

10 of 14 DOCUMENTS

Case Name:

R. v. Bannon

**Between
Her Majesty the Queen, and
Glen Arthur Bannon, Defendant**

[2011] O.J. No. 2620

2011 ONSC 3000

Court File No. 7072

Ontario Superior Court of Justice

E.E. Gareau J.

Heard: February 17, 2011.

Judgment: June 9, 2011.

(49 paras.)

Counsel:

D. Foulds, Counsel for the Crown.

D. Oraziotti, Counsel for the Defendant.

1 E.E. GAREAU J.:-- The accused, Glen Arthur Bannon, was charged with numerous offences under the *Criminal Code*, including breach of trust, accepting "secret commissions" related to the affairs of his principal, namely the Anishinabek Police Service, and four counts of theft of various automobiles contrary to s. 334(b)(1) (one count); and s. 334(a) (three counts) of the *Criminal Code of Canada*

2 On August 19, 2010, the accused, Bannon, entered pleas of guilt to the breach of trust charge contrary to s. 122 of the *Criminal Code of Canada* and to the charge related to the acceptance of "secret commissions" contrary to s. 426(1)(a)(ii) of the *Criminal Code of Canada*. This represented pleas to counts 1 and 2 of the indictment. Counts 4, 5, 6, and 7 of the indictment related to the theft of vehicles were withdrawn at the request of the Crown. The pleas of guilt were entered before me and convictions were registered against Mr. Bannon.

3 The sentencing of Mr. Bannon on counts 1 and 2 of the indictment was adjourned and in the intervening period the accused brought an application for a stay alleging a breach of s. 7 of *The Canadian Charter of Rights and Freedoms*.

4 The court heard this application on December 2 and 3, 2010. The application was dismissed with brief oral Reasons with written Reasons to follow, which were released on December 20, 2010.

5 The court heard submissions as to sentence on February 17, 2011 with sentencing adjourned to June 8, 2011.

6 Also charged in the indictment, in addition to Mr. Bannon, was David Edward Worth, and numbered companies 212321 Ontario Limited doing business as Highland Ford Sales Limited and 746424 Ontario Limited doing business as Cartgate Investments Inc. Mr. Worth and the numbered companies were charged with paying the "secret commissions" to Mr. Bannon while he was employed with the Anishinabek Police Service, contrary to s. 426(1)(a)(i) of the *Criminal Code of Canada*. Specifically, counts 1, 2 and 3 of the indictment reads as follows:

- "1) Glen Arthur Bannon, also known as Glenn Bannon, being an official, namely, Chief of the Anishinabek Police Service, stands charged that he on or between the 4th day of April, 1994 and the 7th day of September, 2005 at the City of Sault Ste. Marie in the said Region, and elsewhere in the Province of Ontario, did, in connection with the duties of his office, commit the offence of Breach of Trust, contrary to Section 122 of the Criminal Code of Canada; and
- 2) Glen Arthur Bannon, also known as Glenn Bannon, stands further charged that he on or between the 4th day of April, 1994 and the 7th day of September, 2005 at the City of Sault Ste. Marie in the said Region, and elsewhere in the Province of Ontario, being an agent, did commit the offence of corruptly demanding, accepting, offering or agreeing to accept a reward, advantage or benefit as consideration for doing or forbearing to do, or having done or forborne to do acts in relation to the affairs of his principal, namely the Anishinabek Police Service, contrary to Section 426(1)(a)(ii) of the Criminal Code of Canada; and
- 3) David Edward Worth, 212321 Ontario Limited, doing business as Highland Ford Sales Limited, 68 Great Northern Road, Sault Ste. Marie, Ontario and 746424 Ontario Limited, doing business as Cartgate Investments Inc., 90 Texas Avenue, Sault Ste. Marie, Ontario stand charged that on or between the 4th day of April, 1994 and the 7th day of September, 2005 at the City of Sault Ste. Marie, in the said Region, and elsewhere in the Province of Ontario, did commit the offence of corruptly giving, offering or agreeing to give or offer to an agent, namely, Glen Bannon, a reward, advantage or benefit as consideration for doing or forbearing to do, or having done or forborne to do acts in relation to the affairs of his principal, namely the Anishinabek Police Service, contrary to Section 426(1)(a)(i) of the Criminal Code of Canada."

