

CANADA / JUDGMENT

R. v. Reynolds

2020 BCSC 732

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 732 R. v. Reynolds

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Reynolds,

2020 BCSC 732

Date: 20200511

Docket: 27705-2

Registry: Vancouver

Regina

v.

Damien Reynolds

Before: The Honourable Mr. Justice G.C. Weatherill

Oral Reasons for Sentence

Counsel for the Crown:

G. Sair

J. Simpson

Counsel for the Accused:

G. DelBigio, Q.C.

J. Flood

Place and Date of Hearing:

Vancouver, B.C.

March 6, 2020

Place and Date of Judgment:

Vancouver, B.C.

May 11, 2020

Introduction

[1] Mr. Reynolds was charged by way of Indictment with the following three counts:

Count 1

Damien REYNOLDS, between December 31, 2003 and March 1, 2017, at or near the City of Vancouver, in the Province of British Columbia, did, by deceit, falsehood or other fraudulent means, defraud the Governments of Canada and British Columbia of money in excess of five thousand dollars, by evading income taxes, contrary to section 380(1)(a) of the Criminal Code, R.S.C. 1985, c. C-46.

Count 2

Damien REYNOLDS, of the City of Vancouver, in the Province of British Columbia, between June 1, 2006 and March 1, 2017, being an officer and director of Feehily MacPhedran Oldfield Reynolds Ltd., and JAT 001 Holdings Ltd, wilfully evaded or attempted to evade the remittance of tax or net tax imposed by the Excise Tax Act, R.S.C. 1985, c. E-15 in the amount of \$244,929, and did thereby commit an offence contrary to paragraph 327(1)(c) of the said Act.

Count 3

Damien REYNOLDS, between December 31, 2006 and March 1, 2017, at or near the City of Vancouver, in the Province of British Columbia, did, by deceit, falsehood or other fraudulent means, attempt to defraud the Governments of Canada and British Columbia of money in excess of five thousand dollars, by claiming false losses on his 2007 and 2008 income tax returns, contrary to section 380(1)(a) of the Criminal Code.

[2] During the course of the trial by jury, the Crown elected to proceed under Count 3 with only the charge relating to the 2008 taxation year.

[3] This was a complex proceeding involving a myriad of financial, corporate, securities and income tax filings and documents, charts, graphs and power point presentations and spread sheets, all presented to the jury in electronic form. By any measure, the case would have been difficult to comprehend for even those well-informed and experienced in the area of corporate transactions and income tax rules.

- [4] Nevertheless, as was its duty, the jury reached a verdict. On October 24, 2019, after 21 days of trial, Mr. Reynolds was convicted on all three counts.

Circumstances of the Offences

- [5] A brief summary of the circumstances of the offences are set out in my February 6, 2020 ruling, pursuant to s. 724(2) of the Criminal Code: *R. v. Reynolds*, 2020 BCSC 143 [unreported]. After a two-day hearing for the purpose of determining the facts that were essential to the jury's verdicts, I made the following ruling:

Mr. Reynolds will be sentenced based upon the following findings of fact that are implicit in the jury's verdicts:

Count 1: he defrauded the governments of income tax payable on \$609,745 in unreported income for the years 2004 and 2005;

Count 2: he failed to remit GST/HST of \$121,179; and

Count 3: he attempted to defraud the governments of money in excess of \$5,000.

Legal Principles For Sentencing

- [6] Section 718 of the Criminal Code provides that the fundamental purpose of sentencing is to protect society and 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. This purpose is achieved by imposing sentences which have, among others, the following objectives:
- a) denouncing unlawful conduct and the harm to victims and/or the community caused by unlawful conduct;
 - b) deterring the offender and other persons from committing offences;
 - c) separating offenders from society, where necessary;
 - d) assisting in the rehabilitation of offenders;
 - e) providing reparations for harm done to the victims and to the community; and
 - f) promoting a sense of responsibility in offenders, and acknowledgment of the harm done to the victims and to the community.
- [7] Section 718.1 of the Criminal Code stipulates that a sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender. It is a highly individualized process, which requires consideration of all relevant circumstances: *R. v. L.M.*, 2008 SCC 31 at para. 22.

