Citation: *R.* v. *Samson*, 2014 YKTC 33

Date: 20140708
Docket: 13-00275
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Judge Cozens

REGINA

v.

TERESA KAREN SAMSON

Appearances:
Leo Lane — Counsel for the Crown
Malcolm Campbell — Counsel for the Defence

REASONS FOR JUDGMENT

[1] COZENS, T.C.J. (Oral): Theresa Samson has been charged with having committed the offence of theft over $5,000.00 contrary to s. 334 of the *Criminal Code*.

[2] Ms. Samson was employed with the Mayo Emergency Medical Service Ambulance Service (the "Service") from 2008 – 2012. This is a non-profit service that receives annual Yukon Government funding. The amount of $2,000.00 was deposited annually into a chequing account by the government. These monies were intended for the purchase of ambulance equipment and supplies as required and other authorized expenses. The account was set up so that monies were to be disbursed only upon a cheque being signed by two employees of the Service.

[3] For the last two years of her employment, Ms. Samson was a supervisor for the Service. On March 25, 2010, and while employed as a supervisor, Ms. Samson arranged for a debit card for this account to be issued in her name. Between February 15, 2011 and September 4, 2012, Ms. Samson made over 50 transactions using this debit card. Only eight of these transactions were legitimate. She withdrew a total amount of $8,380.78 which was used solely for her own purposes. The monies were used for such things as fuel purchases for trips to Fort Nelson B.C. and Dawson City, Yukon; personal hotel stays in Whitehorse; $2,500.00 for insurance for four vehicles; and several purchases at retail, service and fast-food outlets.

[4] On October 11, 2012 due to performance issues, Ms. Samson was asked to step down as a supervisor. She remained as an employee of the Service. The following day the Chair of the Service went to the bank to review the accounts. It was then that the Service became aware of the issuance of the debit card and other irregularities. On October 16, 2012, Ms. Samson was contacted and told that she was no longer to be involved with the Service in any capacity.

[5] On October 19, 2012 Ms. Samson, by e-mail, acknowledged her theft of the monies to the Chair of the Service.

[6] On October 25, 2012 Ms. Samson deposited the amount of $1,400.00 back into the account. She has since paid back the entirety of the funds that were unlawfully taken by her.

[7] Ms. Samson was interviewed by the RCMP and acknowledged her actions, although she was unable to explain all of the transactions.

Positions of Counsel

[8] Crown counsel submits that a period of six months incarceration is an appropriate disposition. Counsel is not opposed to the sentence being served conditionally in the community as an appropriate disposition.

[9] Defense counsel submits that a discharge should be imposed.

Circumstances of Ms. Samson

[10] Ms. Samson is a 35 year old member of the Na-Cho Nyak Dun First Nation ("NNDFN").

[11] She has no prior criminal record.

[12] Her parents separated when she was very young and her mother and her step-father separated when she was 15. She maintains a relationship with her step-father and her biological parents, as well as with two of her four siblings.

[13] She graduated from Grade 12 and has completed one year at the Scotia Career College and one year at each of the University of Alberta and Grant McEwan University.

[14] She has completed several certificate programs at Yukon College and is currently enrolled in the First Nations Governance Program. Ms. Samson stated when addressing the Court that when she graduates from this four-year program she will be the first person from her First Nation to do so.

[15] Ms. Samson worked in restaurants when she was 12 and 16. She worked as a waitress and bartender when she was 21.

[16] After having children, she worked at various part time jobs. From 2007 until 2010 she worked for the NNDFN. She states that she was fired from this employment in 2010 as a result of what she considers to be political circumstances".

[17] Ms. Samson is currently employed full-time with both the Housing and Wellness Departments of NNDFN. Her duties are varied and include facilitating community events to submitting funding proposals. Her current employer is aware of this charge.

