

My client is a 45-year-old accountant who worked as a controller at a mid-sized family-owned manufacturing company in New Brunswick for eleven years. Over a three-year period he created fictitious vendor invoices and diverted approximately \$280,000 into a numbered company he controlled. He was caught when the company hired a new CFO who flagged the irregularities during a routine review. He was not charged until about 14 months after the fraud was discovered because the company initially tried to handle it civilly. He pleaded guilty at the earliest opportunity. He has made voluntary restitution of \$60,000 so far and has entered into a civil repayment agreement with the victim company for the balance, though he has limited means to repay given that he has been unemployed since his termination. He lost his CPA designation following a discipline process and is unlikely to work in accounting again. He has no prior criminal record of any kind. He is married with two teenage children who are financially dependent on him. His wife works part-time. He has been diagnosed since the offence with major depressive disorder and is engaged in ongoing psychiatric treatment. His psychiatrist has written a letter attributing the offending in part to financial stress arising from a period where his wife was seriously ill and the family faced significant uninsured medical expenses, though he accepts full responsibility and has not tried to use this as an excuse. The victim company is a family business and the owner has submitted a victim impact statement describing significant emotional harm and a lasting loss of trust in employees, though the company itself has survived financially and was not devastated by the loss. Crown is seeking 18 to 24 months custody. I want to explore whether a conditional sentence is realistic. I need a table of comparable sentencing decisions to bring to the sentencing hearing, with a focus on cases where courts have considered or rejected conditional sentences in similar white collar fraud cases involving breach of trust.

Overview

Courts across Canada — including the binding New Brunswick Court of Appeal authorities in *Steeves*, *Chaulk*, *Murdoch*, and *Schrivver* — apply a strong presumption of incarceration for employee breach-of-trust fraud, but a conditional sentence remains available where "exceptional circumstances" can be demonstrated cumulatively, with the clearest pathways involving a mental health condition causally linked to the offending (not merely post-offence depression), onerous restitution made under financial hardship, and significant procedural delay; the 15 cases in this table illustrate the range from 6-month CSOs to 2-year federal sentences for amounts comparable to the client's \$280,000 fraud, with Crown's 18–24 month position consistent with NB precedents for a fraud of this scale by an accountant.

SENTENCING CASE TABLE: WHITE COLLAR FRAUD / BREACH OF TRUST — CONDITIONAL SENTENCE CONSIDERED OR REJECTED

Research Note: The governing New Brunswick appellate framework is established by *R v Steeves*, 2005 NBCA 85 (“*Steeves*”) and *R v Chaulk*, 2005 NBCA 86 (“*Chaulk*”), developed further in *Murdoch v R*, 2015 NBCA 38 (“*Murdoch*”) and *R v Schriver*, 2016 NBCA 13 (“*Schriver*”). The core principle is: absent "exceptional circumstances," a fit sentence for employee theft or fraud involving abuse of trust features a jail term. The concept of "exceptional circumstances" is "somewhat elastic by design" (*Murdoch*, para 44), and a sentencing judge's finding on that issue is owed appellate deference unless unreasonable or the product of legal error (*Schriver*, para 34). The December 2022 Criminal Code amendments restored CSO availability for all non-excluded offences, reinforcing the restraint principle (*Bharwani*, 2024 ABCJ 171 at para 24 (“*Bharwani*”); *Dyke*, 2025 ABCJ 29 at para 49 (“*Dyke*”)).

