Citation: *R. v. Morgan*, 2014 YKTC 57

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Docket: 06-00335
06-00335A
06-00335B
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge Cozens

REGINA

v.

DAWN LEE MORGAN

Appearances:
Keith D. Parkkari — Counsel for the Crown
André Roothman — Counsel for the Defence

REASONS FOR SENTENCING

[1] COZENS T.C.J. (Oral): Dawn Morgan has entered a guilty plea to having committed two offences contrary to s. 380(1); one offence contrary to s. 368(1)(a); and one offence contrary to s. 145(2)(b) of the *Criminal Code*.

[2] The circumstances of these offences are as follows:

[3] On April 25, 2006, a complaint was made regarding a number of fraudulent cheques that had been cashed against a company, ALCAN RaiLink Inc. (the "Company"). These cheques had been cashed to Ms. Morgan and a Mr. Leroy Fenton.

[4] An RCMP investigation revealed that a total of five cheques had gone missing from the Company and three of these cheques had been cashed.

[5] Cheque no. 31 was made out to Dawn Morgan in the amount of $2,019.26. This cheque was cashed April 3, 2006.

[6] Cheque no. 40 was made out to Leroy Fenton in the amount of $1,500.00. This cheque was cashed on April 13, 2006, at the Cash Store. Mr. Fenton provided two pieces of identification and advised the Cash Store staff that he was an employee of the Company. Staff called the Company and Ms. Morgan answered the call. She confirmed that Mr. Fenton was an employee of the Company, which, in fact, he was not. Ms. Morgan had obtained the cheque and made it out to Mr. Fenton.

[7] Cheque no. 41 was made payable to Mr. Fenton in the amount of $5,610.24. This cheque was cashed on April 18, 2006.

[8] The total amount obtained by the fraud was $9,129.50.

[9] Kells Boland, a representative of the Company, confirmed that he had not signed any of these three cheques. His signature had been forged. Ms. Morgan admits that she cashed the cheques made out in her name knowing that it was falsified; that she participated with Mr. Fenton in cashing a falsified cheque; and that she participated with Mr. Fenton in further cashing another falsified cheque.

[10] In March and April of 2006, Ms. Morgan was employed as a project administration assistant for the Company and her duties included acting as a bookkeeper for the Company. Ms. Morgan had the keys to the office and the password

to the Company computer. Mr. Fenton was Ms. Morgan's partner at the time, something that the representatives of the Company were aware of. The last time that Ms. Morgan had been seen at the Company was March 29, 2006. Cheque nos. 31, 40, and 41 were dated March 29, 2006. Ms. Morgan failed to show up for work after that date and her employment was terminated as of April 14, 2006. The financial bookkeeping records had been deleted on April 17, 2006, while Ms. Morgan still had keys to the office, and these records pertained to Ms. Morgan's pay and some of these cheques. Only two individuals had access to these financial records, Ms. Morgan and another person. The other person did not delete these records. Also taken were hard copies of cheques pertaining to Ms. Morgan.

[11] On June 5, 2006, Ms. Morgan was located at her new place of employment in Whitehorse. She was arrested and provided the RCMP with a statement that was not incriminating.

[12] Ms. Morgan attended court on August 23, 2006. She failed to attend court on November 7, 2006, and again on December 6, 2006. The circumstances of the November fail to attend court were read in on the plea to the December 6 offence, pursuant to s. 725 of the *Code*. Ms. Morgan turned herself into the RCMP in Whitehorse on June 2, 2014.

[13] Crown counsel submits that a jail sentence of nine months is appropriate, stressing that the principles of denunciation and deterrence are of the most significance in this case. He is not opposed to the sentence being served conditionally in the community. He points to this as being a breach of trust which is a statutorily

aggravating factor according to s. 718.2. He notes that Ms. Morgan was doing the bookkeeping work for the Company, having access to the building and the computer and financial records. She had access to the cheques. She intentionally and knowingly engaged in these illegal actions and took steps to cover her tracks to avoid detection. The cheques were cashed in three separate transactions over an approximately two-week period of time.