[18] Ms. Samson has two children, ages eight and eleven. Her firstborn child died soon after birth as a result of health complications. Ms. Samson eventually ended her relationship with the childrens' father and has been in a stable relationship since 2008.

[19] Ms. Samson states that after she was fired in 2010, the impact of which she terms as "devastating" on her, she went through a very difficult period. She increased her use of illicit drugs and ended up committing the offence for which she is being sentenced.

[20] Since the offence, she has been diagnosed as suffering from depression, something she believes she has suffered from her whole life. Since being diagnosed she has taken prescribed medication which has helped her. She has not taken illicit drugs for 18 months and drinks alcohol only occasionally. She scores as having no problems related to alcohol, and low with respect to problems with illicit drugs, the low rating being only due to her ongoing guilt about past drug use and ongoing drug counselling.

[21] Ms. Samson scores as low on the criminogenic risk assessment.

[22] Ms. Samson states that she believes that in the past she dealt with her undiagnosed depression by self-medicating with illicit drugs. After she was fired from her job in 2010, she increased her drug use to deal with the stress of the situation.

[23] Ms. Samson attends mental health and counselling sessions frequently and intends to continue doing so. Positive letters of support have been provided from two counsellors confirming her participation in addressing her issues, as well as noting the contribution she makes to her community in the Wellness initiative.

[24] Ms. Samson is currently engaged in a number of leisure and recreational activities, is involved with the local minor hockey association and with the organization of the NNDFN hoop dancing group for youth. Since being diagnosed and treated for her depression, she is able to more fully enjoy her involvement in these activities.

[25] Ms. Samson is clearly remorseful for her actions in committing this offence and acknowledges that it will take a lot to rebuild the trust of others.

[26] The author of the Pre-Sentence Report ("PSR") notes that Ms. Samson appeared to be forthcoming, honest and sincere in her presentation of information and her in her remorse for her actions. The information she provided was noted to be supported by collateral information. She continues to maintain her involvement with several forms of support and assistance that are effective in addressing her risk factors and in facilitating her current pro-social and contributing lifestyle.

[27] He notes that the RCMP have had no further involvement with Ms. Samson since her charges.

[28] On page 11 of the PSR, in dealing with her criminogenic risk factors, the author states that:

> A review of the client's criminogenic needs factors shows no current difficulties with family relationships, a pattern of satisfactory living arrangements, and has mostly non-criminal and/or positive associations. She has a level of skills that is causing no present issues, and an employment situation that is causing no issues. The client has no current issues in regards to financial management though the writer notes that this was previously an area of major interference, and she appears to have no current issues in regards to usage of substances though again this appears to have been a major area of concern in the past. This client appears to have behavioural/emotional problems that indicate some need for assistance, and she presents as being motivated to change and receptive to assistance. Overall, her pattern indicates a LOW level of criminogenic needs.

Purpose and Principles of Sentencing

[29] Section 718 of the *Criminal Code* deals with the purpose of sentencing:

> 718. The fundamental purpose of sentencing is 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;
> (b) to deter the offender and other persons from committing ofences;
> (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 acknowledgement of the harm done to victims in the community.

[30] Section 718.1 states as a fundamental principle that:

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

[31] With respect to other sentencing principles, s. 718.2, in part, states that:

> 718.2 A court that imposes a sentence shall also take into consideration the following principles:
>
> > (a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender, and, without limiting the generality of the foregoing,
> >
> > …
> >
> > (iii) evidence that the offender, in committing the offence, abused a position of trust or authority in relation to the victim,
> >
> > …
>
> 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;
> >
> > …
> >
> > (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 should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

[32] Section 730(1) of the *Code*, which deals with absolute and conditional discharges, reads:

> 730. (1) Where an accused, other than an organization, pleads guilty to or is found guilty of an offence, other than an offence for which a minimum punishment is prescribed by law or an offence punishable by imprisonment for fourteen years or for life, the court before which the accused appears may, if it considers it to be in the best interests of the accused and not contrary to the public interest, instead of convicting the accused, by order direct that the accused be discharged absolutely or on the conditions prescribed in a probation order made under subsection 731(2).