7 The crown exercised its prosecutorial discretion by accepting a plea by the numbered company, 746424 Ontario Limited, and withdrawing the charges against the other numbered company and David Edward Worth personally.

8 On August 19, 2010, I accepted a joint submission by the crown and the defence and a fine was imposed against 746424 Ontario Limited in the amount of \$86,956.52 plus a victim fine surcharge in the amount of \$13,043.48 for a total of \$100,000.00. It was further ordered that the fine imposed be paid in full on August 19, 2010.

9 An extensive agreed statement of facts was filed as Exhibit 1 when the accused Bannon entered his plea of guilty to counts 1 and 2 in the indictment. Several paragraphs are repeated below in order to provide context for this decision:

1. Glen Arthur Bannon is fifty-seven (57) years of age, born July 11, 1953. He resides in Echo Bay, ON, east of Sault Ste. Marie. From April of 1994 to September of 2004 he was Chief of the Anishinabek Police Service.
2. 746424 Ontario Limited is the holding company that operates the business of Highland Ford at 68 Great Northern Road in Sault Ste. Marie, ON. Highland Ford is in the business of selling, buying,

leasing and servicing new and used vehicles. The President of the company and its chief executive officer is David Worth. Highland Ford has operated a Ford dealership at its current location since 1968. David Worth has been the general manager or CEO since 1992.

BACKGROUND

3. The Anishinabek Police Service (APS) was founded in 1994. It is an autonomous First Nations Police Service with approximately 60 police officers headquartered in Garden River, close to Sault Ste. Marie, Ontario. The APS serves a population of over 9,000 persons with 15 detachments in 17 First Nations communities in Ontario. The APS Police Governing Authority acts as a board of directors to the APS. The members of the Police Governing Authority (PGA) directed and supervised the overall operations of the APS. The PGA set the administrative policies and participated in the selection of the Chief of the APS. The Chief reported to the PGA.
4. The first Police Chief of the APS was Glen Bannon. He was given the authority by the PGA to purchase and dispose of police service assets, which included vehicles, snow machines and boats. Mr. Bannon routinely dealt with Highland Ford regarding the purchase and sale of police service assets.
5. By arrangement with the Ontario Provincial Police (OPP) in 1996, Mr. Bannon was also given the authority to purchase and dispose of vehicles on behalf of the OPP First Nations Police Services Program. The First Nations Police Services (FNPS) program was an OPP initiative that served aboriginal communities not having an autonomous police service such as the APS. The program allowed the OPP to partner with an aboriginal community to deliver policing services. Providing vehicles for police officers to perform their duties was part of the FNPS program.
6. Between 1994 and 2004, one hundred and seventy-six (176) vehicles (which included cars, trucks, sport utility vehicles, vans, snowmobiles, all terrain vehicles and snowmobile trailers) were leased by the APS from Highland Ford. Payments totalling \$4,015,060.10 were made to Highland Ford by APS between 1997 and 2004.
7. Additionally, on behalf of the OPP FNPS program, between 1997 and 2004, Mr. Bannon, through the APS, purchased ninety-two (92) vehicles (which included cars, trucks, SUVs and ATVs) from Highland Ford. Payments totalling \$2,354,118.35 were made to Highland Ford by APS on behalf of the OPP FNPS program.