- [8] Section 718.2 of the Criminal Code sets out other sentencing principles that must be taken into account. Of particular relevance is s. 718.2(a), which stipulates that when imposing a sentence, the court shall take into consideration any relevant aggravating or mitigating circumstances relating to the offence or to the offender. As well, s. 718.2(d) and (e) provide as follows:
- (d) an offender should not be deprived of liberty, if less restrictive sanctions may be appropriate in the circumstances; and
 - (e) all available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to the victims or to the community should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders.

Count 1: Fraud Contrary to s. 380(1) of the Criminal Code

- [9] As I have already indicated, Mr. Reynolds was convicted based upon an indictment that charged him with fraud contrary to s. 380(1) for the period of 2003 to 2017. In my decision outlining my findings of fact for the purposes of sentencing, I concluded that the evidence at trial only proved beyond a reasonable doubt that Mr. Reynolds committed this offence for the years 2004 and 2005, and that he would be sentenced based upon him having offended in respect of those two years.
- [10] Section 380(1)(a) of the Criminal Code provides that a person who commits the offence of fraud over \$5,000 is liable to be punished by a term of imprisonment not exceeding 14 years.
- [11] Section 380(1.1) provides that when a person is convicted of one or more offences under s. 380(1), the court shall impose a minimum punishment of imprisonment for a term of two years if the total value of the subject-matter of the offences exceeds one million dollars. However, s. 380(1.1) was not in existence at the time of the offences in question, and the Crown concedes that it has no application in this case.
- [12] I note that there were two sets of revisions to s. 380.1 over the period of time covered in Count one of the indictment that added a number of aggravating factors to be considered on sentencing. However, in my findings of fact for sentencing, I determined that Mr. Reynolds will only be sentenced for failing to file taxes for income earned in 2004-2005, and therefore sentencing on that count will proceed based upon the provision as it was written at that time.
- [13] Section 380.1(1), the provision adding statutory aggravating factors for sentencing in fraud cases, came into effect on September 15, 2004. Given that taxes are to be paid upon conclusion of the calendar year, I find that that the offences took place after s. 380.1(1) came into effect, and therefore sentencing will proceed on that basis.
- [14] Section 380.1, as it read at the time of the offences, provides as follows:

380.1 (1) Without limiting the generality of section 718.2, where a court imposes a sentence for an offence referred to in sections 380, 382, 382.1 and 400, it shall consider the following as aggravating circumstances:

- (a) the value of the fraud committed exceeded one million dollars;
 - (b) the offence adversely affected, or had the potential to adversely affect, the stability of the Canadian economy or financial system or any financial market in Canada or investor confidence in such a financial market;
 - (c) the offence involved a large number of victims; and
 - (d) in committing the offence, the offender took advantage of the high regard in which the offender was held in the community.
- (2) The court shall not consider as mitigating circumstances the offender's employment, employment skills or status or reputation in the community if those circumstances were relevant to, contributed to, or were used in the commission of the offence.

Count 2: Excise Tax Act Offence

[15] Sections 327(2)(a) and (b) of the Excise Tax Act provide that a person who wilfully evades or attempts to evade the remittance of Good and Services Tax (GST) or Harmonized Sales Tax (HST) is subject to (a) either a fine of between 100% and 200% of the amount of the tax evaded or sought to be evaded or (b) to a fine and a term of imprisonment not exceeding five years. This count on the indictment alleged Mr. Reynolds committed this offence between June 1 2006 and March 1 2017. In my subsequent findings of fact, I determined that Mr. Reynolds would be sentenced on the basis that he failed to remit GST/HST in the amount of \$121,179 for the years 2009 to 2012.

