Citation: *R. v. Reid*, 2003 YKTC 71

Date: 20030911
Docket: 02-00355
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before: His Honour Chief Judge Lilles

R e g i n a

v.

Wendy Reid

Appearances:
David McWhinnie — Counsel for Crown
Malcolm Campbell — Counsel for Defence

REASONS FOR SENTENCING

[1] Wendy Reid is a 35-year-old woman who has pled guilty to a charge that she on or between the 01st day of January, 1999 and the 09th day of July 2002, at or near Whitehorse, Yukon Territory, did unlawfully commit an offence in that: she did steal monies, the property of Pelly Banks Holding Co. Ltd. (hereinafter referred to as "Pelly Banks"), of a value exceeding five thousand dollars, contrary to s. 334(a) of the *Criminal Code*.

The Facts

[2] Pelly Banks is a small grocery store chain. Ms. Reid was, at the relevant times, an employee of Pelly Banks, and as a long time employee, had responsibilities that included preparing bank deposits. The amount stolen over a period of three years exceeded $200,000.00. The matter came to light in the early part of 2002, when the company was being sold and the purchasers were conducting their "due diligence".

[3] Ms. Reid's job responsibilities included taking the cash register statements and transposing the total receipts for the day into another computer that was connected to the head office. This informed the head office of the total amount received and to be deposited in the bank. Ms. Reid would, from time to time, skim a number of large bills (the $100 and $50 dollar bills) and prepare a bank deposit which reflected the lesser amount. Ms. Reid ensured that the bank deposits coincided with the report to the head office and thus no suspicions were raised. Until the sale of Pelly Banks, no one bothered to compare the actual cash register receipts with either the reports to the head office or the bank deposits.

[4] During the "due diligence" procedure, the discrepancies were discovered. In 1999, Ms. Reid took a total of $33,000.00 on 63 different occasions. In 2000, she took $40,000.00 on 46 different occasions. And, in 2001, on 109 different occasions, Ms. Reid took over a total of $89,000.00. During the first half of 2002, Ms. Reid took almost $50,000.00 on 59 occasions. During the 3 ½ year period, there were over 250 instances of theft, including nine separate thefts between $1,100.00 and $1,600.00 and 135 thefts of $1,000.00. The total amount taken, as I mentioned earlier, amounted to more than $200,000.00. Pelly Banks incurred a further expenditure of $4,630.00 for a forensic audit.

[5] The discrepancies between the cash register receipts and the bank deposits were normally even dollar amounts ($500, $800, $300 and $1,200). The police compared Ms. Reid's bank statements with the dates when money was missing from the store. It was discovered that quite often, a few days after money was missing from the store, Ms. Reid would deposit a number of large bills into her account. These deposits were never explained. As a result, it was concluded that she was skimming off big bills and preparing bank deposits less those amounts. As the bank deposits matched the altered information forwarded by Ms. Reid, her employer had no reason to believe that Ms. Reid was altering the accounts and stealing from the company.

[6] Ms. Reid's annual gross income during this time period was approximately $40,000.00 – 45,000.00 per year, and her husband's was approximately $55,000.00 per year. She expended increasing amounts on her VISA cards: 1999-$16,000; 2000-$25,000; 2001-$75,000; and in 2002-$41,000 by the middle of the year. These expenditures were in addition to certain fixed expenditures such as loan and mortgage repayments and were disproportionate to her family income.

[7] Ms. Reid does not have an alcohol or drug dependency, a gambling problem or crushing debts to service. No psychiatric or psychological problems have been identified. There are no children. The bulk of monies appear to have been spent on airplane trips, cruises, hotel bills, restaurants and flowers. Atypically, she seems to have been addicted only to a high-living lifestyle.

The Law

[8] In 1996, Parliament saw fit to codify certain provisions of the *Criminal Code* to guide judges in sentencing. Section 718 outlines the purpose and principles which a judge must take into account in sentencing an accused:

> 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:
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> 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.

[9] This section also addresses several other issues, including aggravating factors, proportionality of sentences, consecutive sentencing and the principle

that an offender should not be deprived of liberty if less restrictive sanctions are appropriate in the circumstances. For the purposes of this judgment I note, in particular, s. 718.2(e) which reads as follows:

> (e) all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders.

