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2015 BCPC 0045

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File No: 204679-1
Registry: Surrey

IN THE PROVINCIAL COURT OF BRITISH COLUMBIA
Criminal Division

REGINA

v.

EMMA MARIA PAULSEN

**ORAL REASONS FOR SENTENCE
OF THE
HONOURABLE JUDGE J.W. JARDINE**

Counsel for the Crown:

J. MacAulay

Counsel for the Defendant:

E. Warren

Place of Hearing:

Surrey, B.C.

Date of Hearing:

January 21, 2015

Date of Judgment:

January 28, 2015

INTRODUCTION

[1] These are my oral reasons for sentence. The sentencing hearing was adjourned from Wednesday, January the 21st, 2015 for me to review the materials, consider the evidence, and digest the lengthy submissions of counsel. I am grateful to both counsel for their considered submissions. Ms. Paulsen has just had the opportunity to make a statement pursuant to s. 726 and has indicated that she does not wish to say anything at this time.

CHARGES

[2] There are two charges which are before the court for sentencing today. Those charges were sworn before the court on August the 8th, 2014 and six counts were laid by the Crown. On August the 24th, 2014, Ms. Paulsen was placed on an Undertaking to Appear which contained a restrictive bail condition that she "shall not own or possess any pets of any kind." That restricted her liberty from that date forward. The two charges, for ease of reference, I will quote as follows:

Count 4: Emma Maria Paulsen, on or about the 13th day of May, 2014, at or near Richmond, in the Province of British Columbia, being a person responsible for an animals, to wit dogs, did fail to care for the animals including protecting the animals from circumstances that were likely to cause the animals to be in distress in violation of s. 9.1(1) of the *Prevention of Cruelty to Animals Act* and did thereby commit an offence contrary to s. 24(1) of the *Prevention of Cruelty to Animals Act*, [R.S.B.C. 1996], Chapter 372 as amended.

[3] Ms. Paulsen, with respect to the second count for which this sentencing hearing continues, also pled guilty to this count:

Emma Maria Paulsen, on or about the 13th day of May, 2014, at or near Langley, in the Province of British Columbia, with intent to misled, did cause Cst. Courtney Callens, a peace officer, to enter on or continue an investigation by reporting that an offence had been committed when it had not been committed in violation of s. 140(1)(c) and 140(2)(b) of the *Criminal Code*.

Those are the two formal charges on which this hearing rests.

PROCEDURE

[4] Ms. Paulsen entered two pleas of guilt on November the 12th, 2014 before the Honourable Judge M.B. Hicks. The sentencing was adjourned without facts being entered in to found the pleas. The sentencing hearing came before me in courtroom 104 in Surrey on Wednesday, January 21st, 2015. The Crown presented orally a summary of the facts based on a Summary of Facts Outline which was passed to me for the purposes of note-taking. Mr. MacAulay outlined orally the Crown's tendering of relevant facts. At the conclusion of the oral presentation by Mr. MacAulay, Mr. Warren was asked if the recited facts were agreed. He said yes. I have therefore considered those facts as being proven for the purposes of this sentencing.

[5] The hearing then continued with submissions on the law and the fit sentence. During his submissions, Mr. Warren also countered with explanations about his client's knowledge and awareness of the danger of leaving dogs in a rear, confined canopy of her pickup truck. Ms. Paulsen, through her counsel, agreed with the recitation of the facts by Mr. MacAulay, but explanations were proffered and additional facts were provided during his submission.

[6] I have considered as admissible evidence the facts, the recitation, the additional facts provided by Mr. Warren, and the contents of the exhibits admitted during the sentencing hearing. The five exhibits included the following:

Exhibit 1, a jewel case and disc of two news reports depicting Ms. Paulsen interacting with reporters and dog owners on camera; one from CTV and two from Global;

Exhibit 2, the expert opinion of Dr. Rebecca Ledger;

Exhibit 3, a weather hourly chart;

Exhibit 4, the victim impact statements which went in as 4-1, 4-2, 4-3, 4-4, and 4-5, and as well;

Exhibit 5, the Pre-Sentence Report of Ms. Paulsen.

FACTS

[7] On May 13th, 2014 at approximately 6:04 p.m., Ms. Paulsen reported to the Royal Canadian Mounted Police that six dogs had been stolen or gone missing from her pickup. The report was made to the Langley detachment of the Royal Canadian Mounted Police. She said that the six dogs were in the back of her pickup truck at the Brookwood Park at 20600 44th Avenue in Langley. She went to the washroom in the park, and when she returned back to her truck the dogs were gone. The dogs were identified as Mia, a female Pit Bull, 15 months old; Oscar, a male Rottweiler type, six years old; Buddy, a male Boston Terrier, one year ten months old; Molly, a female German Shepherd five years of age; Teemo, a Bouvier poodle type, two-and-a-half years old, and; Salty, a Border Collie type adult which was Ms. Paulsen's dog.

[8] Cst. Callens of the Royal Canadian Mounted Police attended to the Brookwood Langley off-leash dog park to speak to Ms. Paulsen and the involved dog owners.

Those dog owners had been contacted by Ms. Paulsen and told of the theft or the dogs having gone missing. Cst. Callens took information from a number of the dog owners and then later spoke with some of the others by telephone. But on May the 13th, 2014 at approximately 7:10 p.m., Cst. Callens, meeting with Paulsen, took an audio statement from Ms. Paulsen which was reduced to a transcript. The transcript reads as follows:

Yes, so got here approximately 12:30 to play with the dogs, and we played in the park. And then at about in between 1:00 and 1:30 I put my dogs back in the truck and closed the latches on the back and then went to go and go to the bathroom. And I walked back and the top of the canopy was open.

She continued:

And all six dogs were missing, so then I closed -- closed the canopy and I walked down and talked to the people down at the end of the park, asked them if they'd seen anything. I got back -- and they had said that they hadn't seen anything. I got back in my truck and I drove around, just to see, I thought maybe the dogs had run out to the road or -- so I was driving around from approximately 1:30 'til 4:30, looking for the dogs. And I called Langley Animal Protection Society to file a report, to see if anybody had seen any of them, and they said that they had not. And then I continued through the day to, um, go and just get some support, so I drove back and got my, um, my friend to drive me because I was upset. I didn't want to drive.

