

Citation: *R. v. Everitt*, 2010 YKTC 91

Date: 20100812
Docket: 07-11036
09-04456
09-04457
Registry: Dawson City

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Lilles

REGINA

v.

GLEN NORMAN EVERITT

Appearances:
Noel Sinclair
Emily Hill

Counsel for the Crown
Counsel for the Defence

REASONS FOR SENTENCING

[1] LILLES T.C.J. (Oral): Mr. Everitt has pled guilty to one count of breach of trust in connection with the duties of his office, by misappropriating public funds to his benefit, contrary to s. 122 of the *Criminal Code of Canada*. This charge pertains to actions between January 1, 1996 and December 31, 2004, while he was an elected official, namely, the mayor of Dawson City, Yukon Territory.

[2] I am grateful to counsel for the Agreed Statement of Facts, as follows:

1. The Accused, Glen Everitt, has pled guilty to Count 2 of Information 07-11036, amended to include the time period January 1, 1996 to December 31, 2004, being an offence contrary to s. 122 of the *Criminal Code* (breach of trust by a public official by misappropriating public funds).

2. Glen Everitt was Mayor of the Town of the City of Dawson, Yukon, (herein "City of Dawson") from 1996 to 2004.
3. During some of his time as Mayor, Glen Everitt was also a representative of the Association of Yukon Communities and a representative of the Federation of Canadian Municipalities.
4. While he was Mayor, the City of Dawson had, and Glen Everitt was or was made/became aware of, Town policies and by-laws concerning entitlements, authorized expenses and procedures to obtain and account for advances or re-imbusement of authorized expenses or benefits.
5. Between 1996 and 2004 the overall finances of the City of Dawson were in serious disarray.
6. In 2004 the Yukon Territorial Government, acting under the *Municipal Act*, appointed a Trustee to assume responsibility for the governance of Dawson City, replacing the Mayor and Council.
7. During the period of Trusteeship, a study, (the "Doddington Report") was commissioned to look into how the Town had come into such financial difficulties.
8. In that report, submitted March 2005, a variety of deficiencies were identified, and the Report included over 30 different recommendations to enhance proper financial governance of the Town.
9. Along with more general concerns, specific deficiencies and seeming irregularities were identified.
10. For example, employees' travel expenses were not regularly tracked, several individuals had access to the City of Dawson Visa card and used it without prior approval, cash advances were often provided for travel expenses not yet incurred and payments were made or expenses assigned to accounts without proper accounting. Receipts provided by Mr. Everitt for expenses he claimed on behalf of the City were often not recorded or accounted for.
11. A complaint was made to the RCMP concerning the specific deficiencies and seeming irregularities, and an investigation was conducted, culminating in charges.
12. Glen Everitt was married to Debbie Everitt until her passing in early 2009. Ms. Everitt was an employee of Parks Canada and as such received Isolated Post Travel and Medical Benefits for herself and her family, including Mr. Everitt.

13. Between 1996 and 2004, Mr. Everitt submitted claims to the City of Dawson for either advance payments or reimbursement for travel expenses. In some instances, these claims duplicated claims for which he had already received compensation through Debbie Everitt's employment benefits with Parks Canada. The loss to the City of Dawson from these duplicated claims is approximately \$6,550.
14. Between 1996 and 2004, Mr. Everitt submitted claims to the City of Dawson for either advance payments or reimbursement for travel expenses. In some instances these claims duplicated claims for which he had already received payment from the Association of Yukon Communities. The loss to the City of Dawson from these duplicated claims is approximately \$5,300.
15. Between 1996 and 2004, Mr. Everitt submitted claims to the City of Dawson for either advance payments or reimbursement for travel expenses for travel which was not properly supported by documentation or did not actually occur. The loss to the City of Dawson from these claims is approximately \$17,160.
16. Between 1996 and 2004, Mr. Everitt received funds as cash advances from the City of Dawson Visa card and used these funds either for unauthorized City of Dawson expenses or for personal use. The loss to the City of Dawson from these cash advances was approximately \$9,290.
17. Between 1996 and 2004, Mr. Everitt made some payments to the City of Dawson, or assigned benefits he would have otherwise received over to the City of Dawson as partial payment for various debts he had incurred to the City of Dawson.
18. Glen Everitt admits a loss to the City of Dawson as a result of his actions of approximately \$38,300.