[10] Also of note is s. 718.2(a)(iii) which suggests that evidence of breach of trust is an aggravating factor to be considered in imposing a sentence.

[11] These sections are clearly remedial, meaning they were intended by Parliament to implement a change in sentencing practices by judges in criminal cases. Two principal objectives are identified by the Supreme Court of Canada in *R. v. Gladue* (1999), 133 C.C.C. (3d) 385 as reducing the use of prison as a sanction and expanding the use of restorative justice principles in sentencing. When implementing these amendments, Parliament clearly was aware that Canada's incarceration rate is one of the highest among industrialized democracies. In *Gladue, supra,* the Supreme Court of Canada acknowledges that numerous studies have uniformly concluded that incarceration is costly, frequently unduly harsh and ineffective not only in relation to its purported rehabilitative goals, but also in relation to its broader public goals.

[12] Prior to the promulgation of section 718.2 of the *Criminal Code*, theft from employees or fraud directed towards social welfare agencies generally resulted in periods of incarceration, even when the amounts taken were small. Subsequent to the 1996 amendments, a more individualized approach was taken by the courts, although it should be noted that section 718.2 of the *Code* treats a breach of trust as an aggravating factor. The reported cases also underscore the continuing importance of general deterrence in sentencing for fraud and theft.

[13] In *R. v. Khan*, [2002] B.C.J. No. 2950 (B.C.C.A.), the accused, along with another person conducted a 14-month, large-scale fraud in the amount of over two million dollars which had devastating effects on their employer. The mitigating circumstances were an absence of a criminal record, a guilty plea and remorse. The court emphasized the importance of general deterrence in the case of large-scale well-planned fraud. In such cases, in the absence of mitigating and exceptional circumstances, a conditional sentence of imprisonment would be inappropriate. However, the fraud in *Khan, supra,* was ten times greater than the theft by Ms. Reid from her employer.

[14] The Ontario Court of Appeal in *R. v. Pierce* (1997), 32 O.R. (3d) 321 (C.A.) stated:

> The abuse of a position of trust or authority in relation to a victim is an express aggravating circumstance set out in the sentencing guidelines under s. 718.2. This factor has traditionally drawn a severe custodial term even with first offenders.

[15] Similarly, in *R. v. Wilson* (2003), 174 C.C.C. (3d) 255 (Ont. C.A.), a physician was convicted of defrauding a hospital of $900,000.00. The Court of Appeal found the conditional sentence imposed by the trial judge to be demonstrably unfit having regard to the accused's motivation, the quantum of fraud, the seriousness of the breach of trust and the absence of special circumstances. The sentencing judge over-emphasized the significance of the accused's guilty plea. Noting that the fraud was systematic and well-planned, that the hospital suffered losses that were largely unrecovered and that the accused was motivated by greed, the Court of Appeal concluded that a conditional sentence failed to satisfy the principle of general deterrence.

[16] *R. v. N.C.D.*, [2003] B.C.J. No. 753 (S.C.(T.D.)) is a case involving a theft of $173,159.54, not unlike the case at bar. The mitigating factors were remorse, a plea of guilty, a small repayment of monies taken and the fact that the accused

had experienced a great deal of stress. The aggravating factors were that he was in a position of trust, the money was taken over an extended period of time involving over 50 separate transactions, the conduct ended only when discovered and he did not admit the extent of the theft until all of the cheques had been discovered. *N.C.D., supra,* was sentenced to a period of imprisonment of three years. The sentencing judge noted that if restitution had been made or was likely, a shorter term of imprisonment would have been considered.

[17] Romilly J. reviewed the principles of sentencing and the applicable case law for fraud cases in *R. v. Wilson*, [2003] B.C.J. No. 620 (S.C.), a very helpful and instructive decision. The following cases were cited and discussed in his decision.

