

**IN THE SUPREME COURT OF NOVA SCOTIA**

**Citation:** R. v. Boudreau, 2007 NSSC 247

**Date:** 20070821

**Docket:** CRS 274919

**Registry:** Halifax

**Between:**

Her Majesty the Queen

v.

Brian Vincent Boudreau

**Judge:**

The Honourable Justice Walter R.E. Goodfellow

**Heard:**

August 21, 2007 (orally) in Halifax, Nova Scotia

**Written Decision:**

August 22, 2007

**Counsel:**

James E. Clarke, Provincial Crown

Brian Vincent Boudreau, self-represented

**Goodfellow, J.:**

**Offences**

[1] In the matter of *R. v. Brian Vincent Boudreau*, the accused is charged:

THAT HE between the 3<sup>rd</sup> day of September, 1996 and the 27<sup>th</sup> day of September, 1999, at or near Sydney, in the County of Cape Breton, Province of Nova Scotia, did cause Human Resources Development Canada to act upon a forged document, to wit a Record of Employment, as if it were genuine contrary to Section 368(1)(b) of the *Criminal Code of Canada*.

AND FURTHERMORE, between the 3<sup>rd</sup> day of September, 1998 and the 27<sup>th</sup> day of September, 1999, at or near Halifax, in the County of Halifax, Province of Nova Scotia, did cause the Office of Economic Development of the Province of Nova Scotia to act upon a forged document, to wit a Record of Employment, as if it were genuine, contrary to Section 368(1)(b) of the *Criminal Code of Canada*.

[2] Mr. Boudreau, the offender, pleaded guilty to these two counts after which the crown moved for dismissal of the initial 102 count indictment and the motion was granted. The two charges to the which the offender pleaded guilty encompassed the time frame 1996 to 1999 captured in the specific accounts in the original indictment. The entry of guilty pleas results in the cancellation of a 5 week jury trial which was scheduled to commence in Sydney, September the 4<sup>th</sup> for which a panel of 450 prospective jurors would have been required to attend. In

addition, the trial anticipated the calling of forty-one witnesses and that will not now be necessary.

[3] The Bras d'Or North Community Development Association was incorporated in 1989 and was originally formed to provide recreational, social and educational programs to the residents of Bras d'Or North.

### **Crown's Recital of Facts**

[4] The crown recited in considerable detail and at length the facts of the two counts and I will endeavour to summarize them. The period of investigation was from January the 1<sup>st</sup>, 1996 to December 31<sup>st</sup>, 2000.

[5] The offender held office as a Director and/or President of Bras d'Or North Community Development Association for many years including the period under investigation (1995-2000).

[6] During this period the offender furnished false records of employment on behalf of the Association. What was achieved by this was that this not-for-profit

community organization applied for federal and provincial grants and part of the determination for the size of any grant was the extent of expenditure by the Community Association. The scheme put into place by Mr. Boudreau essentially provided a number of members of the community and students with T-4 slips that recited wages in excess to what they actually received. This provided two consequences: first, some of these individuals then used the T-4 slips and the record of employment provided by Mr. Boudreau in his capacity as president to secure E-I benefits or increased benefits. It is estimated that approximately 40 claims for Employment Insurance Benefits were established by the false records, additionally this provided a statical base for the Association in its applications for government assistance.

[7] Without reviewing the various instances where the scheme came to light, I would mention just one. In one case a student was paid exactly what the student was entitled to and without the student's participation the student received a T-4 slip greater than what was paid. This created a problem for the student because the level of wages recited in the false T-4 slip created a problem for the student in the student's application for a student loan and this is one of the ways that the scheme came to light.

[8] The court is advised that Mr. Boudreau was the author of the scheme and carried on without any evidence being provided of other members of the Board being participants.

[9] The matter was subject to an extensive, lengthy and through investigation including interviewing more than sixty persons, all of whom confirmed that the records of employments and payroll records were issued solely by Mr. Boudreau.

[10] Mr. Boudreau was interviewed for approximately 7 hours in 2004 and provided the investigating officers with the records used to substantiate funding requests from the various agencies such as Nova Scotia Economic Development and Human Resources Development Canada. The investigation proceeded and revealed the falsification of records of employment, T-4 slips, and payroll records by the offender.

[11] The crown assured the court that the offender did not receive any financial benefit from the scheme and I made a point of having the Senior RCMP Investigating Officer confirm personally to the court that throughout their

extensive investigation, no evidence of personal financial benefit to the offender was uncovered.

### **Criminal Code Provisions**

[12] The trial judge is given considerable direction with respect to sentencing including the provisions of the *Criminal Code* contained in s. 716, 7.18.1, 7.18.2, 742.1 and I have reviewed all the relevant provisions of the *Criminal Code* in determining what, in my view, is a fit and proper sentence in the totality of the circumstances before the court.

### **Criminal Record**

[13] The crown indicates that Mr. Boudreau had criminal convictions in 1983 and 1984 and that neither were related to fraud or forgery. In such circumstances, stale dated convictions are not a significant factor for consideration.

## **The Offender**

[14] The offender is fifty-three years of age with 4 grown children. He has had employment in Alberta for some period of time and his wife has just entered employment as they wish to put this matter behind them and address their financial circumstances and difficulties. Mr. Boudreau appeared before me subdued and, I think, seriously wanting to get on with his life and be a productive, employed citizen. His employment continues to be available for him and he takes advantage of whatever becomes available, whether it is a ten or twelve hour shift. His employment within Alberta does require some travel and staying in employment accommodation from time to time. Mr. Boudreau did, until recently, have the benefit of experienced legal counsel. He could not afford to meet his financial obligation to counsel and became self-represented.

[15] The crown confirms as a matter of record that there were no aggravating circumstances as set out in the *Criminal Code* and on the assurances that the offender did not receive any financial benefit, I have concluded the recommended conditional sentence is the appropriate disposition. I make it clear that had there been any financial benefit which would have meant the offender was motivated by

greed that I would have considered a conditional sentence totally out of order and would have, in all probability imposed a penitentiary sentence. I must follow the direction given by the *Criminal Code* and, in particular, section 718.2:

A court that imposes a sentence shall also take into consideration the following principles:

...(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 should be considered for all offenders, with particular attention to the circumstances of aboriginal offenders. 1995, c. 22, s. 6; 1997, c. 23, s. 17; 2000, c. 12, s. 95(c); 2001, c. 41, s. 20; 2005, c. 32, s. 25.

[16] The crown has left it to the court to determine the length of the recommended conditional sentence and the offender had apparently indicated he would like to have a conditional discharge. The offence is a serious one and it is not appropriate that a conditional discharge be granted. I am prepared and do sentence the offender on count 1 to a sentence of one year to be served conditionally. The statutory conditions of a conditional sentence will apply and, in addition, his absence from his place of residence is permitted for employment related requirements. It serves no useful purpose to put the offender in a position where he cannot continue to meet the requirements of his employment, therefore,

no specific curfew is imposed. The crown asked for a period of probation, however, I consider that the offender will either straighten himself out and continue to be an employed, productive member of society and that requiring him to do some reporting at the end of his one year sentence, in the totality of the circumstances, would not achieve anything but utilize the services of Probation personnel and their services can be better utilized in other files. I make it clear to the offender that he must strictly adhere to the statutory conditions, particularly, the reporting requirements and that failure to do so or engagement in any other criminal activity, in all probability, will find himself in accommodation with bars.

[17] The sentence imposed on the first count will also constitute the sentence on the second count concurrent.

J.