[14] Counsel further notes that this was not an insignificant amount of money for a small company which had been deprived of its use for a number of years as Ms. Morgan had fled the jurisdiction without dealing with the charges against her.

[15] As mitigating factors, counsel acknowledges that Ms. Morgan has entered a guilty plea and that she turned herself in to deal with these charges.

[16] Defence counsel, citing the recent case of *R. v. Samson*, 2014 YKTC 33, submits that a conditional discharge is appropriate, stating that the circumstances of the offences in this case are less aggravated than in *Samson*, and that the circumstances of Ms. Morgan, as set out in the Pre-Sentence Report, would make a discharge an appropriate disposition.

[17] A Pre-Sentence Report was requested on July 9, 2014, returnable on September 15. The Pre-Sentence Report was completed and provided on September 19, 2014. An update to the Pre-Sentence Report was provided on September 24, 2014.

[18] The following information was provided in the Pre-Sentence Report and update.

[19] Ms. Morgan is a 41-year-old member of the Bonaparte Indian Band and a citizen of the Shuswap Tribe from interior British Columbia. She was 32 years old at the time of the commission of these offences.

[20] She has no prior criminal history.

[21] Her father is of Aboriginal heritage and her mother of Norwegian ancestry.

[22] She was diagnosed at the age of three with juvenile rheumatoid arthritis and continues to suffer from this affliction. She also suffers from an auto-immune disorder and some severe allergies.

[23] Ms. Morgan stated in the Pre-Sentence Report that she has learned that her father was an alcoholic who started to drink heavily after she was born. She was the youngest of three children. She believes that his drinking was in order to deal with the memories of his upbringing, which included significant sexual abuse involving close family members, in particular his being the victim of incest. As a result of his drinking, he would become violent against Ms. Morgan's mother, against her, and against her siblings. He was convicted of impaired driving offences on numerous occasions which resulted in him losing his licence and employment.

[24] Ms. Morgan's mother and father separated shortly after they moved to Ashcroft, British Columbia, in 1980. Her mother worked two jobs to support the family, leaving her in the care of her older siblings quite often. After an unsuccessful attempt to place the three children with an aunt, the Ministry of Children and Families apprehended the children and placed them into the first of several foster homes. After the second

placement, the children were sent to live with their grandparents. This did not work out due to the grandparents' alcoholism. The children were then placed in another foster home in which they were subjected to scaldings and spankings. She described this foster home as cruel and demeaning. She and her sister then resided for four years in a positive foster home, during which time she was involved in numerous pro-social activities.

[25] In 1983, Ms. Morgan's father passed away from cirrhosis of the liver. Ms. Morgan states that she felt completely devastated by his death. At this time, her mother began to use drugs. Ms. Morgan also had a number of family members either pass away or be severely injured in the next several months after her father's death.

[26] Ms. Morgan states that she was a witness to sexual abuse in her school by a teacher involving a number of other students and that she provided testimony against him in court.

[27] She was unfortunately unable to move to Alberta with her positive foster family placement due to an existing court order, and was relocated to live with her uncle and aunt. She began to run away from home at this time. Eventually, her mother was able to obtain custody of her and she lived with her mother until she was 19. She continued to struggle with her health issues during this period of time.

[28] Ms. Morgan was living in Omak, Washington when she was 19 and her life seemed to be on track. She graduated high school and had steady employment there.

[29] In 1992, however, she moved back to Kamloops to be with her sister who was experiencing some difficulties. She completed two years towards her Bachelor of Arts while in Kamloops. She was steadily employed while in Kamloops. I note that her work history shows fairly continuous steady employment. For the last five years, Ms. Morgan has been employed at Safeway in Grande Prairie and, most recently, in Spruce Grove, Alberta.