Count 3: Attempted Fraud

[16] Count 3, the charge of attempted fraud for the years 2007 and 2008 is governed by s. 463 of the Criminal Code which provides for a maximum sentence of seven years' incarceration.

Crown's Position on Sentencing

[17] The Crown seeks the following sentences:

- a) a period of incarceration of 15 months on Count 1;
- b) a period of incarceration of nine months on Count 2, consecutive to the sentence imposed on Count 1; and
- c) a period of incarceration of 24 months on Count 3, consecutive to the sentences imposed in Counts 1 and 2.

- [18] The Crown submits that, although a transactional approach to sentencing necessitates a global sentence of four years, a total period of incarceration of 3½ years is just and appropriate in this case given the totality of the circumstances, the nature of the offences, and the circumstances of the offender.
- [19] In addition, the Crown seeks the imposition of a fine of \$121,179, being 100% of the GST/HST Mr. Reynolds failed to remit.
- [20] The Crown points out that the income tax system in Canada is a self-reporting system that relies on the honesty and integrity of taxpayers. As was stated by the Supreme Court of Canada in *Knox Contracting Ltd. v. Canada*, [1990] 2 S.C.R. 338 at p. 350:

The entire system of levying and collecting income tax is dependent upon the integrity of the taxpayer in reporting and assessing income. If the system is to work, the returns must be honestly completed. All taxpayers have the right to know that it is a criminal violation to commit any of the offences described in s. 239 [of the Income Tax Act]. The Act imposes a public duty. A breach of that fundamentally important public duty should constitute a criminal offence.

- [21] The Crown submits that the applicable case law sets out the overriding principle that, due to the necessity of denunciation and general deterrence, cases of tax fraud or evasion involving significant amounts are serious offences that, absent mitigating factors, generally attract a custodial sentence.
- [22] Crown relies on the following cases involving fraud upon the government in respect of the payment of income tax and GST/HST:
- a) *R. v. Bath and Khangura*, 2012 BCSC 645: Bath: 4½ years; Khangura: 3 years for fraud of \$7,980,122 and \$3,164,853, respectively;
 - b) *R. v. Baudais*, 2014 BCSC 2161: six months' incarceration for counselling to commit fraud (exact amount not determined, but it was "significant");
 - c) *R. v. Porisky*, 2016 BCSC 1757: Mr. Porisky received 18 months' incarceration for evading \$193,333.26 in income tax;
 - d) *R. v. Dwyer*, 2013 ONCA 34: 3½ years' incarceration for mortgage fraud totalling \$633,750, although the bank recovered \$426,049.00 of that amount;
 - e) *R. v. Dyck*, 2018 MBCA 33: 3 years' incarceration for income tax evasion of over \$2 million and \$166,367 of unpaid GST remittances;
 - f) *R. v. Lawson*, 2016 BCSC 2446, aff'd 2019 BCCA 290: six-month custodial sentence for unpaid GST of \$12,681.15 consecutive with 12 months for planned, deliberate and profit-motivated income tax evasion;
 - g) *R. v. Raza*, 2016 BCSC 1030: 51 months' imprisonment for significant fraud exceeding \$11 million;

- h) R. v. Andrus (9 September 2013), Vancouver 867-1 (B.C. Prov. Ct.): 2 years incarceration plus a \$400,000 fine for income tax evasion over nine years of \$676,555;
- i) R. v. DiGiuseppe, 2010 ONCA 91: 6 years' imprisonment and a \$2 million fine for income tax fraud of \$3,492,415.
- j) R. v. Bullen, 2018 ONCJ 745: 2 years' incarceration for mortgage fraud and related offences; and
- k) R. v. Plange, 2019 ONCA 646: 3 years' imprisonment for a "massive fraud" of \$41 million contrary to s. 380(1)(a).