She was asked when she called the dog owners and she said, "No, I had called them in between while I was looking." She was asked, "When you came back, what did the truck look like?" She answered:

Just like the canopy, just it had just been opened, just been opened, that was it, and I always have a big pot of water in the back and, ah, a bed for them that they've torn on the way here. There was, like, fluff all over the place, but nothing looked --

She was asked, "Was the water disturbed or was it kind of where it should be?"

Answer, "It, ah, no, it was definitely spilled out, but that could have been them just drinking, too." She was asked how long she had been at the washroom, and her answer was, "Ten to 15 minutes." And she was asked whether the bottom part of the truck had been opened, and her answer was:

The tail was up, the tailgate was up and just the canopy, the top was open, but I know I had latched it. I always latch it proper.

[9] There were some other questions that are not relevant to today, and the officer then asked, "So we're not sure if they've been taken or if they just got out?" And Ms. Paulsen said, "That's the thing." She was then asked again how long she had driven around, and at this stage she answered differently than at first. She said:

I was here for, I'm trying to think of what time I left. I drove here from 1:30 trying to think of what time I went and got Barry to drive. Must have been around 3:00, about 3:30, 'cause I drove around for hours first.

Question, "So you drove around for about two hours?" Answer, "Two hours."

[10] On May 13th, 2014, in the course of the afternoon, Ms. Paulsen provided the same details to Petsearchers Canada on the phone. Notes were taken of what she said to the assistant at that place. On May 13, 2014, Ms. Paulsen later made a public plea for the dogs to be returned by whoever had stolen or taken them. The dog owners and Ms. Paulsen sought assistance from members of the public at the park and the general public, as well as the media. Ms. Paulsen made an impassioned plea for the dogs to be returned which was filmed by CTV News and Global News. Exhibit 1 represents and

depicts the two video clips which depict not only her pleas but also her interactions with the owners of the dogs and the appearance of her pickup truck.

[11] On May 14, 2014, Al MacLellan of Petsearchers Canada attended to the Brookwood dog park to offer assistance and moral support to the families. A rally was organized to distribute posters to increase public awareness about the missing dogs, and their characteristics. Ms. Paulsen was at the Brookwood dog park. She was describing what had taken place to those around her when the dogs were allegedly stolen from her truck. She told the same story to those present on the 14th, as well as Mr. MacLellan, the media, and members of the concerned public. That was the first time Mr. MacLellan heard her describe the matter in person and in detail.

[12] From May 14 to May 17, searches were conducted and follow-up investigations were conducted of sightings provided by members of the public. Ms. Paulsen called Mr. MacLellan to report sightings of her dog, Salty. She hired Mr. MacLellan to verify if the scent from one of the sightings was from her dog. Mr. MacLellan conducted a thorough search using a Bloodhound, and he satisfied himself that the potential sighting was not her dog. He conveyed that information to Ms. Paulsen.

[13] On May 18, 2014, Mr. MacLellan and Ms. Paulsen met. Mr. MacLellan asked Ms. Paulsen to describe in full detail what happened the day the dogs disappeared. They spent over an hour together. At the conclusion of their discussion on May 18, 2014, Mr. MacLellan discussed his views with the dog owners and was retained for \$1,000 to try and successfully determine what had happened to the dogs. Mr. MacLellan was at that point convinced that Ms. Paulsen was not being truthful, given

her version of events and the weather conditions being so warm on May 13, 2014. To him, the dogs being stolen seemed unrealistic, and selling the dogs made even less sense.

[14] On May 19, 2014, Mr. MacLellan told Ms. Paulsen he needed to talk to her. They met at a Starbuck's coffee shop in the area of 176th and 56th Avenue in Surrey. Mr. MacLellan explained to Ms. Paulsen he had leads that were in direct conflict with what she had told him. He also told Ms. Paulsen that the public interest in the dogs was not going to dissipate. In addition, the police were going to keep on investigating. Mr. MacLellan told Ms. Paulsen that he would release the information he had to the dog owners, the public and the police at some point. Ms. Paulsen said to Mr. MacLellan that she was concerned about the potential ramifications of revealing the truth. Mr. MacLellan told Ms. Paulsen that the truth was going to come out either through evidence, leads coming in, or from her. He told her, "This was the time to come clean, and that if she continued to lie she was digging herself a bigger hole to get out of."

[15] At that point Ms. Paulsen told Mr. MacLellan that she had gone shopping for a short period while leaving all the dogs in the back of her truck, with water, and all the windows left open. When she got back she checked on the dogs and realized that they had all perished due to the heat. She said that she panicked and disposed of the dogs on some land somewhere, and then made up the story of the theft to hide the truth.

[16] Mr. MacLellan did not ask details. Mr. MacLellan told Ms. Paulsen she would have to go to the RCMP to make a statement with full details. He said he would go,

with his assistant Alesha, to tell the truth to the owners of the deceased dogs and to the media. Ms. Paulsen told Mr. MacLellan she would go to the police.

[17] The day before the May 19 conversation, Cst. Callens of the RCMP Langley detachment had contacted Ms. Paulsen. The two of them had made an appointment on the 18th for Ms. Paulsen to go to the Langley detachment. Ms. Paulsen failed to attend at that appointment.

[18] On May the 19th, 2014 at 3:11 in the afternoon, Cst. Callens, in company with Cst. Gill of the Langley detachment, went to the address of Ms. Paulsen's trailer in Delta, in the Province of British Columbia. When Ms. Paulsen came to the door of the trailer she said to Cst. Callens, "I've made a terrible mistake." She said she was planning to come to the Langley detachment that afternoon "to clear everything up." Cst. Callens asked if she could come to the Langley detachment then. Ms. Paulsen was not sure. Cst. Callens then offered to speak with Ms. Paulsen at the Delta Police Department which is in Ladner. Ms. Paulsen agreed. Ms. Paulsen said she was very stressed and too embarrassed to speak about what had happened. She wanted to clear things up with the police because she wanted everyone to know the truth. She was given the police caution; she was told she was under investigation for the offence of public mischief. She stated she understood both the caution and the offence. Cst. Gill then asked Ms. Paulsen, "Do you know where the dogs are?" She replied, "Yes."

[19] On May 19, 2014, Ms. Paulsen gave an audio/video statement to the police. She was not in custody at the time of the giving of the statement. An excerpt of the statement to Cst. Callens is as follows:

Question: "...so you panicked. What happened next?"

Ms. Paulsen sighed and continued:

I drove out to, uh, I drove out to the farmlands out, I don't even know that area. It's called Chilliwack or Yarrow, or I was driving out around there trying to figure out what I was gonna do.