[30] She began a relationship in 1992 which resulted in a daughter that was born in July 1994. That relationship became volatile over the next several years, culminating in an incident in 1998, with a deadly weapon in which she was the victim and which involved a police response in a stand-off situation that resulted in her partner being convicted.

[31] Ms. Morgan was in a fairly good relationship for approximately three years, commencing in 2001. She ended this relationship and began to party and hang out with a more disreputable crowd. She was involved with drugs at this time. It was here that she met and became involved with Mr. Fenton. She became pregnant in 2005 but had a tubal pregnancy that almost resulted in her death. Ms. Morgan and Mr. Fenton broke up shortly afterwards.

[32] Ms. Morgan decided to relocate to Whitehorse where her sister now lived. She obtained employment in Whitehorse, including employment at ALCAN RaiLink in 2005.

[33] In 2006, however, Mr. Fenton unexpectedly showed up in Whitehorse. Ms. Morgan agreed to let him stay at her place for a few days. He did so and left for

several days, returning again to stay with her. She allowed him to do so, although acknowledging that she knew he had been doing drugs in Whitehorse.

[34] At Mr. Fenton's request, she participated in the scheme to defraud her employer. She advised the author of the Pre-Sentence Report that she did so under duress and after being threatened by him. I note on this point that by her guilty pleas and in the submissions of her counsel that Ms. Morgan, although stating that she was under pressure, is conceding that she does not have a defence such as duress, which means that she acknowledges that she had other choices but to commit these offences.

[35] After committing these offences, Ms. Morgan drove Mr. Fenton to Dawson Creek, something he demanded of her. She had her daughter with her. She states that she abandoned him at a gas station in Watson Lake and drove to Grande Prairie, and then returned to Whitehorse with her sister who had flown down to drive back with her.

[36] Ms. Morgan says that, at the advice of a lawyer, she waited for the RCMP to contact her. She states that after being charged and appearing in court, she went to British Columbia to be with her brother who was ill and she ran into Mr. Fenton. He told her that he was going to take care of the bad cheques. Ms. Morgan stated that she believed him and thought it was all going to be taken care of and that she felt that she could go on with her life.

[37] Ms. Morgan states that while in Kamloops in 2008, she took a self-help course called Choices. She states that she was the group leader and learned a number of lessons and gained lifelong friends. She states that in 2009 she participated in a six-week treatment program at a centre in Kitwanga for alcohol and drugs. After

completing this program, Ms. Morgan ended an abusive relationship that she had started while in Kamloops. She states that the treatment program taught her how to live a straight and sober life, and that she has been free of alcohol and drugs since January 23, 2009. She has continued to attend Alcoholics Anonymous meetings regularly since then.

[38] In 2009, Ms. Morgan moved to Grande Prairie and started working for Safeway there. She met her fiancé while on a business trip to Edmonton and transferred to Spruce Grove in 2013 to be with him. She states that she is finally in a committed and loving relationship and is content in her life. She says that her daughter is now enrolled in a prestigious art school in Calgary and has been working at Starbucks for three years, and is currently a supervisor.

[39] Ms. Morgan states in the Pre-Sentence Report that she turned herself in in order to put this part of her life behind her and to focus on her future. Her scores on the self-reported Problems Related to Drinking and Drug Abuse Screening Test indicates that she has no problems related to drug and alcohol abuse at present. She scores on the Criminogenic Risk Assessment as requiring a low level of supervision and having a low criminal history risk rating.

