

CANADA / JUDGMENT

R. v. Elphicke

2018 BCSC 2405

COURT

Supreme Court of British Columbia

DECIDED

18 July 2018

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2018 BCSC 2405 R. v. Elphicke

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Elphicke,

2018 BCSC 2405

Date: 20180718

Docket: 42788-2

Registry: Penticton

Regina

v.

Michael Gordon Elphicke

Loren Reagan

Before: The Honourable Mr. Justice Cullen

Oral Reasons for Sentence

(Re: Accused M.G. Elphicke)

Counsel for the Crown:

P.M. Fullerton

Counsel for the Accused M.G. Elphicke:

J.H. Pennington

Place and Date of Hearing:

Penticton, B.C.

July 18, 2018

Place and Date of Judgment:

Penticton, B.C.

July 18, 2018

- [1] THE COURT: On October 26, 2017 Mr. Elphicke was found guilty of defrauding the Okanagan Elite Hockey Association, OEHA, and 22 named individuals, of an amount exceeding \$5,000. He was also found guilty of theft over \$5,000 in relation to the same transaction. He was found guilty of a third count of operating an unauthorized lottery scheme contrary to s. 207(3)(a) of the Criminal Code arising out of the circumstances in which the fraud and the theft took place.
- [2] The trial took place on various dates between September 11 and September 27, 2017 before Mr. Justice Greyell. Justice Greyell found Mr. Elphicke guilty of the three counts on October 26, 2017 in reasons reported at 2017 BCSC 2404.
- [3] A summary of the general background and context of the offences are found in Justice Greyell's reasons for judgment at paras. 2-7 as follows:
- [2] Mr. Elphicke is charged jointly with Mr. Reagan on an indictment containing three counts: that he did, from July 1, 2011, to February 1, 2012, at or near Penticton, British Columbia, by deceit, falsehood or other fraudulent means defraud the Okanagan Elite Hockey Association, who I will refer to as the "OEHA", and various named persons who are the parents of bantam hockey players, of a value in excess of \$5,000, contrary to s. 380(1)(a) of the Criminal Code . . .; and that between the same dates, at or near Penticton, British Columbia, he committed theft of money, the property of the OEHA and the same named persons, of a value in excess of \$5,000, contrary to s. 334 (a) of the Code; and a third count, that he did, during the same period [of time] . . . conduct, manage, or operate an unauthorized lottery scheme, contrary to 2. 207(3)(a) of the Code.
- [3] Mr. Reagan did not appear for trial. A bench warrant was issued for his arrest. The trial proceeded against Mr. Elphicke over a three-week period in September of 2017.
- [4] The Crown's case against Mr. Elphicke concerns his involvement in the affairs of the OEHA, an organization operated by Mr. Reagan, Mr. Elphicke, and Mrs. Tana Elphicke, during the summer of 2011 and the early spring of 2012.
- [5] The Crown says Mr. Reagan and Mr. Elphicke defrauded and stole funds from the OEHA and from a number of parents of bantam hockey players who signed up for and deposited monies with the OEHA to go on a European hockey trip in the fall of 2012.

