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Owen, 2015 ONCA 462
DATE: 20150623
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Hoy A.C.J.O., Feldman and Rouleau JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Philip Owen

Appellant

Robert B. Carew, for the appellant

Jason A. Gorda, for the respondent

Heard: March 17, 2015

On appeal from the conviction entered by Justice John McMunagle of the Superior Court of Justice, sitting with a jury, on March 1, 2013, and from the sentence imposed by Justice Lynn D. Ratushny of the Superior Court of Justice on March 17, 2014, with reasons reported at 2014 ONSC 748.

Rouleau J.A.:

OVERVIEW

[1] This is an appeal from conviction and sentence for offences arising out of a son's fraudulent transfer of his mother's real property. A jury convicted the appellant son in March 2013. He was sentenced about a year later by a different

judge, because the judge who had presided over the trial was unable to complete the sentencing. The appellant says the trial judge erred in his jury instructions and in restricting defence counsel's re-examination of the appellant. The appellant also says the sentencing judge erred in imposing a sentence that the trial judge had deemed excessive.

[2] For the reasons that follow, I would dismiss the conviction appeal, but in the unusual circumstances of this case, grant leave to appeal sentence and allow the sentence appeal.

BACKGROUND

[3] The appellant, Philip Owen, was in his early fifties at the time of the offences. He had been living with his mother, Barbara Owen, in her condominium from 1989 to June 2009. Barbara was diagnosed with gradual onset dementia in 2006, and the appellant provided support to her, including assisting her in managing her finances.

[4] The appellant had two siblings who were generally not involved in Barbara's care. After the appellant's sister retired from her employment in 2007, however, she became quite involved in Barbara's care. This gave rise to friction with the appellant, which friction led to a series of incidents. On June 26, 2009, the appellant was arrested and charged with various offences, including assaulting his sister and mother. The assault occurred in his mother's

condominium, and involved, among other things, the appellant spilling water on his sister and mother. The appellant was released on bail. One of the conditions of his release was that he have no contact with his mother.

[5] In July 2009, shortly after the appellant's arrest, the appellant's sister became Barbara's attorney under powers of attorney for property and for personal care.

[6] In September 2009, Barbara was diagnosed with Alzheimer's-type dementia. She could no longer care for herself or understand the consequences of her actions. In October 2009, the appellant's sister made arrangements for Barbara to move into a long-term care centre. As a result of this move, the appellant's sister determined that the condominium should be sold to provide funds to pay for the cost of her mother's care.

[7] On December 2, 2009, the appellant went before a commissioner of oaths for the city of Ottawa and made a land transfer tax affidavit that appended a transfer deed purportedly signed by Barbara on April 28, 2002. The April 2002 date happened to be just prior to changes made to the land registry system that implemented a system of electronic registration of documents. Paper documents signed prior to May 23, 2002, could still be registered.

[8] The appellant believed the deed transferred to him the title to Barbara's condominium. The description of the property contained in the deed, however,

made reference to only the parking unit. As a result, only the parking unit, and not the condominium itself, was transferred to the appellant.

[9] Neither the appellant nor Barbara had ever mentioned to the appellant's sister that Barbara had given the condominium to the appellant.

[10] On December 16, 2009, the appellant's sister learned from the condominium manager that the appellant was attempting to take legal possession of the condominium. When his sister performed a title search two days later, she discovered that what had been transferred was the condominium parking space. The appellant's sister thought she recognized some of the appellant's handwriting on the transfer deed. She also thought the signature on the deed did not "have the flow" of her mother's signature. She therefore involved the police.

[11] On the date the appellant swore the land transfer tax affidavit, he was on a recognizance requiring him to keep the peace pending disposition of the June 26, 2009, charges. In 2010, the appellant pleaded guilty to three of the June 26, 2009, charges: assault, which consisted of spilling water on his sister and mother; damaging his sister's cellphone; and breaching one of his bail conditions by contacting his mother in September 2009 in an effort to get her pension check redirected. The appellant received a conditional discharge and probation.

[12] Following the police investigation of the condominium transfer, the appellant was charged with a series of new offences, including fraud and uttering forged documents.