[3] Without minimizing the seriousness of the offence, which involved a serious breach of trust, it is important to consider it in context. According to the Doddington Report and, as submitted by counsel, the administration of the financial affairs of the City of Dawson was in a mess when Mr. Everitt arrived as mayor and throughout his tenure. The direction, checks and balances that one would expect in any organization of the size of the City of Dawson were totally lacking. As indicated in paragraph 10 of the Agreed Statement of Facts above, the lack of proper accounting and inappropriate

expenditures involved other employees of the City. It is noteworthy that the original information charging Mr. Everitt also named the City's chief administrative officer as a co-accused.

[4] It is also appropriate to note that in municipal politics, particularly in smaller towns and cities, the elected officials are not professional politicians. They are part-time politicians dedicated to improving life in their community. They often have little interest or expertise in accounting or bookkeeping. It is the role of the bureaucracy or civil service to direct and support their elected officials. It is apparent that that did not occur in Dawson City during the years 1996 to 2004, and that is one of the reasons why Mr. Everitt's misuse of public funds was not detected for eight years.

The Law

[5] As determined by the Supreme Court of Canada in the benchmark decision of *R. v. Boulanger*, 2006 SCC 32:

I conclude that the offence of breach of trust by a public officer will be established where the Crown proves beyond a reasonable doubt the following elements : (1) the accused is an official; (2) the accused was acting in connection with the duties of his or her office; (3) the accused breached the standard of responsibility and conduct demanded of him or her by the nature of the office; (4) the conduct of the accused represented a serious and marked departure from the standards expected of an individual in the accused's position of public trust; and (5) the accused acted with the intention to use his or her public office for a purpose other than the public good, for example, a dishonest, partial, corrupt, or oppressive purpose. (para. 58)

[6] The purpose of s. 122 of the *Criminal Code*, now known as "Breach of Trust by a Public Officer," is to ensure that public officers use their power and authority for the

public benefit. Public officials are therefore made answerable to the public in a way that private actors may not be. On the other hand, public officials are not criminally responsible for mere mistakes, errors in judgment or negligence. What is required is “conduct so far below acceptable standards as to amount to an abuse of the public’s trust in the office-holder.” That conduct, to be criminal, must also be associated with a variant of dishonest intent, the intention to use one’s public office for purposes other than the benefit of the public. This is the *mens rea* of the offence.

[7] The seriousness of s. 122 offences was recognized in the case of *R. v.*

Berntson, 2000 SKCA 47, at paragraph 24:

We observe that a heavy trust and responsibility is placed in the hands of those holding public office or employ. The public are entitled to expect persons in such positions to observe the “honour” system that they have put in place when it comes to the expenditure of public funds for various allowances.

[8] Finally, it should be observed that the maximum penalty for an offence contrary to s. 122 is five years imprisonment, as compared to ten years for theft over \$5,000, as set out in s. 334 of the *Criminal Code*.

Personal Circumstances of Mr. Everitt

[9] Mr. Everitt is a 46-year-old man who is a long-time resident of Dawson City. He comes from a broken home and, along with his siblings, was molested by his stepfather at a young age. As a result, he refused to live with his mother, although they were reconciled after his stepfather died.

[10] Mr. Everitt completed high school in 1982 and then took some courses in social work at St. Claire College in Chatham, Ontario, but he did not complete the program. Nevertheless, his interest in work and community life continued to be centered on helping people. He was a court worker for CYI, Council of Yukon Indians, in Old Crow, Dawson City and Mayo from 1986 to 1988. He worked for the First Nation in Dawson to develop a program for healthy babies for three years. He worked for the Tr'ondek Hwech'in First Nation in health and social programs in a number of positions, including youth enhancement coordinator and special events coordinator. He found most meaning working with young people in his community. It is apparent that this work was recognized and appreciated, as Mr. Everitt was frequently chosen by the students as their choice of speaker at their graduation ceremonies.

[11] Mr. Everitt was first elected to town council in Dawson City in 1990. He was mayor from 1996 to 2004.

[12] He married Deb Moi in August 1988. She was a member of the Tr'ondek Hwech'in First Nation, who he had met in Dawson City in 1983 when he was working with Katimavik. This is the volunteer program that is very popular in this country. They "sort of got into a relationship" and he told her he would come back in four years. They communicated during the intervening years and he returned to Dawson in 1986. Deb Everitt was diagnosed with cancer in November 2008. She passed away in February 2009 at age 51. Mr. Everitt reported that her death was quite sudden. She had been in hospital in Vancouver and Whitehorse and was going to be sent home so she could gain some weight prior to going for chemotherapy. Her passing was a great emotional and psychological loss to Mr. Everitt, and to their children.