- [6] The Crown called a number of hockey parents to give evidence, summoned banking records from the Bank of Montreal for the OEHA, called a forensic accountant who performed a forensic audit of the banking records, and called officials from the Provincial Gaming Branch as part of its case.
- [7] Mr. Elphicke gave evidence in his own behalf.
- [4] The essence of the offences of which the offender was found guilty involved him and his co-defendant, Loren Reagan, creating the OEHA as a vehicle to raise funds for young hockey players in the Okanagan to go on a hockey playing trip to Europe. The parents of the players were expected to contribute \$5,500 towards the cost per person of the trip. The parents could offset their contribution by volunteering at fundraising events and by selling raffle tickets and tickets for a draw. The OEHA applied for, but ultimately abandoned its application for a gaming event licence to conduct raffle-type fundraising events to offset the cost of the trip. In the result, the funds which were raised were misused by Messrs. Reagan and Elphicke. Justice Greyell's findings with respect to the misuse of the funds collected for the hockey trip to Europe are set out in paras. 48 and 54-69 of his reasons for judgment. I will read that onto the record because I think it comprises an important part of the sentencing reasons.
- [48] I next turn to what I will refer to as the collapse of the OEHA and the planned hockey trip to Europe; a collapse which, in my view, had been in the offing since July of 2011, involving factors [unknown] to the parent group. Essentially, Mr. Reagan and, to a lesser degree, Mr. Elphicke had been paying themselves what amounts to a monthly salary from OEHA funds and had invested OEHA funds in the development of a hockey dorm project being constructed in Penticton as an adjunct to a local hockey arena.
- [54] [Unknown] to the hockey parents, a number of events occurred during the fall of 2011 that relate to the OEHA and its accounts. In September of 2011, Mr. Elphicke, at Mr. Reagan's suggestion, attended a meeting with officials from the City of Penticton to discuss the dorm project. On October 9, 2011, Mr. Reagan entered into a contract of purchase and sale for the city for the dorm project for \$900,000, with a deposit of \$50,000.
- [55] October 17, 2011, 0922883 B.C. Ltd., which I will refer to as "the numbered company", was incorporated by Mr. Elphicke and Mr. Reagan. Both were shareholders and directors. On November 2, 2011, the city received and accepted an offer to purchase the dorm property from the numbered company. The parties agreed the closing date would be February 1, 2012. The deposit was to be increased, payable by solicitor's trust cheque or bank draft by January 16, 2012.

- [56] On November 21, 2011, Mr. Reagan entered into an agreement with Citation Ventures Inc. . . . to provide consulting services for the dorm project and to secure a lender for financing. Later that month, the agreement was assigned to the numbered company wherein the latter was the borrower. Trask Construction Management . . . was engaged to provide quotes for various aspects of the construction of the dorms.
- [57] In late November, early December 2011, Trask provided various quotes to the OEHA, to Mr. Elphicke's address in Winfield, B.C. Mr. Elphicke said he reviewed the quotes and made comments about them.
- [58] On December 15, 2011, Trask gave seven days' notice it would cease its services for lack of payment.
- [59] On December 16, 2012, Messrs. Reagan and Elphicke signed a pledge of shares, pledging their shares in the numbered company to Citation as security for a loan on the purchase of the dorm property.
- [60] The dorm property project came to a halt when the City of Penticton issued a stop-work order for violations of the terms of the project. As a result, financing fell through with the result that representations that had been made by Mr. Reagan could not be fulfilled.
- [61] During the fall of 2011, all of the hockey parents made the instalment payments, which were expected of them, and they worked hard to sell raffle and meat draw tickets which, through the system developed by Mr. Elphicke, gave them credits to be applied to reduce the cost. From time to time, parents received communications from Mr. Elphicke which showed the instalments they had made on account of the trip cost, the number of raffle tickets each parent had sold, and the amount of credit from the cost they could expect to receive against their ticket.
- [62] While many of the parents knew of the dorm project through the attention it received in the local press, they were not aware funds they advanced to the OEHA were being used by Messrs. Reagan or Elphicke for dorm development purposes or construction.
- [63] The bank records of the OEHA were introduced into evidence in these proceedings. Mr. Derek Wong of the Forensic Accounting Management Group of Public Works and Government Services Canada prepared a forensic accounting audit report on the three Bank of Montreal accounts, as well as on the accounts of the numbered company. A forensic audit shows that from July 19, 2011, to January 30, 2012, a total net amount, including transferred and cancelled transactions, of \$184,004 was deposited to the Bank of Montreal accounts. Virtually the same amount was withdrawn from the accounts. Of the deposits, European trip instalment payments by parents totalled \$105,041; raffle ticket and meat draw sales totalled \$19,045; tournament team fees totalled \$25,670. [And] there was sales revenue of \$12,922, cash deposits of \$5,968, and some other miscellaneous deposits, including some from Tana Elphicke and Mr. Reagan.