[13] At the trial on these new charges, which are the subject of this appeal, the central issue was the appellant's credibility. The appellant testified that he had looked after his mother and her finances for many years until his sister retired and became involved. He said that his mother had agreed to transfer the ownership of her condominium unit to him, and that in March 2009 had signed a note confirming this. He also testified that in the fall of 2009, when going through his personal belongings in a storage locker, he found the deed to the unit and its parking space that was signed by his mother in April 2002 and that transferred these properties to him. It had been forgotten in a box of his possessions. This was the deed he registered on December 2, 2009. It was by inadvertent mistake that the description of the land referred only to the parking space.

[14] The Crown tendered expert evidence to the effect that the deed had not been signed by Barbara and was a forgery. The expert could not, however, determine the authorship of the document. The appellant led no expert evidence to rebut the Crown's case, and simply took the position that the expert must have been mistaken.

[15] Barbara had passed away prior to trial.

[16] The jury found the appellant guilty. The jury obviously concluded that the deed and its accompanying land transfer tax affidavit had not been signed by the appellant's mother and that the appellant had used a forged document to convey the property to himself. The jury did not accept the appellant's denial of any wrongdoing, and his denial obviously did not raise a reasonable doubt.

[17] As explained by the sentencing judge, it was clear that the jury had concluded that the appellant had repeatedly lied and that his account of how he had come to recover and register the land transfer deed was simply not credible. Some of the conflicts in the appellant's evidence that the sentencing judge summarized, at paras. 20-26, are as follows:

> First, he said someone had been cancelling his mother's doctors' appointments before the June 2009 assault incident. When confronted with … evidence [from his mother's doctor] that his mother had not been to an appointment since 2006, the accused repeated his assertion that someone was cancelling her appointments and it wasn't his mum.
>
> Second, he could not explain why he had testified in examination in chief that he did not know of his mother's 1996 handwritten will when confronted in cross-examination with his 2010 affidavit filed in [a] civil action that had attached to it a copy of that same will.
>
> Third, he agreed that in the same affidavit dated April 16, 2010 in the civil action he had denied assaulting his mother and sister in June 2009 and four days later on April 20, 2010 he had pled guilty to three offences in connection with that incident.

> Fourth, he denied in cross-examination that he had testified in examination in chief that he had registered the Deed to prevent his sister from selling the condominium unit but then agreed it could have been a contributing factor and added, "but no, my mother had already gifted it to me."
>
> Fifth, he could not explain why the note was signed in March 2009 by his mother where she agreed to transfer the condominium to him when, according to him, the Deed had already been signed by her in 2002.
>
> Sixth, he could not explain why he told police in his June 2009 interview with them in connection with the assault incident that his mother's name was on the Deed to the condominium unit, when his later story was that it was his name that was on the Deed signed in 2002 and registered in December 2009.
>
> Seventh, he agreed in cross-examination that he had only discovered the Deed amongst his belongings on December 11, 2009[1] and then he could not explain why he had registered it nine days earlier, on December 2, 2009.

[18] The appellant was convicted, and counsel made their sentencing submissions. Defence counsel sought an 18-month conditional sentence. Crown counsel sought an 18-month jail sentence with two years of probation. During their submissions, the trial judge indicated multiple times that, although he would impose a sentence with jail time, a sentence of 18 months was "too much" and "excessive" in the circumstances. He also said the maximum probation period he would impose was one year.

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[1] During cross-examination, the appellant agreed he discovered the deed about a week *after* December 11, 2009. Although the sentencing judge was mistaken on this point, nothing turns on it.

[19] The trial judge adjourned the matter to July 2, 2013, to deliver his sentencing decision. However, before imposing sentence, the trial judge became unable to continue with the matter. Ratushny J. assumed the role of sentencing judge and reviewed all of the transcripts and exhibits, including counsels' sentencing submissions. On March 17, 2014, she imposed a jail sentence of 18 months plus probation of two years: 18 months for fraud over $5,000, 12 months concurrent for perjury and 6 months concurrent for breach of recognizance.

[20] The appellant appeals conviction and sentence.

THE CONVICTION APPEAL

[21] The appellant maintains that, faced with the expert evidence to the effect that the transfer document was a forgery, his defence rested almost exclusively on his credibility. He argues the trial judge committed several errors that effectively undermined his credibility and therefore prejudiced his defence. Specifically, he argues the trial judge erred:

1) In failing to properly instruct the jury as to the use that could be made of the evidence of the appellant's prior discreditable conduct and conditional discharge;
2) In restricting defence counsel's re-examination of the appellant;
3) In failing to review the evidence and relate it to the theory of the defence in his instructions to the jury; and

4) In failing to instruct the jury on the proper use of hearsay evidence.