[33] The theft by Ms. Samson is a breach of the trust that was placed upon her as a supervisor. This is an aggravating factor in sentencing. Denunciation and both specific and general deterrence are normally the leading objectives for this kind of offence. It is not at all unusual, in fact more the norm, that this type of theft results in a jail sentence, even for first offenders. Such was the result in ***R.*** v. ***Zenovitch****,* 2001 YKSC 52. The offender was a 42-year-old single parent with no prior criminal history. In her capacity as a bookkeeper, she defrauded her employer, to whom she was also in an intimate relationship, another aggravating factor in the sentencing, of the amount of $37,000.00. She was convicted of 25 counts of fraud and one of theft over $5,000.00 after a judge and jury trial. At the date of sentencing she continued to struggle with accepting responsibility for her actions. Her employer's small business suffered hardship as a result of Ms. Zenovitch's actions. She was sentenced to serve 20 months conditionally in the community.

[34] Such was also the case in ***R.*** *v.* ***Davidson***, 2012 BCCA 518. The 40-year-old offender, who was a firefighter and treasurer of the Vancouver Firefighters Band, stole $102,143.00 from the organization over the entire six-year period he was treasurer. The thefts were discovered when a new treasurer took over in 2008. The offender had no prior criminal convictions. He accepted responsibility for his actions and plead guilty to the offence of theft. As noted in paragraph 7, the offender had positive references with respect to his commitment to training and education programs, community initiatives and charitable events in the field of firefighting. He lost a new job after his employer learned of his outstanding charge.

[35] It appears that he had $66,285.84 outstanding restitution at the time of sentencing and he was prepared to make full restitution right after sentencing.

[36] The sentencing judge rejected the offender's application for a discharge and imposed a one year conditional sentence. It was noted by the Court of Appeal in dealing with the sentencing judge's sentence that:

> 16 … While she accepted such a disposition may accomplish deterrence and denunciation in certain circumstances, she acknowledged the question of whether it would serve the public interest must be answered in the context of all the sentencing principles. She was concerned that a discharge would not serve those principles, particularly that of proportionality. She said:
>
> > [42] The overriding principle is, of course, that a sentence must be proportionate to the seriousness of the offence. The parity in sentencing principle must be observed. A conditional discharge would be well below the accepted sentencing range. There is no rational basis, on the facts before me, to justify a departure from the usual range. I am also governed by the above authorities holding that the driving principle in cases of this kind is general deterrence, and not rehabilitation. These authorities are clear. A substantial jail sentence is generally required to effectively send this deterrent message to the public at large and in particular to those who might otherwise consider committing the very "serious" offence.
> >
> > [43] In my view, a conditional discharge would indeed be contrary to the public interest in this case. Such a disposition would require that I ignore or place minimal weight on the above sentencing principles without any rational basis for doing so.

[37] The Court of Appeal noted:

> 17 The sentencing judge concluded that permitting the appellant to serve his sentence in the community under a conditional sentence order was a fair result that took into consideration the "one distinguishing feature" of the case, which was the fact he would be making full restitution immediately. …

[38] The decision of the sentencing judge was upheld on appeal.

[39] Counsel for Ms. Samson has filed ***R.*** v. ***Elliott***, [2005] O.J. No. 6448 (C.J.), in which a conditional discharge was imposed for theft by a bookkeeper from her employer in the amount of $23,338.00. Ms. Elliott was remorseful for her actions and pled guilty. The monies had all been repaid by the date of sentencing. In para. 7 Atwood J. listed the following factors taken from case law where discharges were imposed for breach of trust thefts:

> A plea of guilt, indication of remorse, repayment of monies taken, previous unblemished record, excellent character, contribution to the community over and above the minimum that any citizen is expected to make and any unusual circumstances that may mitigate the seriousness of the offence. These factors were all noted to be present in Ms. Elliott's case.