[18] In *R. v. Savard* (1996), 109 C.C.C. (3d) 471 (Que.C.A.) the Court dealt with the factors that should be considered in imposing a sentence for offenses of fraud and false pretences. The Court stated at p. 474:

> The factors which permit one to measure liability of an accused on sentencing, in matters of fraud, were well set out in the decision of our court in R. v. Levesque (1993), 59 Q.A.C. 307 (Que.C.A.). These facts can be summarized as follows: (1) the nature and extent of the loss, (2) the degree of premeditation found, notably, in the planning and application of a system of fraud, (3) the accused's actions after the commission of the offence, (4) the accused's previous convictions, (5) the personal benefits generated by the commission of the offenses, (6) the authority and trust existing in the relationship between the accused and the victim, as well as (7) the motivation underlying the commission of the offenses.
>
> Where these factors point to fraudulent wrongdoing with no indication of mitigating circumstances, the courts give preference to incarceration as the preferred means of protecting society and of general deterrence, and expressly reject consideration of rehabilitation (cites omitted).

[19] In *R. v. Dickhoff* (1999), 130 C.C.C. (3d) 494 (Sask. C.A.), the Court held that although a conditional sentence would not endanger the community, denunciation of fraud offences where a breach of trust occurred would not be satisfied by a conditional sentence.

[20] In *R. v. Bernton*, [2000] S.J. No. 237 (Sask. C.A.), the Court upheld a one-year jail sentence for fraud by a member of the legislative assembly regarding claims for legislative allowances.

[21] In *R. v. McCauley*, [2000] O.J. No. 1070 (Ont. C.A.), the Court refused to substitute a conditional sentence for a fraud which involved a considerable amount of money, was committed over an extended period of time, and amounted to a breach of trust.

[22] As *Khan*, *supra,* demonstrates, large-scale frauds are less likely to attract a conditional sentence, in part because the period of incarceration exceeds two years, being outside the eligibility range for conditional sentences. But, that is not to say that a conditional sentence will never be available for a large-scale fraud case: see *R. v. Proulx*, [2000] 1 S.C.R. 61. But, as Lamer C.J. in *Proulx, supra*, notes:

> [T]here may be circumstances in which the need for deterrence will warrant incarceration. This will depend in part on whether the offence is one in which the effects of incarceration are likely to have a real deterrent effect….

[23] In *R. v. Wilson,* [2003] B.C.J. No. 620 (S.C.) the accused, an aboriginal woman, abused a position of trust with her Band over a period of five years during which time she stole approximately $140,000.00. The Court imposed a 20-month conditional sentence, noting that absent any mitigating factors, the appropriate sentence for the accused would entail incarceration. The mitigating factors taken into account by the court were:

a) the fact that the accused is currently raising her twelve year old grandson;
b) the fact that the accused is genuinely remorseful for her actions;
c) the fact that the Band appears to favour alternative means to incarceration, suggesting that some sort of community forum could provide the accused with an opportunity to make atonement and provide the community with healing;
d) the fact that the accused is a first time offender; and
e) the fact of the accused's aboriginal heritage, per s. 718.2(2) of the *Code*.

The Issue of General Deterrence

[24] In the reported cases, general deterrence is most often cited as the reason for imposing a period of incarceration as punishment for large-scale fraud offences. That is also the position of the Crown in this case. But, there is no unanimity as to the role and importance of general deterrence in sentencing.

[25] C. Ruby, *Sentencing*, 5th ed. (1999) at 7-10 and A. Manson, *The Law of Sentencing* (2001), at 43-46, make reference to the absence of empirical evidence supporting the theory that increased severity of sentence deters crime. Nevertheless, courts appear to predominantly continue adhering to general deterrence as a primary consideration in sentencing.

[26] In *R. v. Johnson* (1996), 112 C.C.C. (3d) 225 (B.C.C.A.) Ryan J. articulates that the law requires courts to be of the view that sentences have deterrent effect. She states at p. 236:

> The principle of deterrence as a goal of sentencing is embedded in our law. The Supreme Court of Canada has said so in *C.A.M.*, the amendments to the Criminal Code specifically refer to it as a sentencing objective (see s. 718(b)). We must assume that deterrent sentences have some effect. It is futile to ask whether a particular sentence will deter others. That question can never be answered. Deterrence operates in a general way. Those that would break the law must know, and law-abiding citizens must be

> assured, that law-breakers will receive sentences which reflect the seriousness of their crimes. This will deter some potential offenders, it will not deter others.