(1) Did the trial judge err in his instructions to the jury as to the use that could be made of the evidence of the appellant's prior discreditable conduct and conditional discharge?

[22] The appellant argues that the trial judge's instruction on evidence of prior discreditable conduct was insufficient. When the trial judge instructed the jury that the evidence of prior discreditable conduct could not be used to reason that the appellant was more likely to commit the offences, the only discreditable conduct he referred to in relation to the June 26, 2009, assault was "the throwing of the water." The trial judge failed to refer to the other evidence of discreditable conduct connected to that assault, including the allegations of the appellant's sister that the appellant had hit and pushed her, that he had pulled her hair and squeezed her neck, and that he had attempted to damage her cellphone. The trial judge also did not refer to the allegation that the appellant had put glue in the door lock of the condominium in October 2009. In the appellant's submission, the failure to give a specific limiting instruction regarding all of this evidence was very prejudicial.

[23] I would not give effect to this submission. No issue is raised as to the admissibility of this evidence. At trial, defence counsel properly conceded that a weighing of its probative value against its prejudicial effect would inevitably result in its admission, despite it being evidence of prior discreditable conduct (see *R. v. Stubbs*, 2013 ONCA 514, 300 C.C.C. (3d) 181, at paras. 54-56). The probative

value of this evidence lay in the relevance of these events to live issues at trial, such as motive.

[24] With respect to the use that could be made of the evidence, the jury was twice warned about the dangers of propensity reasoning. As part of the warning in the charge to the jury, the trial judge referenced some of the evidence of discreditable conduct. He did not have to specifically refer to every instance of such conduct. Just as it is not necessary to give a limiting instruction on bad character evidence in every case (see *R. v. Beausoleil*, 2011 ONCA 471, 277 C.C.C. (3d) 50, at para. 20), it is not necessary to reference each particular instance of prior discreditable conduct when a limiting instruction is provided. Most of the evidence of prior discreditable conduct was given little attention at trial and in closing submissions. Defence counsel was properly concerned about not placing undue emphasis on this prior misconduct. Highlighting the events now raised on appeal would have caused more prejudice than good to the appellant and would have distracted the jury from the real issues: the authenticity of the transfer deed and the appellant's explanation of how he came to register it. See *Beausoleil*, at para. 20.

[25] The appellant also argues that the trial judge erred in how he characterized the conditional discharge. The trial judge told the jury that it meant the appellant had "no criminal record", when in fact the conditional discharge meant he had no convictions: see *Criminal Code*, R.S.C. 1985, c. C-46, s. 730(3).

[26] In my view, no prejudice resulted from stating that the accused did not have a criminal record rather than indicating that he had no convictions. Defence counsel raised no objection to this description at trial. In fact, defence counsel at trial stated during the pre-charge conference that he was content with the trial judge's description, and he used the same description in his closing submissions.

[27] I would dismiss this ground of appeal.

(2) Did the trial judge err in restricting defense counsel's re-examination of the appellant?

[28] The trial judge prevented defence counsel from questioning the appellant in re-examination about the details of bonds his mother had owned. In the appellant's submission, he ought to have been allowed to elicit further evidence regarding those bonds because the subject of the bonds was raised by the Crown in its cross-examination of the appellant. In addition, the Crown's cross-examination of the appellant brought out the fact that the appellant's financial circumstances were precarious following his release from jail on June 27, 2009. This evidence could serve to establish a motive for the appellant to fraudulently transfer Barbara's property to himself. In the appellant's submission, his credibility had been damaged by this evidence and, in order to make full answer and defence, his lawyer should have been allowed to re-examine him on the issue of the bonds to address his financial circumstances.

[29] In my view, the trial judge was correct in limiting the re-examination of the appellant as he did. As explained by Watt J.A. in *R. v. Candir*, 2009 ONCA 915, 250 C.C.C. (3d) 139, at para 148, motion for extension of time to file application for leave to appeal to S.C.C. dismissed, [2012] S.C.C.A. No. 8, the purpose of re-examination is rehabilitative and explanatory. Re-examination is meant to give a witness an opportunity to explain, clarify or qualify damaging answers given in cross-examination. This purpose would not have been fulfilled by permitting re-examination of the appellant on the bonds. The subject of the bonds was only briefly touched on by the Crown in cross-examination, and then during re-examination arose only by chance when defence counsel was questioning the appellant about the timing and circumstances of his finding the transfer deed. The appellant mentioned that he found the deed in a storage locker among other papers, including the bonds. Contrary to the appellant's submission on appeal, defence counsel at trial did not seek to explore the subject of the bonds in re-examination to rehabilitate or clarify the appellant's financial state at the time of his release or to dispel any financial motive to transfer the condominium.