Question: So you drove out to Chilliwack, Abbotsford area?

Answer: I think it's past Abbotsford. I decided to take the dogs outta the back of my truck and put them, and hide them in a ditch.

Question: How did you do that?

Answer: I just lifted them up.

Question: ...Did you put them all in the same ditch?

Answer: Yeah.

Question: Did you cover them?

Answer: No. ...it was daylight, so I, I was just trying to be fast, I guess. So I didn't get caught.

She then continued:

...And I, I started calling my customers. And telling them the same story that I told you.

Question: ...And you called them and told them the same story you told me? Can you repeat that story?

Answer: That I was at the Langley dog park and that I went to the bathroom, and when I came out, I told them my canopy was open and all the dogs were gone.

...and I knew that they were gonna come and meet at the park, and that I had to be there, and they all wondered why it took so long for me to say something.

Ms. Paulsen continued:

Parked my, parked my truck 'cause I didn't want anybody to see the big mess in the back with all the stuffing everywhere.

Question: ...where did you drive after you called all the clients to tell them their dogs were missing?

Answer: I drove, drove to Langley.

And I left my truck there, and I called my friend Barry to come and pick me up.

To come and take me to the dog park 'cause I didn't wanna be by myself to talk to everybody. But I didn't tell him anything. I just said that I was in trouble and I needed, I just needed some help.

She was then asked what had happened between the event at the dog park and now, and her answer was:

Just, I cleaned out my truck and washed it and everything, and got rid of all the fluff and threw it away in the garbage. And I just, went out searching, and trying to be supportive to everyone.

[20] On May the 19th, 2014 following the statement, Ms. Paulsen went with Cst. Callens and Cst. Gill and they were successful in finding the area where she had disposed of the deceased dogs. The ditch was located within the geographical area of Abbotsford.

[21] On May 20th, 2014, the deceased dogs were removed from the ditch and transferred to the Animal Health Centre in Abbotsford for examination. Necropsies were performed on all six dogs. At autopsy it was determined that all six dogs were diagnosed with pulmonary congestion, red skin discolouration. Pulmonary congestion and red skin colouration are non-specific findings consistent with death from heat stroke. Four of the six dogs had also ingested fibre-like materials consistent with the bedding material in the dog bed in the back of Ms. Paulsen's pickup truck.

[22] It is the opinion of Dr. Rebecca Ledger, an animal behaviour and welfare expert, that all of the dogs would have experienced significant emotional suffering and distress as a direct result of the heat in the enclosed canopy of the pickup truck. Dr. Ledger said that over time, as the heat increased, the dogs would have become uncomfortably hot and therefore thirsty, leading to a motivational need to get to a cooler area and water. The ingested bedding material was consistent with frantic attempts to escape or to counteract nausea experienced due to renal failure and hypothermia. Their frustration would lead to high levels of anxiety and their state of distress would have been extremely high. In addition to emotional distress, the dogs would have experienced heat stress and heat exhaustion, and were likely to have experienced thermal and physical discomfort as their organs reacted to hypothermia.

[23] Ms. Paulsen operated the dog-walking business called "Walking With Daisy." She had been occupied in the dog-walking business at that time for about seven years.

[24] Ms. Paulsen also had a horse which she boarded at the barn at 2990 57B Street in Delta. She often visited the barn in the late afternoon or early evening, and would leave dogs in the vehicle in the back, or in the cab. She was spoken to by several horse owners, as well as one of the owners of the barn, about her practice of leaving the dogs in the truck. She was questioned about the dogs being loose in the vehicle without airflow or water. Ms. Paulsen responded to all with little concern. The dogs were fine. They had already been out for a walk.

[25] Mr. Warren confirmed that Ms. Paulsen had been warned about the dogs being in the rear of her vehicles. He said Ms. Paulsen agreed some people had mentioned

the dogs being left in her truck. She did not interpret their words as warnings. She did not take seriously their concerns. She did not take their comments seriously, nor interpret them as being valid. The dogs had always been fine. Most of the time she would leave the dogs for only ten or 15 minutes. Nothing untoward had ever happened, and she did not expect anything untoward on May 13th.

[26] Ms. Paulsen, through Mr. Warren, also provided further information about the events of May 13, 2014. It was admitted that she was at the Costco Wholesale Warehouse in Richmond. She estimated she went shopping at that place for approximately 40 minutes. When she parked her truck it was being shaded by trees. She was longer than she had planned and longer than usual. When she returned and found the dogs were deceased, she panicked. She drove to the Fraser Valley and disposed of the dogs in the ditch. She then got a ride to the Brookwood Park and made the false report.

[27] Through Mr. Warren it was stated that on May 13, Ms. Paulsen was devastated, remorseful and afraid of the ramifications. It was also confirmed that Salty, the Border Collie, was her dog. She had purchased Salty and she was 100 percent in her care.

[28] Ms. Paulsen's instructions to Mr. Warren, and the final statement of fact, is that she was in a fragile and troubled emotional state. Her horse had died in 2013 in June. She had let both of her sons go live with their respective fathers by the end of the year. Her stepfather had passed away in August of 2013. She was at that time experiencing panic attacks and drinking too much, using alcohol as a coping mechanism.

PERSONAL CIRCUMSTANCES

[29] The personal circumstances that are part of the factual matrix of this trial have been gleaned from the submissions of Mr. Warren as well as from Exhibit 5, the Pre-Sentence Report. The relevant portions, for the purposes of ascertaining the personal circumstances and the balancing in sentencing, are as follows.

[30] Ms. Paulsen is now 38 years of age and is awaiting sentencing on her first two offences. She was born November the 9th, 1976 in Sweden. She came to Canada at three years of age. Ms. Paulsen was raised in a nuclear family with an older brother, Jonathan, and her mother, Lisbet, and father, John. Ms. Paulsen described her upbringing as a positive one with a warm and comfortable environment.

[31] Her father worked out-of-town approximately a month at a time, and when her father was out-of-town her mother worked full-time at a stable/barn on the family property. Considering both her parents were absent when she was young, Ms. Paulsen states that she had to fend for herself and that she learned life skills at a very young age.

[32] Ms. Paulsen's parents separated in 1990. It was not a happy separation. Her father hired a hit man to scare her mother. The police got involved, and it was recommended that the family, other than the father, move for protection. Lisbet Paulsen moved her family to Ontario. Ms. Paulsen attended a boarding school there, continuing to her Grade 10 year. As she was growing up, Ms. Paulsen and her father did not have a great relationship. The report discloses that her biological father passed away in 2003. Ms. Paulsen continues to have a close relationship with both her mother and her brother.