Aggravating Factors

- [23] In support of its submissions on sentencing, the Crown addressed the aggravating factors in respect of each count. It submits that the offences involved significant sums, occurred in relation to multiple tax years (over the period 2004, 2005, and 2008 to 2012), targeted the trust relationship between the government and its public on which the tax system is built and it must be inferred that, in respect of each count, Mr. Reynolds' actions were motivated by greed.

Count 1

- [24] Regarding Count 1, Mr. Reynolds failed to report Canadian employment income of \$258,681 in 2004 and \$351,064 in 2005, for a total of \$609,745. Assuming basic personal deductions only, the federal and provincial income tax payable on that amount was \$234,042, excluding interest and penalties. Mr. Reynolds has not paid any income tax for those years.
- [25] The fraud charged under Count 1 was not complex--Mr. Reynolds simply did not file income tax returns for the years 2004 and 2005. However, the Crown submits that the magnitude of the fraud, in terms of the amount, was significant, involving many companies with international operations, reverse takeovers and international stock transactions. The Crown submits that the straightforward nature of the fraud does not undermine its sophistication.

Count 2

- [26] Regarding Count 2, Mr. Reynolds' failed to collect and remit \$121,179 in GST/HST that he ought to have collected and remitted, which Crown submits is a significant amount.

Count 3

- [27] Regarding Count 3, at paras. 38 to 44 of my unreported February 6, 2020 ruling, I found that the only basis upon which the court was able to sentence Mr. Reynolds was on the basis that he attempted to defraud the governments of money in excess of \$5,000. This finding was based upon the manner in which Count 3 was drafted, the way the evidence was led at trial, and the instruction to the jury that, although its verdict on each count must be unanimous,

the pathway to each juror's conclusion on each count need not be unanimous. Hence, there was no way of determining the basis upon which the jury concluded that capital losses claimed by Mr. Reynolds on his 2008 income tax return were false.

- [28] The Crown nevertheless submits that Mr. Reynolds should be sentenced on the basis that the quantum of his fraud was at least \$4,173,660, and its magnitude is an aggravating factor. The Crown submits that the likelihood of the jury having concluded otherwise is remote and not supported on the evidence.
- [29] I agree with Mr. DelBigio that, in effect, the Crown is seeking to reargue the s. 724 ruling I have already made. As my ruling made clear, I was not satisfied beyond a reasonable doubt of Mr. Reynolds' guilt under Count 3 in the manner or in the magnitude asserted by the Crown. My ruling stands. However, I accept that the magnitude of Mr. Reynolds' attempted fraud was substantial.

Mitigating Factors

- [30] The Crown acknowledges that Mr. Reynolds does not have a criminal record but submits there are no other mitigating factors. It points out that Mr. Reynolds did not plead guilty, and that he has taken no steps to pay any of the taxes he was liable to pay.

Defence's Position on Sentencing

- [31] Mr. DelBigio submits that in the circumstances of this case, a conditional sentence order ("CSO") of 20 months served in the community will serve the sentencing goals of denunciation and deterrence. He relies on the decision of our Court of Appeal in *R. v. Stone*, 2001 BCCA 728 where such an order was made for an accused convicted of dangerous driving causing bodily harm in relation to, what the court described as, a serious road rage incident. The trial judge sentenced him to two years in jail, noting that, but for the guilty plea, the term would have been three years.
- [32] The Court of Appeal allowed the appeal and imposed a CSO with strict conditions. In doing so, Newbury J.A., in concurring reasons, found that the trial judge had over-emphasized the importance of the deterrence factor and did not consider the objective of restitution and, specifically, that a jail sentence would result in Mr. Stone losing his job such that he would likely be unable to pay his financial obligations to both the victim and to Insurance Corporation of British Columbia.
- [33] Mr. DelBigio submits that no category of offence is excluded from the CSO regime: *R. v. Proulx*, 2000 SCC 5 at para. 79. He points out that such a sentence is possible even in a "large scale fraud" case, citing among other cases: *R. v. Offman*, 2017 BCPC 70 at para. 39; *R. v. Plange*, 2018 ONSC 1657, at paras. 57-58, rev'd 2019 ONCA 646; *R. v. Roberts*, 2019 BCSC 338; *R. v. Keatley*, 2009 BCPC 249; *R. v. Mann* (13 April 2018), 1031-1 (B.C. Prov. Ct.); *R. v. Kaba* (9 December 2011), 644-2-C (B.C. Prov. Ct.).