[13] Their youngest child, Chase, age 14 and currently in Grade 9, has been unable to adjust to his mother's passing and is in need of professional counselling and treatment. Michael, age 17, is in Grade 11. He is not a biological child of Mr. Everitt and his wife. Rather, they have taken on volunteer guardianship to help support him because his mother, a member of the community, has been unable to do so. Michael continues to live with Mr. Everitt. Tamara, aged 19, is studying in Red Deer, Alberta, but is currently working in Dawson City for the summer. There are other siblings and step-siblings who are adults and whose current positions and background are unnecessary for this disposition.

[14] Mr. Everitt currently suffers from some serious medical problems, whose origins are not yet diagnosed. He suffers from cluster migraines and was on many different medications, including morphine, codeine and medication to help him sleep, for approximately the last ten years. In May 2009, he was hospitalized for three weeks to wean off the drugs so he could get re-established on the right medication. He was unable to keep food down and lost 40 pounds. He also suffers from depression. Currently he takes two antidepressants. He also takes codeine for pain management.

[15] He said that his doctor wants him to attend long term counselling with a psychologist and to work on triggers for pain management at a pain clinic. He said his doctor has also told him that he needs to find a new career path away from working with people. When trying to help others, Mr. Everitt uncontrollably takes on their problems as his own, and this is a major source of stress for him.

[16] The Tr'ondek Hwech'in First Nation has indicated to him that they need employees with office management skills. He has made plans to return to his home territory in Chatham, Ontario, and enrol in a business program at St. Claire College. He and his son Chase will also be able to access specialist medical services in Ontario that are unavailable in the Yukon. He then intends to return to Dawson City.

[17] I should indicate that I received a number of documents, including a number of victim impact statements from the members of this community. By way of summary, the concerns expressed by citizens of this community about Mr. Everitt's offence could be categorized as follows: (1) a loss of trust or faith in elected officials; (2) concern about the loss of the dollars that were improperly spent; (3) the cost of the investigation and prosecution; (4) the impact on the reputation of Dawson City; (5) the concern that this event polarized the citizens in this town, and (6) there was concern with respect to Mr. Everitt's failure to apologize.

[18] With respect to the latter, it is very clear to me that the guilty plea entered is a very clear acknowledgment to this Court and to this community of what Mr. Everitt did and an acknowledgment that it was wrong. Yesterday, Mr. Everitt addressed this Court at length. It was a very emotional address and it went on for at least 20 minutes. The whole purpose of that address was to extend apologies and remorse to his family and to the citizens of Dawson.

[19] I also received a number of letters of support or reference for Mr. Everitt. Again, I am not going to read these into the record. I would note that counsel read the letter from the Very Reverend John B. Tyrrell into the record yesterday. The essence of

these letters is that these individuals have known Mr. Everitt for a long period of time, they see him as a good family man, they see him as an individual who has been, over the years, a dedicated worker on behalf of the City, with significant concerns for the youth of this City. He has attempted, to the best of his ability, to be an enthusiast, an advertiser, for the City of Dawson, promoting its attractions and its values wherever possible. They do not see him as a devious individual but rather as a plain and simple man. As one letter said, "You see what you get." They note that these proceedings that have extended over a period of time, a number of years, have significantly worn him out and had a negative impact on his health.

Sentencing

[20] The main sentencing principles in cases of criminal breach of trust are denunciation and general deterrence. See *R. v. Bunn*, 2000 SCC 9. In the case of major fraud cases denunciation and general deterrence are of particular importance and these sentencing principles often point in the direction of incarceration. See *R. v. Randy Collins*, 2010 NLTD 7.

[21] This case, however, was not a major fraud case, and mitigating factors and rehabilitation are therefore also important considerations. The Supreme Court of Canada stated in *R. v. Gladue*, [1999] 1 S.C.R. 688 at paragraph 48, that two of Parliament's objectives in enacting the conditional sentence regime were to reduce the use of prison as a sanction and to expand the use of restorative justice principles in sentencing. Restorative justice objectives are generally achieved more effectively by sanctions other than incarceration.