[40] Atwood J. noted the conflict between the paramount importance of specific and general deterrence in breach of trust cases and the fact that in a discharge, these are not primary considerations. Nonetheless a discharge was imposed based upon Atwood J.'s belief that deterrence could be achieved in other ways.

[41] A discharge was also imposed in the case of ***R.*** v. ***Snyder***, [2011] O.J. No. 4904 (C.J.). The 62-year-old offender pled guilty to nine counts of forgery and fraud over a four year period. His employer, the Ontario Children's Aid Societies, was defrauded in the amount of approximately $9,300.00. The fraud was based upon the offender's anger at his employer and the stress that he was under. He gave away the items he had fraudulently obtained to friends.

[42] The offender had no prior criminal history and had sold his home to make full restitution. He had obtained a psychological assessment and was involved in

counselling to look deeper into why these offences occurred. The aggravating and mitigating factors were set out in some detail in paras. 12 and 13.

[43] The aggravating factors were: the facts that this was a breach of trust scenario that happened numerous times over three years; there was some level of sophistication, in that it took some time, some thought, and some planning; and the amount of the fraud was almost $10,000, which is by no means an insubstantial amount of money.

[44] The mitigating factors were: the early confession; the guilty plea; his evidence of remorse; his prior good character, having led a productive life and been a pro-social member of society; while he by no means had a difficult childhood, certainly there were aspects of how he was raised that had some impact on his actions; the stress he was under at the time, including his wife's mental health issues and associated financial costs; his work stress, the feeling of being trapped in his employment; the shame he felt for his conduct and his not hiding from his actions; there was evidence that he was clearly rehabilitated, that he had owned up to and taken responsibility on many levels, not only in the court by a guilty plea, but in his community; he had made full restitution at great cost to himself, by selling his house; the ongoing medical needs of his wife; the informal consequences of his actions to the limitation of his job prospects, including his loss of references; and the fact that volunteer work in the community was something he had been involved with for the bulk of his adult life.

[45] In para. 19 Greene J. states that:

> 19 In this case, given it is a breach of trust fraud, the appellate courts have made it very clear that deterrence is a paramount consideration, as is denunciation. Frauds are one of those few cases where there is clearly a cost benefit analysis by offenders; that is, they have time to assess. This was not an

> impulsive act but one where there was time to consider the consequences of his actions, and in my view deterrence and denunciation are primary factors. Having said that, I cannot ignore the rehabilitation component of a sentence given his prior good conduct and his personal circumstances.

[46] After finding that a discharge was in the best interests of the offender, Greene J. turned to a consideration of the public interest component of s. 730(1). In para 22 he states:

> 22 A discharge is not confined to any offence or class of offences other than those that are statutorily excluded. The offences involved here are not statutorily excluded. Having said that, the nature of the offence may still require the imposition of a criminal record. The public interest component of a discharge takes into account the public interest in deterring others from committing similar offences; R. v. Fallofield, 13 C.C.C. (2d) 450 (BCCA). But it is important to note that general deterrence is only one factor to consider; R. v. Sears, 39 C.C.C. (2d) 199 (OCA). In R. v. Cheung and Chow, (1976) 19 Crim. L.Q. 281, (Ont.C.A.), the court held the suspended sentence is not necessarily a greater deterrent than a conditional discharge. Speedy apprehension, arrest and public disgrace can be sufficient deterrents. Discharges have also been deemed appropriate where the finding of the guilt provided sufficient humiliation to act as a deterrent; R. v. Blahey, 7 W.C.B. 214. Discharges have also been deemed appropriate where the offence is completely out of character of the accused and where the accused was in the midst of some kind of emotional or mental turmoil or some other unusual disturbance in his life at the time of the offence; R. v. Taylor, (1975) 24 C.C.C. (2d) 551 (Ont. C.A.)