Case Name & Citation	Brief Summary of Facts (Aggravating & Mitigating Factors)	Crown's Position	Defence's Position	Sentence Imposed
<i>R v Bunn</i> 2000 SCC 9, [2000] 1 SCR 183 (“ <i>Bunn</i> ”)	Facts: Lawyer converted trust monies from six deceased beneficiaries' estates — ~\$86,000 via 145 transactions over 3.5 years. Convicted at trial; no guilty plea. Aggravating: Statutory breach of trust; 145 separate transactions over a prolonged period; professional acting in fiduciary capacity; offender caught by Law Society audit, not voluntary cessation. Mitigating: Wife severely disabled and confined to wheelchair; offender sole income-earner and caregiver for wife and teenage daughter; lost 20-year legal career; disbarred; suffered "humiliation and torment" amplified by consequences for family (para 4 of pre-sentence report). Court of Appeal found "ruin and humiliation" brought upon himself and family, together with loss of professional status, could provide sufficient denunciation and deterrence when coupled with a restrictive CSO (para 23). This is the leading SCC authority establishing that a CSO can be appropriate for professional breach of trust in exceptional personal circumstances.	Crown appealed the Manitoba Court of Appeal's substitution of a CSO, seeking restoration of 2-year penitentiary term.	Respondent sought benefit of new CSO regime on appeal; urged that personal circumstances and new sentencing principles warranted community sentence.	CSO of 2 years less a day with house arrest + 200 hours community service. SCC majority (5-4) dismissed Crown's appeal. Dissenters (Bastarache J.) would have restored 2-year incarceration, holding denunciation and deterrence demanded jail absent truly exceptional circumstances and that good reputation should receive little mitigating weight since it enabled the position of trust (para 36).

Case Name & Citation	Brief Summary of Facts (Aggravating & Mitigating Factors)	Crown's Position	Defence's Position	Sentence Imposed
<i>R v Steeves</i> 2005 NBCA 85	<p>Facts: Two Sears employees (~6 years and ~2.5 years tenure) stole \$535 via fraudulent return scheme over several months. Caught by surveillance. Both entered early guilty pleas; no prior records.</p> <p>Aggravating: Planned and deliberate scheme; abuse of position of trust; multiple incidents over time; motivated by greed; offences only stopped upon apprehension; s. 718.2(a)(iii) abuse of trust established.</p> <p>Mitigating: Small amounts; early guilty plea; no record; immediate confession. Trial judge imposed suspended sentences + probation. NB Court of Appeal allowed Crown's appeal: found no "exceptional circumstances" as offenders were motivated by greed alone, scheme was planned and deliberate, and no credible indication they would have stopped voluntarily (para 16). Established the binding NB appellate rule: "absent exceptional circumstances, a fit sentence for an offence of this nature is one that features incarceration" (para 1).</p>	Crown sought 6-month jail sentences; requested community service on those sentences.	Respondents (uncontested) did not file submissions opposing appeal.	6-month CSO each (at Crown's request). Court held the sentences had to feature incarceration but acceded to Crown's specific request that they be served in the community given community safety and fundamental principles considerations (paras 17–18).
<i>R v Chaulk</i> 2005 NBCA 86	<p>Facts: 20-year-old seasonal grocery employee stole \$4,210 over 3 months via cash theft. Observed, confronted, confessed to full amount plus produced additional funds from home. Early guilty plea; acknowledged greed as sole motive; no prior record. Aggravating: Systematic theft over 3-month period; motivated by greed; abuse of trust; extended beyond single incident. Mitigating: Youth; early guilty plea; full confession and cooperation; recovered stolen property; expressed apology in open court. Trial judge granted conditional discharge. NB Court of Appeal held: youth and risk of criminal record do not constitute "exceptional circumstances" — "if the effect of a criminal record, without more, constituted an 'exceptional circumstance', the exception would become the norm for all first offenders" (para 6). Full confession and cooperation argue for leniency "but should not, without more, lead to a sentence that does not feature imprisonment" (para 7). Exceptional circumstances found "rarely, if ever" where offender driven solely by greed over considerable period (para 8).</p>	Crown appealed; sought 6-month jail, to be served in community.	No opposing submissions filed.	6-month CSO (at Crown's request). Companion case to Steeves, decided by same panel on same day. Court set aside conditional discharge, convicted offender, and substituted 6-month imprisonment to be served in community under strict conditions.