[27] The British Columbia Court of Appeal has since modified this position in *R. v. Sweeney* (1992), 71 C.C.C. (3d) 82 (B.C.C.A.) at 84:

> There are a number of goals which have traditionally been ascribed to the sentencing process. One goal is general deterrence, the theory being that the legal sanction imposed on actual offenders will discourage potential offenders. While there can be little doubt that the existence of a criminal justice system acts as a deterrent, there is an increasingly persuasive body of evidence and opinion which calls into question the assumption that the greater the sanction imposed in any given case, the greater will be its general deterrent effect.

[28] There is also jurisprudence suggesting that the creation of conditional sentences by Parliament is an indication of Parliament's waning acceptance of the merit of incarceration as a form of general deterrence. Rosenburg J.A., writing for the Ontario C.A., explains in *R. v. Wismayer* (1997), 115 C.C.C. (3d) 18 (Ont. C.A.) at 38:

> In my view, the enactment of the conditional sentence regime represents a concession to the view that the general deterrent effect of incarceration has been and continues to be somewhat speculative and that there are other ways to give effect to the objective of general deterrence.

[29] A more recent research study by Doob and Webster, *Sentence Severity and Crime: Accepting the Null Hypothesis"* published in Tonry M., *Crime and Justice: A Review of Research,* Vol. 30. (University of Chicago Press, 2003) challenges the notion that harsher punishments have an increased deterrent effect.

[30] Rosenburg J.A., in *Wismayer, supra,* urges caution in using general deterrence as a reason to justify incarceration:

> General deterrence, as the principal objective animating the refusal to impose a conditional sentence, should be reserved for those offences that are likely to be affected by a general deterrent effect. Large-scale, well-planned fraud by persons in positions of trust, such as the accused in R. v. Pierce, would seem to be one of those offences. Even then, however, I would not want to lay down as a rule that a conditional sentence is never or even rarely available. Each case will have to be determined on its own merits. As Donnelly J. noted in *R. v. G. (K.R.)*, a judgment of the Ontario Court -General Division, delivered October 18, 1996, [1996] O.J. No. 3867 at para.30, general deterrence may be achieved in a variety of ways:
>
> > The stigma of trial and conviction is a major deterrent. A conditional order must be, and must be seen to be, more onerous than suspended sentence by way of probation. To achieve goals of denunciation and general deterrence, the punishment must be meaningful by being visible, sufficiently restrictive, enforceable and capable of attracting stern sanction for failure to comply with the conditions.

[31] But, just as society would consider a fine an unacceptable sentence for murder, there are cases involving large-scale fraud or theft where a conditional sentence would not be considered acceptable. Rather than contribute to public respect for the law and the maintenance of a just, peaceful and safe society, as enunciated in s. 718 of the *Code*, there will be circumstances where the imposition of a disposition less than incarceration will erode public confidence in the justice system. Those circumstances will include the offence, how it was committed, and factors related to the offender.

Conclusion

[32] There are a number of aggravating factors in this case. The total amount taken was large by Yukon standards, over $200,000. The amounts taken annually were increasing as Ms. Reid, apparently, believed that she would not be detected. As a senior employee, Ms. Reid was in a position of trust. She abused that trust over the course of three and one half years on hundreds of separate occasions. The thefts stopped only because they were detected. The victim,

Pelly Banks, is a relatively small company. The amounts taken jeopardized the company's financial stability and the continued employment of other employees who worked for the company.

[33] After entering a guilty plea and after the sentencing hearing had begun, Ms. Reid attempted to change her guilty plea. This resulted in a delay of proceedings and two separate hearings, one Territorial Court and another in Supreme Court. Her applications were denied. She was entitled to pursue these applications and they must not now count against her. But in my opinion, she is no longer able to claim, by way of mitigation, that her guilty plea has saved the state time and money. Any savings avoided by her guilty plea must be set off against the time and expense associated with her two unsuccessful applications. Further, by now asserting her innocence in the absence of any evidentiary basis, she cannot claim the mitigating effect of a guilty plea and the remorse implied by such a plea. I assume that this was carefully explained to her by her counsel.

[34] Ms. Reid is before the court with no previous criminal convictions. This is a mitigating factor, but counts less in these kinds of offences because it is precisely this good background that enabled her to be placed in a position of trust and to commit the offence.