[47] Greene J. highlights some of the factors that support a discharge in para. 23. He mentions the major humiliation that was suffered, the out-of-character nature of the offence, the stress, the full rehabilitation, the full acceptance of responsibility, the negative impacts on the offender's life and the full restitution at great expense to himself.

[48] Greene J. considered the typical sentences for such offences and notes in paras. 24-25 that generally large-scale breach of trust frauds result in jail sentences, while small frauds with major mitigating factors can occasionally result in suspended sentences and probation.

[49] In para. 25 Greene J. stated that in rare and exceptional cases, discharges have been imposed for breach of trust thefts, and he goes on to cite several cases.

[50] In para 30 Greene J. states that:

> … the question I must ask myself is whether or not this is the exceptional case where it would not be contrary to the public interest to impose a discharge. I must be mindful that I cannot act on sympathy for the accused; instead, I must act dispassionately and consider all the evidence before me. I also must not place too much emphasis on the mitigating factors; I must be mindful of all the aggravating factors as well and the seriousness of this offence. I also must be mindful of the need to deter others from committing serious frauds and to denounce the conduct. I also cannot forget that the victim is a public agency who needs the funds to help children in need.

[51] In para. 32 he repeats essentially the factors in para. 23 and decides that this was one of those rare and exceptional cases in which a discharge could be imposed.

[52] In ***R.*** v. ***Shortt***, 2002 NWTSC 47, a decision often cited in this jurisdiction with respect to discharges, on an appeal from the Territorial Ct., Vertes J reviews the law behind the discharge option in regard to breach of trust offences of violence in the context of a domestic relationship. Vertes J. set aside the discharge and imposed a suspended sentence and probation.

[53] In paras 24-25 he states that :

> 24 Numerous cases have interpreted the criteria set out in s. 730(1) of the Code: R. v. Sanchez-Pino (1973), 11 C.C.C. (2d) 53 (Ont. C.A.); R. v. Fallofield (1973), 13 C.C.C. (2d) 450 (B.C.C.A.); R. v. MacFarlane, [1976] A.J. No. 441 (C.A.). They generally agree that the first condition, that a discharge be in the best interests of the accused, pre-supposes that the accused is a person of good character without previous convictions, that it is not necessary to deter the accused from further offences or to rehabilitate him, and that the entry of a conviction may have significant adverse repercussions. The second condition, that the grant of a discharge not be contrary to the public interest, addresses the public interest in the deterrence of others. The cases also note that, while a need for general deterrence is normally inconsistent with the grant of a discharge, it does not preclude the judicious use of the discharge option. This option, however, should not be applied routinely to any particular offence (nor is it precluded from use in respect of any offence other than an offence for which a minimum punishment is prescribed by law or an offence punishable by imprisonment for 14 years or for life). Finally, the discharge option should not be resorted to as an alternative to probation or a suspended sentence.
>
> 25 The cases also emphasize that the power to grant a discharge should be used sparingly. This was the view expressed in MacFarlane (supra) at para. 13:
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> > It is to be borne in mind that one of the strongest deterrents to criminal activity, particularly in the case of those who have no records, is the fear of the acquisition of a criminal record.

[54] With respect to the best interests aspect of the test, Vertes J. states in para. 32:

> A review of the case law reveals that in many cases a discharge was granted where a conviction would result in an accused losing his or her employment, or becoming disqualified in the pursuit of his or her livelihood, or being faced with deportation or some other significant result. These are examples of highly specific repercussions unique to the specific accused. But, such specific adverse consequences are not a prerequisite. In my opinion, it is sufficient to show that the recording of a conviction will have a prejudicial impact on the accused that is disproportionate to the offence he or she has committed. This does not mean that the accused's employment must be endangered; but it does require evidence of negative consequences which go beyond those that are incurred by every person convicted of a crime (unless the particular offence is itself harmless, trivial or otherwise inconsequential): see R. v. Doane (1980), 41 N.S.R. (2d) 340 (C.A.), at pages 343-344; and R. v. Moreau (1992), 76 C.C.C. (3d) 181 (Que. C.A.).