[33] Ms. Paulsen has never married. She has two children aged five and 13 from two different relationships. Prior to September of 2013, Ms. Paulsen had care of both of her sons. However, due to her emotional instability, she did not think it was fair for her children to be around her while she was going through such an emotionally-trying time. She at that time gave care of her sons over to their fathers. She is currently embroiled in a Family Court proceeding where the issue is permanent residency and parenting time. She wishes to have the son be with her. She also anticipates further such proceedings in relation to her other boy.

[34] In terms of long-term education and training, Ms. Paulsen confirms that she does not have any post-secondary courses or certifications other than a makeup artistry course at Blanche Macdonald. She has, however, obtained a commercial Class 1 driving licence. She stated to the writer of the Pre-Sentence Report that she has no intention of attending further schooling at this point.

[35] In May of 2014, Ms. Paulsen was running her own business. She had done so for approximately seven years. She was unemployed from May until September of 2014, and in October she obtained full-time employment. She is currently making \$10.25 per hour. Her employment has been confirmed. She also disclosed to the writer of the Pre-Sentence Report that she is in debt to the extent of \$60,000.

[36] To the writer of the Pre-Sentence Report, Ms. Paulsen denied having any concerns about her alcohol use. She admitted to using alcohol as a coping mechanism, and said that she drank alcohol to cope after the death of her stepfather and after this offence. She advised the writer of the report that she had stopped drinking altogether in

August of 2014. I am also told that she, in the course of the Pre-Sentence Report, in Exhibit 5 has demonstrated that she has embarked on other steps towards rehabilitation in that she attended one-on-one counselling. She did that from the end of May until October when her full-time employment precluded her from doing the counselling due to time pressures. She has started exercising in order to deal with stressors and as a coping mechanism, and accordingly has taken significant steps, both in terms of counselling and in stopping drinking and in being employed full-time to embark on a path of rehabilitation.

VICTIM IMPACT STATEMENTS

[37] Exhibit 4 was difficult reading. The victims have expressed their grief, pain, anger, loss and outrage graphically and eloquently. The central theme is the loss of a loved member of their respective family. The loss of the unconditional love, the comfort and joy each of the dogs brought to their household left a painful emptiness. One does not have to be a dog-lover to understand their sense of emptiness at missing the tail-wagging greeting of their pet, or the comfort and peace provided by the daily affection shared with their pet.

[38] Another theme running through the victim impact statements was the sense of betrayal and outrage felt due to the conduct of Ms. Paulsen in misleading them. First, she failed them and their dogs by failing to keep them safe. Then, by lying to avoid the potential ramifications of what she had done, she extended their emotional upset by deceiving them. One of the owners, on learning the truth, was incensed that Ms. Paulsen, while talking about the efforts to find the missing or stolen dogs, raised the

issue of collecting money to cover lost wages, gas and the cost of posters. She said, "Emma tried to make money off of the dogs that she killed."

[39] The contents of Exhibit 4 also describe the emotional upset and trauma experienced by the families during the period from May 13 to May 19, 2014 before the revelation that Ms. Paulsen knew all along the dogs were deceased. The fact that she knew that all along and that she was acting was devastating to the families. Being lied to by Ms. Paulsen increased their sense of betrayal, increased their emotional trauma and led to them being outraged. Some expressed a sense of guilt at not protecting their pet from such a person.

[40] Essentially, the victim impact statements, boiled down, provide a picture of a group of families, who are missing their pets horribly, felt that Ms. Paulsen who had the obedience and trust of their dogs had let down their dogs, and feeling that since they had hired Ms. Paulsen to care for their dogs, that they should have looked after their dogs better. They felt guilty at having given them over to Ms. Paulsen, and betrayed by her.

CROWN'S SUBMISSION

[41] Mr. MacAulay for the Crown submitted, in relation to the *Prevention of Cruelty to Animals Act*, that the fit and proper sentence, taking into account the circumstances of Ms. Paulsen and the principles of sentencing, as well as the penalty provisions of the Act, was three to six months' incarceration, and as well a fine in the range of five to \$10,000. In addition, Mr. MacAulay submitted there should be a lifetime prohibition pursuant to the discretion afforded under s. 24(3) of the Act to prohibit Ms. Paulsen from

having custody or control of an animal for remuneration or business purposes, for life. He also submitted that Ms. Paulsen should be prohibited from owning, being in control of, or having custody of an animal for ten years from the date of sentence. On Count Number 6, Mr. MacAulay submitted that the public mischief committed by Ms. Paulsen should lead to a fit and proper sentence of incarceration due to the deliberate intention to deceive and the number of representations made over a number of days during which Ms. Paulsen repeatedly maintained her deception.

[42] In support of his submissions, Mr. MacAulay provided a casebook with authorities on three main areas of law. As to the predominant principles of regulatory offences he cited *R. v. Cotton Felts Ltd.*, (1982) 2 C.C.C. (3d) 287, (Ont. C.A.); and *R. v. Shamrock Chemicals Limited*, unreported, Provincial Offences Court, St. Thomas, Ontario, February the 13th, 1989, Phillips, PCJ. From those cases, Mr. MacAulay submitted that the appropriate legal principles for regulatory offences such as committed by Ms. Paulsen in this case, would lead to a predominant sentencing principle being denunciation and deterrence.

[43] The Crown also conceded that Ms. Paulsen had no intention to kill or injure the dogs in this case. This was, in Mr. MacAulay's submission, a lesser level of moral blameworthiness than actual intended harm. However, he submitted that Ms. Paulsen should be found to have been wilfully reckless. He said her actions in this case constituted more than simple negligence. She had been warned of the danger of leaving dogs in closed vehicles. Her continuing to do so had to be found, he submitted, to be repeated conduct: deliberate risk-taking.