- [64] The disbursements from the accounts, on account of the purchase of the dorm property, totalled \$44,451. [Those] expenses were broken down into: \$5,000 paid August 17, 2011; \$8,000 paid for an event centre on September 28, 2011; and three payments made between October 20 and October 26, 2011, relating to the dorm project, the last one being \$5,000 for expenses and dorm permit fees. These expenses, in my view, are notable for their size and timing in relation to when the parents paid their deposit monies.
- [5] Justice Greyell summarized Mr. Elphicke's defence position as follows at paras. 76-79:
- [76] The defence in this case says Mr. Elphicke and his partner, Mr. Reagan, were conducting a business enterprise when they set up the OEHA and they were entitled to use the funds they collected for any purpose they deemed a legitimate business purpose, as long as the OEHA met its commitments to the hockey parents; that is, to provide a European hockey experience to members who had signed up.
- [77] The defence says that when the hockey parents decided not to proceed with the trip in January 2012, under the offer given to them by Mr. Elphicke, the OEHA had met all its obligations. The OEHA and Mr. Reagan and Mr. Elphicke had met all their obligations to parent subscribers. They had made the initial deposit, they had reserved the seats through Azorcan, and the next instalment was not due for several months.
- [78] Mr. Elphicke says it matters not where the funds the OEHA held were spent or invested, as the payments were up to date, and in any event, that many of the expenses were justified by the work put in by Mr. and Mrs. Elphicke in administering the fundraising and volunteer effort required to make the trip a success.
- [79] The defence agrees Mr. Reagan's expenditure of the OEHA funds was not warranted, but says Mr. Elphicke took reasonable and appropriate steps to rein in Mr. Reagan's expenditures or do what he could to rein in Mr. Reagan's expenditures, and with reference to other expenditures, particularly those relating to the Penticton dorm project, Mr. Elphicke was misled or led down the garden path by Mr. Reagan.
- [6] In finding Mr. Elphicke guilty Justice Greyell reasoned as follows:
- [83] There are a number of reasons I do not accept Mr. Elphicke's defence.
- [84] First, Mr. Elphicke became aware, very soon after the Bank of Montreal accounts were set up, that Mr. Reagan was charging personal expenses - clothing, food, liquor, and vehicle expenses - to the OEHA. He was aware this was wrong. He was aware, I conclude from the facts, by reason of the steps he took regarding the account, that the monies in the account belonged to the hockey parents, not to Mr. Reagan or to Mr. Elphicke, and that both were accountable to the hockey parents for the use of those funds.

- [85] Mr. Elphicke drew Mr. Reagan's attention to the expenditures Mr. Reagan was charging to the account by telling him on at least two occasions that receipts were needed for the expenditures, otherwise Mr. Reagan would have to repay the amounts to the account. That is found in an email of August 5, 2011, in Exhibit 3.
- [86] On August 14, 2011, Mr. Elphicke advised Mr. Reagan there would be a requirement of two signatures on the account. This was an insistence by Mr. Elphicke that the account process be changed so that there would be a requirement for two signatures rather than the one when the account was initially set up. Mr. Elphicke told Mr. Reagan there would be "no access" to the account by any other means than by a cheque requiring two signatures, and that the account was "frozen" until the new paperwork was signed.
- [87] Mr. Elphicke specified that the gaming account was for deposit only and the tournament account was for deposit and withdrawal "at Mike's direction only". He asked Mr. Reagan to reimburse the OEHA general account a refund Mr. Reagan had received from a hold on his rental car and said the two would discuss the portion to be charged to the OEHA.
- [88] So in my view, Mr. Elphicke's statements to Mr. Reagan in these early days of the operation of the accounts constitute a recognition that the funds in the account were the property of the hockey parents and any disbursement from the accounts had to be carefully accounted for.
- [89] But the problematic issue for Mr. Elphicke in this case is that his conduct thereafter changed and changed within a very short number of weeks. Mr. Elphicke testified that, notwithstanding the accounts were changed to require two signatures, he continued to provide the spendthrift Mr. Reagan with blank signed cheques, five at a time, sometimes more at a time, which Mr. Reagan used to pay himself a salary and to pay various other personal expenses which obviously, from the look of the cheques, had little, if anything, to do with OEHA affairs.
- [90] Mr. Elphicke permitted this situation to continue throughout the fall of 2011. Mr. Elphicke cannot plead ignorance as to the manner in which Mr. Reagan was using the money, because Mr. Elphicke was receiving the bank statements on the 15th of the month following. Mr. Elphicke testified he considered Mr. Reagan to be a con man. He said he did not want to be a partner anymore, referring to a November timeframe. Yet Mr. Elphicke continued to make it easy for Mr. Reagan to access OEHA funds.
- [91] Mr. Elphicke was aware Mr. Reagan had paid none of the funds back that he had been requested to provide receipts for and had not done so.
- [92] In his evidence in cross-examination, Mr. Elphicke acknowledged he became concerned the parents' funds were at risk, yet he continued to sign blank cheques and provide them to Mr. Reagan.