[22] Yukon courts have consistently placed significant emphasis on restorative justice principles and sanctions other than incarceration. For example, *R. v. Zenovitch*, 2001 YKSC 52, involved a theft of \$37,000 from an employer. A 20-month conditional sentence with a curfew was imposed. In *R. v. Eby and Goodman*, 2005 YKSC 56, the fraud amounted to \$318,575, of which \$143,000 was outstanding at the time of sentencing. The Court imposed a conditional sentence of 15 months with house arrest terms.

[23] The aggravating factors in this case include:

1. The fraud occurred over a number of years and involved a number of transactions.
2. The fraud was for personal gain, in some instances monetary gain, in others, for gain in personal reputation.
3. The fraud involved a position of trust, the highest elected position, the position of mayor of the City of Dawson.

[24] Mitigating factors in this case include:

1. The fraudulent steps taken were not complex or devious.
2. If basic checks and balances had been in place in the administration of finances for the City, many of the claims would have been prevented.
3. Although Mr. Everitt has limited financial means, he is willing to make full restitution over time. When his health improves and when he retrains, he will be in a much better position to make full restitution.
4. Because of the state of affairs of the City of Dawson's financial books, this issue has not been resolved quickly. This issue has been hanging over Mr. Everitt's head for six years. In a small town, this has led to a "trial by gossip and innuendo," in the absence of accurate information, with negative consequences to Mr. Everitt and his family.
5. Since the initiation of these charges, Mr. Everitt has suffered the death of his wife and his mother. He is now a single parent with responsibility for three minor children.

6. Mr. Everitt has no previous criminal record.
7. Mr. Everitt does, however, have an enviable record of service in the community, through volunteer activities. Some of these activities include serving on the school council, volunteering at the Humane Society, helping with the school food program and assisting with First Nation special events. He started the important Youth First Hunt Program and he calls bingo on Friday nights for the community, and much more.
8. Mr. Everitt suffers from serious health problems, including cluster headaches, possibly resulting from nerve damage, and gastro-intestinal issues, which have resulted in 13 surgeries since 1990. He has lost 40 pounds and cannot keep his weight up. He also suffers from depression. He requires medical treatment that may not be available in the Yukon.
9. The senior Probation Officer who prepared the pre-sentence report in this case concluded that Mr. Everitt was manageable in the community.
10. As I mentioned earlier, having listened to Mr. Everitt's address to this Court yesterday, taking into account his guilty plea to the charge before the Court, I am satisfied that he is genuinely remorseful.

[25] I am satisfied that Mr. Everitt is not disqualified from a conditional sentence of imprisonment by virtue of s. 742.1 of the *Criminal Code*.

[26] I have noted a number of cases, including *R. v. Proulx*, 2000 SCC 5, that states that a conditional sentence can provide significant denunciation and deterrence.

[27] I am satisfied that a conditional sentence to be served in the community is appropriate, because there is a minimal risk, if any, that Mr. Everitt will re-offend or endanger the community. I am also satisfied that a conditional sentence in these circumstances is consistent with the fundamental purposes and principles of sentencing set out in s. 718 and s. 718.2 of the *Criminal Code*.

[28] The clear direction of Parliament is to reduce reliance upon incarceration. While some may argue that denunciation can only be achieved by incarceration for these

offences, this Court is not of that view. There is considerable social stigma in a community of this size that offenders of this kind will have to face on a day-to-day basis. There is no anonymity that may be found in larger communities. A sentence served in the community has no reduction for good behaviour and must be served in full. Breaches of conditional sentences will result in offenders being arrested and being brought back to court, with possible subsequent incarceration.

[29] In conclusion, then, I am satisfied that a conditional sentence of imprisonment is appropriate on the facts of this case.

[30] In *R. v. Eby and Goodman, supra*, Mr. Justice Veale considered the distinction between house arrest as part of a conditional sentence of imprisonment and merely being placed on a curfew. Quoting from that decision, beginning at paragraph 52:

This raises the issue of the distinction between house arrest and being placed under curfew. There is a significant difference. House arrest is an order that requires the offender to be, in effect, incarcerated in their own home, except for limited circumstances with the permission of the Court or the sentence supervisor.

A curfew, on the other hand, gives the offender the freedom to move about in the community at their own discretion so long as they comply with the general conditions of their sentence and return to their residence for the hours of curfew, typically 9:00 p.m. to 7:00 a.m. when many citizens are in their homes in any event.

Considering the aggravating factors that I have listed, I am of the view that this conditional sentence should include house arrest...