[55] With respect to the public interest component, he states in para. 34:

> The second criterion requires that a discharge not be contrary to the public interest. Most of the case law identifies the "public interest" with the need for general deterrence. Yet, in my opinion, there is a further aspect to the public interest, one familiar to those who work with the Criminal Code bail and bail pending appeal provisions, that being the need to maintain the public's confidence in the justice system. From this perspective the knowledge that certain type of criminal behaviour will be sanctioned by way of a criminal record not only acts as a deterrent to others but also vindicates public respect for the administration of justice. The question to ask here is would the ordinary, reasonable, fair-minded member of society, informed about the circumstances of the case and the relevant principles of sentencing, believe that the recording of a conviction is required to maintain public confidence in the administration of justice. In my opinion, on both aspects of general deterrence and the need to maintain public confidence, the granting of a conditional discharge in this case is not a fit disposition.

[56] In overturning the decision of the sentencing judge, Vertes J. noted:

> 35 The need for general deterrence is particularly pronounced since these offences arose in a domestic context: see Brown (supra); R. v. Friginette, [1994] B.C.J. No. 3087 (C.A.). This also applies to acts of violence or threats of violence to estranged partners: R. v. Eyo, [1983] A.J. No. 157 (C.A.). The respondent's actions, as noted previously, were not impulsive. They were the culmination of what the trial judge found to be a persistent pattern of behaviour that included aggressive conduct and an overall inability on the part of the respondent to cope with the separation. The fact that the assault was relatively minor is off-set by the repeated threats made over the next day, threats of a most serious kind. The combined effect and nature of these crimes require a sanction, one that sends a message to others and demonstrates that this type of behaviour is not tolerated. The respondent had no excuse; indeed he offered none since his defence was a denial of any criminal act.

[57] Sentencing is a highly individualized process and imposing a just and fit sentence requires careful consideration of the circumstances of the offence and the offender, always against the backdrop of the purposes, objectives and principles of sentencing.

[58] Where there is no minimum sentence required and where the discharge option has not been precluded, the sentencing judge has a broader discretion to impose a sentence that balances all these factors.

[59] In sentencing Ms. Samson, I have this broad discretion as there is no minimum sentence and the discharge option is available.

[60] As Vertes noted in ***Shortt*** in para. 19:

> The trial judge's comment to the effect that he should start by considering the most lenient sentencing option available is certainly in accord with the principle of restraint in sentencing embodied by the provisions of Part XXIII of the *Criminal Code*.

[61] He goes on to note in para. 22 that the "principle of restraint animates the discharge option in the overall sentencing regime."

Application to Ms. Samson

[62] I find that this is one of those rare and exceptional cases involving a breach of trust theft where a discharge is the appropriate disposition.

[63] I have no difficulty with respect to finding that a discharge is in Ms. Samson's best interests. I accept that Ms. Samson's expressed desire, as stated in the PSR and by her counsel, to in future run for a position on her First Nation's council is legitimate. Her actions confirm her motivation in this regard. I note that eligibility as a candidate in the NNDFN *Elections Act* requires that a person:

> 5.3 (3) provides evidence, by way of a current Royal Canadian Mounted Police clearance, that he or she has no criminal record for an indictable offence or an offence related to theft, fraud or false pretenses;

[64] While, as Crown counsel submits, there are ways to obtain a pardon or criminal record suspension, such an act will be several years down the road in the case of an indictable offence.

[65] I also find that specific deterrence is not a significant factor in this case. Therefore it is not necessary to record a conviction to deter Ms. Samson from further such offences.