- [93] The Crown has established Mr. Elphicke was more than a beguiled, innocent bystander who was led astray. In my view, Mr. Elphicke was actively involved in using OEHA funds for purposes he knew he should not be using and which he knew was placing the funds at risk.
- [7] Justice Greyell concluded that neither Elphicke nor Reagan "had any colour of right to use the funds for any other purposes other than 'administrative expenses' directly related to the purposes for which they solicited the funds".
- [8] The Crown's submission on sentencing is that the accused should be sentenced on Count 1, the fraud count, to 18 to 24 months and be given a three-year probation order on Count 3. The Crown is also seeking a fine in lieu of a forfeiture order pursuant to s. 462.37 of the Criminal Code. It is the Crown's submission that there are factors at play in the present case that weigh against a conditional sentence order in favour of the imposition of actual incarceration. The Crown cites the development of the plan by Mr. Elphicke and Mr. Reagan in May 2011, the non-disclosed intention that it be a not for profit enterprise, and the representation to the bank that the OEHA would be a unincorporated association/non-profit non-registered, while in fact they registered it as a general partnership under the companies registry. Mr. Elphicke's knowledge of and ability to control expenditures from the OEHA account because he received the various statements from the Bank of Montreal, his ongoing efforts to ensure that the parents met their payment deadlines over several months while the funds were simultaneously being misdirected, his payments to himself, his involvement with using the OEHA funds for the dorm project, his recognition of Reagan's misappropriation of funds, but his ongoing failure or unwillingness to do anything to prevent it, and finally his provision of signed cheques to Reagan who was using the funds from the OEHA account. The Crown says that despite Mr. Elphicke's lesser participation in the misappropriation of the funds, he was aware of it, he received some benefit from it, and ultimately he did too little too late to effectively prevent it from happening and he participated in it himself. The Crown says the offender has not demonstrated remorse and has not taken any steps towards reimbursing the victims of the fraud. The Crown says that of the \$184,004 paid into the OEHA account approximately \$128,836 came from installment payments from the parents, draws and raffles, and sponsorship from outside the parents group and it is notionally subject to repayment.
- [9] It was later determined in the hearing that the sum of \$12,264 was left in the account and was recovered by the parents so the remaining amount would be something in the range of \$117,000.
- [10] The Crown emphasizes that although it was adults who were defrauded, the hopes and expectations of children were implicated in the scheme. There were 16 different families affected by the fraud and the Crown says that Mr. Elphicke breached a position of trust.
- [11] The Crown submits that an absence of remorse while not an aggravating factor does raise the issue of the need for a sentence that emphasizes specific deterrence as well as denunciation.

- [12] The Crown relies on the following cases in support of 18-24 months being an appropriate range: *R. v. Shah*, 2017 ONCA 872; *R. v. Slobbe*, 2011 BCCA 107; *R. v. Copeman*, 2017 BCSC 1360, *R. v. Dreger*, 2014 BCCA 54; *R. v. Dunkers*, 2016 BCCA 174; *R. v. Maddalena*, 2015 BCSC 2474; *R. v. Bethke*, 2013 SKCA 135; *R. v. Bodnarchuk*, 2008 BCCA 39; *R. v. Widdifield*, 2018 BCCA 62; and *R. v. Angelis*, 2016 ONCA 675.
- [13] In summary, the Crown submits deterrence and denunciation are predominant factors in the circumstances of this case. There are few or no mitigating features and the effect of the offender's offending is not simply financial as is established in the victim impact statements which have been put before the Court. The Crown relies on the case of *R. v. Angelis* in support of his submission that a fine in lieu of forfeiture should be imposed on Mr. Elphicke in the circumstances of the present case.
- [14] It is the defence position that a conditional sentence of two years less a day is appropriate in all the circumstances which include Mr. Elphicke's cooperation with the investigators and reporting the offence to them by providing them with relevant documents in his control or possession. The defence also relied on what is characterized as Mr. Elphicke's lesser involvement in the misappropriation of funds as compared to that of his former co-accused Reagan, as well as evidence that various of the hockey parents who got caught up in the scheme were not surprised or upset by the prospect that the enterprise may have been for profit. The defence also emphasizes that Mr. Elphicke has significant health issues that may be compromised by his incarceration and the defence relies on a letter from his treating physician dated October 24, 2017. Dr. Muruve who explained that the offender:

... is a patient under my care who receives life sustaining in centre nocturnal hemodialysis for kidney failure.

[15] Dr. Muruve opined that:

Mr. Elphicke's health would be worse if he receives dialysis while incarcerated. Nocturnal dialysis clearly provides a health benefit especially in younger patients in terms of blood pressure, cardiovascular, and metabolic control. Patients also have significant improvements in quality of life measures.

[16] The Okanagan Correctional Centre does not have the medical equipment on site to provide dialysis treatment, but can provide transportation/escort to Penticton General Hospital as required. Nocturnal dialysis would not be available.

[17] Dr. Muruve indicated that:

Inadequate dialysis could develop similar issues on his right foot (to his left foot which has been partially amputated) not to mention the effects on his heart, blood pressure and metabolism.

[18] As noted, the offender does have prior criminal convictions, however, they are dated, the most recent being in 1992 and the most recent convictions similar to the present offences being in 1989. He has not previously been incarcerated. There is evidence in the pre-

sentence report that he had a turbulent childhood and was exposed to many kinds of abuse. Despite that he evidently has a stable relationship with his wife of 21 years and three children aged 20, 18 and 16. He has a job for which he received remuneration partly on salary and partly on commission. His employer is apparently not familiar with his situation. I am told that the offender would be able to work from his home with a computer and a telephone. His counsel has relied on cases in which the offender's health is a factor to consider in determining the appropriate range or even type of sentence.

- [19] In my view, this is a case which ordinarily would require the imposition of a sentence of actual incarceration. While it is not entirely clear as to the degree of premeditation that led to the scheme by which the victims were defrauded, it is clear that the conduct of both Mr. Reagan and Mr. Elphicke which fraudulently deprived the victims of their money went on for some period of time between July of 2011 and February of 2012. The amount of money involved is not insignificant, particularly in view of the fact that it was taken from families raising children and hoping to provide their children with a meaningful adventure and experience. The implications of the crime perpetrated by the offender and his former co-accused was well described in the victim impact statement submitted by one of the victims, Mr. Ken Whitehead who said in part as follows:

When we found out that all of the money had been taken from the accounts which were set up for this trip in 2012, we were blown away. We found it hard to believe that any individual would bait the kids in this manner for their own personal gains. We had asked friends and family to sponsor jerseys and banners as a fundraiser. We had sold tickets for a raffle that never happened. It is embarrassing to be used in this manner. I can live with the fact that we had paid for a portion of this trip and the money was gone, but to ask others to help us in raising money and to solicit shoppers in malls, friends and family buying tickets just for a means to support Elphicke's expenses pisses me off.

- [20] It is clearly not just the loss of money that is at the heart of crimes such as this. It is the loss of trust and faith in those involved in the offences as well as the embarrassment or humiliation which they feel. The anomalous issue in this case is not the offender's degree of complicity. It is high. He has committed fraud and theft and he has done so by deceiving those around him who relied on him. The issue is his health, which is set out in the letter of Dr. Muruve in Exhibit 6 from which I have already quoted. While there is some accommodation which the Correctional Service can provide to abate the risk to the offender's health, it is not optimal, as it at least requires him to be transported three times a week from Oliver to Penticton (assuming dialysis is available at the Penticton General Hospital) and it does not permit the nocturnal dialysis which Dr. Muruve indicated could negatively affect his heart, his blood pressure and his metabolism.