[30] In any event, the mention of the bonds arose in the context of the Crown's questions about the financial state of the appellant's mother. She was the owner of the bonds, and they had no relevance to the appellant's financial circumstances.

[31] It was not seriously disputed that the appellant was in a dire financial situation on his release in June 2009. In his testimony, he acknowledged that he was not financially stable and that he was homeless and living in a shelter. There was, therefore, no need to readdress the area of his financial circumstances.

[32] I would thus not give effect to this submission.

(3) Did the trial judge err in failing to review the evidence and relate it to the theory of the defence in his instructions to the jury?

[33] The appellant argues the trial judge erred in his charge to the jury by failing to review the evidence in a meaningful way and by failing to review the evidence of the handwriting expert. He says the trial judge further erred in that he only briefly reviewed the appellant's theory of the case and misstated the evidence in two ways. First, the trial judge said the Crown's position was that the appellant had had no access to the storage locker in which the appellant said he had found the transfer deed until February 2, 2010. Second, the trial judge said the appellant testified that he had not re-entered the condominium after his arrest. Both of these statements were wrong.

[34] Appellate review of the adequacy of a jury charge – particularly when the complaint is about the extent to which the trial judge reviewed the evidence – must take into account that "[j]ury charges do not take place in isolation, but in the context of a trial as a whole": *R. v. P.J.B.*, 2012 ONCA 730, 298 O.A.C. 267, at para. 49. Relevant considerations on review include the length of the trial, the

complexity and volume of the evidence adduced at trial, the extent to which counsel reviewed the evidence in their closing addresses, the issues the jury had to resolve, and whether counsel objected to the charge on the grounds argued on appeal. Ultimately, if "the evidence is left to the jury in a way that will permit the jurors to fully appreciate the issues raised and the defences advanced, the charge will be adequate": *P.J.B.*, at para. 49.

[35] In my view, the trial judge's charge to the jury was adequate in all of the circumstances. It contained a focused reference in relation to each count, a review of the factual issues to be resolved and a brief explanation of the theories of each side. The closing addresses of counsel at trial contained a review of the evidence that they considered important. This was an uncomplicated case. The only real issue was whether the signature of the appellant's mother was on the transfer deed.

[36] Taking these factors into account, along with the fact that there was no objection to the trial judge's review of the evidence, I am of the view that the charge permitted the jurors "to fully appreciate the issues raised and the defences advanced": *P.J.B.*, at para. 49. The trial judge explained the critical evidence and the law, and related these to the essential issues in plain and understandable language: see *R. v. Daley*, 2007 SCC 53, [2007] 3 S.C.R. 523, at para. 57. Nothing further was needed.

[37] Regarding the alleged failure to review the expert's testimony, it is neither necessary nor advisable for a trial judge to explain expert testimony or technical evidence: see *Daley*, at paras. 59-62. The trial judge in this case provided the jury with the positions of each counsel in respect of the expert evidence. Again, nothing more was required.

[38] With respect to the two misstatements, it should be remembered that jury charges need not be perfect: *R. v. Jacquard*, [1997] 1 S.C.R. 314. In this case, the misstatements were innocuous and, despite the imperfections, the jury was properly instructed.

[39] Regarding the misstatement about the February 2, 2010, date, after making the error, the trial judge later correctly referenced the Crown's position. He also consistently reminded the jurors that it was their own recollection of the evidence that mattered, not his. Highlighting the misstatement by recharging the jury would have been detrimental to the appellant's case. In fact, Crown counsel suggested recharging the jury on this point, but defence counsel at trial counselled against it because it would have "put too big of a spotlight" on the issue.

[40] As for the misstatement regarding the appellant's testimony about not re-entering the condominium, it was of little or no relevance and was not raised by

trial counsel. In the context of the entire case, it was a minor point and would not have affected the issues the jury needed to decide or the case's outcome.

[41] Therefore, I would not give effect to this ground of appeal.

(4) Did the trial judge err in failing to instruct the jury on the proper use of hearsay evidence?