[40] In the Summary and Recommendations section of the Pre-Sentence Report the author notes:

> Ms. Morgan had a difficult upbringing which included witnessing and being subjected to violence and substance abuse while residing with her birth parents, as well as having to reside with numerous different foster families. As an adult she appears to have struggled with a number of violent and

> dysfunctional intimate relationships. She has a history of instability in her residential living arrangements as evidenced by frequent relocations between cities and communities as a child and as an adult. Ms. Morgan reports having issues with alcohol and drug abuse in the past which she attributed to these offences. ...
>
> In more recent times Ms. Morgan appears to have a number of positive things in her favour including: full time employment for the past five years at Safeway; being in a stable and loving relationship with Mr. Lawson since 2012; remaining sober from alcohol and drugs for the past five years; and turning herself in to deal with these outstanding criminal matters.
>
> As evidenced by her recent actions Ms. Morgan presents as being committed to dealing with her offences and putting these matters behind her. ...

[41] Crown counsel raises some concerns regarding the Pre-Sentence Report. He notes that the only person spoken to for the purpose of gathering information was Ms. Morgan and that no collateral sources of information were contacted. As such, he states that there is little to substantiate any of Ms. Morgan's claims and that I should be wary of the contents of the Pre-Sentence Report.

[42] These are valid concerns. As a general principle, a report that relies almost entirely on information provided by an offender without collateral checks will be regarded more warily, as will an alcohol or drug assessment entirely based upon information provided by the offender. As such, even though the offender may be entirely truthful, the Court will generally have some difficulty wholeheartedly accepting the Pre-Sentence Report as being entirely accurate. That is not to say that the Court will disbelieve it, the Court is simply placed in an awkward position. It is preferable that pre-sentence reports involve contact with sufficient sources of information to assess

what the offender states as against the information provided by other sources. In the same way, it is of assistance for the Court to have documentation for courses taken and treatment and counselling completed to support what the offender states.

[43] Certainly this is the expectation of the Court in regard to pre-sentence reports generally, but frankly, this expectation also extends to counsel who are representing the offender. If counsel wants the Court to consider what his or her client states to the author of a pre-sentence report or what counsel wants the Court to accept regarding employment, education, counselling, and so on, confirmatory evidence will always be of assistance. In the absence of such confirmatory information, counsel is taking a risk that the Court will perhaps assign less weight to information that may assist their client than would otherwise be the case. This is a general statement. I am not certain of what the underlying circumstances of this case were, so I am not going to comment any further with specifics to this case.

[44] In the Updated Report that was obtained, Ms. Morgan's birth mother was contacted and provided information. Patsy Morgan admitted to her own substance abuse addiction but stated that she has been clean and sober for a number of years. She provided information that was generally corroborative of what Ms. Morgan related in the Pre-Sentence Report with respect to her childhood, health issues, past relationships, substance abuse issues, and abusive relationships. She does add, however, that Ms. Morgan would often show up sick from intoxication at her residence when she was approximately 12 or 13 years old. She provided information confirming her daughter's attendance at Kitwanga.

[45] Ms. Morgan's sister was in Court on the date of sentencing and provided information also corroborating Ms. Morgan's information, again, with respect to her difficult childhood, health issues, relationship with Mr. Fenton, remorse, and attendance at treatment. She stated that Ms. Morgan has turned her life around since attending for treatment.

[46] At paras. 33 to 51 in *Samson*, I reviewed the cases of *R. v. Zenovitch*, 2001 YKSC 52, *R. v. Davidson*, 2012 BCCA 518, *R. v. Elliott*, [2005] O.J. No. 6448 (C.J.), and *R. v. Snyder*, [2011] O.J. No. 4904 (C.J.), all cases in which sentences range from 20 months custody to be served conditionally in the community to discharges for breach of trust thefts. Crown counsel has pointed me to the additional cases of *R. v. Everitt*, 2010 YKTC 91, *R. v. Kohlhauser*, 2008 YKTC 68, *R. v. Reid*, 2003 YKTC 71, *R. v. Curtis*, [1995] Y.J. No. 125 (T.C.), *R. v. Eby*, 2005 YKSC 56, *R. v. Hanifan*, 2001 YKSC 27, and *R. v. Wheelton*, [1996] Y.J. No. 42 (S.C.) from this jurisdiction in which sentences from one day to three years were imposed for breach of trust thefts.