Justice Veale also stated at para 54:

...That will ensure that the circumstances of these offences are properly denounced. This case is distinguishable from

R. v. Zenovitch, [2001] YKSC 52, where the offender was a single parent with a child.

[31] In the *Eby* case the total fraud was over \$300,000 and the amount outstanding at the time of sentencing was \$143,000. A major difference between the *Eby* case and this case, in addition to the amounts involved, is that in *Eby*, the accused persons had access to other assets and they were able to satisfy the Court by way of pledging assets and property that, over a relatively short period of time, full restitution would be made.

[32] This point was a matter of some discussion between counsel and myself during the sentencing hearing. I will restate briefly what my position is. Courts have to be careful not to place too much reliance on the ability to make restitution as a factor in determining whether actual incarceration as opposed to a conditional sentence of imprisonment should be ordered. The court should not give affluent individuals with means or with property an advantage. That would inappropriately create two tiers of justice in our society and that would be unacceptable. Having said that, restitution, particularly the willingness to make restitution, is nevertheless an important consideration in sentencing in this court and all of the courts in the Yukon Territory.

[33] In *Eby*, the court placed significant weight on the fact that the *Zenovitch* accused was a single parent. That was a factor in determining whether there should be house arrest or a curfew as part of the conditional sentence. I note that Mr. Everitt too is a single parent and that his young child is struggling with grief issues that have not yet been resolved, even with the limited professional help that has been available in the Dawson community.

Length of Sentence

[34] I have considered the cases submitted by counsel, and others provided by myself to counsel. I will not list them here. I note that the submissions of counsel were generally consistent and referred to the same mitigating and aggravating factors.

[35] I have concluded that an appropriate sentence would be a 12 month jail sentence to be served conditionally in the community on the following terms.

1. Keep the peace and be of good behaviour;
2. Appear before the Court as and when required to do so by the Court;
3. Report to a Supervisor:
 - (i) within two working days or such longer period as the Court directs after the making of the conditional sentence order, and
 - (ii) thereafter when required by the Supervisor and in the manner directed by the Supervisor.
4. Remain within the jurisdiction of the Court unless written permission to go outside that jurisdiction is obtained from the Court or the Supervisor;

I also wish to indicate that any application by Mr. Everitt to change his residence by moving outside the jurisdiction during the course of this conditional sentence, should be directed to myself unless it is impractical to do so.

5. Notify the Court or the Supervisor, in advance, of any change of name or address, and promptly notify the Court or the Supervisor of any change of employment or occupation;

6. Mr. Everitt is to abide by a curfew from 8:00 p.m. in the evening to 6:00 a.m. in the morning, during which time he shall reside in his residence subject only to the exceptions granted by the express written permission of his Supervisor. During reasonable hours of this curfew, he will answer the telephone and answer the door for the purpose of checking on his presence. Failure to do so will be a presumptive breach of this order;
7. He is to abstain from the possession and consumption of alcohol and non-prescription drugs;
8. He is to make restitution payments to the City of Dawson in the amount of \$400 a month, with the first payment to be made on the first day of September 2010, and thereafter on the first day of each month, or such other amount agreed to by his Supervisor that reflects his ability to pay, to a maximum of \$38,300;
9. He will inform any current employer or any future employer of his criminal record;
10. He will participate in such assessment, counselling, and programming as directed by his Supervisor;
11. He will continue to receive medical treatment from his doctor or doctors so long as required and he will provide a release permitting his Supervisor to obtain access to his medical records in order to monitor his condition;
12. He is to disclose all his income to a Supervisor so that restitution is continued commensurate with his income;

13. Provided his medical condition permits, he is to seek and maintain employment;
14. He will attend this Court for a review of the progress of his restitution and his progress under the terms of this order on December 14, 2010, at two o'clock in the afternoon;
15. He will perform 100 hours of community service as and when directed by his Supervisor.

[36] I am also going to impose a 12 month probation order, but we will get to that in a moment. I would like to hear from counsel if I have missed something or I have characterized a term in a way that they think could be improved. Want to start, Mr. Sinclair?

[37] MR. SINCLAIR: Yes, sir. I wondered if the Court wanted to consider a condition prohibiting him from attending any bar, tavern or off-sales during the term of the conditional sentence. It is not that there is any indication that Mr. Everitt is experiencing any alcohol problems himself, but.

[38] THE COURT: No, in fact the evidence is that he does not, or rarely consumes alcohol.

[39] MR. SINCLAIR: It's more a question of public perception of somebody serving a jail sentence in the community.