SECRET COMMISSIONS

8. Between 1999 and 2004, Highland Ford gave the following rewards, advantages or benefits, directly or indirectly, to Glen Bannon:
 - a) a 2000 Bombardier Skidoo valued at \$6,532.35 in December, 1999;
 - b) a television and home entertainment system valued at \$10,807.00 in April of 2000;
 - c) lease payments of \$902./month between February, 2001 and March, 2003 on account of the lease of a 2001 Ford Expedition in the name of Barbara Bannon (spouse of Glen) from Highland Ford, totalling \$21,648.00;
 - d) the re-build of a Chevy high performance stock car engine in the amount of \$5,851.50 in June of 2001;
 - e) a 1999 Skidoo valued at \$8,023.93 in November of 2001;
 - f) a 1977 MGB valued at \$12,075.00 in January of 2002;

- g) a double-side snowmobile trailer valued at \$4,012.50 in March of 2003;
 - h) lease payments of \$942./month between April, 2003 and October, 2004 on account of the lease of a 2003 Ford Expedition in the name of Barbara Bannon (spouse of Glen) from Highland Ford, totalling \$17,898.00;
 - i) a Polaris ATV valued at \$9,737.00 in May of 2003;
 - j) the re-build of a farm tractor engine valued at \$5,852.20 in June of 2003;
 - k) a 1998 Ford F150 pick-up truck, apparently purchased on behalf of the OPP FNPS program, later sold to Carver Bannon (son of Glen) valued at \$16,000.00 in July, 2003; and
 - l) a 2004 F Series 4 x 4 Super Crew pick-up truck, obtained by Mr. Bannon, in part, by Highland Ford using sale proceeds of the trade-in of a 2003 Ford Expedition, Eddie Bauer Edition, formerly purchased on behalf of the OPP FNPS program, valued at \$24,000.00, in April of 2004.
9. The total value of rewards, advantages or benefits paid by Highland Ford, directly or indirectly, to Glen Bannon was \$142,437.48.
22. Glen Bannon, APS Chief, sought and received the rewards, advantages or benefits from Highland Ford, as consideration for showing favour to Highland Ford regarding the purchase or lease of vehicles by the police service or the OPP First Nations Police Services program.

BREACH OF TRUST

26. Glen Bannon, as APS Chief, was a public officer and expected to act for the public good. Between 1999 and 2004, Mr. Bannon did not act for the public good in certain aspects of his conduct as APS Chief. He breached the standard of responsibility and conduct demanded of him as APS Chief. Mr. Bannon acted dishonestly and corruptly by obtaining significant personal benefits for himself and his family. The breaches represented a serious and marked departure from the standards expected of an individual in Mr. Bannon's position of public trust. The following paragraphs are examples.
27. Mr. Bannon received rewards, advantages or benefits paid by Highland Ford, directly or indirectly, in the amount of \$142,437.48, as outlined in paragraphs 7 to 23 above. Public officials are not permitted to receive rewards, advantages or benefits from companies doing business with their principal, namely, APS. No member of the PGA of the APS had any knowledge Mr. Bannon received any rewards, advantages or benefits from any source.
28. On July 30, 2001, Glen Bannon registered a 1987 Harley Davidson motorcycle model FLHTP, VIN XXXXXXXXXXXXXXXXXXXX in his own name. The motorcycle had been the property of the OPP and was formerly registered in the name of Her Majesty the Queen in Right of Ontario. OPP records show the motorcycle was transferred to the APS. However, the motorcycle never became part of the APS fleet and witnesses observed Mr. Bannon operating the motorcycle in the Echo Bay - Garden River area. On October 4, 2004, Glen Bannon sold the motorcycle to a Sault Ste. Marie resident for \$5,500.00. Mr. Bannon retained the sale proceeds personally. There is no evidence of any payment to APS or the OPP on account of the motorcycle. [Numbers replaced with X's by LexisNexis Canada.]
29. In February, 2003, Glen Bannon purchased and registered a 1997 Honda Four Trax 300 All Terrain Vehicle (ATV) VIN XXXXXXXXXXXXXXXXXXXX in his own name. The ATV was previously registered to Her Majesty the Queen in Right of the Province of Ontario (OPP). There is no evidence Mr. Bannon paid the OPP for the ATV. On May 15, 2003 Mr. Bannon sold the

ATV to a third party for \$2,000.00. Mr. Bannon retained the sale proceeds personally. There is no evidence of any payment to APS or the OPP on account of the ATV. [Numbers replaced with X's by LexisNexis Canada.]