[44] The authorities provided by Mr. MacAulay pertaining to sentences in cruelty to animal cases were *R. v. Connors*, 2011 BCPC 0024 (CanLII) per Quantz, PCJ; *R. v. Powell*, unreported, January 24, 2011, Nelson Registry 21727-1, Mrozinski, PCJ; *R. v. Fawcett* 2012 BCPC 421 (CanLII) Merrick, PCJ; *R. v. McKay*, unreported, January 27, 2012, Clearwater Registry, file number 4076-1, Donegan, PCJ; as well as *R. v. Rodgers* 2012 808 (CanLII) Ont. CJ. He also cited three recent cases in the B.C. Provincial Court, *R. v. Chrysler* 2013 BCPC 0241 (CanLII), Gillespie, PCJ; *R. v. Whitlock* 2013 BCPC 0153 (CanLII), St. Pierre, PCJ; and *R. v. Seidel* 2014 BCPC 0230 (CanLII), Cleaveley, PCJ.

[45] Mr. MacAulay said that in respect to the authorities and the factors to be considered, the court should find Ms. Paulsen made a fairly early guilty plea which should be considered as a somewhat mitigating factor. However, he submitted the weight to be attached to the guilty plea should be reduced because of the overwhelming case that the Crown was able to present.

[46] As to the principle of proportionality, the Crown submitted this was repeated conduct by Ms. Paulsen with a moral blameworthiness of wilful recklessness. It was more than mere negligence, and the responsibility of the offender had to be considered in light of her experience of seven years in the business of dog-walking.

[47] As to the seriousness of the offence, the circumstances of the demise of the dogs were horrific. It is common knowledge, he argued, that heated vehicles kill both dogs and children. Given the number of dogs, the fact that it was her occupation, it was

her business, and the impact on the families was significant, incarceration was warranted, in the submission of Mr. MacAulay.

[48] On the public mischief count, Mr. MacAulay cited *R. v. Steinson* (2005) BCPC 0428 (CanLII), Blake, PCJ; *R. v. Little* 2002 BCCA 2 (CanLII), (B.C.C.A.) Saunders, J; *R. v. Hudon* 1996 ABCA 331, (Alta C.A.); *R. v. Lapoleon* 2008 BCPC 80 (CanLII), Rideout, PCJ. As I must take the law from *Little*, and it is binding on me, Mr. MacAulay referred me to tab 6, paragraph 15, and paragraph 16 of *Little* which I will refer to in more detail when I go through the analysis.

[49] Mr. MacAulay concluded by setting out his position on the aggravating and mitigating factors for the court to consider. In summary, his position was that the appropriate sentence is six to 12 months' incarceration, based on a three-to-six-month sentence on each of the offences, consecutive, which would lead to that range. In addition, Mr. MacAulay was seeking the ancillary orders which I have outlined, and the fine to which I have referred.

THE DEFENCE SUBMISSION

[50] Mr. Warren did not cite case law, nor did he argue the law. He submitted the issue was whether the fit and proper sentence was for "real jail" or an intermittent sentence. He also submitted that the court in these circumstances must consider a conditional sentence order. I agree with him.

[51] Mr. Warren proffered explanations of the Crown's recitation of facts on behalf of Ms. Paulsen. As to the warnings at the stable about dogs in the rear of her truck, he

said that some people had mentioned that she should not leave dogs unattended in the truck. Ms. Paulsen did not take seriously their comments. She did not, in her emotional state in late 2013 and in 2014, interpret their remarks as serious.

[52] Mr. Warren submitted that Ms. Paulsen has instructed him that she acknowledges that she left the dogs in her truck which was parked at the Costco parking lot in Richmond. The dogs died in Richmond. She was gone for about 40 minutes, longer than usual. When she realized what had happened, she panicked. She disposed of the bodies and then subsequently made a false report.

[53] As to the sightings of the dogs, include Salty, Ms. Paulsen's dog, Mr. Warren said Ms. Paulsen was receiving phone calls which she passed on to the authorities and to the dog owners and Petsearchers. These were not false reports; she was passing on messages which she had received from members of the public. The difficulty with that submission is that Ms. Paulsen knew the sightings were mistaken, were incorrect, and by passing them on she was making, not by commission but by omission, a misleading report.

[54] The Border Collie, Salty, was 100 percent the possession of Ms. Paulsen. Salty was her dog. In that sense, she disputes the victim impact statement, Exhibit 4-5, and I must accept her version given the provisions of s. 724 of the *Criminal Code*.

[55] Mr. Warren also told the court that he was retained in September 2014, and when he first met his client she was devastated and remorseful. He then embarked on negotiations with the Crown which took until November of 2014. The guilty pleas were

made, he submitted, at the first reasonable opportunity. The guilty pleas were made November the 12th before Judge Hicks

[56] In respect of Count 4, Mr. Warren argued that his client made a poor decision due to her agitated emotional state. She was experiencing emotional instability due to family issues, recent losses, and the abuse of alcohol. He submitted that she should have known that leaving the dogs in a confined space on a hot day was a dangerous thing to do, but she was not alert to the danger. She had been in the dog-walking business for seven years. She would leave the dogs in her care in her vehicle for ten to 15 minutes at a time. Nothing untoward had ever happened prior to May 13, 2014.

[57] On May 13, 2014 in her emotional state, she spent too much time in Costco. She was longer than she had expected. She had parked the vehicle in an area where the trees gave shade. Most people think that 18 or 19 degrees, unless in direct sunshine, would be okay, Mr. Warren argued. The vehicle was shaded when she went inside, he said. Mr. Warren pointed out quite strongly, one could even say pointedly, that Ms. Paulsen did not intentionally harm the dogs. One of the dogs was hers, he argued.

[58] In relation to the *Criminal Code* offence, Mr. Warren pointed out it was not done with the intention of hurting anyone, or hurting someone, and there are two types of offences, he pointed out: One where it is alleged that someone has done a particular crime which they have not done, that is, he says, an intention to hurt someone; the second type of offence under s. 140 is to report an offence has been committed when no offence has been committed. That is what we are dealing with here.

[59] Mr. Warren submitted that this was not a false statement alleging a crime by someone else. Well, it had to be, because there had to be someone who took the dogs if they were stolen. However, as Mr. Warren pointed out, Ms. Paulsen was not making a false statement against a person to hurt them; she was trying to deflect the investigation of the disappearance of the dogs to avoid being found responsible and held accountable.

[60] Mr. Warren submitted that Ms. Paulsen, in her emotionally distraught state, was illogical. She rationalized to herself that by conducting herself as she was that she was giving "hope" to the families. She was not thinking straight, he argued, because of her personal circumstances. She was at the time abusing alcohol and suffering through estranged personal relationships. In her state, he submitted, Ms. Paulsen did not understand that her deception was causing increased harm to the victims. She, he said, could not face the reality that the dogs were all deceased. To that end Mr. Warren argued that his client, in her unstable emotional state, was trying to avoid facing the fact that the dogs were all deceased. She was not trying to get the police involved. The amount of public interest was unexpected and snowballed on her.