[40] THE COURT: You are correct. Usually such a term is automatically included precisely for that reason. If an individual is incarcerated, he or she would

normally not have access to alcohol or other illicit drugs, for example. So it is almost automatic that a community conditional sentence would include a similar term, that he not possess or consume alcohol and that he not attend at any bar, off-licence or other premise whose primary purpose is the sale of alcohol.

[41] MR. SINCLAIR: I know as well that there is a casino that operates here in the City of Dawson, and from the Crown's perspective, at least, it would be inappropriate for Mr. Everitt to be seen to be spending time there for any reason during the term of his conditional sentence;

[42] THE COURT: Any issue with that?

[43] MS. HILL: Could I just have a moment?

[44] THE COURT: The only hesitation I have is that often, for an individual who is known not to consume alcohol, that the casino known as Gertie's is often a source of employment. Let me hear from Ms. Hill if there is any objection to that suggestion.

[45] MS. HILL: No, I don't think so. I think the Court is aware that in this jurisdiction, those types of places are often used as meeting places and as social gatherings and so I might raise an objection in that regard, but given that it is to be a jail sentence in the community, I do not think I can raise much objection.

[46] THE COURT: I do not intend to include that term in the probation order.

[47] MS. HILL: That's fine.

[48] THE COURT: I do think that the public perception issue, which we talked about at some length yesterday, is an important one. So let me just pause there then. Madam Clerk, there will be a term that he not attend any bar, tavern or off-sales or any other premises whose primary purpose is the provision of alcoholic beverages including the establishment known as Gerties in Dawson City.

[49] MR. SINCLAIR: Thank you, Your Honour. As well, I will suggest to the Court that there have been some cases where a term of a conditional sentence might include some sort of public speaking to a community group, youth group, whatever, with respect to the consequences of the conduct. And I know that there were, you know, that this proceeding and the sentence and so forth will become the public record. There were, I would say, not as many people here in the courtroom yesterday and today as I had anticipated, and Mr. Everitt is, quite frankly, a very compelling public speaker from what I heard yesterday. It may serve a purpose with respect to his kind of rehabilitation or his atonement or his ability to close this thing off, if the Court were to find some way that he could make another sort of public statement in that respect.

[50] THE COURT: I understand, and that has been utilized in other jurisdictions and with reported success for the offender as well as for the community.

[51] MR. SINCLAIR: It's not right in every case.

[52] THE COURT: Yes, it is not.

[53] MR. SINCLAIR: But this is a case which it seems to me it might.

[54] THE COURT: It might. My inclination is not to make the specific order. I note that I have made an order for 100 hours of community service. I also note that there are significant medical and stress issues at the current time. I am not in a position to judge at what point requiring him to do this might actually have an adverse effect on Mr. Everitt's health. It is certainly open for him and his Supervisor to explore this avenue for the community service, but I am not even going to recommend that this is something he should consider at this time because of his medical issues. We have not heard from his doctor because he is away on sabbatical. So we have had the discussion; I think he is aware of it, his counsel is aware of it. If he is well enough to do that, I think that would be a very useful way of having some of the community service done. I note again that he has been a frequent speaker at commencements, at high school graduations, and it may very well be that at some point in the future something like that may be useful. It is a good thought, thank you for that. I am going to decline to make the specific order.

[55] MS. HILL: Your Honour, the only two suggestions that I might make. First, I was just speaking with my client about Gerties. I understand that there are sometimes community events that are held there and I wonder if there might be, "except with the prior written permission," so that if there was a useful community event that he wished to attend and he got the permission ahead of time, he could attend that event there.

[56] THE COURT: I do not have a problem with that. You could add to the phrase dealing with Gerties, and it is just to Gerties, "except with the prior written

permission of his Supervisor to permit him to participate in cultural or community events.”

[57] MS. HILL: And with regard to the term requiring him to remain in the Yukon Territory, I wonder if there may be some ability of the Bail Supervisor or the conditional sentence Supervisor to give permission for Mr. Everitt to leave the Territory for short periods. For example, if he had to leave for a medical reason or for a family reason, it can be difficult on short notice to get before the Court.

[58] THE COURT: What did I say with respect to that?

[59] MS. HILL: My understanding was that, “remain within the Yukon Territory unless you receive the prior written permission from the Court,” and then the application to move must be brought back in front of Your Honour.