30. In September, 2001, the APS purchased a 2002 Ford Crown Victoria VIN XXXXXXXXXXXXXXXXXXXX from Highland Ford Sales Ltd. on behalf of the Ontario First Nations Police Services program. The vehicle, which was the property of the FNPS program, was assigned to the Walpole Island First Nation to be used by police serving that First Nation. In September of 2003, the vehicle was transferred to a third party at the instance of Mr. Bannon, without the consent of the FNPS program or the APS. Part of the proceeds of the sale of the vehicle (\$5,700.) were eventually given to Mr. Bannon. On April 15, 2004 Mr. Bannon deposited a cheque in that amount into his joint personal account at a Sault Ste. Marie bank. No money on account of the vehicle was ever paid to the FNPS program or the APS. [Numbers replaced with X's by LexisNexis Canada.]
31. In September, 2002 on behalf of the APS, Glen Bannon attended at Highland Ford and leased a green 2003 Ford Expedition Eddie Bauer Edition VINXXXXXXXXXXXXXXXXXX. The lease was for a period of 36 months with a monthly payment of \$1,189.00. The APS made the monthly lease payments from September of 2002 until September of 2004 at a cost of \$1,189.00 per month. In March, 2003, without the knowledge or consent of the APS Police Governing Authority, Mr. Bannon gave the vehicle to the Chief of another autonomous First Nations Police Service. Mr. Bannon made no arrangement with the other police service for payment of the lease. The other police service did pay for routine maintenance of the vehicle. In addition to the loss of the use of the vehicle, Mr. Bannon caused the APS to make a total of \$21,402.00 in lease payments on account of a vehicle not in his possession. [Numbers replaced with X's by LexisNexis Canada.]
32. In March and April of 2004, Mr. Bannon received a total benefit of \$7,500.00 from a vendor of police vehicle equipment doing business with the APS, which was not disclosed to the Police Governing Authority.

10 The court must determine the fit and appropriate sentence to be imposed for the offences in counts 1 and 2 of the indictment referred to above.

11 Counsel for the accused is asking the court to impose a conditional sentence suggesting that it is appropriate given the background of the accused, the mitigating factors in this case and that it is consistent with s. 742.1 of the *Criminal Code of Canada* and the sentencing principles set out in s. 718 of the *Criminal Code of Canada*

12 Counsel for the crown is asking the court to impose what he referred to as "real jail time". The crown submits that the principle of general deterrence is paramount given the nature of the offences which makes a conditional sentence inappropriate. The crown is seeking a sentence of 2 to 3 years in a federal penitentiary.

13 The court is guided by s. 718 of the *Criminal Code of Canada* which sets out a list of principles and objectives that the court must consider when determining the appropriate sentence to be imposed. Section 718 reads as follows:

718. The fundamental purpose of sentencing is to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful and safe society by imposing just sanctions that have one or more of the following objectives:

(a) to denounce unlawful conduct;

(b) to deter the offender and other persons from committing offences;

- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgement of the harm done to victims and to the community.

14 Mr. Bannon is of Ojibway heritage. This requires the court to pay close attention to s. 718.2(e) of the *Criminal Code of Canada* which directs the court to consider all available sanctions that are reasonable in the circumstances for an offender "with particular attention to the circumstances of aboriginal offenders." All other punishment other than imprisonment should be considered and incarceration should be used only when all other penalties are inappropriate given the nature of the offences and the circumstances of the offender.

15 Given the provision in s. 718.2(3), I have applied my mind to any unique systemic or background circumstances which may have existed with respect to Mr. Bannon.

16 In this regard, the court has the benefit of a *Gladue* Report prepared by Mrs. Hollee L. Tijerina, Wiidohkwin, Gladue Report Specialist which appears at Tab 1 of Exhibit 2. I have carefully reviewed that report and considered the comments and observations in it.