[35] It is evident from the number of support persons who attended in court with her that she continues to enjoy the support of family and friends who say that this offence is out of character for her.

[36] Counsel for Ms. Reid has asked for a conditional sentence of imprisonment to be served in the community. I note that she has served almost three months of pretrial custody for which I grant her double credit – the equivalent of a 6-month sentence of incarceration. I am satisfied that any sentence that I will impose in addition will be less than two years imprisonment. I am also satisfied that serving her sentence in the community would not endanger

the safety of the community. To be eligible for consideration for a conditional sentence, I must also be satisfied that it would be consistent with the fundamental purpose and principles of sentencing as set out in s. 718 to 718.2.

[37] On the one hand these principles require the sentence to denounce unlawful conduct and deter other persons from committing offences. They also require an increased sentence in the case of a breach of trust.

[38] On the other hand, the sentence must also assist in rehabilitating the offender, which includes reintegrating her into the community. It also requires her to provide reparations for victims and an acknowledgment of the harm done to them. The court must also use the least restrictive sanctions appropriate in the circumstances and use jail as a last resort.

[39] These principles are somewhat contradictory, as the former are better met by a further period of incarceration while the latter suggest that a community disposition would be more appropriate.

[40] A further sentencing principle prescribed by the *Code*, and in my view, an important one, is that the sentence should be similar to sentences imposed for similar offences committed in similar circumstances. This requires a careful examination of the case law. In this regard, Crown counsel very helpfully provided me with a book of authorities in support of his position on sentencing. Defence counsel provided no case law in support of his position, that a conditional sentence is an appropriate disposition in a case involving a breach of trust and substantial theft from an employer over a period of a number of years. His failure to do so in circumstances where his client's liberty is at stake sets a standard for an officer of the court that is too low. It also does a great disservice to his client. It also places the court in a difficult position. I can simply accept the Crown's authorities for the purpose of evaluating the principle 'similar sentences for similar offences and offenders'; with the result that Ms. Reid is incarcerated

for a further lengthy period. Alternatively, I can undertake to do the research that defence counsel should have done. I have chosen the latter. The following cases involving theft or fraud, in some instances for substantial amounts, have resulted in conditional sentences of imprisonment. The Zenovitch case was included in Crown counsel's book of authorities and was the only case referred to by defence counsel.

1. R.* v. *Cleary, [2002] N.W.T.J. No. 44
Accused pleaded guilty to theft and fraud charges from her employer, the local housing office. The total amount of money appropriated was $76,105. The accused had no criminal record and had been well employed. Aggravating factors were that she had abused her position of trust and that the acts were repeated over six years.
The Court ordered a conditional sentence of imprisonment for two years less a day to be served in the community with conditions of house arrest and 200 hours of community service. A restitution order of $53,457 was also made.

2. R.* v. *Normand, [2001] M.J. No. 563 (C.A.)
Accused pleaded guilty to theft from her employer. She had a lengthy criminal record and was found to have abused a position of trust. She was also in very poor health. The Court found that a condition of house arrest was adequate to prevent re-offending and allowed the previous order of 15-month imprisonment to be served under conditions in the community.

3. R.* v. *Zenovitch, [2001] Y.J. No. 105 (S.C.)
Accused found guilty of 25 counts of fraud and one count of theft totalling $37,000. She was found to be emotionally dysfunctional. The Court found that she had abused her position of trust. She had no prior record. A 20-month conditional sentence and a restitution order of $37,000 were imposed.

4. R.* v. *Oliver, (2000) 47 W.C.B. (2d) 93 (Ont. Sup. Ct.)
Accused participated in a mock hijacking of the cargo truck he was driving involving cargo with a street value of 1.5 million dollars and a retail value of 4 million dollars. The cargo was eventually recovered. He pleaded guilty. Aggravating factors were a criminal record and breach of trust. Nevertheless the Court found that the accused was not a continuing danger to the community and a 12-month conditional sentence was imposed. In addition he was ordered to perform 100 hours of community service and pay a victim surcharge of $1,000.

5. R.* v. *Verville, (1999), 140 C.C.C. (3d) 293 (Qué.C.A.)

The accused was convicted of stealing $186,488.88 from a real estate development corporation of which he was the president and sole shareholder. The accused was given cash by the corporation's clients as part of real estate

purchases. He used this cash for his own benefit and did not submit it to the corporation. The accused was convicted of theft and sentenced to one-year imprisonment and a compensation order for the total amount.