Case Name & Citation	Brief Summary of Facts (Aggravating & Mitigating Factors)	Crown's Position	Defence's Position	Sentence Imposed
<i>Murdoch v R</i> 2015 NBCA 38	Facts: Employee defrauded employer of modest sum (<\$5,000) via 12 fraudulent transactions over 6 weeks; stopped only when confronted. Guilty plea; no record; first pregnancy at time of offence; eating disorders (anorexia/bulimia since age 12–13); financial stress. No restitution offered. Prosecution elected by indictment (maximum 2 years). Aggravating: Systematic defalcation over significant timeframe; stopped only when caught; motivation was to maintain lifestyle beyond her means; 12 separate opportunities to desist and did not. Mitigating: First offender; good work record; early guilty plea; remorse; pregnant at time; eating disorder history. Court confirmed no "exceptional circumstances": financial stress and lifestyle motives are never sufficient; eating disorders were not mentally ill at time of offending (para 60); pregnancy alone insufficient. Seminal NB CA statement of the "elastic" exceptional circumstances test and its triggers (para 48).	Crown sought 6-month jail.	Defence sought non-custodial sentence on basis of cumulative mitigating factors.	73-day intermittent sentence (on joint recommendation at appeal). Court upheld "no exceptional circumstances" finding but found error in failing to consider intermittent sentence as a proportionate option. Provides NB sentencing table (para 27) showing comparable NB cases — 47-year-old accountant who stole ~\$250,000 received 2 years' jail; 43-year-old accountant (\$200,000) received 18 months' jail + 1 year probation + \$220,246 restitution.
<i>R v Schriver</i> 2016 NBCA 13	Facts: 56-year-old employee of Bird Stairs stole \$2,675 over 2 months. Confronted, confessed immediately, expressed remorse. Guilty plea at first opportunity. Aggravating: Abuse of position of trust; multiple incidents; deliberately took cash entrusted to her; stopped only when caught. Mitigating: (1) Full restitution made under serious financial hardship despite modest means and job loss; (2) Employer did not file victim impact statement (interpreted as tacit signal that jail not needed); (3) Major Depressive Disorder confirmed by medical report as contributing factor at time of offence; (4) Mentally ill son persistently pressured her for money, creating vulnerability. Trial court found exceptional circumstances; imposed 10-month CSO. NB Court of Appeal dismissed Crown appeal, holding finding of exceptionality owed appellate deference and was not unreasonable given cumulative effect of the four factors (para 29). Critical distinction from Murdoch: here, diagnosed MDD was a contributing factor and demonstrated at hearing; in Murdoch, no mental illness at time of offending.	Crown appealed 10-month CSO, seeking jail.	Respondent defended CSO on basis of exceptional circumstances finding.	10-month CSO upheld on appeal. NB Court of Appeal dismissed Crown's appeal. The cumulative effect of: (i) full restitution under hardship; (ii) employer declining to file VIS; (iii) MDD as contributing factor; (iv) vulnerability to mentally ill son's pressure — constituted "exceptional circumstances" open to the sentencing judge to find (para 34).