[47] I also reviewed the case of *R. v. Shortt*, 2002 NWTSC 47, where Vertes J. discussed at length the law as it relates to the imposition of a discharge. The *Shortt* decision is often favourably referred to in this jurisdiction as an authority in cases where a discharge is being sought.

[48] In paras. 24, 25, and 34 of the *Shortt* decision, which were referred to at paras. 53 to 55 of *Samson*, Vertes J. stated:

> 24 Numerous cases have interpreted the criteria set out in s.730(1) of the Code ... 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:
>
> > 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.

[49] And at 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) ...

[50] With respect to the public interest component:

> 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.

[51] *Shortt* was a spousal assault case.

[52] In *Samson*, I imposed a discharge on an offender who committed over 50 illegal transactions over approximately a one-and-a-half-year period. Ms. Samson was a supervisor for the Mayo Emergency Medical Service Ambulance Service. The total amount taken was $8,380.78 which was used solely for her own purposes. Ms. Samson acknowledged her thefts shortly after they were noticed and began the process of paying back the monies. These had been paid back in their entirety by the date of sentencing.

[53] Ms. Samson's personal circumstances are set out in paras. 10 to 28 of the Decision. She was a 35-year-old member of the Nacho Nyak Dun First Nation with no prior criminal record. Her childhood did not involve being shuttled between foster homes or the level of substance abuse that Ms. Morgan's did. Ms. Samson had lost a child shortly after birth due to health complications. This significantly impacted her. She also lost a job within a couple of years prior to the offences being committed in what she termed as political circumstances. As a result, she ended up involved in illicit drug use which encompassed the time frame in which she committed the offences for which she was being sentenced. Ms. Samson was also subsequently diagnosed as suffering from depression, likely for years, and prescribed medication which helped her considerably. She received similar ratings as Ms. Morgan with respect to drugs and alcohol on her Criminogenic Risk Assessment.

[54] In that case, Crown counsel sought a sentence of six months in custody. Defence counsel sought a conditional discharge. After reviewing the relevant sentencing principles in ss. 718 to 718.2 in the case law, I acceded to defence counsel's submission and placed Ms. Samson on a probation order for one year attached to a conditional discharge.

[55] I noted in para. 62 that:

> ... this is one of those rare and exceptional cases involving a breach of trust theft where a discharge is the appropriate disposition.

[56] I found that a discharge was in Ms. Samson's best interests. This is noted in paras. 63 to 65. Ms. Samson had expressed a desire, which I found to be realistic in

the circumstances, noting in particular her completion of several certificate programs at Yukon College and her enrolment in the First Nations' Governance Program, from which she is expected to be the first person from her First Nation to graduate from.

[57] I also found it not to be contrary to the public interest in paras. 66 to 71.

[58] Of particular importance with respect to both aspects of the discharge test was Ms. Samson's intent to run for a leadership position in her community. I had before me evidence that a criminal conviction would have precluded this for a significant number of years. I considered that precluding Ms. Samson from the opportunity to serve her community in this way, by imposing a sentence in which she would receive a criminal conviction, would not be in accord with the purposes, objectives, and principles of sentencing as set out in ss. 718 to 718.2, in particular the requirement in s. 718.2(e) to pay special attention to the circumstances of Aboriginal offenders.

[59] I note at this time that the *Samson* case has been appealed and that appeal has not yet been heard. This is a Crown appeal.

[60] A breach of trust theft from an employer will generally result in the imposition of a jail sentence, even for a first-time offender. This is because of the need for general deterrence and denunciation. Employees are placed in positions of trust with their employers across societal lines and, as a result, breach of trust thefts need to be denounced. It is only in rare and exceptional cases that a discharge will be imposed.