[42] There were several occasions where Crown witnesses gave hearsay evidence detrimental to the appellant and the trial judge gave no warning to the jury. The appellant argues the trial judge erred in failing to warn the jury on the limited use that could be made of that evidence.

[43] I would not give effect to this submission. Hearsay evidence was elicited by both the appellant and the Crown. On at least two occasions, the trial judge gave mid-trial instructions on the limited use that could be made of hearsay evidence.

[44] Although in his final charge to the jury, the trial judge did not provide another specific caution on the limited use that could be made of hearsay evidence, he did remind the jury of his previous instructions: "I told you about several rules of law that apply in general to some of the evidence as it was received during the trial. Those instructions continue to apply." Even though a repeat of the instruction on hearsay statements in the final charge would have been preferable, it was, in my view, unnecessary.

[45] Additionally, the hearsay evidence the appellant referenced on appeal as not having been subject to a warning was not mentioned in the jury charge, nor was it used by either counsel in closing submissions. Referencing it in the final charge by providing a specific hearsay caution would likely have done more harm than good in the circumstances.

[46] As a result, I would dismiss the conviction appeal.

THE SENTENCE APPEAL

[47] Before becoming unable to complete the sentencing, the trial judge heard extensive submissions on sentence. In the course of these, he repeatedly told the appellant and the Crown that he viewed the Crown's requested sentence of 18 months as being too high. In the trial judge's view, "18 month [was] too much." The trial judge also said, in response to Crown counsel's submissions on sentence:

> I am not sending a family man to jail, who's got a brand-new baby, for 18 months. I think, frankly, that is excessive in the circumstances, with respect. … You're taking a principled position of 18 months. Let's put it in polite legal terms, it's at the highest end of the range, I think is the way the Court of Appeal talks about it. I'm telling you, for me, it's excessive under these circumstances.

As the trial judge explained: "He's going to jail. What I don't know is how long … [a]nd so it's not going to be anywhere near 18 months". The trial judge was "going to keep the jail sentence to a bare minimum."

[48] The trial judge also addressed the issue of the appropriate probation period. He stated, “This man is never going to commit another crime for the rest of his life, I’m confident of that.” As a result, the trial judge indicated he would not accede to the Crown’s request to impose a probation period of two years. As explained by the trial judge, “[t]he maximum period will be one year. There’s no need to have this man … on the books of probation for two years.”

[49] The appellant argues the judge who took over the sentencing erred in imposing an 18-month prison sentence and two years of probation because a sentence of that length was rejected by the trial judge as being excessive in the circumstances. In the appellant’s submission, the trial judge heard all the evidence and was in the best position to determine an appropriate sentence. Under normal circumstances, his view would attract deference. The appellant should not be penalized because the trial judge was unable to complete the sentencing. In the appellant’s view, the trial judge had correctly found that a sentence of 18 months was at the high end of the range and was inappropriate in light of the appellant’s age and lack of criminal record.

[50] The respondent, for its part, argues that the sentencing judge’s reasons contain no error and that the sentence is not demonstrably unfit. The sentencing judge reviewed all of the evidence and submissions, but was not bound by the trial judge’s comments. The sentencing judge considered the appropriate

sentencing objectives and all of the aggravating and mitigating factors in this case, and arrived at a proper sentence.

[51] In the very unusual circumstances of this case, I would allow the sentence appeal.

[52] Let me say at the outset that I agree with the Crown's submission that the sentencing judge was not bound by the trial judge's comments. I also acknowledge that the sentencing judge gave clear and well-crafted reasons in the difficult circumstances in which she was called on to act.

[53] The sentencing judge was aware that the trial judge was in the best position to determine the appellant's sentence. She explained:

> I was not the trial judge, I did not see the witnesses testify and I did not deal firsthand with the sentencing submissions including [the appellant's] interventions with Justice McMunagle. This kind of firsthand knowledge … [is] a factor entitling the trial judge's decision to deference.

[54] The sentencing judge made her decision in March 2014, based exclusively on a review of the record of proceedings. Yet her reasons make no mention of the views expressed by the trial judge during sentencing submissions in June 2013 as to what he thought might be an appropriate sentence.

[55] In my view, after a delay of nearly nine months following the sentencing submissions, which delay resulted from McMunagle J. being unable to complete the sentencing, the sentence of 18 months' incarceration followed by two years'

probation imposed by the sentencing judge would have come as a complete shock to the appellant.