The Court of Appeal allowed an appeal from sentence. It removed the compensation order, given that the accused had already been ordered by a bankruptcy Court to repay the full amount. The Court of Appeal also found that the trial judge had improperly rejected a conditional sentence. The Court found that the judge's reasons for finding a danger of a repeat offence were not based on objective or relevant evidence. Other factors included that it was the accused's first offence, that he would be the only victim once repayment had occurred and that a conviction would seriously interfere with his future business prospects. The Court specifically found that there was no breach of trust in this case due to the unsophisticated nature of the crime. 240 hours of community service were imposed.

6. R.* v. *Smith, [1999] N.J. NO. 6 (S.C. (T.D.))
Two accused, with same surname although unrelated, were found guilty of theft of $14,937 from their employer, the town of Norman's Cove-Long Cove. Neither had a prior criminal record and the Court found that neither would be a danger to the community. Aggravating factors were abusing a position of trust and the extended period of time over which the theft occurred. A 7-month conditional sentence was imposed including 140 hours of community service for each accused. Due to their financial hardship, neither accused was required to make restitution.

7. R.* v. *Putuguq, (April 26, 1999), Doc. Gjoa Haven CR 03686 (N.W.T.S.C.)
The accused was convicted of theft from her employer and was sentenced to a conditional sentence of imprisonment for two years less a day followed by 2 years probation. Restitution with payment to be made in instalments was ordered.

8. R.* v. *Pedersen, [1998] M.J. No. 70 (C.A.)
Accused convicted of theft of $100,352.84 from her employer. The theft took place over 2 to 3 years. The Court ordered a 12-month conditional sentence, followed by 18 months of probation, 80 hours of community service and a restitution order for the full amount.

9. R.* v. *Ahow, [1997] M.J. No. 259 (C.A.)
The accused pleaded guilty to theft from a company with which he was occasionally employed on contract. He stole $132,091.72 over a period of three years. He had no prior record and was addicted to gambling. He had already served three months in jail by the time of the appeal. The Court ordered a 15-month conditional sentence and restitution for the full amount.

10. R.* v. *Horvath, (1997), 117 C.C.C. (3d) 110 (Sask. C.A.)

The accused pleaded guilty to two charges of fraud and one charge of theft from the bank where she was employed as a branch manager. The total value appropriated was almost $200,000. She had no criminal record. The accused was remorseful. She was addicted to gambling and had undergone treatment. The Court imposed a conditional sentence of two years.

[41] These cases illustrate that conditional sentences are imposed regularly for theft and breach of trust charges. When a conditional sentence is imposed, care must be taken to tailor the orders so as to ensure accountability. Moreover, the Supreme Court of Canada directs that a conditional sentence can provide a significant amount of denunciation and deterrence provided sufficiently punitive conditions are imposed – see *Proulx, supra*.

[42] In the circumstances of this case, taking into account the absence of any significant mitigating factors, a period of actual incarceration is required to denounce and deter such conduct. Ms. Reid has, however, served the equivalent of a six-month custodial sentence in remand. While this is very much on the low side of the suitable range, the consolidation of the original four counts into one now precludes me from imposing a blended sentence, one that combines additional incarceration with a conditional sentence. On balance, I have decided to impose a further period of imprisonment of 18 months, to be served in the community. The first six months of this sentence will include very strict, punitive conditions, approximating actual incarceration. This 18-month sentence of imprisonment will be followed by two years probation. This sentence will require and will maximize opportunities for Ms. Reid to make restitution.

[43] In addition to the statutory terms, the 18-month conditional sentence of imprisonment will include the following terms:

1) to be released to and reside at such place as approved in advance by the conditional sentence supervisor in writing and to abide by the rules of such residence.

2) (a) For the first six months of this order (to and including March 9, 2004) to abide by a curfew and remain within the approved residence between the hours of 3:00 p.m. and 11:00 a.m. with the following exceptions:

- with the verbal permission of your supervisor, to attend for medical or dental appointments, and for the purpose of reporting to your supervisor;
- with the prior written permission of your supervisor, to attend for job interviews, skills training, employment, education purposes, religious worship or such other purpose considered appropriate by your supervisor.