[61] As to the cases and the appropriate range, it is Mr. Warren's position that there are not many cases on point, and with that I heartily agree. The scope of media interest and exposure was significant, and the impact of this exposure, he argued, has affected Ms. Paulsen in her attempts to obtain employment, maintain relationships and retain friends. Given the public perception as a result of the media attention by press, radio and television, he submitted that this is a significant mitigating factor at sentencing. If

public condemnation is part of the punishment, it militates towards a lesser emphasis on specific deterrence, he argued.

[62] Mr. Warren submitted the fit and appropriate sentence on these two counts is a community-based sentence. Ms. Paulsen does not, he submitted, present as a danger to the community. Given the language in *R. v. Little*, and the directions by the Supreme Court of Canada in *R. v. Proulx*, he argued that denunciation and deterrence could be achieved by a community-based sentence. The fit sentence, he submitted, should be a conditional sentence order with strict terms. In the alternative, the court should consider an intermittent sentence permitting Ms. Paulsen to serve the sentence on weekends. I pause to note he has not submitted that jail is not appropriate. As to a fine, Mr. Warren submitted his client is without funds. She is \$60,000 in debt, living in a trailer and earning \$10.25 per hour at a barely-subsistence-level-wage job. A fine would be, in such circumstances inappropriate, and a compensation term unrealistic.

THE APPROPRIATE LAW AND ANALYSIS

Legislation

Prevention of Cruelty to Animals Act, s. 9.1(1):

A person responsible for an animal must care for the animal, including protecting the animal from circumstances that are likely to cause the animal to be in distress.

Section 9.2:

A person responsible for an animal must not cause or permit the animal to be, or to continue to be, in distress.

Section 1(2):

For the purposes of this Act, an animal is in distress if it is

- (a) deprived of adequate food, water, shelter, ventilation, light, space, exercise, care or veterinary treatment, and
- (a.2) not protected from excessive heat or cold.

The Penalty Provisions

24(3) If a person is convicted of an offence under 9.1, under ss. 1(a) a justice may, in addition to any other penalty that may be imposed for the offence, prohibit the person from owning or having custody or control of an animal for a period of time specified by the justice.

24.1 A person who commits an offence under this Act is liable on conviction to a fine not exceeding \$75,000 or to imprisonment for a term not exceeding two years, or to both.

[63] In respect of Count 4, I find that the facts justify the plea and that that is the sentencing provision with which I must deal.

[64] In terms of the public mischief, the offence section is under s. 140(1)(c). It is a public mischief which entails the latter of the two styles to which I have referred, stating that with intent to mislead, Ms. Paulsen provided to the police, the public, the owners, the Langley Animal Protection Society, and anyone else who would listen, that the dogs had either been stolen or had gone missing and someone was keeping them. The penalty provision is the general penalty provision provided for in the *Criminal Code* which provides for a fine of \$5,000 or to imprisonment for six months, or to both.

APPLICABLE LAW ON THE *PREVENTION OF CRUELTY TO ANIMALS ACT*

[65] I am satisfied, by virtue of the authorities of *R. v. Cotton Felts* and other cases, that deterrence is a paramount principle in regulatory offences. The concept that is articulated in the cases is that the sentence, by emphasizing community disapproval of an act and branding it as reprehensible, has a moral or educative effect and thereby affects the attitude of the public. This purpose of sentencing has now been encoded when one looks at s. 718, particularly 718(a), which provides in the *Criminal Code* that one of the purposes of sentencing is to denounce unlawful conduct.

[66] The law of sentencing is informed now by the legislative content of s. 718, 718.1 and 718.2 in the *Criminal Code*. I am not going to repeat each of those sections, but the paramount principle or the fundamental principle of sentencing is that the sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[67] Section 718 provides that there are some six objectives which should be considered by trial judges at sentencing. Some of them are applicable here; some are not. I will highlight them with a view to explaining how I have approached this. Denunciation is a live issue. Deterrence, both general and specific, is a live issue. Separation from society is not; we are not dealing with protection of the public. Rehabilitation is always a live issue. Providing reparations for harm done to victims or to the community is particularly difficult in a circumstance such as this case where someone is impecunious. The nature of the offence also makes it difficult.

[68] 718(f) is a very live issue in this sentencing. "The promotion of a sense of responsibility in offenders and an acknowledgement of the harm done to victims and to

the community." That is of particular import in a circumstance where no s. 726 statement was made. Ms. Paulsen, before I commenced the sentencing reasons, had an opportunity to express an apology and remorse. She said she had nothing to say at this time.

[69] On the 26th of January 2015, our Court of Appeal emphasized a point in respect of the sentencing in each trial. Madam Justice Kirkpatrick, at paragraph 25 in *R. v. Samuelson* 2015 BCCA 29, said as follows:

At the outset, it is important to emphasize that sentencing is an individualized process, as the Supreme Court of Canada recently explained in *R. v. Pham*, 2013 SCC 15 at para 8. The potential of a person to rehabilitate is an important factor to consider in crafting such an individualized sentence. Assessing the potential of a particular offender to rehabilitate is a fact that is within the purview of the sentencing judge: *R. v. C.A.M.*, [1996] 1 SCR 500 at para 82.

I will be referring to *C.A.M.* later.

Even if the manner and the type of offence is similar, and even where some background circumstances of the offender (e.g. age or criminal record) are partly analogous, the underlying potential of the offender to be rehabilitated may indicate the need for a more (or less) severe sentence.

[70] Section 718.1 and the principle of proportionality make the determination of a fit and proper sentence a balancing exercise. The assessment of the gravity of the offence and the degree of responsibility of the offender requires sentencing judges measure those factors. Our Reasons at Sentence should explain the process by which we arrive at a just sentence. As part of the assessment, we should determine and articulate the purposes to be emphasized.

[71] I am mindful of the direction in **R. v. M.(C.A.)**, [1996] 1 SCR 500, where the court at pages 557 to 558 explained retribution in the criminal context. I say that because of the contents of the victim impact statements which I have read in this case. Vengeance is neither the purpose nor the intent of sentencing. The court said:

Furthermore, unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment and nothing more.