Case Name & Citation	Brief Summary of Facts (Aggravating & Mitigating Factors)	Crown's Position	Defence's Position	Sentence Imposed
<p><i>R v Fraser</i> 2007 ABCA 386 (“<i>Fraser</i>”)</p>	<p>Facts: University of Alberta office manager wrote 43 unauthorized cheques totalling \$132,161 over ~2 years. Guilty plea; no record; full restitution paid (\$150,000, exceeding the charged amount) in October 2002, 4 months after discovery. Not charged until 2006 — a 4-year delay solely due to lack of Crown resources; marriage destroyed upon charging; single mother left with two children; arrested barefoot in distress, committed under Mental Health Act on day of charging; longstanding depression/anxiety since 1987; long-term psychiatric care. Aggravating: Planned, deliberate, repeated breach of trust over extended period. Mitigating: Full and prompt restitution; complete cooperation; early guilty plea; longstanding mental health history causally linked to offending; inordinately prejudicial Crown-caused delay devastating offender's life; loss of marriage; mental fragility. Court held this was "unique and extraordinary" and the combination was decisive — "not merely her co-operation or restitution which we consider decisive...we have all those things, coupled with a demonstrably prejudicial and even destructive effect upon the life of the appellant over a period of five years from the process of the law itself" (para 17–18).</p>	<p>Crown defended 12-month jail sentence.</p>	<p>Accused sought conditional sentence.</p>	<p>12-month CSO substituted for 12-month jail. The leading case where AB Court of Appeal granted a CSO in an employee embezzlement case. Consistently distinguished by subsequent courts on basis of: (1) full restitution (not partial); (2) extraordinary Crown-caused delay; (3) mental illness causally linked to offending; (4) catastrophic collateral consequences of the process itself. Described in Miles as a "highly particularized" MOJ carrying "little weight" as general precedent.</p>
<p><i>R v Fulcher</i> 2007 ABCA 381 (“<i>Fulcher</i>”)</p>	<p>Facts: 33-year-old insurance employee embezzled \$268,949 by forging client signatures on ~40 cheques over 13 months; also defrauded relatives. Guilty plea; no record; consented to civil judgments; agreed to pay \$250/month restitution (described as a "polite fiction" given the growing debt). Cooperation after discovery. No explanation of where funds went. No addiction or mental health cause for offending — motivated by pure profit. Aggravating: Sophisticated scheme; large amount; breach of trust; repeated thefts over 13 months; offending only stopped when caught; restitution token/nominal; no explanation for funds. Mitigating: Guilty plea; no record; cooperation after discovery; current employment. Court held: (1) good character "far from a distinguishing factor" as it is what enabled the trust position (para 35); (2) guilty plea given little weight as full discovery was inevitable and plea withheld for 13+ months (paras 37–39); (3) nominal restitution payments a "polite fiction" (para 21); (4) mental health not causally linked to offending (paras 40–43). Established the "absent truly exceptional circumstances, the sentencing goals of deterrence and denunciation demand a sentence of imprisonment" rule (para 30).</p>	<p>Crown appealed CSO, seeking actual imprisonment.</p>	<p>Offender defended CSO on mitigating factors.</p>	<p>2 years less a day actual imprisonment (substituted for 2-year-less-a-day CSO). Leading Alberta Court of Appeal authority. Reasons for Judgment Reserved (binding precedential weight per Miles). The foundational authority cited in every subsequent employee embezzlement case from AB to NS.</p>

Case Name & Citation	Brief Summary of Facts (Aggravating & Mitigating Factors)	Crown's Position	Defence's Position	Sentence Imposed
<i>R v Miles</i> 2011 ABCA 133 (“Miles”)	Facts: Bookkeeper embezzled \$203,000 from small electrical contracting company via 63 forged cheques over 28 months; stole extra \$21,500 the day before her last shift; company sold partly due to losses. Guilty plea; no record; confessed to police; partial restitution (\$53,519 of \$203,000 total); severed nerve injury; caregiver for granddaughter; family financial motivations; positive PSR; low-to-moderate reoffending risk. Aggravating: 63 transactions over 28 months; forgery involved; offending stopped only on layoff not by choice; last theft was the largest (\$21,500); significant harm to small company including its forced sale; bookkeeper in small company in "far greater position of trust" than bank manager due to lack of internal controls (para 33). Mitigating: Guilty plea; confession; no record; partial restitution; family responsibilities. Court held: guilty plea, no record, and partial restitution are "common to almost all employee embezzlement cases" and "none of these factors, either alone or together, take this case into the realm of 'exceptional circumstances'" (para 32). Trial judge erred in treating a small-company bookkeeper as less deserving of trust protection than a bank manager.	Crown appealed CSO; sought 2 years less a day actual incarceration.	Offender defended CSO; argued partial restitution, guilty plea, family responsibilities were exceptional.	2 years less a day actual incarceration (substituted for 2-year-less-a-day CSO). Court of Appeal allowed appeal. Confirmed Fulcher controls and that Fraser (CSO granted) is a sentencing MOJ with "highly particularized facts" that "should be given little weight as precedent" (para 30). The definitive Alberta statement that partial restitution + guilty plea + no record, standing alone or together, do not establish exceptional circumstances.
<i>R v Naugler</i> 2011 NSPC 68	Facts: Nova Scotia bookkeeper stole \$153,757 over 39 months via fictitious salary payments and fraudulent pension deductions. Guilty plea; clinical depression; no prior record; caregiver responsibilities; financial stressors. Aggravating: 39-month duration; systematic scheme; breach of trust over extended period; planning and deliberation required to maintain scheme; offending involved multiple victims (employer and pension plan). Mitigating: Guilty plea; depression; no record; caregiver responsibilities; remorse. Court held that most crimes are committed under stress and that requiring self-control under pressure is precisely what the law demands (para 82); depression did not compromise her ability to calculate and maintain the fraud over 39 months (para 83); mitigating factors served to reduce sentence length, not justify a CSO (para 97); a CSO "would look too much like probation" given the seriousness of the offence (para 95).	Crown position not specified in available reasons; sentence imposed suggests Crown sought custody.	Defence sought conditional sentence on basis of mental health, family, guilty plea.	8 months jail + 12 months probation + \$145,409 restitution order. CSO rejected. Valuable NS authority confirming that post-offence depression and family caregiving do not constitute exceptional circumstances, and that financial stress is insufficient mitigation.