17 That report sets out Mr. Bannon's background and personal circumstances.

18 Mr. Bannon is currently 57 years of age. He is married and he and his wife Barbara have four adult children.

19 He was born and raised in the Fort William First Nation. His father, Moses Bannon, was a registered status Indian. His mother was of Ukrainian descent. Moses Bannon, Glen Bannon's father, spoke fluent Ojibway and had knowledge of Ojibway teachings, customs and practices. His father was also an abusive binge drinker and an alcoholic and as a result, domestic violence in the family home was a usual occurrence and children were very often present.

20 Mr. Bannon resided in the Fort William First Nation until he was approximately 20 years old. From grades 1 - 3 he was educated by Jesuits in a one-room school house. From grades 4 - 8 Glen Bannon attended approximately 14 different elementary schools. Typically, he and his fellow students were moved within months of attending because school administrators "did not know what to do with Indians". Glen recalls being subjected to "special rules" at school and being ridiculed by non-aboriginal children for being Indian.

21 In 1976, he began his career in the First Nations Policing Program in the Fort William First Nation community as an Indian Constable, which was administered by the Ontario Provincial Police. Mr. Bannon extended his education at the Ontario Police College in Aylmer, Ontario working alongside other Indian constables as well as non-Indian OPP constables.

22 Mr. Bannon continued to police his home community until 1986. At that time, he took a two-year leave of absence from policing as a result of being diagnosed with kidney cancer. After successful treatments for cancer, Mr. Bannon returned to policing in 1988.

23 In 1990, the applicant accepted a two-year secondment in Moosonee, Ontario where he began teaching for the Law and Security Program at the James Bay Education Council. He remained a teacher until 1992 and then relocated back to the Fort William First Nation. He resumed policing until 1994.

24 In 1994, Mr. Bannon was offered the Chief of Police position with the Anishinabek Police Service (APS) located in Garden River First Nations. He welcomed the change and had full support of his family. He and his wife bought a home in Echo Bay, Ontario where they still live.

25 As the Chief of Police, the applicant describes himself as the one to have brought the organization into acceptable

standard of operations, gained equitable salaries for Aboriginal officers and obtained the necessary training and equipment for Aboriginal officers.

26 The Anishinabek Police Service was said to be below the standard of operation in comparison to the OPP. As the Chief of Police, the applicant demanded that all APS officers have a formal post-secondary education, obtain a certificate of result and meet all the requirements at the Ontario Police College. This requirement was to ensure that APS had equal qualifications to their OPP colleagues so as to justify equitable salaries.

27 Mr. Bannon was terminated as Chief of Police for the Anishinabek Police Service in September, 2004.

28 After his policing career ended, Mr. Bannon has tried several businesses and currently operates an insulation business, known as Algoma Insulation.

29 It would be an understatement to say that Mr. Bannon has experienced a significant fall from grace as a result of his criminal charges and convictions. He has lost the respect of the Native community and the status within that community in being the Chief of Police. He has experienced social isolation and has been ostracized as a result of his criminal activity. Mr. Bannon has experienced a significant reduction in pay and undoubtedly as a result, a significant reduction in his standard of living as a result of losing his employment as Chief of Police of the Anishinabek Police Service. As indicated at Tab 2 of Exhibit 2, in his last full year as Chief of Police, Mr. Bannon earned \$113,393.81. Up to the time of his termination on September 13, 2004, Mr. Bannon earned \$112,539.20. In 2009, as the operator of Algoma Insulation, Mr. Bannon had an income of \$15,224.00 as indicated in his notice of assessment. Obviously, the loss of employment has had a significant negative financial impact on Mr. Bannon.

30 By all accounts, Mr. Bannon was a pillar of his community, which he served in various volunteer positions. Mr. Bannon and his wife, Barbara, continue to provide valuable work and general donations to Habitat for Humanity, as indicated in the letter dated July 6, 2010 at Tab 3A of Exhibit 2. Mr. Bannon also continues to make charitable donations by way of insulation and installation of insulation to such worthwhile causes as St. George's Church and the Free Methodist Church as indicated in Tab 3B of Exhibit 2.