[72] In this case of such focused media and public interest, the court must be careful to exercise that measure of restraint. In the face of such a horrendous result for the animals in this case, the public condemnation has been unmerciful. The sentence must reflect an awareness of the public humiliation visited on Ms. Paulsen.

[73] Count 4 is an offence which defines a measure of negligence but not an intentional doing of harm. Ms. Paulsen did not intentionally kill her own dog, Salty, or the other five dogs in her care. She did not want them to suffer or die. Her actions were not wanton and reckless. In my view, her actions constituted distracted, thoughtless negligence in circumstances where she was emotionally upset and very self-centred. But that does not excuse her conduct, nor her failure to look after these animals left in her trust.

[74] In my view, her conduct must be viewed in the context of the comments and warnings she had received over the preceding two years from stablemates and from one of the owners of the stable. Despite those comments, because nothing untoward had happened, she continued to put the animals in her care at risk. Ms. Paulsen was in the business of dog-walking. The dogs gave her their trust and obedience. The dog-

owners left their friends and pets with her, trusting her. She had six dogs in her care. Her actions in leaving them in the rear of the truck in the middle of the day to go shopping constituted more than mere negligence, in my view. Her actions constituted repeated risk-taking. She had or ought to have known of the danger. It is common sense and common knowledge that the interior of vehicles and vehicle canopies heat quickly in such circumstances. There were six dogs inside the confined space. She, in her distracted, self-centred emotional state, failed in her duty to her canine charges and their owners, including Salty, her own dog.

[75] Her post-offence conduct was motivated by fear, shame and panic. Her intent was to avoid the potential personal ramifications. Her conduct was repeated over the next six days. On May 13, 2014, Ms. Paulsen phoned the dog owners over the hours from 1:30 to 4:30. She lied to them, telling them the dogs were missing and had been stolen or had run away. She repeated that version of events to the Langley Animal Protection Society, then the media. This was done over many hours. It was done in circumstances where she had not yet cleaned out her truck. Surely, during the course of that afternoon at some point, she must have had a sense of guilt which should have caused her to check herself. It is her failure to check herself and her continuing down the avenue of deception that really aggravates the whole of this proceeding.

[76] The deception continued May 14 through May 18. It was only when confronted by Mr. MacLellan she told him the dogs were deceased. Mr. MacLellan gave her the opportunity to go to the police; she did not. The only reasonable inference is she continued to take the view that avoiding taking personal responsibility and being held

accountable was preferable to being remorseful or contrite. Her sole concern was for herself.

ANALYSIS: ANIMAL CRUELTY AUTHORITIES

[77] I have reviewed the authorities. While I found them helpful on the issue of analysis, they are distinguishable on the facts. None of the cases concerned similar type of offence, or the number of animals, or the same type of offender such that the principle of parity is engaged. The range of sentence in the cases is very broad. I would commend to anyone following my analysis the decision in *R. v. Connors* wherein Judge Quantz provided an extensive review of the case law at paragraphs 22 to 32. The sentence range is from a suspended sentence to incarceration for one year at the top end. None of those cases listed by Judge Quantz, nor any of the cases provided by Mr. MacAulay, are on point. This is a unique set of circumstances. That should not be a surprise to anyone because sentencing is an individualized process as Madam Justice Kirkpatrick has so recently said in *Samuelson*.

[78] I am of the view, having reviewed all of the aspects of the law, that the objectives of a sentence on Count 4 should be denunciation and deterrence, but that I should not fail to consider and engage in consideration of rehabilitation as well. I take that from the cases, and I take that as well from the contents of s. 718. I am mindful, in speaking to that, that I have considered s. 718.2(b), that a sentence should be similar to sentences imposed on similar offenders for similar offences; I could find no case comparable. I am also mindful that where consecutive sentences are imposed the combined sentence should not be unduly long or harsh. I have considered that and the applicable law in

light of the submissions of Mr. MacAulay. I have considered that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances because both counsel have addressed jail. I have considered as well that all available sanctions, other than imprisonment, that are reasonable in the circumstances should be considered with particular attention to the self-rehabilitation steps taken by Ms. Paulsen.

[79] When I say that I am of the view that deterrence is significant, I have reviewed as well the remarks in the British Columbia Court of Appeal in *R. v. Bhalru*, 2003 BCCA 645 at paragraph 45, as well as *R. v. Johnson*, (1996) 112 CCC (3d) 225 at paragraph 29. Madam Justice Ryan, in *Johnson*, explained, similar to the characterization in *Cotton Felts*, that "we must assume that deterrent sentences have some effect." She continued:

Deterrence operates in a general way. Those that would break the law must know, and law-abiding citizens must be assured, that lawbreakers will receive sentences which reflect the seriousness of their crimes. This will deter some potential offenders, it will not deter others.

[80] I turn now to a consideration of the analysis as it relates to, not the facts and the interplay between the facts and the applicable law, but specifically the law of public mischief and the availability in a sentence involving a public mischief decision, of a conditional sentence order.

[81] Earlier I referred to *R. v. Little*, a decision of Madam Justice Saunders in the British Columbia Court of Appeal. In this instance, Ms Little had made a false report alleging the commission of an offence in relation to a previous person in her life. As

part of the sentencing consideration, given that the trial judge had imposed a sentence of nine months, Madam Justice Saunders referred to the language of Chief Justice Fraser, dissenting, in the Alberta Court of Appeal in *Hudon*, to which I referred earlier. In relation to, however, Ms. Little, she said at paragraph 15:

With respect, I consider that the conclusion of the sentencing judge overreaches in considering incarceration as the penalty for the offence.

The judge had said that the appropriate sentence was incarceration; he had considered a conditional sentence order. She then quoted from *R. v. Proulx*, a decision to which I have referred earlier, in the Supreme Court of Canada, and for ease of reference, *Proulx* is 2000 SCC 5 (CanLII) at paragraphs 102 and 106 wherein Chief Justice Lamer for the court provided that incarceration would provide more denunciation than a conditional sentence, but a conditional sentence could still provide significant denunciation as well as a significant deterrent effect if sufficiently punitive conditions are added to the order. And Chief Justice Lamer's perspective was that no conditional sentence order should do anything but start at house arrest.

[82] Madam Justice Saunders, having considered those portions of *Proulx*, said at paragraph 16 the following:

To the extent the sentencing judge appeared to consider that a conditional sentence could not be fashioned that would meet the requirements of deterrence and denunciation, I would disagree, and would prefer the view articulated by Chief Justice Fraser set out above. While a false allegation of a criminal offence is a serious matter, and the sentencing judge was correct in referring to denunciation and general deterrence as predominant principles, the requirement to harken to the circumstances of the offence and the offender remain.