[61] Ms. Morgan presents as a compelling individual. She has had a difficult life, some of it as a result of the choices she has made, but these choices have been made

from the position she stood in, which is not the same places others who may wish to judge her may be standing in. This is not an excuse for her actions, simply a context. Ms. Morgan has made a choice to become free from substance abuse and to follow a pro-social lifestyle. I find that this did not begin in 2008, but had its seeds much earlier, as is seen in her steady employment and, perhaps most markedly, in the success of her daughter whom she has been able to raise almost exclusively as a single mother. Ms. Morgan is a contributing member of society with a bright future, frankly made all that much brighter because of her acceptance of responsibility for these crimes and her putting this phase of her life behind her forever. She should be proud of whom she has become and I respect her for that.

[62] There is much that is similar in the circumstances of Ms. Morgan when compared to Ms. Samson when it comes to issues of risk and of rehabilitative efforts. They are both of Aboriginal heritage and I consider carefully the application of s. 718.2(e) in context with the rest of ss. 718 to 718.2.

[63] Their offences are both similar and in some ways dissimilar. Ms. Samson's took place over a significantly longer period with many more transactions, albeit with approximately the same amount taken.

[64] Ms. Morgan took steps to cover her crimes and did not immediately admit to them, contrary to the actions of Ms. Samson.

[65] Both individuals, in different ways, were in states of some duress: Ms. Morgan from Mr. Fenton, and Ms. Samson from her depression and substance abuse. It is not

particularly clear to me just what Ms. Morgan's substance abuse issues may or may not have been at the time she committed these offences.

[66] Ms. Samson repaid all of the monies she stole relatively quickly after her thefts were discovered. Ms. Morgan has made arrangements to repay all of the stolen monies from the bail she has posted, albeit almost eight years after the monies were fraudulently taken.

[67] Both individuals were, and are, remorseful for their actions.

[68] Neither individual needs to be specifically deterred from committing further offences.

[69] Both individuals have positive letters of support, although I understand that Ms. Morgan's employer is not fully aware of the extent of her actions.

[70] There is one distinguishing factor, however, in particular between Ms. Samson and Ms. Morgan that is relevant to whether a discharge should be imposed. There was clear and convincing evidence in Ms. Samson's case that a discharge would have a negative impact on her that went beyond that normally experienced by a first-time offender. This negative impact potentially extended to her First Nation as well. This made Ms. Samson's case a rare and exceptional one in my mind, such that a sentence somewhat outside of the usual range was appropriate to be imposed.

[71] The impact upon Ms. Morgan is not the same. While she expressed concerns that having a criminal record would deprive her of future employment and educational opportunities, I was not provided any detail to confirm this to, in fact, be the case.

[72] Ms. Morgan expressed concerns about travelling to the United States to see her grandmother and to places around the world and the impact that a criminal record would have on her future plans. Again, I have no evidence before me that establishes with any certainty that having a criminal record for these offences, as compared to drug trafficking for example, would preclude such travel.

[73] Generally speaking, there is likely to be some potential negative impact of a criminal conviction. That, in and of itself, does not mean that a discharge should be imposed. There is a consequence to the commission of a criminal offence as noted by Vertes J., "One of the greatest deterrents to the commission of offences for people without criminal records is the knowledge that they might obtain one." The breach of trust theft from employees is the kind of offence in which such a deterrent is of particular importance. The question in this case, in part, is whether the imposition of a discharge has a consequence upon Ms. Morgan that is somewhat disproportionate in the circumstance.

[74] While I am sympathetic to Ms. Morgan's position and I recognize all the positive steps she has taken, I am still required to balance all the sentencing principles, objectives, and purposes. I simply cannot place this case within that category of cases that are rare and exceptional in which a discharge is an appropriate disposition for a breach of trust theft from an employer. As such, I find that a discharge is not appropriate in these circumstances and that I must impose a sentence within the usual range for such an offence. The usual range of sentence includes a period of incarceration and I find such a sentence to be necessary and appropriate in order to accord with the purpose, principles, and objectives of sentencing. And while the

sentence suggested by Crown counsel is certainly within the range, I find that a lesser sentence is also within the range and is more appropriate.