Case Name & Citation	Brief Summary of Facts (Aggravating & Mitigating Factors)	Crown's Position	Defence's Position	Sentence Imposed
<i>R v Klyne</i> 2017 BCPC 26	Facts: 67-year-old senior pension coordinator stole \$282,264 from employer's pension plan via forged documents over 2.5 years. Gambling disorder (diagnosed post-offence); serious health conditions (diabetes, macular degeneration, heart disease, cancer diagnosed during proceedings). Guilty plea; no prior record; no restitution made. Motivated in part by revenge on supervisor. Aggravating: \$282,264 — nearly identical to client's amount; senior position of trust; prolonged scheme (2.5 years); sophisticated forgery; offending only stopped when caught; no restitution. Mitigating: Guilty plea; no record; gambling disorder; serious health conditions; age 67; loss of career. Court held: gambling disorder insufficient even combined with serious health issues to displace denunciation/deterrence imperative; CSO cases have involved causal mental illness not merely addiction; motive of revenge negated any financial hardship argument; no restitution made (paras 93–101).	Crown sought 18 months jail.	Defence sought CSO.	18 months imprisonment + full restitution order. CSO rejected. Very closely analogous to client on the dollar amount (\$282K). Key distinction from exceptional circumstances cases: no causal mental illness; no restitution; mixed/revenge motive.
<i>R v Stirling</i> 2010 ABPC 142 (“ <i>Stirling</i> ”)	Facts: 56-year-old office manager stole \$255,420 (net loss \$146,069) from community residents' association over 3 years via 254 unauthorized withdrawals. CSO GRANTED. Guilty plea; no record; full restitution made (via civil judgment settlement — MLRA made whole by Stirling, bank, and estate of auditor); offence occurred 1994–2001 but sentencing not until 2010 — 9 years of productive community tenure post-offence; cared for grandchildren without remuneration; unlikely ever to work in accounting again; offender continued to reside in the victimized community, making the denunciatory effect ongoing and daily (para 37). Aggravating: Significant amount; prolonged scheme; planning and deliberation; abuse of trust. Mitigating: Full restitution; extraordinary 9-year gap of productive community life; age 56; CSO would continue denunciatory effect visibly in victimized community (para 39). "A major distinguishing factor in this case is that restitution has been made" (para 38).	Crown sought 18 months to 2 years actual incarceration.	Defence sought CSO.	2-year-less-a-day CSO with full house arrest + 240 hours community service. CSO granted. Primary distinguishing factors: (1) full restitution; (2) extraordinary 9-year productive community period post-offence; (3) age; (4) ongoing denunciatory effect of living in victimized community. Illustrates that full restitution, in combination with other factors, can constitute the "exceptional circumstances" required.