[34] I note that in 2012, a number of amendments were made to the Criminal Code which limited the availability of CSOs, including when an offence is prosecuted by way of indictment where there is a maximum term of imprisonment of 14 years or life. However, these amendments were made after the offences in respect of which Mr. Reynolds has been convicted. Accordingly, a CSO is available in this case.

Mitigating Factors

[35] Mr. DelBigio submits that the following mitigating factors are present in this case:

- a) Mr. Reynolds had a tumultuous childhood. Mr. DelBigio provided the Court with the following background information:

Mr. Reynolds is currently 52 years old. He was born in Vancouver. He was one of three children of his parents. He had a tumultuous childhood during which he suffered from poverty and violence at the hands of his father. His father insisted on home schooling of his children and Mr. Reynolds was homeschooled for grades 1 to 3. He first attended school in grade 4. He was approximately 12 years old when his parents separated. He and his mother and siblings lived in a low-cost hotel. His father then attempted to kill his mother by stabbing her multiple times with a screwdriver. He was convicted and went to jail. Thereafter Mr. Reynolds changed schools multiple times and failed classes in grade 9, 10 and 11. He eventually left school and began working as an "office boy" for a mineral exploration company where his mother worked. That is the industry in which Mr. Reynolds devoted his career.

Mr. Reynolds married Christine and together they had four children, Arielle, Hannah, Christopher and Harrison. In 1998, the family moved to Australia, Christine's native country. Mr. Reynolds travelled a great deal for his various businesses, sometimes being away from his family 10 months per year. The family had little money.

In 2006, Mr. Reynolds and his family returned to live in Vancouver. He and Christine separated in 2008. He currently lives with his second wife, Emma, in a rented apartment in Vancouver.

After learning about the criminal investigation that led to the charges in this case, Mr. Reynolds visited Australia but returned to Canada knowing he would likely be criminally charged.

- b) There were 32 letters of support provided for Mr. Reynolds. They are from each of his children, his mother, his father-in-law, his son-in-law, sister-in-law, Christine, Emma, friends, business associates, professional advisors and a university professor. They are detailed and variously describe Mr. Reynolds as a man of outstanding character, a loving, dedicated and doting father, a husband, a trusted friend who is fiercely loyal, selfless, greatly respected, well-liked in the community, fair, thoughtful, caring, honourable, courteous, kind, creative, considerate, dependable, committed, honest, inspiring, loyal, supportive, trustworthy, reliable, engaging and genuine. Each of the authors commented on how shocked they were and how difficult it was for them to grasp that Mr. Reynolds had been convicted of fraud and how out of character it was for him to have been convicted of any crime. They portrayed him as a pillar, a role model, a mentor, a man who has sacrificed

for his family and, overall, a good human being who has made a mistake and is deserving of a second chance.

- c) Mr. Reynolds has no prior criminal history.
- d) The conduct for which he has been convicted was unsophisticated and did not involve any significant degree of planning, skill or deception.
- e) Mr. Reynolds' conduct did not involve breach of a position of trust or involve vulnerable individuals.
- f) There is no evidence that Mr. Reynolds engaged in an effort to conceal his frauds.
- g) With respect to Count 2, Mr. Reynolds did not keep the GST/HST for himself. Rather, he simply failed to collect and remit it.
- h) Mr. Reynolds has lived with being under criminal investigation since 2016 and incarceration will have a severely negative impact on him and his family.
- i) There is no suggestion that Mr. Reynolds will endanger the community if he were to serve his sentence in the community.