(b) for the next six months of this order (March 10, 2004 to September 9, 2004) to abide by a curfew by remaining within your residence between the hours of 6:00 p.m. and 8:00 a.m., unless you have the prior written permission of your supervisor.

(c) for the balance of your conditional sentence, abide by a curfew by remaining within your residence between the hours of 10:00 p.m. and 7:00 a.m., unless you have the prior written permission of your supervisor.

(d) for the purposes of this order, ‘residence’ shall include the land immediately contiguous to the physical residence that is part of the lot on which the physical structure is built and which is within 15 metres of that structure.

3) You are to answer the door or the telephone during your curfew when your supervisor or a peace officer conducts a curfew check. Failure to do so will constitute a presumptive breach of this order.

4) You are to abstain absolutely from the possession and consumption of alcohol and not attend at any licensed bar, tavern or liquor store. Should a peace officer have a reasonable suspicion that you have consumed alcohol, you will comply with a demand to provide a sample of breath or bodily fluids for the purpose of analysis.

5) You are to use reasonable efforts to seek, obtain and maintain employment and provide your supervisor with details upon request. For any employment requiring handling of monies belonging to the employer, you shall disclose the fact of and the circumstances of this conviction.

6) You will, on a monthly basis, provide your supervisor with a complete statement of all income and monetary receipts and upon demand, provide documentation, including income tax returns, to substantiate the same. If required, you will provide all necessary releases to permit your supervisor to confirm the payments made to you by any employer, contractor or government department.

7) During the first 12 months of this order, you are to make restitution to the Territorial Court in trust for Pelly Banks Trading Company Ltd., as a minimum, the amount of $20,000.00. Thereafter, you are to make monthly restitution payments of $1,000.00, or such lesser amount commensurate with your income as approved by the court upon your application.

8) You are to complete a psychological assessment as and when directed by your supervisor and engage in such related counseling and programming as directed by your supervisor. You are to provide the supervisor with releases to enable the supervisor to gain access to such assessment and to your progress in counseling or programming.

9) You are not to attend at the Super A Foods store in Porter Creek.

10) You are to perform 100 hours of community service as and when directed by your supervisor.

11) You will attend court for a review of your performance under this order on Tuesday, December 16, 2003 at 9:30 a.m.

[44] In addition to the statutory terms, the two-year probation order will contain the following terms:

1) You are to report to your probation officer as and when directed;
2) You are to use reasonable efforts to seek, obtain and maintain employment and to provide your probation officer with details upon request. For any employment requiring handling of monies belonging to the employer, you shall disclose the fact of and the circumstances of this conviction.
3) You will, on a monthly basis, provide your supervisor with a complete statement of all income and monetary receipts and upon demand, provide documentation, including income tax returns, to substantiate the same. If required, you will provide all necessary releases to permit your probation officer to confirm the payments made to you by any employer, contractor or government department.
4) You are to make monthly restitution payments of $1,000.00 per month or such lesser amount commensurate with your income as approved by your probation officer in writing.
5) You are to participate in such psychological counseling and programming as directed and provide your probation officer with all necessary releases to enable the probation officer to monitor your progress.
6) You are to perform a further 100 hours of community service as and when directed by your probation officer.

[45] There will also be a freestanding restitution order pursuant to s. 738 of the *Code* in the amount of $200,000.00 less any payments made pursuant to your conditional sentence and probation order in favour of Pelly Banks Trading Company Ltd.

[46] I should make a further observation that relates to Ms. Reid's husband, Shain Reid. During the period when this fraud took place, Mr. Reid benefited directly and indirectly from the actions of his wife. Mr. Reid shared in their elevated lifestyle, including trips and cruises, paid for by Ms. Reid with Pelly Bank's money. It is difficult for me to comprehend how he could not be aware that Ms. Reid was spending money well beyond what they were earning. The most favourable interpretation of his role is that he was willfully blind to the actions of his wife. There was no suggestion that he questioned, challenged or investigated the source of their new found affluence. While not legally bound to contribute to Ms. Reid's restitution, in my view, there is an overwhelming moral duty that he do so.

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Lilles C.J.T.C.