Case Name & Citation	Brief Summary of Facts (Aggravating & Mitigating Factors)	Crown's Position	Defence's Position	Sentence Imposed
<i>R v Bharwani</i> 2024 ABCJ 171	<p>Facts: 38-year-old account administrator defrauded employer of \$140,969 via company credit cards over 9 months for hotels, restaurants, casinos, and adult entertainment. Caught when supervisor noticed suspicious charges; initially lied when confronted. CSO GRANTED. Guilty plea; no record; two psychiatric reports diagnosing Social Anxiety Disorder, Generalized Anxiety Disorder, Alcohol Use Disorder (partial remission), Gambling Disorder (full remission), and Major Depressive Disorder — both psychiatrists directly linked Mr. Bharwani's psychiatric disorders to his offending behaviour (para 16); \$53,000 saved for restitution; committed engagement with ongoing therapeutic counselling; low-to-moderate reoffending risk; remorse; family and community support.</p> <p>Aggravating: Breach of trust; high dollar value; 9-month duration; persistent deceitfulness when confronted (para 29). Mitigating: Guilty plea; no record; remorse; psychiatric disorders directly causally linked to offending (reducing moral blameworthiness per para 31); ability to make partial and ongoing restitution; December 2022 Code amendments restoring CSO availability for all but most serious offences (para 24); restraint principle.</p>	Crown sought 2 years jail + probation + full restitution.	Defence sought 2-year-less-a-day CSO + probation.	2-year-less-a-day CSO + 30 months probation + full restitution orders. CSO granted. The decisive factors: (1) psychiatric disorders directly causally linked to offending by two independent psychiatrists, reducing moral blameworthiness; (2) committed engagement with ongoing treatment; (3) partial restitution saved with commitment to full repayment; (4) 2022 Code amendments and restraint/restorative justice principles (para 34). Contains Appendix A — comprehensive Alberta case comparison table (16 cases). The most useful recent CSO-granted case for client's situation given MDD diagnosis, though distinction re causal linkage is important.
<i>R v Dyke</i> 2025 ABCJ 29	<p>Facts: 46-year-old accounts receivable clerk stole \$87,859 from Toyota dealership over 4.5 years via fictitious entries. Active steps to conceal fraud from co-workers. CSO GRANTED. Guilty plea; no record; partial restitution; Gladue factors (adopted outside Métis culture; suffered domestic abuse and concussions; isolated childhood); diagnosed Generalized (Severe) Anxiety Disorder and severe agoraphobia — so severe she sometimes cannot leave her sister's house; son has serious mental health issues and attempted suicide as teenager. Aggravating: 4.5-year duration; planned and deliberate; active concealment steps (s. 380.1(1)(f)); breach of trust. Mitigating: Guilty plea; remorse; no record; partial restitution; severe pre-existing anxiety disorder; agoraphobia; Gladue factors; domestic abuse history. Court held Fulcher does not say all principles aside from denunciation/deterrence are ignored; "proportionality remains the overarching sentencing principle" (para 61); found individualized circumstances "exceptional enough that a period of actual incarceration would be disproportionately harsh" (para 65).</p>	Crown sought 15 months jail + 12 months probation.	Defence sought 2-year-less-a-day CSO + 2 years probation.	2-year-less-a-day CSO with 18 months house arrest + 6 months curfew + 240 hours community service + 3 years probation. CSO granted. Note: CSO was 9 months longer than Crown's jail request, satisfying denunciation. Critical for client: court found Gladue factors + severe diagnosed pre-existing agoraphobia + history of domestic abuse = "exceptional." However, absence of Gladue factors in client's case is an important distinction. The 2022 Code amendments were cited as reinforcing proportionality and restraint.