- [21] In *R. v. Ralph*, 2014 BCSC 467, the Court held as follows:

- [106] . . . An accused's infirmity is always a factor to be considered and may warrant a reduction in sentence that would otherwise have been imposed or, in appropriate circumstances, a different kind of sentence. In such cases, the principles of denunciation and deterrence must give way to the more humane principles of compassion, empathy, and clemency.
- [22] The issue in my mind in the present case is not so much one involving compassion or empathy, but rather fashioning a sentence that does not unduly put the offender's health at risk while still serving the objects of denunciation and deterrence.
- [23] As Judge Derrick put it in *R. v. Al-Awaid*, 2015 NSPC 52, whether an offender's health is a factor or not, sentencing will continue to be a highly individualized exercise.
- [24] Here, in my view, having the offender harnessed in an ongoing stringent obligation to repay the victims of his crime is a means of achieving that while confining him to his home under strict terms of house arrest for a period of two years less a day. The terms which I am going to impose on him are as follows:
- [25] He will keep the peace and be of good behaviour. He will appear before the court when he is required to do so.
- [26] He will report by telephone to a conditional sentence supervisor in Calgary, Alberta, no later than the end of the day on July 23, 2018, and thereafter as required and in the manner directed by the supervisor or somebody acting in his stead.
- [27] He will remain within the Province of Alberta unless written permission to go outside the province is obtained from the court or the supervisor.
- [28] And he will promptly notify the court or the sentence supervisor in advance of any change of name or address and promptly notify the court or supervisor of any change of employment or occupation.
- [29] He will make all reasonable efforts to maintain his employment or to locate and maintain employment should he lose his present employment as directed by his supervisor.
- [30] For the first 12 months of the conditional sentence he is to have no more than one visitor that is not a family member at a time at any point during the day. For the duration of the conditional sentence, he is to have no visitors between the hours of 8:00 p.m. and 7:00 a.m. He is to remain in his premises at all times beginning at 4:00 p.m. on July 23, 2018 and ending at 11:59 p.m. on the conclusion of the conditional sentence order, two years less one day hence.
- [31] His house arrest condition will be subject to the following exceptions: when he is at regularly scheduled employment which his sentence supervisor knows about and travelling to or from that employment by a direct route; when he is dealing with a medical emergency or medical appointment of his own or a member of his household when travelling to and from that by a direct route. Those medical appointments or emergencies will include, of course, his attendance at the Foothills hospital for dialysis. When attending a scheduled

appointment with his conditional sentence supervisor and travelling to and from that appointment by a direct route.

- [32] In the event that he finds it necessary to look for work then there will be an exception that he can be out of his home when making applications for employment or attending job interviews from Monday to Friday between the hours of 9:00 a.m. to 5:00 p.m.
- [33] Insofar as the repayment of his victims is concerned I will make a restitution order in the amount of \$117,000 and I will order that as a condition of his conditional sentence order that he pay no less than one-quarter of his gross income which includes his salary, commission, bonuses, and any interest amounts to the court to be distributed pro rata to the victims of his fraud.
- [34] The offender shall provide his conditional sentence supervisor with monthly up-to-date statements of his income and will provide his conditional sentence supervisor with an authorization to speak to his employer to confirm that information.
- [35] In addition, with respect to Count 3 I will order that he be subject to a probation order for three years, the same statutory conditions will apply as with respect to the conditional sentence order and the same terms of payment will apply. So for the next five years, Mr. Elphicke, you are harnessed to the obligation to repay the victims of this offence in the manner that I have ordered.
- [36] Is there anything further counsel?
- [37] MR. PENNINGTON: No, thank you.
- [38] MR. FULLERTON: My Lord, just -- what's the -- in repaying or paying a quarter of his gross income what is the repayment restructure, like is that monthly, one --
- [39] THE COURT: Monthly, yes.
- [40] MR. FULLERTON: Monthly.
- [41] THE COURT: Yes.
- [42] MR. FULLERTON: Excuse me.
- [43] THE COURT: And I am sorry, maybe I should have made that a little more clear. I think the first payment will be made August 31, 2018 and thereafter for the balance of the conditional sentence order and ultimately the probation order.
- [44] MR. FULLERTON: Thank you.