Analysis

- [36] As part of its analysis on sentencing, the court considers and may be guided by the range of sentences imposed for similar offenders committing similar offences. However, sentencing is an individualized process.
- [37] As was recently stated by the Quebec Court of Appeal in *Barchichat v. R.*, 2020 QCCA 282 at paras. 11 and 20:
- [11] Courts must adequately weigh all sentencing objectives. The objectives of deterrence and denunciation must be considered in light of the circumstances of each case and cannot a priori exclude a sentencing choice solely due to the objective gravity of a crime.
- [20] With all due respect for the trial judge, whose decision is otherwise more than adequately substantiated, I am of the view that she erred in law by emphasizing deterrence and denunciation to such an extent that she did not follow the approach set out in *[R. v. Proulx [2000] 1 S.C.R. 61]* to exclude a conditional sentence in the present case.
- [38] I agree with Crown Counsel that in cases involving large scale fraud, the law is clear that the need for denunciation and deterrence must take precedence: *R. v. Lawson*, 2019 BCCA 290, at para. 13; *R. v. Bath and Khangura*, 2012 BCSC 645 at paras 39, 52-54, 75-76; *R. v. Dyck*, 2018 MBCA 33, at para. 26; *R. v. Tickell*, 2010 BCCA 303 at para. 60; *R. v. Khan & Ali*, 2002 BCCA 703 at para. 9; *R. v. Schneider*, 2002 BCCA 143 at para. 18; *R. v. Simmons*, 2007 BCCA 478 at para. 4; *R. v. Dickson*, 2007 BCCA 561 at para. 63.

- [39] I accept that, with the exception of having been motivated by greed, the aggravating factors enumerated by the Crown in respect of Counts 1 and 2 are present in this case. The evidence at trial overwhelmingly demonstrated that Mr. Reynolds was at the material times a "deal-making" entrepreneur who left the details to others. He retained the services of accountants and lawyers to handle his tax matters. Nevertheless, there is no question in this case that Mr. Reynolds' moral culpability is high. That is because he must be taken to have known or having been in reckless disregard of or wilfully blind to his income tax and GST/HST payment obligations. Respecting Count 3, while I cannot determine the precise amount of the fraud, I am satisfied that it was substantial.
- [40] However, I also accept that the mitigating factors put forward by Mr. DelBigio are present. In addition, while there was no guilty plea in this case, the evidence proffered by the Crown was by any measure profoundly complicated and fraught with difficulty. Indeed, as the trial progressed, the Crown's case regarding the years during which Mr. Reynold's conduct was impugned, as well as the transactions in the remaining years in respect of which the Crown pursued its charges, steadily diminished.
- [41] Mr. Reynolds, will you please stand. Is there anything that you wish to say before I sentence you?

[COMMENTS BY THE ACCUSED]

- [42] Thank you. You may have a seat.
- [43] Sentencing any offender is a difficult task. I have given the circumstances of this case considerable thought.
- [44] It is one of the fundamental principles of sentencing that an offender should not be deprived of liberty if less restrictive sanctions may be appropriate in the circumstances. All available sanctions, other than imprisonment, that are reasonable in the circumstances and consistent with the harm done to the victims or to the community should be considered for all offenders. There is no evidence to suggest that CSOs are any less effective as a general deterrent than custodial sentences, or that those offenders given CSOs are more likely to re-offend. As was stated in *R. v. Dickson* 2007 BCCA 561:
- [42] The second aspect of the sentencing judge's reasoning that warrants comment is the statement that conditional sentencing orders do not have any significant effect as a general deterrent, that the public and the media consider conditional sentencing orders and a suspended sentence to be equivalent, and that a conditional sentencing order is regarded by the media and the public as a "mere slap on the wrist". He suggested that he might have to "pander to the public to some extent by imposing real jail" if the sentence imposed was to have any real deterrent effect.
- [43] There are a number of problems with this line of reasoning. Conditional sentencing orders have been available to judges as a sentencing option since 3 September 1996 (a period of more than ten years). They have been imposed in a wide variety of cases and for a wide