[66] With respect to the public interest, I consider the following factors in light of Vertes J.'s comments regarding what the ordinary, reasonable fair-minded member of society would believe regarding the requirement to record a conviction for this offence:

- Ms. Samson has no prior criminal history and appears to be of previous good character;
- She has pled guilty and accepted responsibility for this offence;
- She committed this offence, which involved numerous transactions and was not a minor offence, while in a period of personal turmoil and increased illicit drug use, while suffering from undiagnosed depression;
- She has taken significant steps to address her depression and underlying grief issues and her illicit drug use, and has been drug-free for 18 months with respect to illicit drugs;
- She has repaid all the monies, something that placed an increased financial burden on her and her family;
- There is no indication that the Service suffered any hardship or was deprived of any necessary equipment or other items, and I say this only to distinguish it from the cases which noted, as an aggravating factor, such hardship or deprivation suffered by the victim;
- She is an active and contributing member of her community;
- She has experienced considerable shame for her actions, with such shame being highlighted by the small size of her community;

[67] I also consider the application of 718.2(e). Ms. Samson is of Aboriginal ancestry. While the information before me differs markedly from what is all too often the case before me, in that there is no stated residential school history and resultant abuse and neglect, I am required to consider her ancestry in a broader context.

[68] Ms. Samson is pursuing education in order to work within her First Nations Community, both within a supportive role, as is evidenced by her present actions, as well as much of her past actions, but also in a leadership role.

[69] Although there is not specific evidence before me, such as would be contained in a *Gladue* report regarding the NNDFN, I am prepared to take judicial notice, based upon my experience, that the negative consequences all too often associated with Aboriginal ancestry, flowing from the residential school system and other similarly destructive governmental actions, have impacted many of the members of this First Nation and, as a result, the First Nation's community as a whole. I note that Ms. Samson has numerous extended family members in the community that are or have been involved in the justice system.

[70] A discharge allows Ms. Samson the fullest opportunity to contribute to her First Nation.s community. Whether she does so from a leadership position or not is something for her community to decide, should Ms. Samson choose to pursue that path.

[71] I am mindful of the need for denunciation and general deterrence. Having to face her small community every day having committed this offence is not an easy task. She wears her offence every day before her community. Choosing to do so and to still continue to contribute to her community sends a strong message as well. In this way

she acknowledges before her community the wrong that she has done, she demonstrates her acceptance of responsibility for her actions and she provides reparations to the Service and to her community.

[72] I am satisfied that the imposition of a discharge, albeit somewhat rare and unusual, nonetheless in these particular circumstances, balances the purposes, objectives and principles of sentencing in order to achieve a just and fair result. I am satisfied that the ordinary, reasonable, fair-minded member of society, being apprised of all the circumstances of this offence and offender and the purposes, objectives and principles of sentencing, would not find this disposition to cast the administration of justice into disrepute.

[73] The discharge is conditional and the period of probation will be one year on the following terms:

1. Keep the peace and be of good behaviour.

2. Appear before the court when required to do so by the court.

3. Notify the Probation Officer, in advance, of any change of name or address, and promptly, of any change in employment or occupation.

4. Report to a Probation Officer within two working days and thereafter, and when and in the manner directed by the Probation Officer.

5. Attend and actively participate in all assessment and counselling programs as directed by your Probation Officer, and complete them to the satisfaction of your Probation Officer, for the following issues:

(a) Substance abuse,

(b) Psychological issues,

(c) Any other issues identified by your Probation Officer, and

(d) Provide consents to release information to your Probation Officer regarding your participating in any program you have been directed to do pursuant to this Order.

6. Perform 80 hours of community service as directed by your Probation Officer or such other person as your Probation Officer may designate. This community service is to be completed by the 10th month of this Probation Order.

[74] This is a secondary designated offence for the purposes of DNA analysis. In the circumstances to decline to make this order.

[75] There is a Victim Fine Surcharge in the amount of $100.00 as this predates the amendments to the *Code*. I will make it payable forthwith.

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COZENS T.C.J.