31 There are 15 separate letters of recognition and character references concerning Mr. Bannon from various individuals and organizations which are set out at Tab 4 of Exhibit 2. He is described as a "trusted friend and a committed family man", and a "caring and compassionate individual", and as someone who is a "courteous, dependable, honest and hardworking individual who is always willing to help out when he is called upon."

32 In 2002, Mr. Bannon was awarded the Queen's Golden Jubilee Medal, an award to recognize the 50th Anniversary of the ascension of Her Majesty Queen Elizabeth II to the throne and awarded to individuals who have made a significant contribution to Canada, to their community, or to their fellow Canadians. Mr. Bannon was recognized by the Department of Canadian Heritage of the Government of Canada as someone deserving of this award.

33 Mr. Bannon has entered a guilty plea and is without a criminal record. This, along with the facts noted above, are significant mitigating factors when considering a proper and fit sentence to be imposed on Mr. Bannon.

34 The guilty plea itself is an indication of remorse and Mr. Bannon has indicated to the court that he was "truly sorry" for his criminal activity. These expressions of remorse must be tempered by the comments on page 22 of the *Gladue* report prepared by Mrs. Tijerina which reads as follows:

"It appears that he harbours a lot of anger toward his current situation and the impact that this has had on his family; this is to be expected. He believes that he has been mentally and emotionally beaten into submission by the government and that his criminal matters are politically and racially motivated. He appeared emotional when expressing this view."

35 However, there are significant aggravating factors which must be considered as well. Mr. Bannon received a

substantial financial benefit from his criminal activity, totalling \$142,437.48 in rewards, advantage or benefits paid to him. It has been suggested that this has been a "victimless crime" in that the advantages secured were Mr. Bannon's alone and the payments made were paid by Highland Ford alone, who freely went along with the arrangement. It is suggested that no third parties were harmed by this arrangement. I do not accept this suggestion. Mr. Bannon was a police officer, in fact the Chief of Police, entrusted with the responsibility of upholding the law, enforcing the law. If the community cannot rely on the Chief of Police not to be engaged in criminal activity, how can it have confidence in its policing institutions and the rule of law? In this way, the community that Mr. Bannon was to serve was victimized. Mr. Bannon was a public official entrusted with a duty to protect the public and uphold the law. The breach of trust by a Chief of Police is an aggravating circumstance in this case of considerable weight.

36 Mr. Bannon seeks a conditional sentence. Section 742.1 of the *Criminal Code* allows the court to impose a conditional sentence of imprisonment where the offence is not punishable by a minimum term of imprisonment and the court: a) imposes a sentence of imprisonment of less than 2 years, and b) is satisfied that serving the sentence in the community would not endanger the safety of the community and would be consistent with the principles of sentencing as set out in Sections 718 to 718.2 of the *Criminal Code*.

37 The imposition of conditional sentences was considered by the Supreme Court of Canada in *R. v. Proulx*, [2000] 1 S.C.R. 61. Mr. Bannon is certainly eligible for consideration of a conditional sentence under the provisions of s. 742.1 of the *Criminal Code* and the principles set out in *Proulx*. It is to be noted from *R. v. Proulx* that a conditional sentence must be able to achieve the objectives of denunciation and deterrence, when that is the overriding consideration given the particular offence and the particular offender. Put simply, if the court does not feel that a conditional sentence can satisfy the need for general deterrence or specific deterrence, then it should not be imposed by the court.

38 This principle does not change because Mr. Bannon is of Aboriginal heritage. Although s. 718.2(e) of the *Criminal Code* requires the court to pay "particular attention to the circumstances of Aboriginal offenders" and therefore be very mindful of the traditional Aboriginal concepts of justice which hold restorative justice to be the primary objective, s. 718.2(e) does not alter the fundamental duty of the court to impose a sentence that is fit for the offence and the offender. It is, therefore, open to the sentencing court to give primary consideration to the principles of denunciation and deterrence where the offence requires it regardless of the fact that the offender is an Aboriginal person. In coming to this conclusion, I rely on the case of *R. v. Wells*, [2000] 1 S.C.R. 207 (S.C.C.).