[60] THE COURT: What I intended was, in the case of short term visits not involving changing his residence, that either the Court or the Supervisor could provide permission. But if he wishes to change his residence to outside the Yukon, he will need this Court’s permission, and for the reasons I indicated yesterday, unless it is impractical to do so, that that request should be dealt with by myself. I would note that it is possible to deal with these kinds of matters as telephone applications.

[61] MS. HILL: Yes, and that would be fine as long as the order could reflect that he could leave the Yukon Territory with the prior written permission of his Conditional Sentence Supervisor but not to relocate from the Yukon Territory without the prior written permission of the Court, and that’s fine.

[62] THE COURT: Exactly.

[63] MR. SINCLAIR: Not to belabour the Gerties issue but certainly it would be the Crown's expectation that if there were events, community events that were there that were utilizing the casino facilities, it would be the Crown's expectation that Mr. Everitt not be participating in that kind of gaming --

[64] THE COURT: No.

[65] MR. SINCLAIR: -- as a community service.

[66] THE COURT: And I have no -- I must say, you may have more information about what kind of meetings take place there, I do not.

[67] MR. SINCLAIR: I don't.

[68] THE COURT: Basically, if it is a community fundraiser that involves gambling, I suspect the Supervisor will not provide that permission because it is contingent on the Supervisor giving the permission. It has to be a special cultural or community event, not a gambling event.

[69] MR. SINCLAIR: I think that Mr. Everitt himself is sort of sensitive to the optics and so forth so I don't think a lot more needs to be said about that.

[70] THE COURT: I think Mr. Everitt more than anyone.

[71] MR. SINCLAIR: Yes, sir. I agree. Thank you.

[72] THE COURT: Yes. All right. I am fine with that.

[73] I have indicated as well, there would be a 12-month probation order. The purpose of the 12-month probation order is not to supervise Mr. Everitt closely in the community, so it will have minimal terms, include the statutory terms:

1. Keep the peace and be of good behaviour;
2. Report to a Probation Officer within five clear days of the beginning of the probation order and thereafter when and in the manner directed;

I want the restitution term to continue, Madam Clerk:

3. That you make restitution payments to the City of Dawson in the amount of \$400 per month or such other amount agreed to by your Supervisor that reflects your ability to pay to a maximum of \$38,300;
4. Disclose all of your income to your Supervisor so that restitution can be continued commensurate with your income;
5. Provide releases permitting your Supervisor to obtain your medical records to monitor your health conditions.

[74] For the gallery, I want to say I am satisfied that Mr. Everitt does not need day-to-day supervision. He does not have an alcohol problem. He has some medical issues, and he is appropriately seeking assistance with those medical issues. So the primary purpose of the probation order is to monitor his restitution.

[75] Finally, with respect to s. 738 of the *Criminal Code*, I am making a freestanding restitution order pursuant to s. 738 of the *Criminal Code* for the balance of the \$38,300 remaining unpaid at the end of his probation period.

[76] Ms. Hill, anything with respect to the probation order that causes concern?

[77] MS. HILL: No.

[78] THE COURT: Anything?

[79] MR. SINCLAIR: May I also suggest a term requiring Mr. Everitt to maintain employment or education during the term of both of the orders?

[80] THE COURT: Yes, the wording will be along these lines.

6. He is to pursue retraining and/or employment as permitted by his medical condition and to report all such efforts to his Probation Officer.

[81] MR. SINCLAIR: Is that in the probation order?

[82] THE COURT: The probation order. There is already, I think, a term such as that in the conditional sentence.

[83] In the circumstance, the victim fine surcharge will be waived. I am more concerned with having any of his funds directed towards restitution rather than to the Territorial Government's purse.

[84] Anything else from counsel?

[85] MR. SINCLAIR: The DNA order.

[86] THE COURT: I am not particularly moved. I know it is discretionary; let me hear from Ms. Hill on that.

[87] MS. HILL: This is a secondary offence and I know that normally it is a hard application to oppose because the intrusion on someone's *Charter* rights is fairly minimal. But given the nature of this case, given Mr. Everitt's clean criminal record up to this point and his own efforts at rehabilitation thus far, and the findings of this Court with regard to his ongoing risk to the community, I would say that this is a case where it's appropriate to decline to make the DNA order.

[88] THE COURT: Anything in response?