I take from Madam Justice Saunders' remarks that what she is saying is that the fundamental principle of sentencing remains proportionality. With that I agree.

CONCLUSION

[83] Having reviewed the facts, the personal circumstances, the victim impact statements, the submissions of counsel and the applicable law, I turn to a consideration of the balancing exercise required. I find it useful to list the mitigating and aggravating features to delineate the analysis. I have already referred to much of this in my analysis of the facts and the applicable law.

[84] I will start with the mitigating factors:

1. Ms. Paulsen did not intend to harm or kill the dogs. She did not intend the consequences. She was not wanton or reckless. Her actions constituted distracted, thoughtless negligence, even though she had been repeatedly warned.
2. Ms. Paulsen was, at the time, in an emotionally fragile and unstable state due to the loss of her horse, the death of her stepfather, her abuse of alcohol, and family and relationship conflicts.
3. Ms. Paulsen is a first-time offender; she has no criminal record.
4. Ms. Paulsen lost her seven-year-old business, her employment, due to these events.
5. A bail condition precluded Ms. Paulsen owning a pet as of August 24, 2014 so her liberty has been affected since that date.
6. The public condemnation and vilification which has occurred is a mitigating factor in the determination of a fit and proper sentence. It is relevant to s. 718(e) and the need for Ms. Paulsen to provide reparations for the harm done.
7. Ms. Paulsen, in her 726 statement, did not express remorse, but Mr. Warren has, on her behalf, said that she was devastated and remorseful as at September of 2014. One would expect that her circumstances would remain the same.

8. The guilty plea: Although mitigating, the weight to be given these pleas is minimized by the overwhelming nature of the evidence against Ms. Paulsen.

I have considered those mitigating factors in arriving at a determination and measure of the fit and proper disposition.

[85] The aggravating factors at this sentencing include:

1. Leaving the dogs in the confined space in the rear of the truck was repeated conduct in the face of warnings. It was more than mere negligence.
2. Ms. Paulsen was in the business of dog-walking for seven years. She was in a position of trust to the dogs and their owners.
3. The number of dogs and the nature and manner of their deaths is an aggravating factor, though the consequence was unintended.
4. The post-offence conduct on May 13, 2014 is evidence Ms. Paulsen knew she had done something very wrong. Her initial panic led to a long drive to dispose of the bodies. It led to the concoction of a false story, getting a ride from a friend, and the attendance to the Brookwood off-leash dog park area to provide further deception. The number of steps taken and the number of false reports leads to only one inference; she was trying to cover up her wrongdoing. It was Ms. Paulsen who engaged the owners, the Langley Animal Protection Society, the police, the public and the media. Moreover, once she had an opportunity she went to clean the truck and did so secretly.
5. The allegation to Cst. Callens that someone either stole the dogs or they tried to escape from the back of the truck was one act contrary to s. 140(1)(c) of the *Criminal Code*. There were many others. Ms. Paulsen made an impassioned plea to the cameras. She repeated her criminal conduct many times on May 13, 14, right through to May 18. Her prolonged deception continued until confronted by Mr. MacLellan, and I find that that prolonged deception is an aggravating factor at this sentencing.

[86] In summary therefore, the paramount principle at this sentencing is general deterrence and denunciation. I must consider rehabilitation, particularly the steps of counselling, the steady employment, the quitting drinking in August of 2014 as a balance against the general deterrence and denunciation. I must consider the other

aggravating factors. I must also consider that reparations are not possible financially, and that Ms. Paulsen could be considered as one to be involved in community work service to cause her to learn to look outwards rather than inwards, having regard to both 718(e) and 718(f).

[87] In my view, the Crown's submission as to the sentencing range for these two offences is fair and reasonable. However, a sentence of eight to 12 months would be unduly harsh. The principles of totality and the measured balancing of sentencing require a sentence which is, in total, achieving the purpose and principles and objectives of sentencing, but also incorporating a principle of restraint.

[88] In order to impose a just and appropriate punishment and nothing more, I am of the view that the fit global sentence is six months. I have considered s. 742.1(a) of the *Criminal Code*. I am of the view that the self-centred focus of Ms. Paulsen, her emotional fragility and the nature of these offences, are such that I cannot achieve the promotion of a sense of responsibility in Ms. Paulsen and acknowledgement of the harm done to victims and the community except by imposing a deterrent sentence. I could not achieve a fit and appropriate sentencing to fulfil the purpose and principles if I was to impose a community-based sentence. Moreover, her circumstances would make a community-based sentence problematic; isolation is not something that she needs, given the circumstances of Ms. Paulsen.

[89] To assist in rehabilitation there will be a probation order for a period of two years. It will contain these terms and conditions:

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

2. You will report within 96 hours of your release from custody, and thereafter as directed, to a probation officer;
3. You will attend to, participate in, and complete such counselling as is directed by your probation officer.

ANCILLARY ORDERS

[90] I have not completed my reasons because I need to deal with each count separately, so I am going to enter next into the ancillary orders.

1. Ms. Paulsen you are, pursuant to s. 24(3) of the *Prevention of Cruelty to Animals Act*, prohibited from owning or having custody or control of an animal for a period of ten years.

2. You are, pursuant to s. 24(3) of the *Prevention of Cruelty to Animals Act*, prohibited from having custody or control of an animal for remuneration or business purposes for life. For a person who has been around animals and barns for most of her life, and who has chosen to be involved with animals, these ancillary orders can only be considered additional punishment.

[91] On Count 4, the sentence is three months. On Count 6, the sentence is three months consecutive. The probation order will follow.

[92] The victim fine surcharge is not waived; I will give you to October the 31st, 2015 to pay the victim fine surcharge.

[93] Those are my reasons; the matter is concluded. Are there counts to be stayed, Mr. MacAulay?

[94] MR. MacAULAY: Your Honour, the Crown directs a stay of proceedings relating to all counts, 1, 2, 3 and 5 of the Information. And just for clarification, Your Honour, the probation order attaches to...

[95] THE COURT: Count 2. Pardon me, Count 6.

[96] MR. MacAULAY: Count 6. Thank you, Your Honour.

[97] THE COURT: The *Criminal Code* matter.

(REASONS FOR SENTENCE CONCLUDED)