variety of offences. I know of no evidence, and there was none before the sentencing judge, to suggest that conditional sentencing orders have been any less effective as a general deterrent than custodial sentences, or that those offenders given conditional sentencing orders were more likely to re-offend, or that crime rates have risen for offences where conditional sentencing orders have been used. To the extent that the public or the media may hold the view that conditional sentencing orders are not an effective deterrent, that view is unsupported by any evidence before the Court.

[45] I have considered the aggravating factors as well as the mitigating factors. I am particularly impressed by the volume and content of the letters of support and character references. They demonstrate that, but for the offences for which he is now being sentenced, Mr. Reynolds is a man of good behaviour and is unlikely to reoffend. There is no evidence that he is any form of danger to the public and no reason has been proffered by the Crown that he cannot serve his sentence in the community.

[46] In my view, the objectives of deterrence and denunciation can be met in this case by imposing a CSO.

The Sentence

[47] I am imposing, as a global sentence in respect of counts 1 and 3, a conditional sentence order of two years less one day to be served in the community.

[48] In addition, I am imposing the following conditions:

- a) you must keep the peace and be of good behaviour. You must appear before the Court when required to do so by the Court;
- b) you will report to your bail supervisor within two working days of today's date and thereafter when required by your supervisor. If, due to the current situation regarding the Covid-19 pandemic, you are unable to report to your supervisor as required, you are required to seek appropriate accommodation from the Court;
- c) you will remain within the jurisdiction of this Court unless prior written permission to go outside that jurisdiction is obtained from you supervisor or this Court;
- d) you will reside at your current residence at [address redacted] and will notify the Court or your supervisor in advance of any change of name, address or phone number, and promptly notify the court or your supervisor of any change in employment or occupation;
- e) you will remain at your residence between the hours of 9 p.m. and 5 a.m. unless, you obtain the prior written approval of your supervisor to be away from your residence during any of those times, subject to the needs, exigencies and contingencies of a genuine emergency and the requirements of your community service described below;

- f) you will perform 200 hours of community service within the next 12 months as directed by your supervisor.
- [49] Regarding your sentence with respect to Count 2, it is mandatory that I impose a fine of \$121,179. In recognition that you are in the midst of bankruptcy proceedings, you will have 12 months from today's date to pay that fine.
- [50] In the event that your bail supervisor is of the opinion that a change in circumstances suggests it would be desirable to change one of the optional conditions that I have imposed, your supervisor must provide written notice of the proposed change, and reasons for the change, to you, the court and to the prosecutor.
- [51] Section 742.6 provides that, should you be found in breach of any conditions that I have imposed in this order, a warrant for your arrest can issue and you will be brought before the court for a hearing. If the court finds, on a balance of probabilities, that you breached a condition without reasonable excuse, the court may change or add new optional conditions, suspend the community sentence and direct that you serve a portion of your remaining sentence in custody, or terminate the community sentence and direct that you serve the remainder of the sentence in a custodial setting.
- [52] If it is determined by an appropriate authority that you may be in breach, the clock on your community sentence order stops when a warrant is issued for your arrest or you are arrested, or your appearance is compelled, and only restarts upon a determination by the court of whether you were in breach. The court may, if it deems it in the interests of the justice, deem the period of suspension as time served.
- [53] Mr. Delbigio, I would ask that you review the substance of ss. 742.4 and 742.6 again to ensure that Mr. Reynolds understands the conditions, the process for changing conditions and the consequences with failing to comply with them. Mr. Reynolds, I encourage you to ask your lawyer any questions you may have about the conditions and the procedures that I have summarized.

"G.C. Weatherill J."

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