- [45] My Lord, I will ask that Your Lordship consider a condition that requires him to attend either RCMP or -- I don't know his exact residence so I don't know if it's RCMP or Calgary Police Service, but I will be asking for Your Lordship to consider -- sorry, I just need to find what I am looking for -- a fingerprinting condition on the CSO pursuant to the Identification of Criminals Act and --
- [46] THE COURT: Yes, I will certainly make that order. I thought it would happen automatically.
- [47] MR. FULLERTON: It -- it happens automatically when people step into custody and I don't know if -- to be honest with you I don't know if it actually happened when he was arrested on this --
- [48] THE COURT: All right.
- [49] MR. FULLERTON: -- this file.
- [50] THE CLERK: We need a pick list term or something. I don't know what kind of [indiscernible].
- [51] MR. FULLERTON: I can --
- [52] THE COURT: Yes, if --
- [53] MR. FULLERTON: I can read --
- [54] THE COURT: -- Mr. Fullerton, you can --
- [55] MR. FULLERTON: Yes.
- [56] THE COURT: -- provide that to the clerk.
- [57] THE CLERK: Yes.
- [58] THE COURT: And Mr. --
- [59] MR. PENNINGTON: Calgary Police Service.
- [60] THE COURT: I am sorry?
- [61] MR. PENNINGTON: Calgary Police Service.
- [62] THE COURT: Yes, if you could provide an address as well, Mr. Pennington --
- [63] MR. FULLERTON: You ready?
- [64] THE COURT: -- to -- for the house --
- [65] THE CLERK: No, I should just --
- [66] MR. FULLERTON: Oh.
- [67] THE COURT: -- for the house where he is under house arrest.

- [68] MR. PENNINGTON: Yes.
- [69] MR. FULLERTON: The condition that I would be asking for, and I can read it on the record.
For the purposes of --
- [70] THE CLERK: Is there a number on it? Don't you just have a number, sir?
- [71] MR. FULLERTON: Oh, yeah. This is a bail term.
- [72] THE CLERK: Sure.
- [73] MR. FULLERTON: Okay, 1106.
- [74] THE CLERK: Eleven oh six, thank you. Thank you. Okay.
- [75] MR. FULLERTON: Found it?
- [76] THE CLERK: Perfect, yeah.
- [77] MR. FULLERTON: Okay. Okay, then I don't need to read it.
- [78] THE COURT: All right. Nothing further, Mr. Pennington?
- [79] MR. FULLERTON: The last thing I would ask, My Lord, is that --
- [80] THE CLERK: And I still think Penticton -- no, actually [indiscernible].
- [81] MR. FULLERTON: Yes, to Calgary.
- [82] THE CLERK: To Calgary?
- [83] MR. FULLERTON: It should be to Calgary.
- [84] THE CLERK: Okay.
- [85] MR. FULLERTON: I would ask the court to consider conditions that he not assume any director, officer or other executive positions with incorporated or unincorporated entities and that he not work in -- work or volunteer in any capacity that involves fundraising.
- [86] THE COURT: All right.
- [87] MR. PENNINGTON: Yes, sure.
- [88] THE COURT: All right, I will make those orders.
- [89] MR. FULLERTON: It would apply to both the CSO and the probation --
- [90] THE COURT: Yes, the CSO and the probation order.
- [91] MR. PENNINGTON: I give to Madam Clerk his residential address.
- [92] THE COURT: Thank you.
- [93] THE CLERK: Thank you.

[94] THE COURT: All right.

[95] MR. FULLERTON: And in terms of Count 2 I think -- I am not sure Your Lordship if it should be you who is directing a stay pursuant to Keinapple or?

[96] THE COURT: I think it probably should be. I will direct a stay of proceedings pursuant to the provisions of R. v. Keinapple.

[97] MR. FULLERTON: Thank you.

The Honourable Mr. Justice A.F. Cullen

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/18/24/2018BCSC2405.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-elphicke-2018>

Prepared on 27 October 2026 · Esheria