39 Mr. Bannon is a public officer who has breached his public duty contrary to s. 122 of the *Criminal Code of Canada*. Police officers have been held to be in a special category of offenders when it comes to charges of breach of trust. As noted in paragraph 29 in the case of *R. v. Cook*, [2010] O.J. No. 4414, a decision of Hill, J.:

"29 Police officers, as officials discharging public duties, occupy a special position of trust in the community: *R. v. LeBlanc* (2003), 180 C.C.C. (3d) 265 (N.B.C.A.) at para. 32; *R. v. McClure* (1957), 118 C.C.C. 192 (Man. C.A.) at 200; *United States v. Rehal*, 940 F.2d 1, 5 (1st Cir. 1991). "[A] heavy trust and responsibility is placed in the hands of those holding public office or employ"; *R. v. Berntson* (2000), 145 C.C.C. (3d) 1 (Sask. C.A.) at para. 24 (aff'd [2001] 1 S.C.R. 365, at para. 2). Individuals working in the justice system "owe a duty to the public to uphold the values of that system" (*R. v. Feeney et al.* (2008), 238 C.C.C. (3d) 49 (Ont. C.A.) at para. 5) with the administration of justice "depend[ant] on the fidelity and honesty of the police": *R. v. McClure*, supra, at 200."

40 A breach of trust is considered in law an aggravating factor on sentence. As indicated in paragraph 38 of the *R. v. Cook* decision, cited above, general deterrence and denunciation drive the sentencing process in abuse of trust prosecutions. I adopt the observations at paragraph 17 of the decision of *R. v. Ryan*, [2004] N.S.J. No. 338, quoted at paragraph 38 in *R. v. Cook*, that "the integrity of the police forces in Canada must be maintained to its highest level and when there is any departure by criminal conduct of an officer the message must be clear that such will not be tolerated."

41 In my view, the law is clear that the primary consideration in sentencing public officials who have breached their public duty is deterrence and denunciation.

42 Having said this, I am very sensitive to the *Gladue* factors and to s. 718.2(e) of the Criminal Code which requires consideration of the systemic and background factors that have contributed to the difficulties faced by Mr. Bannon as a person of Aboriginal heritage. The *Gladue* report prepared by Mrs. Tijerina indicates that Mr. Bannon has experienced the following systemic background factors:

- (a) substance abuse - Mr. Bannon is a recovering alcoholic;
- (b) poverty - Mr. Bannon grew up dirt poor. His father's alcoholism exacerbated family poverty;
- (c) racism - Mr. Bannon was subject to racial prejudice and was taught to conceal his Indian identity as a means of protection from racism;
- (d) lack of employment opportunity - Mr. Bannon does not have a post-secondary education and had to leave Fort William to pursue career change;
- (e) Indian residential and day school - Mr. Bannon's use of the language resulted in corporal punishment. This was also the case in residential and day schools;
- (f) family breakdown - alcohol-related domestic violence was prevalent in the Bannon's family home growing up and in his community.

43 The aforementioned background is troubling. The crown argues that there is no connection between the accused's Aboriginal background and the commission of the offence, which, the crown argues, is rooted in greed. In dealing with this position, I am guided by the recent decision of the Ontario Court of Appeal in *R. v. Collins* 104 O.R. (3d) 241. At paragraph 32 of that decision, the court makes the following observation:

"There is nothing in the governing authorities that places the burden of persuasion on an aboriginal accused to establish a causal link between the systemic and background factors and the commission of the offence. Further, s. 718.2(e) and the *Gladue* approach to sentencing aboriginal offenders is not about shifting blame or failing to take responsibility; it is recognition of the devastating impact that Canada's treatment of its aboriginal population has wreaked on the members of that society."

44 Absent Mr. Bannon's Aboriginal heritage and the *Gladue* factors, I would have imposed a considerably longer sentence. I have taken into account the root systemic difficulties that Mr. Bannon has experienced as an Aboriginal person in imposing a sentence that I believe is fit and just.