[56] Fairness to the appellant required he be told that the sentencing judge did not necessarily share the views that the trial judge had expressed during submissions nine months prior. Further, fairness required that the sentencing judge allow the parties to make brief additional submissions if they so chose. The sentencing judge should have indicated to the appellant that she would take into account any additional statements he might wish to make. In effect, she should have allowed him to make the reply submissions he might have chosen to make had McMunagle J. not indicated multiple times that an 18-month sentence would not be imposed.

[57] The appellant was not given a fair opportunity to address the judge who was about to determine the sentence he would have to serve. When the appellant sought to address the sentencing judge prior to sentencing, she did not inform him that she disagreed with the trial judge's views or give him a chance to make submissions on that issue. She simply responded: "Mr. Owen, you recognize that what you say today is not going to make any difference as to the decision that I have prepared and am about to read, but if you want to say something to me, sir, please go ahead."

[58] Ultimately, in my view, the sentencing judge's error lay in her failure to tell the appellant that she did not share or consider herself bound by the views expressed by the trial judge, and to signal that the sentence she was considering was the very sentence the trial judge had said was excessive. She effectively denied the appellant the opportunity to make full sentencing submissions in these changed circumstances. This resulted in unfairness to the appellant. I would, therefore, grant leave to appeal sentence and allow the sentence appeal.

[59] The appellant submits that in the circumstances, we should modify the sentence to time served. The appellant served slightly more than four months of his sentence before being released in July 2014 on bail pending this appeal. In the appellant's submission, reincarcerating him would serve no useful purpose.

[60] The Crown, for its part, maintains that the sentence imposed was fit and ought to be maintained.

[61] I consider the 18-month sentence imposed to lie in the range of possible sentences, although it lies at the upper end of that range. I also agree the offences are serious, in that they constitute a serious breach of trust against a vulnerable family member. A sentence of incarceration was appropriate in this case.

[62] In the unusual circumstances of this appeal, however, I do not think reincarcerating the appellant is required or appropriate. Reincarceration at this

stage would serve no genuine societal interest and is unnecessary to achieve the objectives of denunciation and general deterrence: *R. v. Smickle*, 2014 ONCA 49, 317 O.A.C. 196, at para. 18. With respect to those objectives, this decision would confirm that offenders committing fraud of the nature perpetrated by the appellant can expect to receive a significant jail sentence. Furthermore, specific deterrence was not the primary sentencing objective and, as noted previously, the trial judge was confident the appellant would not commit another crime.

[63] The appellant, who is married and has a young child, poses no risk to the safety of the community. He has already served a significant portion of his sentence – four months – in jail, and has been on bail pending appeal for almost a year without apparent incident. This period of bail is in addition to the lengthy periods spent on bail, through no fault of his own, awaiting imposition of the sentence following McMunagle J.'s inability to complete the sentencing. Given these circumstances, the appellant would likely qualify for parole relatively soon after any reincarceration. And, such reincarceration would interrupt his rehabilitation and reintegration into the community.

[64] In my view, the most appropriate sentence at this point, the one that would best serve the administration of justice, is to substitute the 18-month jail sentence with an 18-month conditional sentence and vary the probation period to one year. The reduced probation term is warranted in the circumstances, given that the appellant has already spent significant time supervised on bail. And, although an

18-month conditional sentence may not have been appropriate at the outset, it is, in my view, the proper disposition at this juncture. It retains the length of sentence imposed, does not unnecessarily reincarcerate the appellant and allows him to serve the balance of his sentence as a conditional sentence, which still provides significant denunciation and deterrence: see *R. v. Proulx*, 2000 SCC 5, [2000] 1 S.C.R. 61, at para. 41.

CONCLUSION

[65] As a result, I would dismiss the conviction appeal, but allow the sentence appeal. I would convert the sentence on all counts to a conditional sentence, and vary the probation term from two years to one year. The appellant would receive credit for the time he has spent in custody. I would ask the parties to submit a joint proposal or brief submissions not exceeding three pages on the appropriate terms for the conditional sentence and probation within five days of the release of these reasons. Subject to the submissions of counsel, I would expect a significant portion of the conditional sentence to be served under house arrest.

"Paul Rouleau J.A."
"I agree Alexandra Hoy A.C.J.O."
"I agree K. Feldman J.A."

Released: June 23, 2015