

1 THE COURT: Just prior to jury selection  
2 for his trial, the accused, with the consent of  
3 the Crown, entered a plea of guilty to a charge  
4 of unlawfully possessing cocaine for the purpose  
5 of trafficking, contrary to s.5(2) of the  
6 Controlled Drugs and Substances Act.

7 A further count of possession of monies  
8 obtained by crime was, with leave of the Court,  
9 withdrawn.

10 Following re-election of the mode of trial,  
11 the jury panel was discharged. Despite its  
12 lateness his plea of guilty is nonetheless a  
13 mitigating factor that must be duly considered  
14 and assessed prior to imposition of sentence.

15 In his submission, the learned Crown  
16 Attorney indicated that members of the R.C.M.P.  
17 stopped a motor vehicle after it failed to signal  
18 a left turn in this City. The accused, who was a  
19 passenger in the front seat, was observed to be  
20 holding a device between his legs known as a  
21 "Bong". This device is used to smoke illicit  
22 drugs.

23 Following a CPIC query, the accused was  
24 arrested on an outstanding warrant for an unpaid  
25 fine. The smoking device, as well as bundled and  
26 unbundled cash totalling in excess of \$3400  
27 located during a cursory search of the person of

1 the accused, was seized. As the accused  
2 consented to an order of forfeiture, the subject  
3 monies as well as all other drug paraphernalia is  
4 forfeited.

5 Following the arrest of the accused, the  
6 officer opened the passenger door and immediately  
7 observed a clear plastic bag between the seat and  
8 well of the door. This bag contained a chunk of  
9 cocaine weighing 16.9 grams. Its value for  
10 trafficking purposes was estimated to be at least  
11 \$1700, with one gram quantities selling for \$100  
12 constituting the usual sale.

13 Subsequent search warrants resulted in the  
14 seizure of drug paraphernalia from the car and  
15 residence of the accused and co-accused.

16 The accused, a resident of these  
17 territories, is 53 years of age. He is an  
18 aboriginal offender with a Grade 8 education.  
19 There was a child born from his two year  
20 relationship with the co-accused. This  
21 relationship ended in December of last year. In  
22 the past, he has been employed as a heavy  
23 equipment operator.

24 The determination of a fit and proper  
25 sentence for a specific offender and for a  
26 specific offence is the most difficult of all  
27 judicial tasks.

1           The fundamental principle of sentencing is  
2 set forth in s.718.1 of the Criminal Code of  
3 Canada. It reads:

4           A sentence must be proportionate to  
5 the gravity of the offence and the  
6 degree of responsibility of the  
7 offender.

8           In Regina v. Priest (1996), 110 C.C.C. (3d)  
9 (Ont. C.A.) at 297-98, Rosenberg J.A. described  
10 the proportionality requirement in this way:

11           The principle of proportionality is  
12 rooted in notions of fairness and  
13 justice. For the sentencing court  
14 to do justice to the particular  
15 offence, the sentence imposed must  
16 reflect the seriousness of the  
17 offence, the degree of culpability  
18 of the offender, and the harm  
19 occasioned by the offence. The  
20 court must have regard to the  
21 aggravating and mitigating factors  
22 in the particular case. Careful  
23 adherence to the proportionality  
24 principle ensures that this offender  
25 is not unjustly dealt with for the  
26 sake of the common good.

27           As will be noted from s.718 of the Criminal

1 Code of Canada, the purpose and objectives of  
2 sentencing include,

- 3 - the denunciation of unlawful conduct,
- 4 - specific deterrence to deter the accused,
- 5 - general deterrence to deter others,
- 6 - and the rehabilitation of offenders.

7 For whatever purpose a particular sentence  
8 is imposed, the sentence must be fit for the  
9 specific offender and specific offence.

10 Bearing in mind the principle of  
11 proportionality, the first subject is a  
12 consideration of the seriousness of the offence.  
13 The gravity of the offence of possession for the  
14 purpose of trafficking is reflected in s.5(3) of  
15 the Controlled Drugs and Substances Act. It  
16 provides that every person who commits the  
17 offence is liable to imprisonment for life.