45 The accused has asked the court to direct its mind to the principle of parity in sentencing suggesting that Mr. Bannon should receive similar treatment to that received by David Worth or the numbered company that pled guilty to count 3 in the indictment. With respect to this, I repeat what I stated in paragraphs 21 and 22 of my decision released on December 20, 2010 with respect to the Charter issue as follows:

21. The applicant takes the position that there should be parity in the way he is treated and the way Mr. Worth was treated and that there is a serious element of unfairness in that Mr. Worth and Mr. Bannon will be treated differently in the sentences imposed upon them. Mr. Worth will have escaped a criminal conviction and a criminal record whereas Mr. Bannon will be saddled with a conviction and a record. Counsel for the defence contends that the principle of parity is encoded into the *Criminal Code of Canada* in s. 718.2 which reads as follows:

"A court that opposes a sentence shall also take into account the following principles: (b) a sentence should be similar to sentences imposed on similar offenders for similar

offences, committed in similar circumstances."

22. In my view, there is little commonality between Mr. Worth and Mr. Bannon. Mr. Worth is a businessman operating Highland Ford, a Ford dealership in the City of Sault Ste. Marie, Ontario. He is not a public official or a public servant. Mr. Bannon was a public official as Chief of Police of the Anishinabek Police Service. He is entrusted with a duty to protect the public and uphold the law. Although count 2 in the indictment relating to Mr. Bannon and count 3 in the indictment relating to Mr. Worth are "similar offences" contemplated by s. 718.2 of the *Criminal Code of Canada*, the charge of breach of trust against Mr. Bannon puts him in a different category of offender than Mr. Worth. This is not a "similar offence" which is a key component in the application of the parity principle in s. 718.2 of the *Criminal Code of Canada*.

46 On June 8, 2011 counsel for the defence tendered a medical report dated June 8, 2011 from Dr. Berry, who is the Medical Director of the Algoma Regional Renal Program at the Sault Area Hospital. This report was entered as Exhibit 3. The report indicates that since 2005 Mr. Bannon has received care for progressive diabetic nephropathy, or in other words, kidney disease. Mr. Bannon's disease has progressed to the point where he will likely require dialysis within the next 3 to 6 months. This dialysis requires the placement of a catheter into Mr. Bannon's abdominal cavity. The report indicates once dialysis is undertaken a sterile environment is crucial as serious infections can cause difficulties as serious as further dialysis being discontinued. In his report, Dr. Berry expresses concern that any incarceration will increase Mr. Bannon's risk of infection and complications.

47 I have carefully considered this report and Dr. Berry's comments and concerns. I am not satisfied that Mr. Bannon's health will be compromised if a period of incarceration in a provincial institution was imposed as a sentence, nor am I satisfied that adequate medical provisions cannot be made to ensure that Mr. Bannon's medical needs are met. Undoubtedly, there have been individuals who received sentences of incarceration who have had medical difficulties and the facilities have managed these difficulties. One would expect a heightened sense of vigilance given what is at stake.

48 The gravity of the offences in counts 1 and 2 of the indictment committed by a person entrusted with protecting the law requires a period of incarceration and the principles of deterrence and denunciation cannot be adequately addressed by the imposition of a conditional sentence in the community. In my view, a conditional sentence would fall outside of a fit and just sentence considering the offences and the position of trust held by Mr. Bannon at the time of the commission of the offences. A conditional sentence in this case sends the wrong message about police officers who breach the public trust, to both the policing profession and to the community at large.

49 Mr. Glen Arthur Bannon, on count 1 of the indictment, being the breach of trust charge contrary to s. 122 of the *Criminal Code of Canada*, I sentence you to a period of incarceration of 12 months. Considering that count 1 is the substantive count, on count 2 of the indictment, I sentence you to a period of incarceration of 4 months to be served concurrently to the sentence imposed in count 1 of the indictment.

E.E. GAREAU J.

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