Case Name & Citation	Brief Summary of Facts (Aggravating & Mitigating Factors)	Crown's Position	Defence's Position	Sentence Imposed
<i>R v Oakes</i> 2024 PESC 11	Facts: 71-year-old funeral home owner misappropriated \$425,215 in prepaid funeral trust funds from 66 individual victims over 20+ years. Guilty plea; no prior record; serious health conditions (cardiomyopathy with ejection fraction 35–40%, atrial fibrillation, diabetes, chronic kidney disease, peripheral artery disease); age 71. No restitution made. Gambling issues contributed. Member of the regulatory Board that oversaw the very trust requirements he was violating, adding aggravating knowledge dimension. Aggravating: 20+ year duration; 66 victims; \$425,215; serious and ongoing breach of trust; knowledge of trust obligations as Board member; no restitution; multiple victims including elderly and vulnerable; used new client funds to pay old obligations (Ponzi-like); previous banking institutions had flagged mishandling. Mitigating: Guilty plea; no record; age 71; serious health conditions; not a flight risk. Court applied Chaulk and rejected CSO: court concluded a CSO was "inconsistent with the fundamental purpose and principles of sentencing" and "a conditional sentence — of any duration and with even very onerous terms" would not be consistent with sentencing principles given denunciation and deterrence imperatives (para 210).	Crown sought 3.5-year penitentiary sentence.	Defence sought 2-year-less-a-day CSO (house arrest) or alternatively 8 months jail.	2 years less a day imprisonment + 18 months probation + restitution orders. CSO rejected. Closest Atlantic Canada comparator for client's sentencing given similar amount range and guilty plea. Key distinction: 66 victims, 20+ years, no restitution, Board membership. Shows that even with age and serious health conditions, CSO was rejected at this dollar amount and gravity level.
<i>R v Martin</i> 2023 ABCJ 122	Facts: 44-year-old Associate Registrar at Northern Lakes College stole \$285,000 via 130+ forged cheques over ~18 months. Late guilty plea (not early); Gladue factors (indigenous ancestry); gambling and drug addiction; completed residential treatment; no restitution made. No prior record. Aggravating: \$285,000 — virtually identical to client's amount; 130+ forged transactions; breach of trust; senior position; offending only stopped when caught; no restitution. Mitigating: Guilty plea (late); Gladue factors; addiction; post-offence rehabilitation; no record. Court applied Fulcher squarely: guilty plea, addiction, Gladue factors, and family consequences "are not unusual facets of this type of offence or offender" (para 42); no "exceptional circumstances" found even with Gladue factors.	Crown sought 2 years jail.	Defence sought CSO or 2-year federal sentence.	2 years federal penitentiary. CSO rejected and sentence slightly exceeded 2 years (federal jurisdiction). The amount is virtually identical to client's case (\$285K vs. \$280K). Even with Gladue factors and addiction, no exceptional circumstances found. Strong Crown authority on the general sentencing range for a ~\$280–285K employee fraud.

Notes for Counsel

The governing NB framework is *Steeves / Chaulk* (2005 NBCA), *Murdoch* (2015 NBCA), and *Schrivver* (2016 NBCA). The test is

whether "exceptional circumstances" are present; the concept is elastic and the sentencing judge's finding on that question is owed appellate deference.

Client's case for a CSO rests primarily on: (a) the psychiatrist's letter attributing offending at least in part to financial stress arising from wife's serious illness and uninsured medical expenses — this must be framed as an **offence-related mental health condition** (MDD diagnosed since offence) that was operative at the time, not merely post-offence depression, following *Bharwani* at para 31 and *Schrifer* at paras 32–34; (b) partial but ongoing restitution combined with a civil repayment agreement, which — while not full restitution — should be distinguished from cases with no restitution at all, per *Murdoch* at para 44 (restitution under onerous financial hardship can, in conjunction with other circumstances, justify exceptionality); (c) earliest possible guilty plea; (d) complete loss of professional status (CPA designation, career in accounting) analogous to *Bunn* at para 23; (e) family caregiving and financial dependency of teenage children; and (f) the 14-month delay between discovery and charge, which while modest compared to *Fraser* (4 years), may be argued as a mitigating feature of the process.

The key weakness is that the psychiatrist attributes offending to financial stress, not to MDD as a clinical cause of the offending conduct. *Bharwani* (CSO granted) involved two independent psychiatrists **directly linking diagnosed disorders to the offending behaviour** (para 16, 31). *Fulcher* (CSO refused) similarly involved depression that was not causally linked to the offending (paras 40–43). Counsel should secure a psychiatric report that addresses the causal question directly: was the MDD or related condition operative and causally linked to the offending decisions, or did it arise as a consequence of discovery?

The NB sentencing range for a ~\$250,000–\$280,000 accountant fraud in NB on a guilty plea appears from *Murdoch's* table (para 27) to be 18 months to 2 years jail (R v Thornton, 43-year-old accountant, \$200,000: 18 months jail; R v Miles at para 32 and *Murdoch* at para 47).