[89] MR. SINCLAIR: From the Crown's perspective, the requirement for an offender to provide a DNA sample, which really only involves just a pin prick in their finger, is really now becoming the modern equivalent of fingerprinting or in conjunction with fingerprinting. So it's a relatively low level intrusion on the personal integrity and in order to displace the presumption, if I can call it that, of the taking of the sample, I believe that the offender has to show that it is contrary to the interests of justice. I don't hear that, and the Crown just likes to have these samples.

[90] THE COURT: I think I am somewhat "handcuffed" by the wording of the section. I do not personally believe that it is necessary in this particular case, but Parliament really has deemed otherwise, and I do agree with you that today it has become a form of fingerprinting and identification, which is not intrusive at all. That order will go as requested.

[91] MR. SINCLAIR: Thank you.

[92] THE COURT: If there is nothing else, I do want to say one thing further. This kind of case is never easy, particularly for counsel. I know that Ms. Hill talked about a room full of paper. Had all of the computer records been transcribed into hard copy, there would have been a lot of work for counsel to sort this out all the issues. It is clear to me that counsel, by working together, have acted extremely professionally. I mentioned earlier that the Agreed Statement of Facts was very helpful to the Court. I thank counsel for that, but I think I should also observe that seldom have I had two counsel work together so professionally in the courtroom. I congratulate you both in terms of how you conducted yourselves and how you presented your cases, the respect that you showed for each other and the respect that you showed to this Court. I think that how you conducted yourselves could be an example for young lawyers.

[93] The final comment I wish to make is in relation to something that Ms. Hill related yesterday. This community should not underestimate the importance of a guilty plea in this kind of a case. When I say the importance, I mean in terms of cost savings. If there had not been a guilty plea in this case, if there had not been acceptance of responsibility by Mr. Everitt, he would have been entitled, by law, by the constitution, to have a full trial. It could have very well been a jury trial. It would have gone on for weeks, perhaps months. It could have taken as long as another year of preparation to get all those documents in a row and get counsel prepared to deal with them. So the community should understand that the disposition today reflected the fact of the guilty plea.

[94] There is something else before the Court that has to be dealt with?

[95] MR. SINCLAIR: There is a ticket under the *Motor Vehicles Act*, R.S.Y. 2002, c. 153, or two tickets. It is my understanding that Mr. Everitt at this time is prepared to enter plea with respect to the alleged operation of an uninsured motor vehicle, contrary to s. 89(2) of the *Motor Vehicle Act*.

[96] THE COURT: Is this June 1, 2009, Mr. Everitt?

[97] THE ACCUSED: Yes.

[98] THE COURT: You understand the charge?

[99] THE ACCUSED: Yes.

[100] THE COURT: You are accepting responsibility for it?

[101] THE ACCUSED: Yes.

[102] THE COURT: Ms. Hill, can I enter a guilty plea?

[103] MR. SINCLAIR: I am appearing as agent for the Territorial Department of Justice. Do you need to hear any information with respect to the charge?

[104] THE COURT: Yes, just in a sentence or two.

[105] MR. SINCLAIR: Well, on the date identified on the ticket last year, Mr. Everitt was observed driving at an excessive rate of speed; he was pulled over. When the documents were checked it was determined that he did not have valid insurance on the vehicle. It is my understanding that it was a vehicle that had recently been

registered to him and that he was one day outside of the 14-day period allowed for the transfer of insurance.

[106] MS. HILL: Yes, and I have had some discussion with Mr. Everitt and with Ms. Badcock of the Territorial Crown, and there was some discussions back and forth because there is a 14-day period allowed to register and insure a new vehicle. The days when the registry is open and the insurance are open in Dawson don't line up. Mr. Everitt was going to Whitehorse to take care of that. The vehicle was registered the next day. So unfortunately he falls outside the 14 days and is prepared to enter a guilty plea to that charge.

[107] THE COURT: Any reason to deviate from the amounts on the ticket?

[108] MR. SINCLAIR: No, Crown is seeking the fine identified on the ticket, \$400 and a \$60 victim fine surcharge.

[109] THE COURT: That order will go as indicated. Time to pay?

[110] MS. HILL: Obviously, Mr. Everitt has a number of things to attend to, so.

[111] THE COURT: Three months?

[112] MS. HILL: That's fine. I believe the other ticket will be stayed.

[113] MR. SINCLAIR: That's correct. Crown will direct a stay of proceedings on the other ticket.

[114] MS. HILL: I'm not sure whether the other criminal charges have been stayed?

[115] MR. SINCLAIR: Crown will direct a stay of proceedings on the other charges before the Court on the criminal matter.

LILLES T.C.J.