18 Under s.10 of the Act, the specific purpose  
19 of sentencing under this legislation, as well as  
20 the circumstances to be taken into account, are  
21 set forth. A previous conviction for a  
22 designated substance offence is to be considered  
23 as a relevant aggravating factor.

24 The accused is not a stranger to the courts.  
25 His extensive record of convictions is simply  
26 atrocious. His record of previous offences,  
27 which takes two-and-a-half pages of Exhibit S1 to

1 list, includes not one, but two designated  
2 substance offences. Of particular concern is the  
3 repetitiveness of criminal behaviour over the  
4 last three decades and record for convictions of  
5 violence. Aside from convictions for assault and  
6 assault with a weapon, on three separate  
7 occasions he has been sentenced to three years'  
8 imprisonment for robbery.

9 The drug in this case is crack cocaine.  
10 Particularly significant is the observation of  
11 the learned Crown Attorney that there is in this  
12 community a very serious cocaine problem. Given  
13 the harmful effect of this drug, he submits that  
14 the Court, through its sentence, should send a  
15 message to the accused and to others in this  
16 community that "involvement in the drug trade,  
17 particularly on the commercial scale where  
18 persons possessing drugs for sale, that that's  
19 not going to be tolerated and that's going to be  
20 dealt with in the harshest way."

21 Cocaine is a terribly addictive drug which  
22 spawns derivative crime. Trafficking in crack  
23 cocaine is a particularly serious crime, not only  
24 because it preys on the addiction of others for  
25 profit, but because of the incalculable damage  
26 and devastating consequences on our society in  
27 general, and addicted persons in particular.

1           For obvious reasons, deterrence and  
2           denunciation are the main principles that apply  
3           in cases of trafficking in such a drug.

4           Learned counsel in this case have submitted  
5           a joint recommendation that, given the length of  
6           pre-trial custody, a sentence of one day would be  
7           appropriate. The pre-trial custody of  
8           ten-and-a-half months equates with a sentence of  
9           imprisonment of 21 months.

10           It is only in rare and/or exceptional cases  
11           that a Court will not favourably endorse a joint  
12           recommendation.

13           This is such a case.

14           The cumulative effect of the totality of the  
15           circumstances militates against such a sentence.

16           Given the need for a denunciatory and  
17           deterrent sentence, the repetitiveness of  
18           criminal behaviour on the part of the accused,  
19           the number of crimes committed involving  
20           violence, his prior convictions of a related  
21           nature, the gravity of the offence, the quantity  
22           and nature of the seized drug in the light of the  
23           existing problem in the community, the minimum  
24           term of imprisonment would attract a penitentiary  
25           term of two years.

26           Given the pre-trial custody served, the  
27           accused is sentenced to an additional term of

1 three months. Pursuant to s.109 of the Criminal  
2 Code, he is prohibited for life from possessing  
3 any firearm, cross-bow, restricted weapon,  
4 ammunition, and explosives.

5 The surtax is waived, and the requested  
6 order concerning bodily substance samples for DNA  
7 analysis is granted.

8 Anything further, gentlemen? Mr. Shabala?

9 MR. SHABALA: Nothing further, Your Honour.

10 Thank you very much.

11 THE COURT: Mr. MacFarlane.

12 MR. MacFARLANE: No, thank you, Your Honour.

13 .....

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15 Certified to be a true and  
16 accurate transcript pursuant  
17 to Rule 723 and 724 of the  
18 Supreme Court Rules of Court.

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19 \_\_\_\_\_  
20 Annette Wright, RPR, CSR(A)  
21 Court Reporter

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IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF:

HER MAJESTY THE QUEEN

- v -

MICHAEL ROBERT FRASER and

JULIE MACKEINZO

Transcript of the Reasons for Sentence (re: Michael Robert Fraser) delivered by The Honourable Justice W. Darichuk, in Yellowknife, in the Northwest Territories, on the 24th day of October, A.D. 2006.

APPEARANCES:

Mr. J. MacFarlane: Counsel on behalf of the Crown

Mr. S. Shabala: Counsel on behalf of the Accused

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Charge under s.5(2) CDSA - Michael Fraser  
Charge under s.4(1) x 2 CDSA - Julie Mackeinzo