[75] The sentence I impose for the ss. 380 and 368 offences is a period of custody of 180 days on each concurrent. I find that this sentence can be served conditionally in the community in accord with s. 742.1.

[76] For the s. 145(2)(b) offence, the sentence will be 30 days, also to be served conditionally, concurrent.

[77] Ms. Morgan surrendered herself into custody on June 2, 2014. She was brought before a justice of the peace on June 3rd and the matter proceeded to show cause. Ms. Morgan was detained and held in custody until her release at a bail review on consent on July 4, 2014. She spent a total of 33 days in pre-trial custody. Her time in custody was made more difficult due to her health issues, in particular her allergies.

[78] At the time of sentencing, it was agreed that she should receive credit for her time in custody at a rate of 1.5 to 1, which would have resulted in her being credited with 50 days custody. However, I did not render a decision on that day, wishing to take time to consider the matter. Since that date, the Court of Appeal's ruling in *R. v. Chambers*, 2014 YKCA 13 has been released and an offender is only entitled to a maximum of 1-to-1 credit for time in remand after a s. 524 application to revoke prior process has been made. Such an application was made on June 3, 2014. As I am bound by the decision in *Chambers*, the maximum credit Ms. Morgan is entitled to is 34 days, as she is able to obtain credit at 1.5 to 1 only for June 2nd.

[79] That leaves a remainder of 146 days custody, as I said, to be served conditionally in the community.

[80] The terms of the conditional sentence will be as follows:

1. You are to keep the peace and be of good behaviour;

2. You are to appear before the Court when required to do so by the Court;

3. You are to notify your Supervisor in advance of any change of name or address, and promptly notify your Supervisor of any change in employment or occupation;

4. You are to report to your Supervisor immediately upon your release from custody and thereafter when and in the manner directed by your Supervisor;

5. You are to reside as approved by your Supervisor and not change that residence without the prior written permission of your Supervisor;

[81] [DISCUSSION WITH COUNSEL]

6. You are to abstain absolutely from the possession or consumption of alcohol and/or controlled drugs or substances that have not been prescribed for you by a medical doctor;

7. You are not to attend any premises whose primary purpose is the sale of alcohol, including any liquor store, off-sales, bar, pub, tavern, lounge, or nightclub;

8. You are to attend and actively participate in all assessments and counselling programs as directed by your Supervisor and complete them to the satisfaction of your Supervisor for any issues identified by your Supervisor;

9. You are to provide consents to release information to your Supervisor regarding your participation in any program that you have been directed to do pursuant to this order;

10. You are to have no contact directly or indirectly or communication in any way with Kells Boland, except with the prior written permission of your Supervisor or with the consent of Kells Boland;

11. For the entirety of the order, you are to abide by a curfew by being inside your residence between the hours of 9:00 p.m. and 6:00 a.m. daily, except with the prior written permission of your Supervisor, for the purposes of work, counselling, or such other reasons as your Supervisor may deem appropriate;

12. You must answer the door or the telephone for curfew checks. Failure to do so during reasonable hours will be a presumptive breach of this condition;

13. You are to perform 20 hours of community service as directed by your Supervisor or such other person as your Supervisor may designate. Any hours spent in counselling or treatment may be counted as community

work service hours. This community service is to be completed by the 130th day of this order. If there are any difficulties for unforeseen reasons, this matter can obviously be brought back before me for a review;

[82] [DISCUSSION WITH COUNSEL]

[83] THE COURT:

14. You are to make reasonable efforts to find and maintain suitable employment and provide your Supervisor with all necessary details concerning your efforts.

[84] [DISCUSSION WITH COUNSEL]

[85] Victim Fine Surcharges. I am satisfied that with the restitution being paid and the date of these offences, I am going to waive them. There will be no victim fine surcharges payable.

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COZENS T.C.J.